But humans are adaptable. The American people must come to realize that this instant communication is part of their environment and learn how to deal with their own reactions.

Politicians up to and including presidents must always keep in mind, as well, the swiftness with which the word is spread, for better or for worse.

SENATE—*Friday, November 9, 1973*

The Senate met at 11 a.m. and was called to order by Hon. JAMES B. ALLEN, a Senator from the State of Alabama.

PRAYER

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

Almighty God, who hast revealed Thyself in a Carpenter-Physician-Teacher, make known Thyself to us in the quiet discharge of each day's duty, ennobling all our labor by doing it as unto Thee. Keep ever before us the vision of Thyself in the common things of every day, that we may find a divine calling serving our fellowman in this place. We pray not for tasks fitted to our strength but for strength which fits us for our tasks. When we ask Thee "to forgive us our trespasses" may we be sure "to forgive those who trespass against us." Gather the President, all legislators, all jurists, all those in the diplomatic and military services, and all citizens of this great land under the shelter of Thy forgiveness, Thy mercy, and Thy love that the Nation may live righteously as "one nation under God."

In Thy holy name we pray. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The second assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., November 9, 1973.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. JAMES B. ALLEN, a Senator from the State of Alabama, to perform the duties of the Chair during my absence.

JAMES O. EASTLAND,
President pro tempore.

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

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.

THE ENERGY CRISIS—MESSAGE FROM THE PRESIDENT

The ACTING PRESIDENT pro tempore (Mr. ALLEN) laid before the Senate a message from the President of the United States which was referred jointly to the Committees on Armed Services, Banking, Housing and Urban Affairs, Commerce, Government Operations, Interior and Insular Affairs, Public Works, and the Joint Committee on Atomic Energy. The message is as follows:

To the Congress of the United States:

As America has grown and prospered in recent years, our demands for energy have begun to outstrip available supplies. Along with other major industrialized nations, we are now faced with the prospect of shortages for several years to come.

Two years ago, in the first energy message ever sent to the Congress by a President of the United States, I called attention to the looming energy problem. Since that time, I have repeatedly warned that the problem might become a full-blown crisis, and seeking to minimize shortages, I have taken a number of administrative steps to increase supplies and reduce consumption. Earlier this year, I also sent more than a half dozen urgent legislative proposals to the Congress. While none of these has yet been enacted, I am hopeful at least several of the measures will be ready for my signature before year's end.

Unfortunately, the energy crisis that once seemed a distant threat to many people is now closing upon us quickly. We had expected moderate shortages of energy this winter, but four weeks ago, when war broke out in the Middle East, most of our traditional suppliers in that area cut off their shipments of oil to the United States. Their action has now sharply changed our expectations for the coming months.

Largely because of the war, we must face up to the stark fact that we are heading toward the most acute shortages of energy since the Second World War. Of the 17 million barrels of oil a day that we would ordinarily consume this winter, more than two million barrels a day will no longer be available to us. Instead of a shortage of approximately 2–3 percent that we had anticipated this winter, we now expect that our supply of petroleum will be at least 10 percent short of our anticipated demands—and could fall short by as much as 17 percent.

ADMINISTRATION ACTIONS TO MEET THE EMERGENCY

Faced with this emergency, I believe that we must move forward immediately on two fronts: administrative and legislative.

In a speech to the Nation last night, I announced a number of immediate actions:

First, industries and utilities which use coal—our most abundant resource—will be prevented from converting to oil. Efforts will also be made to convert power plants from the use of oil to the use of coal.

Second, reduced quantities of fuel will be allocated to aircraft. This will lead to a cutback of some 10 percent in the number of commercial flights, but it should not seriously disrupt air travel nor cause serious damage to the airline industry.

Third, there will be reductions of approximately 15 percent in the supply of heating oil for homes, offices and other establishments. This is a precautionary measure to ensure that the oil now available not be consumed early in the winter, so that we shall have adequate amounts available in the later months. This step will make it necessary for all of us to live and work in lower temperatures. We must ask everyone to lower the thermostat in his home by at least 6 degrees, so that we can achieve a national daytime average of 68 degrees. In offices, factories and commercial establishments we must ask that the equivalent of a 10-degree reduction be achieved by either lowering the thermostat or curtailing working hours.

Fourth, there will be additional reductions in the consumption of energy by the Federal Government, cutting even deeper than the 7 percent reduction that I ordered earlier this year. This new reduction will affect the operations of every agency and department in the Government, including the Defense Department, which has already led the way in previous cutbacks. As one of the steps in this Federal effort, I have ordered that daytime temperatures in Federal offices be reduced to a level between 65 and 68 degrees. I have also ordered that all vehicles owned by the Federal Government be driven no faster than 50 miles per hour except in emergencies. This is a step which I have also asked Governors, mayors, and other local officials to take immediately with regard to vehicles under their authority.

Fifth, I have asked the Atomic Energy Commission to speed up the licensing and construction of nuclear plants, seeking to reduce the time required to bring nuclear plants on line from ten years to six years.

Sixth, I have also asked Governors and mayors to reinforce these actions by taking appropriate steps at the State and local level. Among the steps which I believe would be helpful are these: staggering of working hours, the encouragement of mass transit and carpooling, alteration of school schedules, and elimination of unnecessary lighting. I have also recommended to the Governors that, consistent with safety and economic considerations, they seek to reduce highway speed limits to 50 miles per hour. This step alone could save over 200,000 barrels of oil a day.

NEED FOR EMERGENCY LEGISLATION

As essential as these actions are to the solution of our immediate problem, we must recognize that standing alone, they are insufficient. Additional steps must be taken, and for that purpose, we must have new legislation.

I am therefore proposing that the Administration and the Congress join forces and together, in a bipartisan

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

spirit, work to enact an emergency energy bill. Members of my Administration have been consulting with apppropriate leaders of the Congress for more than two weeks on this matter. Yesterday I met with the bipartisan leaders of the House and Senate and found them constructive in spirit and eager to get on with the job. In the same manner, I pledge the full cooperation of my Administration. It is my earnest hope that by pushing forward together, we can have new emergency legislation on the books before the Congress recesses in December.

Based on previous consultations with the Congress, I have decided not to send a specific Administration bill to the Congress on this matter but rather to work with the Members in developing a measure that would be acceptable to both the executive and legislative branches. As part of that process, I think it would be helpful to call attention to those provisions that I think should be included in this emergency bill. At a minimum, I hope that the act would:

—Authorize restrictions on both the public and private consumption of energy by such measures as limitations on essential uses of energy (office hours, for instance) and elimination of non-essential uses (decorative lighting, for example);

—Authorize the reduction to 50 miles per hour of speed limits on highways across the country;

—Authorize the exemption or granting of waivers of stationary sources from Federal and State air and water quality laws and regulations. Such actions would be taken through the Administrator of EPA.

—Authorize the exemption of steps taken under the proposed energy emergency act from the National Environmental Protection Act (NEPA).

—Provide emergency powers for the Federal regulatory agencies involved in transportation to adjust the operations of air, rail, ship and motor carriers in a manner responsive to the need to conserve fuel.

—Empower the Atomic Energy Commission to grant a temporary operating license of up to 18 months for nuclear power plants without holding a public hearing. Such actions would be subject to all safety and other requirements normally imposed by the Commission.

—Authorize the initiation of full production in Naval Petroleum Reserve #1 (Elk Hills, California) and the exploration and further development of other Naval Petroleum Reserves, including Naval Petroleum Reserve #4 in Alaska.

—Permit Daylight Saving Time to be established on a year-round basis.

—And authorize the President, where practicable, to order a power plant or other installation to convert from the use of a fuel such as oil to another fuel such as coal and to make such equipment conversions as are necessary.

In addition to the provisions above, all of which I believe must be enacted before December, there are a number of other authorities which should be provided as soon as possible and hopefully will be included in the emergency measure.

One such provision would grant the President additional authority to allocate and ration energy supplies. Under this new authority, the President could take such actions based solely upon energy considerations. It is my hope that rationing of energy products will never be required, but if circumstances dictate it, there should be no impediments to swift action. For contingency purposes, I have already directed that plans for gasoline rationing be drawn up and held in reserve.

Recognizing that a more efficient use of our transportation resources is necessary, we should also provide additional authority to encourage greater use of funds from the Federal-Aid Highway Act of 1973 for mass transit capital improvements.

In addition, we should provide the Federal Power Commission with authority, during the duration of the energy emergency, to suspend the regulation of prices of new natural gas at the wellhead.

Finally, I believe it would be wise if, on energy grounds, the President were empowered to exercise any authority now contained in the Defense Production Act, the Economic Stabilization Act and the Export Administration Act, even though those acts may have otherwise expired.

MEETING THE LONG-TERM CHALLENGE

As we act to deal with the immediate problem before us, we must not ignore the need for preventing such a crisis from recurring. The lead-times required to meet our long-range energy needs dictate that we must move on them at once.

Legislation authorizing construction of the Alaskan pipeline must be the first order of business as we tackle our long-range energy problems. The American people are depending upon the Congress to enact this legislation at the earliest possible moment, and they are depending upon me to approve it. With passage apparently imminent, I would urge the Congress not to burden this legislation with irrelevant amendments. This is no time to hold the Nation's energy future hostage to other controversial interests.

I am also requesting early action on pending legislative proposals to:

—permit the competitive pricing of new natural gas;

—provide reasonable standards for the surface mining of coal;

—provide simplified procedures for the siting and approving of electric energy facilities;

—establish a Department of Energy and Natural Resources;

—and provide procedures for approving construction and operation of deepwater ports.

Because of the critical role which energy research and development will play in meeting our future energy needs, I am requesting the Congress to give priority attention to the creation of an Energy Research and Development Administration separate from my proposal to create a Department of Energy and Natural Resources. This new administration would direct the $10 billion program aimed at achieving a national capacity for energy self-sufficiency by 1980.

This new effort to achieve self-sufficiency in energy, to be known as Project Independence, is absolutely critical to the maintenance of our ability to play our independent role in international affairs. In addition, we must recognize that a substantial part of our success in building a strong and vigorous economy in this century is attributable to the fact that we have always had access to almost unlimited amounts of cheap energy. If this growth is to continue, we must develop our capacity to provide enormous amounts of clean energy at the lowest possible cost. Thus, irrespective of the implications for our foreign policy and with the implicit understanding that our intentions are not remotely isolationist, the increasing costs of foreign energy further contribute to the necessity of our achieving self-sufficiency in energy.

RICHARD NIXON.

THE WHITE HOUSE, *November 8, 1973.*

Mr. ROBERT C. BYRD subsequently said: Mr. President, I ask unanimous consent that the President's message be referred jointly to the following committees:

Armed Services; Banking, Housing and Urban Affairs; Commerce; Government Operations; Interior and Insular Affairs; Public Works; and the Joint Committee on Atomic Energy.

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

EXECUTIVE MESSAGES REFERRED

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

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

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Hackney, one of its reading clerks, announced that the House had agreed to the amendments of the Senate to the bill (H.R. 4771) to authorize the District of Columbia Council to regulate and stabilize rents in the District of Columbia.

The message also announced that the House had passed the following bill in which it requests the concurrence of the Senate:

H.R. 11104. An act to provide for a temporary increase of $10,700,000,000 in the public debt limit and to extend the period to which this temporary limit applies to June 30, 1974.

HOUSE BILL REFERRED

The bill (H.R. 11104) to provide for a temporary increase of $10,700,000,000 in the public debt limit and to extend the period to which this temporary limit applies to June 30, 1974, was read twice

by its title and referred to the Committee on Finance.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Wednesday, November 7, 1973, be dispensed with.

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

AUTHORIZATION FOR ALL COMMITTEES TO HAVE UNTIL MIDNIGHT SATURDAY, NOVEMBER 10, 1973, TO FILE REPORTS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that all Senate committees have until midnight Saturday to file reports.

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

SUPPLEMENTAL AUTHORIZATION OF APPROPRIATIONS FOR THE ATOMIC ENERGY COMMISSION FOR FISCAL YEAR 1974

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 463, S. 2645.

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

The legislative clerk read as follows:

S. 2645, to amend Public Law 93-60 to increase the authorization for appropriations to the Atomic Energy Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and for other purposes.

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

There being no objection, the bill was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 101(a) of Public Law 93-60 is hereby amended by striking therefrom the figure "$1,740,750,000," and substituting the figure "$1,751,450,000".

SEC. 2. Section 101(b) of Public Law 93-60 is hereby amended by adding to subsection (b)(1) the following words: "Project 74-I-1, additional waste concentration and salt cake storage facilities, Richland, Washington, $30,000,000."

SENATOR CANNON ON "FACE THE NATION"—NOMINATION OF GERALD R. FORD TO BE VICE PRESIDENT

Mr. MANSFIELD. Mr. President, on Sunday, November 4, 1973, the distinguished Senator from Nevada (Mr. CANNON), the chairman of the Committee on Rules and Administration, appeared on the nationwide telecast "Face the Nation."

At that time, he was interviewed by George Herman of CBS News, Carl Leubsdorf of the Associated Press, and Marya McLaughlin of CBS News.

I watched the telecast in its entirety. I was tremendously impressed with the way Senator CANNON conducted himself and the logic with which he answered the questions.

I think, because of the situation which confronts the Nation and will confront the Senate shortly relative to the nomination of a new Vice President, it would behoove the Senate to look over the transcript of the interview on "Face the Nation," because it answers a lot of questions. Senator CANNON answered them capably and well.

Mr. President, I ask unanimous consent that the transcript of this telecast "Face the Nation" in which Senator HOWARD CANNON, chairman of the Committee on Rules and Administration, was the main participant, be printed in the RECORD.

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

FACE THE NATION AS BROADCAST OVER THE CBS TELEVISION NETWORK

GEORGE HERMAN. Senator Cannon, three American newspapers of some significance have called in editorials this morning for the resignation of President Nixon. Do you think such mounting pressures are going to force him to resign as President of the United States?

Senator CANNON. Well, if you had asked me that a week or ten days ago, I would have said there is no chance, but the way the pressures are continuing to mount, I wouldn't want to make a guess in that area. We went through the Agnew incident and we saw the same type of thing occur. There was no question but what Mr. Agnew would not resign, and then all of a sudden he did, so I would not want to speculate very strongly in that area.

ANNOUNCER. From Washington, D.C., Face the Nation, a spontaneous and unrehearsed news interview with the Chairman of the Senate Rules Committee, Senator Howard Cannon, Democrat of Nevada, Senator Cannon will be questioned by CBS News Correspondent Marya McLaughlin, Carl Leubsdorf, Chief of the Associated Press Senate Staff, and by CBS News Correspondent George Herman.

HERMAN. Senator Cannon, if President Nixon were to resign now, the Speaker of the House, a Democrat, would become the President. Do you think that there is any thought in his mind that he would refrain from resigning, if indeed he has any thought of resigning, until after your committee and both Houses of the Congress have confirmed Mr. Ford as the new Vice President?

Senator CANNON. Well, I have a very hard time reading Mr. Nixon's mind, but I would say that from my constituent mail, there are many people in the country who believe that that might be the case. My mail is reflecting a strong urging to delay action on the Ford nomination until the matter is actually settled, because they believe that Mr. Nixon is likely to resign and that they just don't want to see him have the opportunity to appoint his own replacement. My own view is that we should proceed in our normal actions along this line, and that Mr. Ford's nomination should not be held hostage to anything else.

LEUBSDORF. How important do you think it is, Senator Cannon, that there be a Republican Vice President in line to take the presidency in case Mr. Nixon is impeached or has to resign?

Senator CANNON. Well, in the first place, our government provides now that the President and Vice President run together, so you can't have the situation of a Republican president and a Democrat vice president or vice versa, because they do run on the same ticket. Now in light of that, then I think that the system that we have established should be followed until such time as it may be changed, and that would mean that we should have the same party in the position to follow along if we're going to go outside of the speakership of the House.

MCLAUGHLIN. Senator Cannon, you said that you've gotten a lot of mail that says delay action on Mr. Ford but that you feel that you should go along in an orderly way. If the pressures on President Nixon to resign increase, as they have over the last week, what about your colleagues in the Congress? Do you think they are going to be very—particularly the Democratic ones—I'd say mainly the Democratic ones—are they going to be very eager to put the Good Housekeeping stamp of approval on Mr. Ford?

Senator CANNON. Well, I'm sure that they would not be as eager to move rapidly as if there were no possible chance of the President resigning, and of course they will be the ones that eventually have the say, but I as committee chairman do not want to assume that responsibility to try to delay the nomination for any reason other than the fact that we do need to make a complete and thorough investigation. We need to lay out how Mr. Ford thinks and what he stands for on the record so that the American people will have the opportunity to judge him as they would had he been a candidate for Vice President.

MCLAUGHLIN. But do you think that there's a good possibility that you now are working on the confirmation, if that's possible, of the next President of the United States?

Senator CANNON. Well, I've already said that in the hearings in my opening statement. I've pointed out that we could very well be confirming the next President of the United States, not just the Vice President. And I think we have to proceed on that assumption that that possibility is a very strong likelihood.

HERMAN. Let me go back to your opening question in which you brought up the—reminded us of the situation with Vice President Agnew, how he denied vehemently that he would resign and then did resign, and as it later appeared that vehement denial was for a purpose. Do you see any parallel? Do you think that the denials issuing from the White House now, that he's giving any thought to resigning, are for a similar purpose, perhaps to aid Mr. Ford's confirmation?

Senator CANNON. No, I kind of doubt that. I think that the President has no intention as of this time of resigning. I believe that myself, and so I don't think those denials are for a precise purpose. I frankly was surprised to see some of the very respected newspapers now coming out and suggesting that he ought to, and a number of columnists who have traditionally supported him taking the same position. But I believe that in his own mind that he has no intention of resigning at this time.

LEUBSDORF. In your opening statement, which you just referred to, you said that it would be a mistake for the committee to bar approval of Mr. Ford because of what some have called a record of favoritism for big business or indifference to the needs of the disadvantaged, but shouldn't the philosophy

of the man be important, especially if you are confirming a President?

Senator CANNON. Well, the philosophy of the man should be important, but on the other hand President Nixon is entitled to nominate someone of his own political ideology and his own political philosophy. I have said this before, and I think it's very clear that that's exactly what he has done, and if you will recall in the hearings, we questioned Mr. Ford along these lines, and he pointed out that he was an internationalist in international affairs, and that he was a conservative in fiscal affairs, and a moderate in domestic matters. I don't think his voting record really bears that out, but on the other hand this should be the President's decision, and I don't think we can turn him down simply because I disagree with his philosophy or because some other members of the committee do. And I think that one of the persons who was interviewed was one of those over 1,000 interviews that have been conducted so far—stated it very well when he made the statement that if you like Mr. Nixon, you'll love Jerry Ford.

McLAUGHLIN. Senator, we've asked you about whether you think Mr. Nixon will resign you know because of pressure and everything; what we haven't asked you, do you think he should?

Senator CANNON. Well, I find some difficulty with that. I would say that as of this very moment, I do not think that he should resign. I think our country has been torn apart very badly up to the present time, and I think that there is still a chance for Mr. Nixon to reestablish himself and reestablish our country in a better light, and I'd like to see some steps taken along those lines. And if that does not occur, it's getting to the point now where we almost hate to listen to the news because of something new that might have occurred, and if we continue to have new disclosures as time goes on that destroy or damage the credibility of the executive branch, then at some time in the future I would be prepared to change my mind.

HERMAN. Do you expect there to be new revelations which might make you change your mind and think the President ought to resign?

Senator CANNON. Well, I don't know of any right at the moment, although I have heard some of the rumors that I'm sure that you have, and in light of the way things have developed in the past, we certainly cannot discount the fact that there may be new disclosures as time goes on.

McLAUGHLIN. Senator Cannon, in the investigation of Mr. Ford, you have a 1,700 page FBI report, and after reading that report you said there are some questions that will have to be answered by Mr. Ford, some things that will have to be cleared up. Can you tell us if those things have been cleared up in your own mind, whatever they were?

Senator CANNON. Well, a lot of them have, but there are still some questions that we have remaining that we will go into tomorrow. You know, in FBI raw files, such as the 1,700 pages that you referred to, those contain people that say, well, I've heard this said or I've heard that said, or I read something in the paper one time, and—so these are leads that we generally try to follow them out if it sounds like there is anything serious. We try to follow them through, we try to run them down, we try to get affidavits or statements from people involved—

HERMAN. Have you succeeded?

Senator CANNON. Yes, we have. In most instances we have verified—either discounted or verified the things that have been said, and have asked some of the questions about them. You recall one I raised was the so-called laundering of campaign funds, and there are others. One was the so-called treatment by the psychiatrist.

McLAUGHLIN. Were you satisfied with his answer on the laundering of the campaign funds?

Senator CANNON. Well, I wasn't satisfied, because it simply points out that there are no records available as to who the contributors were, that $38,000-plus that went to the committee out in Michigan. Now, I'd like to have known who the contributors were, but the D.C. committee, in raising those funds, raised the funds, didn't keep the records, and dissolved the committee prior to the April deadline that was written into the law, and this was the general pattern of events that occurred with respect to the raising of the presidential campaign funds that have created so much difficulty.

McLAUGHLIN. And were you satisfied with his answer about the psychiatrist, about the fact that he had never seen the psychiatrist?

Senator CANNON. Well, if—he said under oath that he had never been treated by, never been a patient of this particular doctor, and of course the implication there was that there would be something wrong with that. I don't think that a person should read that necessarily into a result that many people read it into. I would say that we have requested Dr. Hutschnecker to come in and appear before the committee in executive session because we want to find out precisely from him, under oath, if that is a fact.

LEUBSDORF. A lot of the questions dealt with events mentioned by Mr. Winter-Berger in his book, and you're planning to have Mr. Winter-Berger in executive session Wednesday; why not put him on the stand in public session so that the public can see exactly if these charges hold up?

Senator CANNON. Well, this creates a very difficult problem. This man—many of the things that are stated in the book, we have already verified are not factually supportable, and therefore we think it would be a disservice to people who are named in that book, and who are referred to—it would be a disservice to them, give them no opportunity to refute these charges, when many of them we know presently are not true. And we felt therefore that it was better to interview Mr. Winter-Berger in executive session under oath, and then find out if we should, in light of what has developed, in supportable evidence, if we should then present him before the committee and before the American public in open session.

LAUBSDORF. Do you plan the same procedure with Dr. Hutschnecker?

Senator CANNON. We plan the same procedure with Dr. Hutschnecker, unless the doctor satisfies us when he appears before us in executive session that the facts that we now have are correct.

HERMAN. How will you release the details of what Mr. Winter-Berger has said—what—a sanitized version?

Senator CANNON. Well, we haven't made that determination yet, and that is something the committee will have to decide after we hear Mr. Winter-Berger on Wednesday.

HERMAN. Going back to the FBI 1,700-page document, are you through with that, have you completely explored all the charges, and are you satisfied that Mr. Ford has passed this test?

Senator CANNON. Well, first, I have reviewed all of it personally, every bit that has been furnished me. It did raise some questions that I have requested the FBI now to go back and do some further checking on some of the matters that have been pointed up. That checking has not all been completed, but I hope that I will have the answers on most of it by tomorrow.

McLAUGHLIN. Do you have faith in that 1,700-page FBI report? You know, you described it as being one of the most thorough—and we went through that same kind of thing, that they had done the most thorough investigation of the Watergate at one time, and there is some doubt whether they actually did. Do you have complete faith in this report you have?

Senator CANNON. Well, I have confidence in the investigative work that's being done. We have not relied solely on the FBI. We have had the General Accounting Office working with us, we have had the Library of Congress doing research with us, we have had our own investigators, we have had the Government Operations investigative committee staff helping us, some of them, and so we have gone to a lot of different sources and I am satisfied in my mind that this is the most comprehensive and the most thorough investigation that has ever taken place in our history with respect to the nomination of either a President or a Vice President to fill that particular office.

LEUBSDORF. I'd like to get back to the question of the relationship between Mr. Ford and Mr. Nixon, which you mentioned. Did you get the impression on Thursday at the hearing that Mr. Ford was trying rather consciously to set himself somewhat aside from Mr. Nixon on such things as executive privilege, the special prosecutor, and the war powers, for example?

Senator CANNON. Yes, I had the feeling that he was trying to point out that, as best he could, that he couldn't be necessarily a blind follower in his views, and that he does differ from Mr. Nixon on some of those points of view. I was very pleased, I may say, to find that he did differ in the areas that he differed with the President on, because I think they're important. I think the executive privilege thing was a good one. On the other hand, there are some areas that I disagree with him, for example, his position on the problem of impeachment—is it just a matter of having the votes and is it a political decision? I think the Constitution makes it clear that that is not the case because impeachment should depend on those strict constitutional requirements and not just whether you have a popularity contest and the political votes to vote an impeachment.

HERMAN. But it hasn't always, has it? You recently—what was the most recent impeachment? There was a judge who was found innocent in the impeachment process, but he was nevertheless impeached, because although innocent, he'd brought disrepute upon his office.

Senator CANNON. Yes, but the judge—the test for a judgeship is different than that of the president and the vice president. It's constitutionally different. Now, the judge can be impeached for improper conduct, and that isn't in the language of the presidential and vice presidential test.

HERMAN. Everything that seems to happen in this particular case is precedent-making. This is the first time the Congress has had a newly named vice president put before it for confirmation, and *I wanted* to ask you about one of the precedents that Mr. Ford seems to be setting, that is, saying that he has no intention of running for the presidency next time around. In our party political system, do you think that is a good idea?

Senator CANNON. I don't, really. I don't think it's a good idea to pre-commit oneself in a situation such as that and it may have been done for a deliberate reason. He may have felt that this would get a lot of people off his back, so to speak, people who might be considering running next time, and might make it more difficult for him to get confirmed now if he were to leave the door open. I don't like to see that, because I think many situations might occur in the meantime. Let's suppose for example, suppose the President might step out or might be impeached, and Mr. Ford goes in as president, then? Has he then precluded himself, because he said that, from running for re-election? You can conceive that he might have been in office a year's time, and might have started out rather good as a president, and yet, because of what he said, he's precluded himself from running again.

HERMAN. Well, it's not exactly Shermanesque. He simply says he has no intention——

Senator CANNON. I understand.

MCLAUGHLIN. Senator, what do you think the President can do—people talk about his ability to govern—his credibility is gone—what can he do to regain that?

Senator CANNON. Well, I think there are a number of things that could occur that would help re-establish himself or reinstate himself, if you will. One, I think a satisfactory solution of the Middle East crisis would be something that would be helpful. I think to continue the detente relationship with Russia and China, and particularly if he were able to negotiate an agreement with Russia on a mutual and balanced force reduction in Europe, between our NATO allies and the eastern bloc. On the domestic affairs, if he were able to solve this very, very difficult problem of inflation, I think that is the biggest problem in people's mind today, on the domestic level, and then in addition, if he were to start appointing people to office that were not people who were expecting political favors, but people who were able to reinstate the basis of our government here, that were people who were honest and truthful in their relationship to the American people and were capable of doing a good job, and when I say that, I'm thinking now of the situation that we have where we—the President went in, as you know, on a theory of—one of the planks was a law and order and get the crime off the streets, and so on, and yet, we have lost three of the top law enforcement people of this nation by various reasons, but all of these bringing some sort of discredit to the government, either to themselves or to the government, or to the office, or to the presidency, and so this is the sort of thing that I think the President is going to have to work on very hard, and work on to surround himself with people in the White House who the American people have some trust in.

MCLAUGHLIN. I notice that you didn't list on the domestic issues, some sort of resolution of the Watergate business and the tapes.

Senator CANNON. I'm sorry. I didn't mean that to be all-inclusive and I would certainly say the Watergate is—that's a basic thing that has to be resolved—the issue of the tapes and the issue of the Watergate matter and a complete resolution, to the satisfaction of the American people, that all of the leads have been explored and that the people who are guilty in this matter have been properly dealt with.

LEUBSDORF. Senator Goldwater said that he felt the only way that that could be done would be if the President agreed to come and testify before the Ervin Committee. Do you think that's a good idea, or practical solution?

Senator CANNON. I don't think really that that's a practical solution. It might be one, but I don't believe it's very practical. But I do think that the President is going to have to make a free and full disclosure, that he is going to have to give the person who is charged with the responsibility of investigation full and complete authority, with no power of removal, and I know that we get into a constitutional question here, as to whether or not we in the Congress can insist on the appointment or whether the executive branch has that authority. I'm one of those sponsors of the bill to appoint a completely independent prosecutor—to have the court do so—and we have a majority of the senators that are on that, but I know there is a constitutional question involved.

HERMAN. The first step in this whole process is, is it not, is getting a new Attorney General of the United States, Mr. Saxbe? Do you think the Senate is justified in departing from its usual procedure and insisting on holding hearings on a fellow member of the Senate?

Senator CANNON. No. I think that hearings should be held on Mr. Saxbe. Personally, I approve of that appointment. I think he would be a good Attorney General. I do say again, we have a constitutional question there, that's involved in his appointment at the present time, but I do not think that we should have shortcuts in the constitutional process simply because it's a person we know, and I felt the same way about Mr. Ford; even though many of us in the Congress know Mr. Ford, still, we're establishing a precedent here, and we need to go through those procedural steps to safeguard any situation like that that occurs in the future.

HERMAN. How long a procedural step before your committee on Mr. Ford? When will you be ready to report to the Senate?

Senator CANNON. It's somewhat difficult to forecast that at the moment, but I would guess that in the next two weeks we would conclude our hearings on Mr. Ford, and then it would take us a short period of time to work up the report and be prepared to make our recommendations to the Senate.

MCLAUGHLIN. Senator, in the questioning of Mr. Ford on a philosophical basis, there's been a lot of talk about the President's relationship to the country; you've gone into questions of how he feels about war powers, executive privilege and the special prosecutor. But what about how he feels about so many other things? Are you going to pursue how he feels on a lot of domestic issues, such as the welfare issue, civil rights, farm—just to build a picture of Jerry Ford—do you intend to do that?

Senator CANNON. Well, I had not intended to go into that detail in our hearings, because as I said, I think the President's entitled to the philosophy that he wants in there, and Mr. Ford is pretty much a carbon copy of President Nixon certainly in his position on these various domestic issues, because he has been the President's leader and he has fought the President's battles as he well should have in that position, and so his voting record, which is already open to the public, and it's quite well established over the years—it's available to anyone, and it clearly establishes that that is his basic position.

HERMAN. Do you think we'd have been better off under a parliamentary system, where a vote of no confidence in the Congress might have toppled any president by now?

Senator CANNON. Well, I would say that that certainly is an area for historians, perhaps to compare and to make judgments on, but I would certainly say that had we been under that form of government, certainly the events that have occurred would have toppled the government before now, and I found that in some of my visits with some of my friends abroad, that they cannot understand how our government could still be in existence.

LEUBSDORF. Do you feel that if President Nixon resigns, or is impeached there should be or there is any way there can be a special presidential election before the end of the four years to which he was elected?

Senator CANNON. I kind of doubt it. I kind of doubt that there could be, under the present legal situation as it now exists.

HERMAN. Would you like to see one, if it could be worked out?

Senator CANNON. I would like to see some sort of provision in the Twenty-fifth Amendment, as well as if the President were replaced for some sort of—the public to have——

HERMAN. Thank you, Senator Cannon, for being with us on Face the Nation.

ANNOUNCER. Today on Face The Nation, the Chairman of the Senate Rules Committee, Senator Howard Cannon, was interviewed by CBS News Correspondent Marya McLaughlin, Carl Leubsdorf, Chief of the Associated Press Senate Staff, and CBS News Correspondent George Herman. Next week, another prominent figure in the news will Face The Nation.

Mr. HUGH SCOTT. Mr. President, will the distinguished majority leader yield?

Mr. MANSFIELD. I yield.

Mr. HUGH SCOTT. Mr. President, I heard the program. It was an excellent program and presented a dignified reaction to many matters of importance to the Nation.

I feel that the distinguished chairman of the Committee on Rules and Administration has performed with his usual great capacity and diligence. He has done an excellent job in conducting the investigation into the qualifications of the Vice President-designate, Mr. FORD. All the questions which anyone sought to raise are being considered. I congratulate the chairman for the manner in which he has presided over his committee.

Mr. MANSFIELD. The Committee on Rules and Administration, under the chairmanship of the Senator from Nevada (Mr. CANNON), has moved with expedition and efficiency. The committee has not dodged asking hard questions, and the nominee has not dodged answering hard questions. I hope it will be possible before too long to get action on the nomination, and that we may submit the question to the Senate before Thanksgiving.

Mr. HUGH SCOTT. I certainly hope so. The ranking member of the committee, the distinguished Senator from Kentucky (Mr. COOK), has also made possible the reasonable expedition by the careful, deliberative course that he has pursued.

Mr. MANSFIELD. He has, indeed. He and the chairman have worked in tandem, and the whole committee has shown a high degree of dignified purpose.

CONTINUATION ON PAYROLL OF CERTAIN EMPLOYEES OF VICE PRESIDENT

Mr. MANSFIELD. Mr. President, on behalf of the Republican leader, the distinguished Senator from Pennsylvania (Mr. SCOTT), and myself, I send to the desk a resolution and ask for its immediate consideration.

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

The legislative clerk read as follows:

S. RES. 199

Resolved, That not more than four of the clerical and other assistants to the Vice President continued on the payroll of the Senate under authority of Senate Resolution No. 184, agreed to October 10, 1973, are hereby continued on such payroll at their respective salaries for an additional period of not to exceed thirty days, such sums to be paid from the contingent fund of the Senate: *Provided*, That any such assistants continued on the payroll while so continued, shall perform their duties under the direction of the Secretary of the Senate, and the Secretary of the Senate is hereby authorized and directed to remove from such payroll any such assistants who are not attending to the duties for which their services are continued.

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

There being no objection, the resolution (S. Res. 199) was considered and agreed to.

Mr. HUGH SCOTT. Mr. President, with regard to the measure just agreed to, I think we ought to make a little legislative history, with the approval of the distinguished majority leader.

We have extended the payment of salaries for 30 days. We do not know whether the nomination of the Vice President-designate will actually be confirmed before 30 days. If a few more days are involved, I take it that the majority leader would have no difficulty in extending the period reasonably, for a short time, by further action, if necessary, pending the actual confirmation of the nomination of the new Vice President.

Mr. MANSFIELD. No, I would agree with the distinguished Republican leader. I feel safe in saying that I think the Senate would also agree.

THE PROPOSED RECESS

Mr. HUGH SCOTT. Mr. President, on my own time, let me say that I regret the proposed recess very much, because we in the Senate are really caught with our calendar down. We have very little work to do. We are waiting for the other body. We took a recess in October. Now we are faced with a recess of 10 days in November, which will carry us into a December session.

This is a situation which is difficult for the Members of Congress and for their families. I think it is difficult for the people of the country, because I have sensed over the years that people are happier when Congress is out of session. Certainly, when we are out of session, we cannot hurt anybody very much. Therefore, we ought to finish our work and go home.

I know that the distinguished leaders on the other side of the aisle as well as on this side of the aisle have indeed wrought mightily this year and have done a very considerable job and were not the initiators of the idea of this additional recess. We do understand the problems in the other body; we must not be too critical of them. But the real delay is due to the fact that the other body has not sent over to us certain vital measures, including one particular appropriation bill of magnitude and importance.

I believe we ought to consider the Magnuson proposal and other proposals whereby we can dispose of authorization bills in the first half of the year and appropriation bills in the second half. We would control expenditures better; we would be a more responsible Congress.

I really do regret this. I would rather stay here and finish than take all these recesses. As Menander once said, "We live not as we wish to, but as we can." So we are in the hands of a system which is sluggish and which is not really operating at high gear.

Therefore, I present this as an apologia for the fact that the Senate has to meet and talk but has very little action before it, and that is a pity.

WATERGATE AND THE PRESIDENT

Mr. HUGH SCOTT. Mr. President, on Saturday, September 15, 1973, a Republican dinner was held in Lexington, Ky., honoring John Kerr, retiring Republican State chairman, which was attended by more than 800 people from throughout Kentucky. Our honored friend, the former Senator from Kentucky, John Sherman Cooper, addressed the gathering, and I ask unanimous consent that his speech and an editorial referring to his speech be printed in the RECORD.

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

WATERGATE AND THE PRESIDENT

This has been a great evening for Kentucky Republicans. It bespeaks our loyalty to and faith in our party and its principles.

Now, as would be said in my home county of Pulaski in the hills, I want to talk "serious" for a few minutes. I want to talk about Watergate and the insinuations against President Nixon. I shall speak first from a legal viewpoint and then my own personal beliefs and feelings.

We Republicans, as all good Americans, do not condone criminal or illegal activity, and that of Watergate. Justice is essential to the very underpinnings, the foundations of our country. We give full credit to the media for its work in bringing into full light the wrongs of Watergate. But lately, a part of the media is trying President Nixon upon the basis of hearsay, headlines, reports from 'unidentified sources'—statements that could not be admitted in a court of justice.

I have been a Judge, but before and beyond that experience I was reared, as you were, and the vast majority of our countrymen, in the knowledge of that right which is the right of every one, including the President, that no man is considered guilty until he has been proven guilty. There has been nothing to prove Richard Nixon guilty.

Let the facts come out, through the courts and in the press. But let there be due process and justice. I believe it wrong, day after day, to give the people, through hearsay from unidentified sources, the impression that the President is guilty. That is not "due process." That is not justice.

Now I want to speak of my personal belief. I have known President Nixon since 1947, and quite well since 1953 when he became Vice President. Since he became President he has been engaged in ending the war in Vietnam, which he did not start but found on his doostep; in halting the inflation largely caused by that war; and lately to bring about better relations between the United States, Mainland China, and the Soviet Union, in the cause of peace.

President Nixon is a reserved man. He has been busy with the work of the nation, and from my own judgment I don't think Richard Nixon knew anything about the break-in at the Watergate or the cover-up which followed.

SENATOR COOPER DISCUSSES WATERGATE

Because of his knowledge and his honest political independence, former U.S. Sen. John Sherman Cooper has long been regarded as one of America's finer statesmen. When the Somerset Republican tells an audience, as he did Saturday night in Lexington, he wants '"to talk serious for a few minutes," it's well worth the time to listen.

Sen. Cooper wanted to talk about the Watergate hearings and the insinuations made against President Nixon. He started out by saying "we (Republicans) don't condone criminal activity, for justice is essential to the underpinnings of our country . . . But no man is considered guilty until he has been proven guilty".

Then he said: "There has been nothing to prove Richard Nixon guilty . . . I believe it wrong, day after day . . . to give the people the impression that the President has done wrong."

Speaking on a more personal basis, Sen. Cooper said he knows Richard Nixon is "a reserved man;" that he knows Mr. Nixon tried to clean up a war laid upon his doorstep, tried to clean up crime and corruption in city after city across the country, and a man who stands for decency, honor and service to the country.

Sen. Cooper said: "I don't think Richard Nixon knew anything about the break-in at the Watergate or the cover-up which followed."

It was a short, direct speech, delivered by a man whose words have always had the authoritative ring of truth.

PROGRAM

Mr. HUGH SCOTT. Mr. President, I now ask the distinguished majority leader if he can advise me as to the schedule, if any, facing the Senate.

Mr. MANSFIELD. Yes, indeed.

First, may I say, for the information of the Senate, that, as all Senators were informed early this year, the Thanksgiving recess will begin at the close of business Wednesday, November 21, and will last until noon, November 26. If, however, all possible legislation is disposed of, consideration will be given to going out at an earlier date.

However, as the distinguished Republican leader has said, the Senate does have a very heavy schedule. We would like to adjourn at a reasonable time this year. The schedule as of now would consist as follows, and consideration of this legislation would begin next week:

Calendar No. 344, S. 2188, having to do with the northeastern railroad situation, will be up, hopefully, by midweek—a very important item.

Mr. HUGH SCOTT. It certainly is.

Mr. MANSFIELD. Then, Calendar No. 365, S. 1739, to amend the Federal Aviation Act as it affects charters.

There is the authorization for an energy bill now in the Committee on Interior and Insular Affairs. Senators JACKSON and FANNIN and their colleagues are working now with might and main. Hopefully, they may be able to complete it this week and, if not, Monday by the latest. It will receive expeditious consideration by the Senate.

The military construction authorization report has been agreed to but has to be taken up in the House.

The District of Columbia home rule authorization conference should be available in the Senate by Wednesday next.

The Alaska pipeline authorization, I understand, will be taken up in the House on Monday, and immediately after that the Senate will proceed to its consideration.

The conferees have agreed on State, Justice, and Commerce appropriations and on HEW appropriations. We would hope that we could get to those bills around Wednesday of next week or thereabouts.

Then, of course, there is the pay re-

duction bill having to do with the designation of a new Attorney General, and that is a matter which will have to be worked out between the Committee on Post Office and Civil Service and the Committee on the Judiciary.

Then, as I indicated earlier, there is the matter of the Ford nomination which we would hope we could face up to and dispose of before we go out on a Thanksgiving recess.

There is also the health maintenance organizations conference report, which might be ready by late next week; the fuel allocation conference report, which likewise should be ready next week; and finally the Legal Services Corporation measure, to be reported today, which also should be taken up sometime the latter part of next week. Those items all have priority so far as consideration is concerned. This announcement gives the Senate an indication of the workload which confronts it at the present time.

Mr. HUGH SCOTT. With respect to the FORD nomination before the Rules Committee, I understand that there is not expected to be more than 1 day of hearing.

May I address myself to the distinguished assistant majority leader?

Mr. ROBERT C. BYRD. Mr. President, so far as I know, the statement of the distinguished Republican leader is correct.

Mr. HUGH SCOTT. Therefore, I would hope that the committee could meet and act promptly, so that we can do this, if possible, before Thanksgiving, leaving the other body an option to finish as soon as it can.

Mr. MANSFIELD. I agree wholeheartedly.

Mr. GRIFFIN. If the Senator will yield, the committee clerk has sent a notice to the members of the Rules Committee that that day of hearing would be held next Wednesday.

Mr. HUGH SCOTT. I understood that it was Wednesday. I had hoped they could meet earlier, but I am sure there are reasons for that.

However, we ought to get this legislation out, particularly the energy bill, because I imagine that that could be designated as the "keep cool" bill in view of the lowering of the thermostats. It is an effort to avoid a freeze, and this is the kind of freeze everybody will feel, so I hope the measure will be passed promptly.

I would hope that if we do not have too much work during the week, we do not attempt too much on Friday, because many Members thought that by November, Congress would be in adjournment. I am not speaking for myself. My appointments seem to be mostly on Saturdays. But I have been approached by Senators who have said that in midsummer they made Friday appointments for November and early December; so that perhaps we could avoid tilting our schedule down so that too much of it falls on Friday, with due regard to getting it done.

Mr. MANSFIELD. We will do our best to try to bunch up legislation, so that we will give what the Senator has called to the Senate's attention every possible consideration.

Mr. HUGH SCOTT. I certainly hope that the other Senators read what I have said, because I have delivered on a promise to a number of them.

Mr. ROBERT C. BYRD. This, again, will depend to a considerable extent on the timing of the flow of legislation and conference reports from the other body.

Mr. HUGH SCOTT. Yes; I understand that. But the other body often is not in session on Friday, and I am asking that we bear that in mind, too.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. At this time, in accordance with the previous order, the distinguished Senator from Ohio (Mr. TAFT) is to be recognized.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the recognition of Mr. TAFT be vacated.

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

Mr. ROBERT C. BYRD. I ask unanimous consent that the distinguished Senator from Connecticut be recognized at this time, under his order, and that the time allotted to Mr. DOMINICK be reserved to my control.

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

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. At this time, under the previous order, the Chair recognizes the distinguished Senator from Connecticut for not to exceed 15 minutes.

(The remarks Senator WEICKER made at this point on the introduction of S. 2674, dealing with the functions of the Office of Telecommunications, and the ensuing debate are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Chair recognizes the distinguished Senator from Minnesota (Mr. HUMPHREY) for not to exceed 15 minutes.

(The remarks Senator HUMPHREY made at this point on the introduction of Senate Joint Resolution 169, providing for a feasibility study with regard to certain items of equipment on the Capitol Grounds, and Senate Joint Resolution 170, amending the Export-Import Act of 1969, are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

SENATE RESOLUTION 200, A RESOLUTION RELATING TO THE NATIONAL SECURITY

Mr. HUMPHREY. Mr. President, I send to the desk a resolution relating to the national security of the United States and ask that the resolution be stated.

The ACTING PRESIDENT pro tempore. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution relating to the national security of the United States.

Mr. HUMPHREY. Mr. President, 29 Senators join me in the sponsorship of this resolution.

I believe the Congress must communicate to both ally and adversary that our present domestic difficulties will not impair our ability to protect our vital national interests.

The message must go forth from this body that no nation, and no national leader should doubt the bipartisan unity behind the pursuit of American national security objectives and a just and stable peace in the Middle East.

All of us on both sides of the aisle are well aware of the problems affecting the public's confidence in the Presidency and the people's confidence in the political process itself.

There has been wrongdoing in high places of government.

Many have abused the power given them by the people in a bond of sacred trust.

Some have tampered with our system of justice and threatened the individual rights of our citizens.

And I am sure that many will be punished for their crimes and misdeeds.

But despite the tragic events of the past months which have so shaken the Nation, the Congress must state unequivocally that our domestic difficulties should not tempt others to misinterpret our national will when it relates to matters of vital national interest and the great issue of achieving peace in the world.

Today, there is hope for a stable peace in the Middle East. The extremely fragile cease-fire is in the process of being strengthened by the very recent agreement between Israel and Egypt to arrange for the return of the POW's, the creation of a U.N.-supervised corridor for the provision of the Egyptian 3d Army, the end of the Egyptian blockade of the Bab el Maudeb Strait and the adjustment of the cease-fire lines to the satisfaction of all parties. But continued progress in the expected direct negotiations will take the perseverance and patience of all concerned.

There have been numerous indications in the past few days that news of the Watergate crisis and the President's difficulties is being disseminated widely in the Soviet press. Experts and observers indicate that the revelation of the Watergate horrors and rumors surrounding the President's future could mean that the Kremlin is willing to go beyond the boundaries of détente counting on our supposed inability to muster a unified response. It is clear that if the Soviets attempt such probings, they will first come in the Middle East.

Mr. President, I ask unanimous con-

sent that the resolution be immediately considered.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair, as the Senator from Alabama, does object to the immediate consideration of the resolution.

Mr. HUMPHREY. Mr. President, I regret that the Chair saw fit to do that. This matter has been cleared with the majority and the minority side of the aisle. However, every Senator, of course, has his rights.

Mr. President, I need not tell Members of the Senate that many people believe that the Soviet and Arab boldness in the initiation of the war in the Middle East was due, in large part, to their perception of the United States as a nation weakened by domestic difficulties.

Whether this is true or not, the time has come to tell all who may listen that Members of Congress who may disagree with Mr. Nixon on many issues, including his handling of the Watergate crisis, will help him forge a bipartisan foreign policy which has as its objective, a just and stable peace in the Middle East. And by bipartisanship, I do not mean a rubber stamp. To me, bipartisanship means constructive collaboration in the pursuit of shared objectives.

I have often been critical of the President. I have been his political opponent. I have differed with him on the many domestic issues and on some of his policies in Indochina.

But let no one in the Kremlin, in Peking, in Cairo, Damascus, or elsewhere interpret legitimate criticism of a President as a sign of national disunity and unwillingness to respond when there are grave threats to our vital interests and to international peace and stability.

The resolution I am offering today is badly needed. Not as a blanket endorsement of every Presidential policy but as a reaffirmation of a congressional commitment of bipartisan support if our Nation or our vital interests are threatened or impaired.

Finally, Mr. President, this resolution calls upon our allies to support us in our efforts to secure peace in the Middle East.

It is indeed unfortunate that we must make this request. But since the war began on October 6 the United States has received little or no cooperation from its NATO allies. I realize the great dependence of European countries on oil from the Middle East. But we have formed an alliance in the name of collective security. We asked our allies for assistance and cooperation during the conflict. Their refusal to aid us because of their dependency on oil from Arab countries could weaken the spirit of mutual trust and confidence on which this alliance was founded.

Every effort must be made to reaffirm the principle of mutual cooperation and collective security. Likewise, the United States must keep in mind the necessity of timely and full consultation with our allies. This is an essential procedure for an effective alliance.

Now we ask for the support of our friends and allies in the U.N. and elsewhere in the securing of a just and stable peace in the Middle East. There needs to be a common and shared objective for the alliance. For our NATO alliance means more than military might. It means working together for the collective security and well-being of all the allied nations. We cannot afford to be divided in the face of economic or military threats. Europeans know all too well that the course of appeasement is futile.

In summary, Mr. President, it is essential that we make it abundantly clear to the entire world that matters of national security stand above any divisions that we may have on the American domestic scene.

To leave any doubt on this matter in light of current circumstances here at home might very well tempt or open the door to actions and developments by other countries that could seriously jeopardize our national interest and security.

I ask unanimous consent that two articles, one by Mr. Victor Zorza entitled "Soviet Press Unleashed on Talk of Impeachment," and the other by Leonard Silk, in the New York Times of November 6, "The Oil Weapon," be printed in the RECORD.

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

SOVIET PRESS UNLEASHED ON TALK OF IMPEACHMENT

(By Victor Zorza)

The Kremlin's decision to allow the Soviet press to talk about the impeachment of the President and Watergate generally means that the Soviet leaders are beginning to have doubts about the chances—and desirability—of Mr. Nixon's survival.

As long as the Kremlin thought that Mr. Nixon was unalterably committed to a policy of detente, it was prepared to suppress any criticism of him. But evidently the Kremlin was greatly disturbed by Mr. Nixon's role in the worldwide alert of U.S. forces.

Even Secretary of State Henry Kissinger's first press conference announcing and explaining the alert caught the Kremlin on the wrong foot. The first version of the remarks he made on that crowded Thursday morning was not released by Tass, the official news agency, until midnight Moscow time, while the Kremlin was considering how to handle the whole matter.

Dr. Kissinger's statement was composed with great deliberation as a variation on two themes. On the one hand, he spoke of the risks that the Russians were running by appearing to threaten intervention in the Mideast. He made it clear that the United States was determined to prevent such intervention, even if it was presented under the guise of a joint Soviet-U.S. force.

On the other hand, he stressed that the Kremlin had so far taken no irrevocable action and that there was no need for it to back down. The crisis would be over as soon as Moscow had signified its support for the Security Council resolution on a U.N. peacekeeping force.

Kissinger was leaving the Russians a way of retreat. They promptly took it during the Security Council vote. The Tass version of his remarks omitted all mention of the alert, of its causes, all indication of any crisis between the two superpowers—which is what the press conference had been all about. The Kremlin, in other words, didn't want a crisis and made it disappear by refusing to admit there was one. The only discordant note replayed by Tass was Kissinger's rejection of a joint Soviet-U.S. force.

But the Kremlin debate evidently continued, for even this Tass release was withdrawn, leaving next day's Moscow's papers without any word of Kissinger's momentous statement. The direction in which the Kremlin was moving was evident from the second Tass version released to the papers later. It dropped the discordant note and was extensively rewritten to put even more emphasis on the wholly pacific side of Kissinger's remarks. Any lingering fears in the Kremlin that the United States might welcome a confrontation to blot out Watergate had evidently been removed.

Only then did Party Secretary Leonid Brezhnev make his first public statement on the crisis. He was even more pacific than Kissinger at his best. He still refused to acknowledge the alert or the crisis, apart from a reference to "fantastic speculation" designed to fan passions "in some NATO countries"—not specifically the United States.

Brezhnev reaffirmed his commitment to Nixon and to his detente policies. He looked forward to the President's 1974 visit to Moscow and paid tribute to those Western statesmen who were working to overcome the "inertia" of the cold war. He dropped some broad hints to suggest that he would welcome a constructive response from the President.

During his own press conference that evening, Mr. Nixon stressed the value of detente in overcoming the Mideast crisis—but he threw a bucket of ice-cold water over Brezhnev's head. For Nixon made it clear that Brezhnev had backed down in the face of the determination and the power of the President of the United States.

The Soviet Union had been planning to send "a very substantial force" to the Mideast," he said, but after some "rather rough" communications which left "little to the imagination" on both sides, a settlement was reached. Why? "What Mr. Brezhnev does understand is the power of the United States," Mr. Nixon said.

Brezhnev also knew, he emphasized, that even when the President was under "unmerciful assault, during previous crises, he still went ahead and did what was right." And he recalled the other occasions when Brezhnev had backed down—the invasion of Cambodia, the bombing and mining of North Vietnam just before last year's Moscow summit, and the final bombing of Hanoi just before Christmas. "This," Mr. Nixon concluded, "is what made Mr. Brezhnev act as he did."

This is what Mr. Brezhnev heard as he waited, into the small hours of the morning Moscow time, to hear Mr. Nixon's response to his own elaborately friendly speech of the previous day. He angrily authorized Tass to release—at half past six in the morning—his own response, which described the Washington claims about the reasons for the alert as "absurd" and the alert itself as an attempt to "intimidate" the Soviet Union. It was only after this that the Soviet press began to discuss the possibility of impeachment.

The sequence of events, and the contrast between Dr. Kissinger's and Mr. Nixon's handling of them re-awakened old fears in the Kremlin. It evidently concluded that Mr. Nixon may abandon detente, in order to reemerge as the "strong man" that the country would have to keep in the White House to protect it from the Russians.

[From the New York Times, Nov. 6, 1973]

THE OIL WEAPON

(By Leonard Silk)

The war in the Middle East and the Arab decision to impose an embargo on oil shipments to the United States, the Netherlands or any other country that provides support to Israel have given the NATO alliance its most severe internal shock since France withdrew from military integration in 1966.

Accusations are rife on both sides of the Atlantic. The Europeans blame the United States for trying to bully them into backing the American position on Israel, for not consulting with them, for giving them virtually no warning before putting American bombers and other forces on worldwide alert and for

expecting them to risk a cutoff of their oil from the Middle East and North Africa, on which Europe depends for more than 80 per cent of its supply.

The United States in turn blames the members of NATO for acting like a collection of small countries trying to hide in the woodwork, for not looking beyond this moment's or this winter's problems, for putting oil above principle and for refusing to work with the United States to draw up a common policy toward the war—and the strategic threat of the Soviet bloc.

Within Europe itself the strains are intense as a result of the Arab cut-off of 15 per cent of Western Europe's oil supply. The nine members of the European Common Market are meeting in Brussels now to discuss the sharing of oil. But the French and British, who regard themselves in a specially favored position vis-a-vis the Arabs, are reluctant to pool their oil with the Dutch, who are facing the loss of 70 per cent of their oil due to the Arab embargo, and the West Germans, who get much of their fuel via the Dutch port of Rotterdam.

However much truth—or guilt—there may be on both sides, the fact is that the present crisis has exposed serious weaknesses in the Atlantic alliance, weaknesses that could be disastrous if they are permitted to continue. For oil, so critical to the highly industrialized economies of the West, has become a weapon that the Arab states, acting in concert, intend to continue to employ primarily for economic purposes—though they would obviously like to see Israel reduced or destroyed in the bargain.

The Soviet Union, for its part, means to exploit oil for political purposes—as a weapon that could break up the North Atlantic alliance. It could also isolate the United States not only from Europe but from Japan, which is totally dependent on imported oil.

The conceptual basis of the Western alliance now needs to be clarified—and broadened. The essential question is: what does collective security mean?

In this era of so-called détente (a condition that obviously did not keep the Russians from pushing for major strategic gains in the Middle East) collective security must mean more than a wall against Soviet tanks, troops or nuclear bombs. It must also mean common economic policies to protect the jobs, living standards and prosperity of the West, as well as its military security.

Permitting the Arabs and the Soviets to use what are called "salami tactics" in slicing one ally from another would be the worst blunder the West could commit. Although the circumstances are very different from the threat to the West in the nineteen-thirties, the folly of seeking to appease greed by sacrificing individual countries to aggressors would be as great today as it was in the days of Hitler, the Sudetenland, Austria, the Danzig corridor and Czechoslovakia.

There are many dimensions to the disarray among the Western powers—including international trade, investment and monetary payments, not to mention military cooperation itself—but oil has emerged as the most sensitive immediate issue. It is an issue that will only intensify with time. The Middle East and North Africa, with proved oil reserves of 440-billion barrels out of a world total of about 530-billion barrels, contain the overwhelming share of the resources upon which the importing nations must rely. Even the United States, which now gets only about 10 per cent of its crude oil, directly or indirectly, from the Middle East and North Africa, will depend on that area for about 35 per cent of its oil by 1980.

The Western powers and Japan can simply not afford to be divided and passive before the Arab oil threat. They must begin to work together to develop a common strategy on oil imports, energy conservation and development, and on the sharing of oil supplies. This implies that the United States would have to be prepared to share fuel with its allies. There would also have to be a common Western policy toward exporting and other economic relations with the Arab states, should they press their embargo or extortionate demands.

The nations of Europe, Japan and the United States must face up to the choice that now confronts them: whether each nation should seek special deals with the Arabs or whether they will work together for their collective security and well-being. The first course, however tempting it may seem to some countries in the short run, cannot work for long, any more than did appeasement at Munich.

Mr. GRIFFIN. Mr. President, if the Senator will yield, I wish to indicate to the Senate that the Senator from Minnesota was correct when he said that the resolution has been cleared for immediate consideration by the leadership on this side of the aisle.

The junior Senator from Michigan is a cosponsor of the resolution, as is the distinguished minority leader.

It is important, I think, that the world understand that there is some unity in this country, and particularly in Congress, insofar as our foreign policy is concerned. While I might have worked the resolution a little differently, a little bit more strongly in the President's interest, I think the wording that the Senator from Minnesota has provided is certainly very helpful in terms of presenting a united front to the rest of the world. So I commend him for providing bipartisan leadership on a matter of basic policy.

Mr. HUMPHREY. Mr. President, I yield to the Senator from Georgia.

Mr. NUNN. Mr. President, I commend the Senator from Minnesota for introducing this resolution in a spirit of dedication to bipartisan unanimity in matters of foreign policy.

I am pleased to join the Senator from Minnesota and my colleagues in urging the prompt approval of this resolution which puts all other nations on notice not to misread our current domestic discord.

Approval of this measure by the Senate will demonstrate to the world the unalterable and continuing resolve of this Nation to remain strong and united in the face of any possible threat to our national security.

It is important that none of our adversaries misread the attitude of the American people nor question our steadfastness in supporting our national security objectives. We are a united nation, and other countries should not make the mistake of taking any action which threatens this Nation's vital national interests and the peace of the world. It would be a mistake for any nation to attempt to undermine this Nation's security. This resolution makes that very clear.

I am particularly pleased that this resolution expresses the resolve of this Nation that our domestic concerns should not be allowed to hamper our efforts to achieve a just and durable peace in the Middle East and to honor our national foreign policy commitments.

Mr. HUMPHREY. Mr. President, I yield to the distinguished Senator from Vermont.

Mr. AIKEN. Mr. President, I have no hesitation in cosponsoring this resolution with the junior Senator from Minnesota. I think the Congress——

The ACTING PRESIDENT pro tempore. Will the Senator please use his voice amplifier?

Mr. AIKEN. Very well. I just wanted to state that I had no hesitation in cosponsoring this resolution with the Senator from Minnesota.

I think it is important at this time because in some parts of the world the story is being spread that the American Congress hates the President so much that the Congress will not do anything to back the President up in any sense of the word.

I feel it is important to show that whether we are regarded as liberals or conservatives, or whatever we are, we still back up our country, and others should not make the mistake of assuming that dislike for the President on the part of some would influence us to let any foreign element come in here and undertake to influence our people to the extent which apparently some are trying to do.

Mr. HUMPHREY. Mr. President, I thank the Senator from Vermont, the Senator from Michigan, and the Senator from Georgia for their comments. I am confident that what this resolution will do will be of substantial help in obtaining peace in a very troubled part of the world, at a time, may I say, when the entire world is deeply concerned over the constant threats, conflicts, and tension.

Mr. President, this resolution is merely an effort to state once again that when the vital interests of our country are at stake and when a determined effort is being made to obtain a peaceful solution to grave international disputes, we in this body and elsewhere, without trying to rubber stamp anything, will put aside whatever partisanship we may have, and will even put aside our feelings on domestic concerns, and try to unite in common cause and common purpose.

Mr. President, I would hope that we might now move to favorable consideration.

Mr. GRIFFIN. Mr. President, will the Senator yield for the observation that this resolution helps to establish the spirit of Arthur Vandenberg which has not been repealed.

Mr. HUMPHREY. Yes. I thank the Senator.

Mr. HUGH SCOTT. Mr. President, I am pleased to join two of my distinguished colleagues (Mr. HUMPHREY and Mr. AIKEN) on Friday in sponsoring this resolution relating to the national security of the United States. What it says to other nations is this: do not construe domestic events as adversely affecting our resolve to uphold the vital interests of the United States, especially in the Middle East. In that most troubled part of the world, the President of the United States, with the support of the Congress, has not only brought about a ceasefire, but has been able to build foundations for a lasting peace.

The Humphrey resolution should stand as a red light to those who feel that domestic unrest can be converted to a foreign policy defeat. I commend the Senator for his initiative in this regard.

Mr. BAKER. Mr. President, I wish to

commend the distinguished senior Senator from Vermont and the distinguished junior Senator from Minnesota for offering one of the most timely sense of the Senate resolutions I have seen in recent years.

That resolution serves notice to any and all potential adversaries of the United States that it would be the gravest sort of error to misinterpret the effect of our present domestic troubles on our ability to protect our vital national interests both at home and abroad. The resilience and resolve of the American people is second to none, in my judgment; and the proposed resolution offered in the same spirit of bipartisanship evident during the near confrontation with the Soviet Union, is proof of that unique determination.

It should also be made clear that the United States will not shrink from its obligations to our allies nor abandon our efforts to bring a just and lasting peace to the Middle East, no matter what the cost.

There can be no more significant goal than protecting our national security interests whether at home or abroad, and I am pleased today to lend my enthusiastic support to a resolution which emphasizes the primacy of security over any and all domestic problems.

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

There being no objection, the resolution was considered and agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

RESOLUTION RELATING TO THE NATIONAL SECURITY OF THE UNITED STATES

Whereas the law of our nation requires the concurrence of the Congress in all decisions relating to the nation's vital national security interests; and

Whereas the recent uncertainties and divisions in the nation may cause adversaries and friends to doubt the bipartisan unity behind the pursuit of our national security objectives; and

Whereas the ability of the U.S. government to effectively pursue its international objectives must not be impaired, particularly in time of crisis; and

Whereas recent international events have posed a grave threat to peace and stability; and

Whereas the U.S. is currently involved in serious negotiations affecting our vital national interests and the peace of the world: Now, therefore, be it

Resolved, that it is the sense of the Senate that other nations should not construe domestic events as adversely affecting our resolve to uphold these vital interests, nor be tempted to seize upon them as an opportunity to undermine the security of the United States;

Be it further resolved that it is the sense of the Senate that other nations should not construe domestic events as impairing the full commitment of our government to achieve a just and durable peace in the Middle East;

Be it further resolved that the Senate calls upon all friendly nations to join with the United States in pursuance of these vital common objectives, which have as their goal respect for law and a stable and secure peace throughout the world.

Mr. HUMPHREY. Mr. President, I move that the vote by which the resolution was agreed to be reconsidered.

Mr. NUNN. Mr. President, I move that the motion to reconsider be laid on the table.

The motion to lay on the table was agreed to.

Mr. HUMPHREY. Mr. President, I am very pleased and I want to thank the leadership for its cooperation as well as my colleagues.

This resolution will be open for further cosponsorship.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. The Senator from Wyoming is recognized.

(The remarks Senator MCGEE made at this point on the introduction of S. 2673, dealing with the nomination of Senator SAXBE to be Attorney General, and the ensuing colloquy are printed in the RECORD under Statements on Introduced Bills and Joint Resolution.)

CONFERRING JURISDICTION UPON DISTRICT COURTS OF THE UNITED STATES OVER CERTAIN CIVIL ACTIONS BROUGHT BY CONGRESS

Mr. ERVIN. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 455, S. 2641, which was placed on the calendar on November 2, 1973.

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

The assistant legislative clerk read as follows:

S. 2641, to confer jurisdiction upon the district courts of the United States over certain civil actions brought by the Congress, and for other purposes.

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

There being no objection, the Senate proceeded to consider the bill.

Mr. ERVIN. Mr. President, I send forward a substitute amendment for the bill and ask that it be stated.

The ACTING PRESIDENT pro tempore. The substitute amendment will be stated.

The assistant legislative clerk proceeded to read the substitute amendment.

Mr. ERVIN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER (Mr. NUNN). Without objection, it is so ordered, and the substitute amendment will be printed in the RECORD at this point.

The text of the substitute amendment is as follows:

"(a) The District Court of the United States for the District of Columbia shall have original jurisdiction, without regard to the sum or value of the matter in controversy, of any civil action heretofore or hereafter brought by the Senate Select Committee on Presidential Campaign Activities, which was created on February 7, 1973, by Senate Resolution No. 60, to enforce or secure a declaration concerning the validity of any subpoena or order heretofore or hereafter issued by said Committee to the President or the Vice President or any other officer of the United States or any officer or employee of any department or agency of the United States to procure the production before the said Committee of any information, documents, taped recordings, or other materials relevant to matters the said Committee is authorized to investigate, and the said District Court shall have jurisdiction to enter any such judgment or decree in any such civil action as may be necessary or appropriate to enforce obedience to any such subpoena or order.

"(b) The Senate Select Committee on Presidential Campaign Activities shall have authority to prosecute in its own name or in the name of the United States in the District Court of the United States for the District of Columbia any civil action heretofore or hereafter brought by said Committee to enforce or secure a declaration concerning the validity of any subpoena or order heretofore or hereafter issued by said Committee or Vice President or any other officer of the United States or any officer or employee of any department of the United States to procure the production before the said Committee of any information, documents, taped recordings, or other materials relevant to the matters the Committee is authorized to investigate, and pray the said District Court to enter such judgment or decree in said civil action as may be necessary or appropriate to enforce any such subpoena or order.

"(c) The Senate Select Committee on Presidential Campaign Activities may be represented by such attorneys as it may designate in any action prosecuted by said Committee under this Act."

Mr. ERVIN. Mr. President, I should like to state that I am introducing this substitute amendment with the approval of all members of the Senate Select Committee on Presidential Campaign Activities.

The original bill was rather broad, in that it attempted to give every congressional committee the power to bring suits.

At the suggestion of the distinguished Senator from Nebraska (Mr. HRUSKA), I decided that the original bill was too broad and I drew up this substitute amendment to conform to his suggestion; that is, that the bill be restricted to the Senate Select Committee on Presidential Campaign Activities. That is the purpose of the substitute amendment.

The amendment is necessary because Judge Sirica held that the District Court of the District of Columbia had no jurisdiction to entertain the original suit of the select committee. The substitute amendment is to cure this defect in jurisdiction.

Mr. HRUSKA. Mr. President, the bill in its original form was very broad and sought to establish a vast area of new Federal jurisdiction, the bill as amended would restrict its scope to the Senate Select Committee on Presidential campaign activities. I believe this to be a wise step.

Even as to the modified proposal, however, I suggest, Mr. President, that this kind of step flies in the face of the role of the courts in our constitutional system of Government, therefore, I would like to take this opportunity to offer some words of caution with respect to this bill which was introduced by my distinguished colleague from North Carolina (Mr. ERVIN).

On October 17, 1973, Chief Judge John J. Sirica of the U.S. District Court for the District of Columbia ordered that the action commenced by the Select Committee on Presidential Campaign Activi-

ties to enforce its subpenas directed to the President of the United States and requesting a turnover of certain tape recordings be dismissed with prejudice.

The basis of the court's dismissal of this action was a finding by the court that there was no jurisdictional statute upon which the action could be grounded. Because of its conclusions and disposition, the court did not reach the problem of justiciability or the merits of the case.

I have been advised that the intent of the sponsors of the subject bill as originally introduced is to grant only such jurisdiction as is needed to require a production of the tapes requested. It would seem, however, that the sponsors have gone far beyond their stated purpose and suggest a broad grant of jurisdiction to the U.S. District Court for the District of Columbia which could serve as a foundation for substantial litigation in this and other circumstances.

The proposed legislation as originally introduced would empower Congress or congressional committees to petition the District Court for the District of Columbia for enforcement of congressional subpenas or orders requiring production of information, documents, or other materials which are in the custody of any officer or employee of the executive branch, including the President or Vice President. As I indicated earlier, I believe the amendment to confine the scope of this bill to the select committee was a prudent step. However, even as amended, I am concerned that this bill would confer original jurisdiction over such suits to the District Court for the District of Columbia and thereby eliminate the longstanding jurisdictional amount requirement of 28 U.S.C. 1331.

In addition to authorizing suits for enforcement of such subpenas and orders, the bill also purports to authorize suits "to secure a declaration concerning the validity" of such subpenas and orders. This latter authorization, although nebulous, appears to contemplate suits for declaratory judgment similar to the recent action filed by the Senate Select Committee on Campaign Practices.

This proposal, generated by the committee's unsuccessful suit for production of Presidential tapes and documents, does, in its present form, present serious problems of a legal, and practical nature.

In its suit for declaratory judgment, the select committee specifically disavowed any intent or desire to seek a "wholesale invasion of the President's files." Furthermore, the Select Committee cautioned that this particular case "must be placed in proper perspective."

Such a cautious approach is even more appropriate in analyzing the instant legislative proposal.

Congress has always had the power to enforce its own subpenas. Such enforcement may be compelled by the Sergeant at Arms for the Senate or the House There is, additionally, statutory enforcement power under 2 U.S.C. 192, which makes contempt of Congress a misdemeanor.

For the first time in history, however, Congress is being asked to determine that these enforcement powers are inadequate. This dissatisfaction has resulted from an unprecedented clash between Congress and the Chief Executive in the context of a specific case—the "Watergate case." This "case" undoubtedly will generate a variety of legislative reforms. This proposal is merely the first.

Instead of solving the signal jurisdictional problem faced by the Select Committee, this proposal would cast the judicial branch in the role of umpire or referee between Congress and the executive in disputes over the production of documents and information. In so doing, it flies in the face of the role of the courts in our constitutional system of government.

Such a significant incursion into traditional jurisdictional boundaries may only emphasize the ultimate constitutional obstacle blocking the success of any congressional suit against the President. That obstacle is the article III, section 2 requirement that the Federal courts entertain only justiciable cases and controversies. This constitutional barrier prevents the courts from refereeing disputes between the other two branches. It cannot be avoided or erased by congressional action. Congress cannot legislatively compel the courts to decide a basically nonjusticiable issue.

With this ultimate constitutional barrier in mind, any legislation, generated by the select committee's jurisdictional dilemma, might best be limited to resolving that specific problem. The amendment offered by the distinguished Senator from North Carolina (Mr. ERVIN) is a step in that direction; the bill as originally introduced would go far beyond such a modest approach by opening a whole new field of Federal jurisdiction. It is not difficult to envision a virtual flood of congressional suits against myriad executive officials and employees over the production of information and documentation in the custody of the executive branch.

There are other matters on which I wish to comment. Specific phrases and terms cry out for clarification. Foremost among these is the proposal's use of the term "order." In authorizing Congress and its committees to petition the courts for enforcement of "orders," in addition to subpenas, the proposal becomes dangerously ambiguous. Nowhere is "order" defined. If the term is to be used, it should be defined and confined to specific areas of congressional power.

The language authorizing suits "to secure a declaration concerning the validity of any subpena or order" is also obscure. It appears to authorize the Congress to seek an "advisory opinion" from the courts, an exercise in which courts have never indulged.

Before taking action of such a fundamental nature, I would caution my colleagues to consider the advisability of proceeding in a more deliberate manner, utilizing the traditional committee processes of the Congress.

Given the temper of the times, however, the greater likelihood is that some version of the bill will be congressionally approved. The suggested approach which narrows the scope of this bill should satisfy or gratify the demands of the times. Any general statute of broad application should be preserved for future complete legislative processing.

In such processing, the precedents in case law, and in congressional procedures, as well as the more profound and fundamental constitutional considerations and requirements can be fully presented and studied. Indications of the reaches and the gravity thereof can readily be perceived by a reading of Judge Sirica's Order and Opinion filed October 17, 1973, in Civil Action No. 1593–73, the suit brought by the Senate Select Committee on Presidential Campaign Activities; and also by a reading of a staff legal memorandum which I now submit.

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

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

A MEMORANDUM RE A BILL TO CONFER JURISDICTION UPON THE DISTRICT COURTS OF THE UNITED STATES OVER CERTAIN CIVIL ACTIONS BROUGHT BY THE CONGRESS, AND FOR OTHER PURPOSES

The proposed legislation would empower Congress or Congressional Committees to petition the District Court for the District of Columbia for enforcement of Congressional subpoenas or "orders" requiring production of "information, documents, or other materials" which are in the custody of any officer or employee of the Executive branch, including the President or Vice President. In so providing, the draft bill confers original jurisdiction over such suits on the District Court for the District of Columbia and eliminates the long-standing jurisdictional amount requirement of 28 USC 1331.

In addition to authorizing suits for enforcement of such subpoenas and "orders," the Bill also purports to authorize suits "to secure a declaration concerning the validity" of such subpoenas and "orders." This latter authorization, although nebulous, appears to contemplate suits for declaratory judgment (28 USC 2201 et. seq.) similar to the recent action filed by the Senate Select Committee on Campaign Practices.

This proposal, generated by the Ervin Committee's unsuccessful suit for production of Presidential tapes and documents, does, in its present form, present serious problems of a legal and practical nature.

In its suit for declaratory judgment, the Ervin Committee specifically disavowed any intent or desire to seek a "wholesale invasion of the President's files" and cautioned that its case "must be placed in proper perspective." * Such a cautious approach is even more appropriate in analyzing the instant legislative proposal.

Congress has always had the power to enforce its own subpoenas. Such enforcement may be compelled by the Sergeant of Arms for the Senate or the House. *Anderson* v. *Dunn*, 6 Wheat 204 (1821). There is, additionally, statutory enforcement power under 2 USC 192, which makes contempt of Congress a misdemeanor. For the first time in history, however, Congress is being asked to determine that these enforcement powers are inadequate. This dissatisfaction has resulted from an unprecedented clash between Congress and the Chief Executive in the context of a specific case—the "Watergate case."

The Watergate "case" undoubtedly will generate a variety of legislative reforms. This proposal is merely the first. It is important therefore to recall the admonition by Justice Holmes:

"Great cases, like hard cases, make bad

* "Memorandum in Support of Motion for Summary Judgment," at page 1.

law. For great cases are called great, not by reason of their real importance in shaping the law of the future, but because of some accident of immediate overwhelming interest which appeals to the feelings and distorts the judgment. These immediate interests exercise a kind of hydraulic pressure which makes what previously was clear seem doubtful, and before which even well settled principles of law will bend."

Holmes, J., dissenting in *Northern Securities Co.* v. *United States*, 193 U.S. 197, 400–401 (1904).

Given the extraordinary climate which has generated this legislation, every effort should be made to restrict the proposal's applicability to the unique circumstances surrounding the quest for Presidential documents by the Senate Select Committee on Campaign Practices. Unfortunately, the proposed bill is not so prudently drafted.

Instead of solving the signal jurisdictional problem faced by the Ervin Committee, the proposal casts the judicial branch in the role of umpire or referee between Congress and the Executive in every dispute over production of document and information by the executive branch. In so doing, it flies in the face of the role of the courts in our constitutional system of government. To use the words of Justice Douglas, "federal courts do not sit as an ombudsman refereeing disputes between the other two branches." *Gravel* v. *United States*, 408 U.S. 606, 640 (1972) (Douglas, J. dissenting). Such a significant expansion of traditional jurisdictional boundaries may only emphasize the ultimate Constitutional obstacle blocking the success of any congressional suit against the President. That obstacle is the Article III, § 2 requirement that the federal courts entertain only justiciable cases and controversies. This Constitutional barrier prevents the courts from "refereeing disputes between the other two branches;" it cannot be avoided or erased by congressional action. See *Mississippi* v. *Johnson*, 4 Wall. (71 U.S.) 475, 500–501 (1866). Congress cannot legislatively compel the courts to decide a basically non-justiciable issue. Thus the instant proposal cannot and does not solve the major part of the jurisdiction/justiciability dilemma facing the Ervin Committee. Moreover, by expanding jurisdiction so radically, the justiciability problems awaiting future congressional suits of this nature may be compounded.

With this ultimate Constitutional barrier in mind, any legislation, generated by the Ervin Committee's jurisdictional dilemma, should be limited to resolving that specific problem. This proposal, however, goes far beyond such a rational approach by opening a whole new field of federal jurisdiction. It is not difficult to envision a virtual flood of congressional suits against myriad executive officials and employees over the production of information and documentation in the custody of the executive branch.

Such suits have been unnecessary in the past, despite a long tradition of claims of privilege by the executive branch. Why should a unique situation faced by a single Senate committee signal the need for such unprecedented a proposal? In apparent chagrin over Judge Sirica's ruling that the federal courts lack jurisdiction to entertain their suit against the President, the Bill's sponsors have proposed sweeping legislative revision of long-standing jurisdictional boundaries. Such hasty action is both unwise and unnecessary. The proposal should be redrafted to limit its applicability to the requirements of the Ervin Committee.

Aside from the proposal's imprudent and unnecesasry breadth, there are specific phrases and terms which cry out for clarification. Foremost among these is the proposal's use of the term "order." In authorizing Congress and its committees to petition the courts for enforcement of "orders," in addition to subpoenas, the proposal becomes dangerously ambiguous. Nowhere is "order" defined. If the term is to be used—and its necessity is doubtful—it should be defined and, if necessary, confined to specific areas of traditional congressional power.

The language authorizing suit "to secure a declaration concerning the validity of any subpoena or order" is also obscure. It appears to authorize the Congress to seek an "advisory opinion" from the courts, an exercise in which courts have never indulged. *Flast* v. *Cohen*, 392 US 83, 95 (1968). To avoid the possibility of such an unfortunate interpretation, the obvious intent of its drafters to authorize suit for declaratory judgment under 28 USC 2201 and 2202 should be clearly and definitely stated.

CONCLUSION

For 184 years it has been unnecessary for any congressional committee to file suit against the President in an attempt to obtain Presidential documents. We do not admit the necessity for such action now. That such a suit at least has been filed, and dismissed by a federal court for lack of jurisdiction, is a forceful reminder of the unprecedented nature of such a legal action and the political climate which generated it. If legislative reform is necessary to allow such a suit, it should therefore be a reform which is tailored to the need and not a sweeping expansion or revision of the judicial role in our tripartite system.

Thus the proposal should be limited to the specific needs of the Ervin Committee and should be defined and articulated in a manner which avoids unfortunate and inaccurate interpretations. To do otherwise would be a disservice to Congress, the Presidency and the Constitution.

[In the U.S. District Court for the District of Columbia, Civil Action No. 1593–73]

ORDER

Senate Select Committee on Presidential Campaign Activities, suing in its own name and in the name of the United States, and Sam J. Ervin, Jr.; Howard H. Baker, Jr.; Herman E. Talmadge; Daniel K. Inouye; Joseph M. Montoya; Edward J. Gurney; and Lowell P. Weicker, Jr., as United States Senators who are members of the Senate Select Committee on Presidential Campaign Activities, Plaintiffs versus Richard M. Nixon, individually and as President of the United States, Defendant.

This matter having come before the Court on plaintiffs' Motion for Summary Judgment, and the Court having considered the memoranda and arguments of counsel, and the Court having concluded for the reasons stated in the attached opinion that it lacks jurisdiction over this matter, it is by the Court this 17th day of October, 1973, Ordered that this action be, and the same hereby is, dismissed with prejudice.

JOHN J. SIRICA, *Chief Judge*.

[In the U.S. District Court for the District of Columbia, Civil Action No. 1593–73]

OPINION

Senate Select Committee on Presidential Campaign Activities, suing in its own name and in the name of the United States, and Sam J. Ervin, Jr.; Howard H. Baker, Jr.; Herman E. Talmadge; Daniel K. Inouye; Joseph M. Montoya; Edward J. Gurney; and Lowell P. Weicker, Jr., as United States Senators who are members of the Senate Select Committee on Presidential Campaign Activities, Plaintiffs, versus Richard H. Nixon, individually and as President of the United States, Defendant.

The Court presently has before it a motion for summary judgment filed by plaintiffs. Plaintiffs are the Senate Select Committee on Presidential Campaign Activities, established by Senate Resolution 60, 93rd Congress, 1st Session (1973), and the seven United States Senators who compose the Select Committee. Richard M. Nixon, President of the United States, is defendant. The action is styled "Complaint for declaratory judgment, mandatory injunction and mandamus."

Facts concerning the origin of this action are not controverted. The Senate Select Committee on Presidential Campaign Activities (Select Committee) became a duly authorized and constituted committee of the United States Senate on February 7, 1973, "empowered to investigate and study 'illegal, improper or unethical activities' in connection with the Presidential campaign and election of 1972 and to determine the necessity of new legislation 'to safeguard the electoral process by which the President of the United States is chosen.' "[1] In the course of its investigatory procedures, the Select Committee heard one Alexander P. Butterfield, formerly a Deputy Assistant to the defendant. Mr. Butterfield testified that the President had electronically recorded conversations occurring in various of his offices during a period of time that included the campaign and election of 1972. This testimony was later confirmed by Presidential counsel, J. Fred Buzhardt.[2]

Upon learning that among these recorded conferences were a series which they regarded as highly relevant to their investigation, plaintiffs commenced informal efforts to secure the pertinent tape recordings as well as various written documents. Plaintiffs were and remain convinced that the recorded account of these presidential conversations, together with written White House documents alluded to by witnesses at their hearings, would undoubtedly contain information having an important bearing on their investigation and would probably resolve critical conflicts in the testimony of several key witnesses.

When informal attempts proved unsuccessful, the Select Committee directed two subpoenas *duces tecum* to the defendant President. Both were served on July 23, 1973, and together with proof of service, are attached as exhibits to the complaint herein.

The first required prodution of the tape recordings of five meetings which were in each instance attended by the defendant President and then White House counsel, John W. Dean, III. Other persons had also been present during some of these conferences. As noted in the subpoena, the meetings occurred on September 15, 1972, February 28, 1973, March 13, 1973, and March 21, 1973, with two meetings on the last mentioned date. The second subpoena sought documents and other materials "relating directly or indirectly to [an] attached list of [25] individuals and to their activities, participation, responsibilities or involvement in any alleged criminal acts related to the Presidential election of 1972." Defendant filed no objection to either subpoena or to service thereof, although in a subsequent filing counsel have characterized the second subpoena as oppressive. Defendant's sole response consisted of a letter to Select Committee Chairman Senator Sam J. Ervin, Jr., expressing the President's intention not to comply with the subpoenas and the reasons for his decision. The President's letter is also appended to the complaint herein as an exhibit. It is understood that although the subpoenaed tape recordings had previously been in the custody of others, at the time the subpoenas were issued, and at present, they are within the sole possession, custody and control of the defendant President.[3]

Plaintiffs next proceeded to file wtih the Court the present civil action. They deliberately chose not to attempt an adjudication of the matter by resort to a contempt proceeding under Title 2, U.S.C. § 192, or via Congressional common-law powers which permit the Sergeant at Arms to forcibly

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Footnotes at end of article.

secure attendance of the offending party. Either method, plaintiffs state, would here be inappropriate and unseemly. On the day defendant filed his answer to the complaint, plaintiffs submitted a motion for summary judgment. A response to the motion and other memoranda were subsequently filed, and the matter came on for oral argument on October 4, 1973. In their subsequent pleadings and at oral argument, plaintiffs have emphasized that portion of the complaint which seeks a declaratory judgment. It is argued that such judgment include the following statements:

(1) That the two subpoenas were lawfully issued and served by plaintiffs and must be complied with by defendant President;

(2) That defendant President may not refuse compliance on the basis of separation of powers, executive privilege, Presidential prerogative or otherwise;

(3) That defendant President by his action to date has breached the confidentiality of the materials subpoenaed and waived any privilege that might have applied to them.

The prayer for a mandatory injunction and/or relief by way of mandamus has been referred to the Court's discretion and otherwise ignored by plaintiffs.

The case presents a battery of issues including jurisdiction, justiciability, invocation of the declaratory judgment statute, executive privilege, waiver of privilege, validity of the Select Committee's investigation, and authority of the Select Committee to subpoena and bring suit against the President. Because of its ruling, the Court has found it necessary to consider only one question, that being whether the Court has jurisdiction to decide the case. The Court has concluded, for the reasons outlined below, that it lacks such jurisdiction, and the action is therefore dismissed with prejudice.

I

The Court has recently decided another case involving some of the same tape recordings that are here at issue.[4] As its caption indicates, that matter concerned a subpoena *duces tecum* isued to the President by a grand jury. It was there ruled that compliance with the subpoena could be judicially required as to unprivileged matter and that the Court was empowered to determine the applicability of any privilege. The case is presently the subject of appellate review.

This present case, by contest, is a civil complaint, and in such actions particularly, jurisdiction is a threshold issue. Some elementary principles perhaps need restating here. For the federal courts, jurisdiction is not automatic and cannot be presumed. Thus, the presumption in each instance is that a federal court lacks jurisdiction until it can be shown that a specific grant of jurisdiction applies. Federal courts may exercise only that judicial power provided by the Constitution in Article II and conferred by Congress. All other judicial powers or jurisdiction is reserved to the states. And although plaintiffs may urge otherwise, it seems settled that federal courts may assume only that portion of the Article III judicial power which Congress, by statute, entrusts to them.[5] Simply stated, Congress may impart as much or as little of the judicial power as it deems appropriate and the Judiciary may not thereafter on its own motion recur to the Article III storehouse for additional jurisdiction. When it comes to jurisdiction of the federal courts, truly, to paraphrase the scripture, the Congress giveth, and the Congress taketh away.[6] Finally, the principle is firmly established that jurisdictional requirements cannot be waived.

II

Plaintiffs have cited four statutory bases any and all of which, according to their submission, grant jurisdiction here. Before proceeding to analyze these provisions, however, it should be noted that the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and Rule 57 of the Federal Rules of Civil Procedure do not themselves confer jurisdiction. These statutes, as defendant points out, are procedural only and do not constitute the jurisdictional statute necessary to consideration of a specific declaratory judgment action.[7]

One of the four statutory bases of jurisdiction cited by plaintiffs is 28 U.S.C. § 1345 which reads:

§ 1345. United States as plaintiff

Except as otherwise provided by Act of Congress, the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress.

Plaintiffs have disclaimed any attempt to classify themselves as an "agency or officer" within the meaning of this section. Rather they purport to bring suit in the name of the United States. Reference, however, to common practice and related statutory provisions belies the soundness of such a claim. Title 28 U.S.C. § 516, in language similar to that of § 1345, reserves to the Attorney General and Department of Justice authority to litigate as United States.

§ 516. Conduct of Litigation reserved to Department of Justice

Except as otherwise authorized by law, the conduct of litigation in which the United States, an agency, or officer thereof is a party, or is interested, and securing evidence therefor, is reserved to officers of the Department of Justice, under the direction of the Attorney General.

While this section does not require a congressional litigant to be represented by the Justice Department, it does deny such a litigant the right to sue as the United States when jurisdiction derives from § 1345.[8] The practice has been otherwise and the two cases cited by plaintiffs do not so hold.[9] Section 1345 is simply imapplicable here.

B

A second statute called to the Court's attention is 28 U.S.C. § 1361. That statute provides:

§ 1361. Action to compel an officer of the United States to perform his duty.

The district courts shall have original jurisdiction of any action in the nature of a mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

In attempting to meet the terms of § 1361, plaintiffs impute to the defendant President a "legal duty to respond to and to comply with . . . [Select Committee] subpoenas." As defendant indicates, however, the traditional criteria for mandamus proceedings apply here[10] and only a "ministerial, plainly defined and peremptory" duty may properly be the subject of such proceedings.

Before such a writ may issue, it must appear that the claim is clear and certain and the duty of the officer involved must be ministerial, plainly defined, and peremptory. *Huddleston* v. *Dwyer*, 10 Cir. 145 F.2d 311. The duty sought to be exercised must be a positive command and so plainly prescribed as to be free from doubt. *Wilbur* v. *United States ex rel. Kadrie*, 281 U.S. 206, 50 S. Ct. 320, 74 L.Ed. 809.[11]

These criteria have not been satisfied.

After reading cases that have considered applications for mandamus, the Court cannot in good conscience hold that any duty defendant may have as President is "plainly defined and peremptory" as that phrase has been interpreted.[12] Mandamus properly issues to enforce such duties as that of a government officer to issue a driver's or marriage license when all licensing requirements are met or that of a military official to confer an honorable discharge where the law so provides. In every case, official duties are involved. No analogous obligation appears here. Regardless of whatever duty the President may owe the Select Committee as a citizen with evidence in his possession, it is not "free from doubt" that his *official* responsibilities require compliance. There is nothing in the Constitution, for example, that makes it an official duty of Presidents to comply with Congressional subpoenas.[13]

A fair reading of § 1361 cannot sustain jurisdiction here.

C

As a third statutory basis of jurisdiction, plaintiffs cite the Administrative Procedure Act, 5 U.S.C. §§ 701–706. There is some question whether the President is an "agency" for purposes of the Act,[14] whether "agency action" is involved here,[15] and whether plaintiffs have suffered a "legal wrong" within the meaning of these provisions.[16] A final resolution of these problems, however, is unnecessary here since the rule in this Circuit precludes use of this Act altogether as an independent basis of jurisdiction.[17] The Administrative Procedure Act does not confer jurisdiction where an action is not otherwise cognizable by the federal courts. Plaintiffs have urged that although this was once the rule in the District of Columbia, the *Independent Broker-Dealers' Trade Association v. SEC* case at 442 F. 2d 132 (D.C. Cir. 1971), *cert. denied* 404 U.S. 828 (1972) has effectively overruled the earlier position. The Court does not so read *Independent Broker-Dealers*. Plaintiffs there enjoyed an independent basis for jurisdiction in 28 U.S.C. § 1331, and the ruling concerned not whether the APA itself affords jurisdiction but whether the SEC's informal act was reviewable and whether any such review might be had in the District Court. The Court held that an SEC letter to the New York Stock Exchange requesting that the Exchange prohibit "customer-directed give ups" constituted judicially reviewable "agency action." The Court agrees with defendant's counsel that it is hardly probable the Court of Appeals would overrule its prior decisions without any reference to them.

The Court concludes that the Administrative Procedure Act cannot serve to grant jurisdiction here.

D

Plaintiffs have placed principal reliance for purposes of jurisdiction on 28 U.S.C. § 1331. That statute, often termed the "federal question" jurisdiction statute, provides in pertinent part as follows:

§ 1331. Federal question; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000 exclusive of interest and costs, and arises under the Constitution, laws or treaties of the United States.

Unlike the statutes heretofore discussed, this provision includes a monetary sum or value as an incident of jurisdiction, the $10,000 jurisdictional amount. Although the amount has varied over the years, defendant is correct in his assertion that whatever the sum, it is a jurisdictional prerequisite.[18] The satisfaction of a minimum amount-in-controversy is not a technicality; *it is a requirement imposed by Congress which the courts may not dispense with at their pleasure.*

While some decisions have held to the contrary, most notably *Spock* v. *David*, 469 F. 2d 1047 (3rd Cir. 1972), it is the near-universal view that a right or matter in controversy must be capable of valuation in dollars and cents to sustain jurisdiction ununder § 1331.[19] To the Court, this constitutes not only the majority but the more realistic analysis of the amount-in-controversy requirement. Where it desires to award jurisdiction over cases involving important rights without regard to a monetary valuation, the Congress is capable of excluding such restrictions; witness, for example, the civil

rights and elective franchise statute at 28 U.S.C. § 1343. Thus, where Congress has required a jurisdictional sum, it would seem unwarranted for a court to presume that the limitation was unintentional.[20]

The question therefore becomes whether a quantifiable amount-in-controversy, of sufficient value to satisfy the statutory minimum, exists here. The parties agree, and it is well settled that in determining the amount-in-controversy, reference to either party's situation is appropriate, there the case is worth at least $10,000 to the defendant, the requirement is satisfied just as fully as where a plaintiff can demonstrate the $10,000 value or sum.

Computations measure the "value of the object" of the *suit, Mississippi & Missouri R.R. Co.* v. *Ward,* 2 Black (67 U.S.) 485 1862), that is the monetary value of objects at issue or direct monetary impact of an adjudication. The object here could be described as either the tapes and documents themselves or as access to the information contained therein. Since intrinsically, the tape recordings and documents do not approach a $10,000 value, we look instead to the value of a disposition either granting or denying the declaratory judgment and other relief sought.

Plaintiffs suggest several possible analyses by which existence of the required minimum value may be established. It appears to the Court, however, that none of these proposals suffice. First, in an affidavit of the Select Committee Chairman appended to their Supplemental Memorandum, plaintiffs calculate the expenses they will incur if compelled to secure from other sources the information contained in the subpoenaed materials. Though the Court does not dispute this assessment, it nevertheless cannot accept such indirect costs as the amount-in-controversy. Alternative means of achieving the object of a suit or collateral results of a judgment are not properly considered in computing the jurisdictional minimum under § 1331.[21] The cost of added Committee work to ferret out the desired information is quite clearly the cost of an alternative procedure. Nor is the Select Committee's appropriation of a valid measure. The decision in *Williams v. Phillips,* —F. Supp. —— (D.D.C. 1973, C. A. No. 490–73), the only authority cited for this proposition, contains no such holding. Plaintiffs have not attempted to quantify the direct impact of a judicial decision, and indeed, it appears to the Court that such an appraisal is impossible from either party's viewpoint.

Second is a suggestion that the rights and responsibilities of legislators exceed the $10,000 minimum. The restriction to a dollars and cents evaluation of the matter in controversy, however, logically precludes an assumption that the value of such a right can satisfy § 1331. The value of the right or duty must be quantifiable.[22] There must be some financial gain or loss associated directly with sustaining, rejecting or declaring the right. The Supreme Court has only recently reminded us that in suits against federal officials under § 1331, "it is necessary to satisfy the amount-in-controversy requirement for federal jurisdiction." *Lynch v. Household Finance Corp.,* 405 U.S. 538, 547 (1972). Any direct financial consequence to rights or duties is not apparent in this case.

Finally, regarding value from defendant's viewpoint, the Court cannot find any basis on which to assign a dollar value to the matter in controversy. Just as the constitutional obligations of legislators, defendant's interest, whatever it may be termed, is incapable of such an appraisal. Each of the plaintiff's assertions, then, regarding the amount-in-controversy are legally inadequate, and finding no possible valuation of the matter which satisfies the $10,000 minimum, the Court cannot assert jurisdiction by virtue of § 1331.

No jurisdictional statute known to the Court, including the four which plaintiffs name, warrants an assumption of jurisdiction, and the Court is therefore left with no alternative here but to dismiss the action.

III

Because of its conclusion and disposition, the Court does not reach the problem of justiciability or the merits of the case. Any comment on these matters therefore is inappropriate, and the Court does not proffer its views.

The Court has here been requested to invoke a jurisdiction which only Congress can grant but which Congress has heretofore withheld. Whether such jurisdiction ought to be conferred is the prerogative of the Congress. Plaintiffs, of course, are free to pursue whatever remedy they now deem appropriate, but the Court cannot, consistent with law and the constitutional principles that reserve to Congress the conferral of jurisdiction, validate the present course.

JOHN J. SIRICA, *Chief Judge.*

October 17, 1973.

FOOTNOTES

[1] "Statement of Material Facts as to which there is no Genuine Issue" filed by plaintiffs on August 29, 1973, at 1. Counsel for the defendant President acknowledged in Court on October 4, 1973, that defendant takes no issue with plaintiffs' statement.

[2] *Id.* at 2.

[3] *Id.* at 3.

[4] In Re Grand Jury Subpoena Duces Tecum Issued to Richard M. Nixon, etc., 360 F. Supp. 1 (D.D.C. 1973).

[5] The Supreme Court and the Court of Appeals for this Circuit have affirmed that jurisdiction fails "if the cause is not one described by any jurisdictional statute." Powell v. McCormack, 395 U.S. 486, 512–513 (1969) citing Baker v. Carr, 369 U.S. 186, 198–199 (1962). *See also,* Cary v. Curtis, 3 How. (44 U.S.) 236, 245 (1845) and United States Servicemen's Fund v. Eastland, —— F. 2d —— (No. 24,279 August 30, 1973) (D.C. Cir. 1973). Reference to Article III, § 2 alone is insufficient.

For the contrary proposition plaintiffs cite six decisions: New York Times Co. v. U.S., 403 U.S. 713 (1971); Sanitary District of Chicago v. U.S., 266 U.S. 405 (1925); In Re Debs, 158 U.S. 564 (1895); U.S. v. Arlington County, 326 F.2d 929 (4th Cir. 1964); U.S. v. Brand Jewelers, Inc., 318 F. Supp. 1293 (S.D.N.Y. 1970); and U.S. v. Brittain, 319 F. Supp. 1058 (N.D. Ala. 1970). None of these cases, however, holds that the government or anyone else may invoke jurisdiction of the federal courts without utilizing a specific jurisdictional statute. Each were initially brought by the United States and jurisdiction apparently invoked under 28 U.S.C. § 1345, or its predecessor, an independent statutory base applicable to the government.

[6] Job 1:21 (The Holy Bible)

[7] *See,* Skelly Oil Co. v. Phillips Petroleum Co., 339 U.S. 667, 671 (1950) and Aetna Life Ins. Co. v. Haworth, 300 U.S. 227, 249 (1937).

[8] *Cf.,* Confiscation Cases, 7 Wall (74 U.S.) 454, 457 (1868). It may be argued that Senate Resolution 262, 70th Congress, 1st Session (1928) permits the Select Committee to sue in the name of the United States here despite the provisions of § 516. Resolution 262 states in pertinent part:

[A]ny committee of the Senate is hereby authorized to bring suit on behalf of and in the name of the United States in any court of competent jurisdiction if the committee is of the opinion that the suit is necessary to the adequate performance of the powers invested in it or the duties imposed upon it. . . .

It occurs to the Court that there are at least three responses which answer this claim. First, insofar as the Senate Resolution is inconsistent with the provisions of § 516, it would appear that the statute, enacted by both Houses of Congress, should control over the Resolution of one House. Second, any exception to § 516 must be one "authorized by law." Although the question has never been specifically litigated, it seems apparent that "law" in § 516 would not include a legislative action of the sort represented by S. Res. 262. The term "law" does not normally encompass within its definition "resolution," and all recognized exceptions to § 516, such as 10 U.S.C. § 1037, are statute laws enacted by both Houses. In addition, the Supreme Court has hinted that authorization of legislative committees to sue as the United States under § 1345 may require a specific statutory enactment. The Court in Reed v. County Commissioners, 277 U.S. 376 (1928), did not reach the question of whether a Senate committee could act as the United States under 28 U.S.C. § 41 (predecessor to 28 U.S.C. § 1345), because *"even if it be assumed* that the *Senate alone* may give that authority," it had not even attempted to do so. 277 U.S. at 388 (italic added).

Third, and most importantly, the language and historical setting of S. Res. 262 exact the conclusion that it was intended, not to confer jurisdiction, but to ensure standing in lawsuits. Both parties agree that the Senate adopted S. Res. 262 in response to the Supreme Court decision in *Reed.* As just noted, the *Reed* Court did not reach the issue of statutory jurisdiction because it found that the Senate Special Committee lacked standing. 277 U.S. at 388. S. Res. 262 was intended to correct that defect, and thus it authorized committees to sue "in any court of competent jurisdiction." This language traditionally means courts that already have jurisdiction, that are presently competent to consider the case, pursuant to some independent statutory provision. It does not itself serve to bestow jurisdiction.

[9] Plaintiffs cited In Re Hearings by the Committee on Banking and Currency, 245 F. 2d 667 (7th Cir. 1957) and In Re Hearings by the Committee on Banking and Currency, 19 F.R.D. 410 (N.D. I11. 1956).

[10] See, Senate Report No. 1992, 87th Cong., 2nd Sess. pp. 2–4 (1962). 28 U.S.C. § 1361 did not create a new or distinct cause of action.

[11] Prairie Zand of Potawatomie Tribe of Indians v. Udall, 355, F. 2d. 364, (10th Cir.) *cert. denied* 385 U.S. 831 (1966).

[12] *See e.g., Harmon* v. *Brucker,* 355 U.S. 579 (1958); McGaw v. Farrow, 472 F. 2d. 952 (4th Cir. 1973); Spock v. David, 467 F.2d 1047 (3rd Cir. 1972); United States v. Walker, 409 F.2d 477 (9th Cir. 1969); Greffanti v. Hershey 296 F. Supp. 553 (S.D. N.Y. 1969); Switzerland Co. v. Udall, 225 F. Supp. 812 (W.D.N.C. 1964) *aff'd* 337 F. 2d 56 (4th Cir. 1964) *cert. denied* 380 U.S. 914 (1965).

[13] Plaintiffs misread the prior opinion of this Court when they think they find a declaration therein that Presidents have a duty, ministerial in nature, to comply with subpoenas. The Court rather stated that defendant's obligation to produce unprivileged evidence was "more *akin* to a ministerial duty" than to a discretionary one, *"if indeed it concerns official duties at all."* In Re Grand Jury Subpoena Duces Tecum Issued to Richard M. Nixon, etc., 360 F. Supp. 1, 8 n.21 (D.D.C. 1973). (emphasis added). In sustaining the Court's position in that case, the Court of Appeals for this Circuit characterized the responsibility of the President to produce evidence as one of the "routine legal obligations that confine all citizens." Nixon v. Sirica,—F. 2d—(No. 73–1962 October 12, 1973) (D.C. Cir. 1973), at page 18 slip opinion.

[14] Plaintiffs cite Amalgamated Meat Cutters & Butcher Workmen v. Connally, 337 F. Supp. 737 (D.D.C. 1971), the decision of a three-judge court written by Circuit Judge Leventhal, as definitively establishing that the President is an "agency' for purposes of the statute. As the Court reads that decision, however, and as defendant suggests, that issue was specifically left open. The opin-

ion does include the following statement cited by plaintiffs:

The leading students of the APA, whose analyses are often cited by the Supreme Court, and who on some matters are in conflict with each other, seem to be in agreement that the term "agency" in the APA includes the President—a conclusion fortified by the care taken to make express exclusion of "Congress" and "the Courts." 337 F. Supp. at 761 (footnote omitted).

Nevertheless, in the next sentence the court writes:

But we need not consider whether an action for judicial review can be brought against the President *eo nomine*. 337 F. Supp. at 761.

The Court of Appeals in this Circuit has also left open this question. *See*, Soucie v. David, 448 F. 2d 1967, 1073 n. 17 (D.C. Cir. 1971). Defendant further notes, "it is hard to imagine that a statute that excludes from its operation even the governments of the territories and the Mayor of the District of Columbia should be held to have included, in its bland and neutral language, the President of the United States." Brief in opposition at 33 p. 7.

[15] "Agency action" is defined by the statute as "the whole or a part of any agency rule, order, license, sanction, relief or the equivalent or denial thereof, or the failure to act." 5 U.S.C. § 551 (13). Plaintiffs cite this language as aptly describing "the President's failure to turn over the evidence which the Committee has demanded. **" "** In fact, the term 'adjudication' as defined by the APA, could well apply to the President's action. See 5 U.S.C. § 551 (6 and 7)." Reply Memorandum at 18. Defendant interprets the same definition as applicable only to the "rule-making" and "formulation of orders" functions of agencies, categories into which his actions do not fall. Brief in opposition at 33, 34.

[16] 5 U.S.C. § 702 provides:

A person suffering legal wrong because of agency action or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.

The plaintiffs claim a legal right of the Committee to have its lawful subpoenas obeyed by the President and cite principally Watkins v. U.S., 354 U.S. 178 (1957) and McGrain v. Daugherty, 273 U.S. 135 (1927). Supplemental Memorandum at 27; Reply Memorandum at 18, 19. Defendant maintains that although plaintiffs may have cited an adverse effect, they have not pointed to an illegal effect recognized by law. He cites Senate Report No. 752, 79th Congress, 1st Session (1945) at 26, and Kansas City Power & Light Co. v. McKay, 225 F.2d 924 (D.C. Cir.) *cert. denied* 350 U.S. 884 (1955). Brief in Opposition at 34.

[17] See Pan American World Airways, Inc. v. CAB, 392 F.2d 483, 494 (D.C. Cir. 1968); Kansas City Power & Light Co. v. McKay, 225 F.2d 924, 932–933 (D.C. Cir.) *cert. denied* 350 U.S. 884 (1955); Almour v. Pace, 193 F.2d 699, 701 n. 5 (D.C. Cir. 1951). Such is the rule in other circuits as well. *See, e.g.*, Arizona State Dept. of Public Welfare v. Dept. of Health, Education and Welfare, 449 F.2d 456, 464 (9th Cir. 1971), *cert. denied* 405 U.S. 919 (1972); Zimmerman v. United States Government, 422 F.2d 326, 330–331 (3rd Cir.), *cert. denied* 399 U.S. 911 (1970); Twin Cities Chippewa Tribal Council v. Minnesota Chppewa Tribe, 370 F.2d 529, 532 (8th Cir. 1967); Chournos v. United States, 335 F.2d 918, 919 (10th Cir. 1964); Local 542, International Union of Operating Engineers v. NLRB, 328 F.2d 850, 854 (3rd Cir.), *cert. denied* 379 U.S. 826 (1964); Ove Gustavsson Contracting Co. v. Floete, 278 F.2d 912, 914 (2d Cir.), *cert. denied* 364 U.S. 894 (1960).

[18] *See, e.g.*, Holt v. Indiana Mfg. Co., 176 U.S. 68 (1900) and U.S. v. Sayward, 160 U.S. 493 (1895).

[19] *See, e.g.*, Barry v. Mercein, 5 How. (46 U.S.) 103 (1847); McGaw v. Farrow, 472 F.2d 952 (4th Cir. 1973); Kheel v. Port of New York Authority, 457 F.2d 46 (2nd Cir. 1972); Goldsmith v. Sutherland, 426 F.2d 1395 (6th Cir.) *cert. denied* 400 U.S. 960 (1970); Rosado v. Wyman, 414 F.2d 170 (2nd Cir. 1969), *reversed on other grounds* 397 U.S. 397 (1970); Rapoport v. Rapoport, 416 F.2d 41 (9th Cir. 1969) *cert. denied* 397 U.S. 915 (1970); Giancana v. Johnson, 335 F.2d 366 (7th Cir. 1964) *cert. denied* 379 U.S. 1001 (1965).

[20] Defendant states that Congress has had before it several times legislation "rewriting the statute to remove the amount in controversy requirement in cases in which constitutional rights are asserted against federal officers," but has each time failed to enact it. Brief in Opposition at 25.

[21] *See, e.g.*, Healy v. Ratta, 292 U.S. 263 (1934); Lion Bonding & Surety Co. v. Karatz, 262 U.S. 77 (1923); Town of Elgin v. Marshall, 106 U.S. 578 (1882); Quinalt Tribe of Indians v. Gallagher, 368 F. 2d 648 (9th Cir. 1966) *cert. denied*, 387 U.S. 907 (1967).

For the contrary propostion plaintiffs cite Petroleum Exploration Co. v. Public Service Commission, 304 U.S. 209 (1938); Bitterman v. Louisville & Nashville R.R., 207 U.S. 205, 224–35 (1907); and Federated Mutual Implement & Hardware Ins. Co. v. Steinherder, 268 F. 2d 734 (8th Cir. 1959). In each of these instances, however, parties stood to suffer monetary losses in excess of the jurisdictional amount as the *direct* result of a judgment. In *Petroleum Exploration* it was the expense a Maine corporation would incur if forced to appear and give information pursuant to an order of the Kentucky Public Service Commission. In *Bitterman*, it was a railroad's financial loss if ticket sales by brokers were not enjoined. The *Federated Mutual* case concerned losses that would befall an insurance company if a former sales agent were not restrained from competing in the insurance business for two years.

[22] Plaintiffs urge that Kennedy v. Sampson (D.D.C., C.A. 1583–72, August 16, 1973) and Holtzman v. Richardson (E.D.N.Y., 73–C–537, July 25, 1973) *reversed*, — F. 2d — (2nd Cir. 1973) found that the constitutional rights and duties of legislators met the monetary requirement of § 1331. This conclusion, however, seems inaccurate. *Kennedy* did not discuss jurisdiction but was apparently a § 1361 case (performance of a ministerial duty). In *Holtzman*, the object of the controversy from defendants' viewpoint (bombing in Cambodia) far exceeded the $10,000 jurisdiction sum. As plaintiffs note, a court in this district has apparently ruled that the inherent value of a constitutional right to vote "must be equal to any amount set for jurisdictional purposes."

West End Neighborhood Corporation v. Stans, 312 F. Supp. 1068 (D.D.C. 1970). This Court, however, cannot justify a conclusion that the *Stans* decision represents the law in this or any Circuit with the possible exception of the Third, and accordingly, with due respect, cannot regard that precedent.

To say that constitutional rights are incapable of a monetary assessment is not to say that they are petty or worthless. All persons realize, or should realize, that their value is unsurpassed. Such value, however, is simply not the type intended to satisfy the monetary restrictions of § 1331. Other statutes may grant jurisdiction in some of these cases, but § 1331 does not.

The PRESIDING OFFICER. The question is on agreeing to the substitute amendment of the Senator from North Carolina.

The substitute amendment was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill (S. 2641) was ordered to be engrossed for a third reading, was read the third time and passed, as follows:

S. 2641

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the District Court of the United States for the District of Columbia shall have original jurisdiction, without regard to the sum or value of the matter in controversy, of any civil action heretofore or hereafter brought by the Senate Select Committee on Presidential Campaign Activities, which was created on February 7, 1973, by Senate Resolution Numbered 60, to enforce or secure a declaration concerning the validity of any subpoena or order heretofore or hereafter issued by said committee to the President or the Vice President or any other officer of the United States or any officer or employee of any department or agency of the United States to procure the production before the said committee of any information, documents, taped recordings, or other materials relevant to matters the said committee is authorized to investigate, and the said district court shall have jurisdiction to enter any such judgment or decree in any such civil action as may be necessary or appropriate to enforce obedience to any such subpoena or order.

(b) The Senate Select Committee on Presidential Campaign Activities shall have authority to prosecute in its own name or in the name of the United States in the District Court of the United States for the District of Columbia any civil action heretofore or hereafter brought by said committee to enforce or secure a declaration concerning the validity of any subpoena or order heretofore or hereafter issued by said committee to the President or Vice President or any other officer of the United States or any officer or employee of any department of the United States to procure the production before the said committee of any information, documents, taped recordings, or other materials relevant to the matters the committee is authorized to investigate, and pray the said district court to enter such judgment or decree in said civil action as may be necessary or appropriate to enforce any such subpoena or order.

(c) The Senate Select Committee on Presidential Campaign Activities may be represented by such attorneys as it may designate in any action prosecuted by said committee under this Act.

Mr. ERVIN. I move to reconsider the vote by which S. 2641, as amended, was passed by the Senate.

Mr. MANSFIELD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The title was amended so as to read:

To confer jurisdiction upon the District Court of the United States of certain civil actions brought by the Senate Select Committee on Presidential Campaign Activities, and for other purposes.

Mr. ERVIN. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the engrossment of S. 2641, as amended and passed in the Senate today.

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

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. At this time, in accordance with the

previous order, the Chair recognizes the distinguished Senator from Arkansas (Mr. FULBRIGHT) for not to exceed 15 minutes.

DÉTENTE AND THE MIDDLE EAST

Mr. FULBRIGHT. Mr. President, as the Middle East crisis continues, its consequences are felt beyond the region in concentric rings. One immediate effect has been the acute fuel shortage necessitating the emergency measures called for by the President in his speech of November 7. The energy crisis is by no means solely the result of the partial and selective Arab boycott; even the Canadians have chosen this moment to increase the price of their oil, and the United States imports more oil from Canada than from any other foreign country. Increased costs and shortages of fuel will inevitably result not only in discomfort for most Americans and hardship for many farmers and others whose livelihood is affected, but also in shortages of other, petroleum-based goods, shortages which will accelerate inflation.

The Middle East war has also provided grist for the mill of our redouble cold warriors, who have seized this occasion to attack cooperation with the Soviet Union.

This morning it was reported that the Pentagon will request a $3-billion to $4-billion increase in the military budget. The administration had already requested an additional $2.2 billion to pay for arms shipped to Israel.

Assaults upon the merits of détente with the Soviet Union are not only inflammatory but sterile. They are sterile because the detractors seem to assume that there is a satisfactory alternative to Soviet-American cooperation, when in fact the only alternative is the cold war with its endless polemics, the ruinous arms race, and periodic trips to the nuclear brink. It may well be granted that Soviet-American cooperation in the current Middle East crisis has been less than might have been desired, but does it follow that we would be better off if there had been no cooperation at all? The burden of proof has been placed on the wrong side. Instead of holding the advocates of détente to an exacting, if not impossible, standard, the detractors ought to be required to show that they have something better to offer.

I doubt that they can, although it appears that they shall have their chance. Bowing to political reality, the administration has abandoned for the time being its effort to secure equal trade treatment for the Soviet Union. It did so to avoid a prospective congressional vote on the Jackson amendment, which would make both equal trade treatment and ordinary commercial credits contingent upon free emigration from the Soviet Union—a blatant intrusion upon internal Soviet affairs. The result is that, for the time being at least, Soviet trade will continue to be discriminated against, and we shall now see how the Jackson approach works for our national interest. We shall see specifically, whether continued trade discrimination provides leverage for Soviet-American cooperation in the Middle East, and whether it will induce the Russians to drop remaining emigration controls and grant civil liberties to its citizens.

Perhaps the Jackson approach will work, but if it should fail to bring the desired results, the congressional majorities which have insisted upon linking equal trade treatment with internal reforms within the Soviet Union may wish to reconsider their attitude toward détente and intervention in Soviet internal affairs.

My own view is that the best—and most—we can do to advance the cause of liberties within the Soviet Union is to build an international atmosphere or climate of security and confidence through trade, investment, cultural exchange, frequent political contacts, and above all, arms control. These are also the best we can do for world peace—and for peace in the Middle East.

Whether or not the Soviet-American encounter of October 24 and 25 qualifies as the "most difficult crisis" since the Cuban missile crisis of 1962 as President Nixon said, it was serious enough to point up the surpassing importance of Soviet-American cooperation in matters of world peace, and also to point up the interest of all nations in the resolution once and for all of the Arab-Israel conflict which brought the great powers to the crisis of late October. The temptations to recrimination are strong: President Nixon may have overreacted with the military alert, but that is over and done with, and the crisis ended with the joint Soviet-American sponsorship of the United Nations emergency force to supervise the truce.

It is also being widely contended that the mere threat of unilateral Soviet military intervention in the Middle East proves the hollowness of détente. Are we to conclude that a cold war stance would have served us better? Would the Soviets have shown greater restraint and good faith if our relations were still frozen as in Stalin's time? It seems hardly likely. Instead of dismantling the détente, the logical implication of the crisis of late October is the need to strengthen Soviet-American cooperation.

The fact that détente is fragile does not mean that it is futile. Quite the contrary: every time the two great nuclear powers come to a point of confrontation, the necessity of détente is reinforced. What the detractors cannot seem to get through their heads is that there is no alternative except endless conflict. We and the Russians have to get along with each other, because in matters of world peace, neither can get along without the other.

I underline that by reiterating the existence of nuclear warfare, the nuclear arms about which we have talked so much in this body.

Perhaps there has been some misunderstanding of the meaning of détente. It does not mean that the two superpowers have come to see everything eye to eye; on the contrary, we remain political rivals with inimical political systems. Détente, in its essence, is an agreement not to let these differences explode into nuclear war. We may hope to mitigate our ideological differences through time and human contact, but we dare not force the pace lest we undercut the purpose of maintaining peace. That is what is so wrong and mistaken about the Jackson amendment: it would force the pace, at great risk and almost certainly to no avail.

Perhaps there is something in our Puritan heritage which causes us to feel that if we cannot have perfect harmony, we do not want any at all. Instead of treating our various dealings with the Soviet Union as simply problems to be solved, we have tended to approach each encounter as a new morality play. The sorting out of good guys from scoundrels may be mordant fun for moral crusaders, but its uses are limited—and so, too, are its moral dividends.

I do not know—or much care—whether the Russians' motives are idealistic or opportunistic as long as they behave sensibly and cooperate with us for peace. Nor am I prepared to excommunicate them from the human race if they cooperate with us on one occasion and then compete with us on another; I am in favor of seeking out areas of cooperation wherever they can be found and building upon them to whatever extent that is possible.

I might say, parenthetically, that I feel somewhat the same way about the Nixon administration: as long as the President and his advisers are working for improved relations with the Soviet Union and for a viable, compromise peace in the Middle East, there seems little to be gained from speculation on their "ulterior"—or domestic—motives. In some of the more heated debates one hears these days in this polarized agitated political community, one is reminded of the preacher in Tom Sawyer who delivered a sermon "so prosy that many a head by and by began to nod—and yet it was an argument that dealt in limitless fire and brimstone and thinned the predestined elect down to a company so small as to be hardly worth the saving."

The Russians have shown once again in the recent Middle East crisis that they hardly qualify for the "predestined elect." That is hardly news. But they also showed that they are not Attila's hordes or the devil's minions; they demonstrated again that they tend to be prudent in a crisis and that they are quite as resolved as we to keep the Middle East conflict within bounds. Their short-lived move toward unilateral intervention in Egypt was apparently conceived in haste as an emergency measure to save the Egyptian 3d Corps from destruction by the Israelis after the initial truce broke down and the Israelis drove rapidly to seize more territory. It is hardly likely that we would have done less if the Israeli Army had been trapped and threatened with annihilation.

The lesson of the Middle East crisis is not the incompleteness of détente, which is and always has been quite evident. The true lesson is the necessity of great power cooperation, through the United Nations, to put a quick and equitable end to the Arab-Israel conflict.

As long as that conflict goes on, the great powers—and the world—are threatened with nuclear confrontation. It

cannot, therefore, be contended that the issue is only one for the belligerents themselves. That would be the case if the Soviet Union and the United States were willing to abandon their respective clients, withhold all further arms, and consign them to each other's mercy, to work out, or fight out, their differences as they will. But the Russians are not likely to abandon the Arabs, and we are certainly not going to abandon Israel. Over the course of the last 25 years we have become politically and morally committed to the survival of Israel. But we are not committed to the retention by Israel of her conquests of 1967 and 1973. It is up to us, and up to the Russians, working through the United Nations, to apply whatever degree of persuasion we can, or whatever degree of pressure we must, to bring about a compromise peace based upon the principles of the Security Council resolution of November 1967. It would then be the responsibility of the Soviet Union and the United States, through the United Nations, to guarantee the settlement.

The fourth Arab-Israel war has created a new situation in the Middle East. The Arabs did not win this war, and were probably about to lose it when the truce came. But they have demonstrated to themselves and to the world that Arab armies can fight with tenacity and make effective use of modern, sophisticated weapons. They have confronted Israel with an exceedingly bleak prospect for the future if a settlement is not now reached. That prospect is for still another war, and then even another, not lightning wars like that of 1967, but wars of attrition in which the Arabs would have a mounting advantage deriving from their vastly greater numbers, their growing technological capacity, and the enormous financial resources of the oil-producing states of the Arab world.

The oil-producing states have barely begun to use their leverage—and one hopes that they will not. Saudi Arabia and the other oil-producers of the Persian Gulf have been reasonably restrained thus far, but even the limited production cutbacks already instituted threaten the United States and other countries with fuel shortages this winter. The Middle East economic survey reports production cuts of more than 4 million barrels a day overall, or some 20 percent of total Arab production. Dependent on the Arab world for not much more than 10 percent of its oil consumption, the United States is unlikely to be severely injured by the current cutback, but we must certainly take warning for the future. Our dependence upon Arab petroleum is increasing rapidly, and will continue to increase for some years to come even if we embark upon a costly crash program for the development of alternate energy sources. Furthermore, it is a virtual certainty that the Arab oil producers would make ever more drastic use of their oil weapon in a fifth, sixth, or seventh round of Arab-Israel conflict.

Editorialists may fulminate against "oil blackmail," but here too we are ill-served by self-righteous moralizing. The use of economic sanctions in international politics is not an Arab innovation. We ourselves have not shrunk from economic "blackmail" in dealing with such countries as Cuba, Chile, North Vietnam, and for that matter the Soviet Union by withholding credits and most-favored-nation trade treatment. There is no objective moral difference between American trade sanctions as a lever on Soviet emigration policy and Arab oil sanctions as a lever on American policy toward Israel. Arabs, like Americans, believe themselves to be using sanctions for a noble cause.

There is, however, a political distinction, and one might as well be brutally frank about it. The United States is a superpower which can get away with the use of economic pressure, however, unwise it may be. The Arab oil producers are militarily insignificant, gazelles, as I suggested once before, in a world of lions. I was most gratified on an earlier occasion to have my apprehensions of possible military intervention in the Persian Gulf dismissed as unfounded; the Senator from Washington (Mr. JACKSON) thought my apprehension most unfortunate and utterly irresponsible. Despite these assurances, I would hope that the oil-producing states will continue to show restraint and treat their oil wealth as an international responsibility, if only for their own protection. Just as they feel impelled to use oil for political purposes to which they attach great importance, they must take account of the pressures and temptations to which the powerful industrial nations would be subjected if their economies should be threatened by severe and protected energy crises.

For its part the United States can readily avoid conflict with the oil-producing states of the Persian Gulf. Most of these states, and especially the largest and richest, Saudi Arabia, desire close and friendly relations with the United States.

Mr. President, there is no direct conflict of interests between these or any other Arab States and the United States. The only issue between us is the Arab-Israel conflict, which it is in our interests to resolve in any case. We come back, therefore, to the necessity of an early, compromise peace. We ourselves have three basic interests in the Middle East: a secure, peaceful Israel; friendly relations with the Arab States and a reliable source of oil; and the avoidance of conflict with the Soviet Union. These interests are neither incompatible nor unattainable—if we pursue a rational policy.

The central requirement is peace, and the time to press for it is now, before another military truce hardens into another untenable and illusory status quo. The precise terms will have to be worked out in protracted negotiations, but the general requirements are clear: The recovery of lost lands by the Arabs and security for Israel. Concessions—great concessions—will be required on both sides. The Arabs cannot demand to have all of their requirements met as a precondition before they even enter negotiations. Nor indeed can they expect to have every last inch of the territories lost in 1967 restored in a final settlement, although I would hope and expect that territorial changes would be confined to those "insubstantial alterations required for mutual security" referred to in the Rogers plan of 1969.

The Israelis, for their part, must give up the chimera of absolute military security through the occupation of territory, recognizing that the absolute military security of one nation means absolute insecurity for its neighbors. Israel is going to have to reconcile itself to compromise, and time is no longer on her side. Whatever else the recent war has shown, it has shown that Israel's military supremacy is a diminishing asset. As Israel's elder statesman and first Prime Minister David Ben-Gurion recognized some time ago—

> Real peace with our Arab neighbors—mutual trust and friendship—that is the only true security.

All concerned must recognize, and at long last take steps to redress, the great wrong done to the Palestinian people. Whatever form a new political dialog takes, the Palestinians are entitled to participate as a recognized national group. The outcome could be a new Palestinian state or confederation with Jordan, combined with arrangements for repatriation, resettlement and compensation. Whatever the settlement, the dispossessed and long-suffering Palestinians must be equal partners in shaping it.

It is not my purpose here to outline a detailed peace plan for the Middle East. I have suggested schemes in the past, and so have many others, and some of the suggestions made have seemed both equitable and practical. The missing elements have been good sense and good will. Possibly—just possibly—the recent war will have instilled some measure of these into the thinking of both sides. One surely hopes so, but to the extent that good sense and the spirit of compromise are lacking among the belligerents, it will become the responsibility of outsiders to bring them to bear.

That is where Soviet-American détente comes in. The greater the cooperation of the great powers, working through the United Nations, the greater the likelihood of an equitable, viable, compromise peace. Such a peace in turn, guaranteed and supervised by the great powers working through the United Nations, would further strengthen the détente itself, while also removing the one great obstacle to our good relations with the oil-producing states of the Arab world. The political factors involved—Arab-Israel, energy and détente—can be mutually reinforcing in a constructive direction, just as they have been mutually debilitating in the past. Like the Balkans before 1914, the Middle East has been the potential flash point of great power conflict. To the extent that the Middle East is stabilized, so too will world peace be stabilized. Perhaps when wisdom and patience have brought us to that high plateau it will become feasible to look beyond peace, toward the other possible benefits of détente.

Mr. President, the agreement announced today among the parties to the conflict in the Middle East, is an encouraging development and is evidence

of the energy, skill, and resourcefulness of Secretary Kissinger and of the spirit of compromise which seems to be developing.

Mr. President, I ask unanimous consent to have printed in the RECORD an article by Bernard Gwertzman published in the New York Times on this subject.

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

[From the New York Times, Nov. 7, 1973]

SHARP TURN IN MIDEAST—MANY QUESTIONS UNANSWERED, BUT WAY TO REAL UNITED STATES-ARAB DIALOG SEEMS OPEN

(By Bernard Gwertzman)

CAIRO.—The dramatic Middle East developments today have occured with such rapidity and secrecy that several crucial questions remain unanswered. On the basis of what was announced it seemed to many Americans traveling with Secretary of State Kissinger that Washington's relations with both Egypt and Israel may never be quite the same again. The announcement that President Anwar el-Sadat agreed this morning to the restoration of diplomatic relations with the United States—the prime military supporter of Israel—despite the apparent uncertainty of the current cease-fire seemed to bear out Mr. Kissinger's personal view that for the first time in many years the United States could engage in a serious dialogue with the Arab world.

Perhaps even more significant, Washington's long-standing ties with the Israelis seemed more strained than at any time since President Eisenhower joined with Nikita S. Khrushchev to end the 1956 Suez war.

Officially, Robert J. McCloskey, the acting State Departmental spokesman, denied again that the United States was trying to put pressure on Israel to make undue concessions.

Yet the sudden dispatch of Mr. Kissinger's top two Middle East aides, Joseph J. Sisco and Harold Saunders, to Israel this afternoon created the invitable impression here that the United States and Egypt had reached a consensus on a formula for resolving the cease-fire dispute and getting full peace talks under way and that Washington was urgently seeking Israeli's concurrence.

TIMETABLE SEEMS STEPPED UP

It may take a few days to learn exactly what led to the day's development. Senior officials traveling with Mr. Kissinger told newsmen only yesterday that the restoration of diplomatic ties was a possibility, but they did not indicate that it would occur so rapidly. Likewise, Mr. Sisco and Mr. Saunders had not been expected to go to Tel Aviv before the end of the week, after Mr. Kissinger had completed the Moslem part of his round-the-world trip, which will also take him to China and Japan.

The same officials had made it clear in private conversations, however, that the last two weeks of diplomacy had produced two clear impressions in Washington: First, that the Egyptians were willing to put their trust in the United States to produce an acceptable solution and, second, that the Israelis were unhappy with the way the United States seemed to be rushing to get a settlement of all issues.

To put it another way, Mr. Kissinger found himself mediating between, on the one hand, the Egyptian's desire to translate their military success in crossing the Suez Canal into a permanent settlement that would restore their occupied territories and, on the other, the Israelis' belief that diplomatic haste was a mistake and that the Egyptians should be made to suffer for having launched the war on Oct. 6.

Secretary Kissinger was not interested in pinning guilt on either party but in using what he regarded as a golden opportunity to bring about a lasting settlement. To do this he has had to keep the Egyptians interested in negotiating with the Israelis—something they said they would do—and to persuade the Israelis that their long-term, security interests would be enhanced more by a political settlement than by maintaining their hold on Sinai and other Arab land.

The negotiating effort has been complicated by two exceedingly emotional issues. The Egyptians, at least so far, have said that the lifting of the encirclement around the 20,000-to-30,000-man III Corps on the east bank of the canal was absolutely necessary for progress toward peace. The Israelis have demanded the release of prisoners as first step.

Mr. Kissinger has tried to find a formula, such as a United Nations-supervised corridor to supply the III Corps, to resolve those problems. Presumably Mr. Sadat may have given his assent to a formula that Mr. Kissinger believed was a fair compromise. Whether this would be acceptable to Israel was an open question.

If the Israelis choose to balk at what the United States regards as a fair compromise, this could cause serious problems in their already-strained relations and add to President Nixon's political difficulties at home.

But Mr. Kissinger has proved in the past that he does not commit the United States to a position unless he is reasonably sure that it has a chance of success. Inevitably, comparisons are being drawn between his latest piece efforts and his work a year ago to get the North Vietnamese and the South Vietnamese to agree to what eventually became the Vietnam cease-fire.

As he did then, he has handled the brunt of the negotiations himself with the aid of a few others—in this case Mr. Sisco, Mr. Saunders, Alfred L. Atherton, Mr. Sisco's deputy, and Mr. McCloskey. There is the same penchant for secrecy and surprise. The Sisco mission today resembled the trips that Alexander M. Haig Jr. used to take to Saigon to convince President Nguyen Van Thieu that peace was in his interest.

BROADLY BASED SUPPORT

But Premier Golda Meir is no President Thieu. She has broadly based support not only in her own country but also in the United States. Yet, like Mr. Thieu, she may in the end have to accept compromises she might otherwise have refused if she is to insure the continued goodwill and arms supplies that Israel has deemed so necessary to survival.

In addition to a desire to help negotiate a settlement, Mr. Kissinger has considerations in mind that were not so crucial even a few years ago. The United States has had to take the Arab oil blockade seriously, and any settlement that pleases Egypt would probably avert the threat to cut the United States off from Arab oil.

Also hanging in the balance, of course, is the effect of the Middle East crisis on Soviet-American relations. Moscow has played a much less publicized hand in the negotiating effort, but Mr. Kissinger is known to have placed considerable stock in Soviet cooperation.

The celebrated one-day "precautionary alert" last month does not seem to have had a lasting impact on the ngotiations, although it is assumed that Washington has moved with alacrity for a settlement, at least partly to demonstrate to Moscow that it is sincere.

The Russians have apparently played an important role in keeping Cairo interested in negotiating and they will probably become more active if and when full-scale talks begin. When the crisis is over Mr. Kissinger would like to report that the spirit of Soviet-America détente, which he helped create, had been translated into big-power cooperation in bringing about peace.

Mr. FULBRIGHT. Mr. President, in addition, I ask unanimous consent to have printed in the RECORD two articles, one from the New York Times and the other from the Baltimore Sun.

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

[From the New York Times, Nov. 8, 1973]

SOVIET DISSIDENT BACKS BETTER U.S. TIES

(By Hedrick Smith)

Moscow, November 7.—Roy A. Medvedev, a prominent dissident and unofficial historian of the Stalinist purges, urged the West today to proceed with relaxation of tensions and warned that Congressional restrictions on Soviet-American trade could have a negative effect on prospects for emigration from the Soviet Union.

In a 7,000-word essay circulating is Moscow, Mr. Medvedev voiced fear that Congressional conditions on tariff and credit concessions to Moscow would "worsen prospects" for solving the emigration problem and "decrease chances" that liberal provisions on emigration would be written into a new Soviet constitution now being drafted.

He thus took direct issue with Andrei D. Sakharov, the dissident atomic physicist, who previously cautioned the West not to accept improved relations on Soviet terms and urged Congress to adopt legislation withholding tariff concessions to Moscow until the Soviet Union allowed completely free emigration.

"TACTICALLY WRONG"

"This is tactically wrong," Mr. Medvedev said, because it expects too much from outside pressure on the Soviet leadership and because in the long run human rights in the Soviet Union will be aided by moving ahead with East-West amity.

The historian, a close friend of Mr. Sakharov, with whom he collaborated in 1970 in a lengthy critique of Soviet society, renewed many of his criticisms today, deploring what he termed a general "shift to the right in our politics and our society."

He defended Mr. Sakharov's right to speak out, and denounced measures against him and other dissidents, but differed over the crucial issue of how to proceed with East-West accommodations.

A BACKLASH EFFECT

In a reasoned and carefully balanced essay obviously intended to appeal to what Mr. Medvedev considers liberal elements in the Soviet hierarchy, he asserted that Western opinion had clearly exercised great influence on the Soviet leadership but warned that it "has its limits" and sometimes could have a backlash effect.

Alluding to Mr. Sakharov and the author Aleksandr I. Solzhenitsyn, another friend, Mr. Medvedev suggested that some dissidents were "coming out with more and more extreme ideas and putting forward less and less constructive proposals, being guided, as they are, by their emotions rather than by considerations of political expediency."

He warned his colleagues that they were thus playing into the hands of "reactionary factions of our leadership" who were using their declarations "to increase pressure on the intelligentsia and to split and demoralize dissidents."

Nonetheless, he discounted speculation here that campaigns against Mr. Sakharov and Mr. Solzhenitsyn this fall had been deliberately staged by Soviet "hawks" to sabotage the accommodation policy of the party leader, Leonid I. Brezhnev.

PRAISE FOR LEADERS

Privately, usually well-informed Western diplomats have reported evidence that the Politburo and Mr. Brezhnev himself had approved the anti-Sakharov campaign.

But Mr. Medvedev praised the present leadership for having pursued a relaxation of tensions and made sacrifices in its behalf, including an end to jamming major Western broadcasts. He said that more such steps were needed, among them freer travel for western correspondents based in the Soviet Union and greater access for them to Russian citizens, to reciprocate for privileges that Soviet newsmen in the West "long ago received."

He also called for greater access for Soviet citizens to Western publications and relay of Western television broadcasts by satellite.

Mr. Medvedev asserted, moreover, that there had been struggles within the leadership over the policy of accommodation and said "it is known" that at least one high-level Soviet conservative, the former Ukrainian party leader, Pyotr Y. Shelest, had been demoted from the Politburo for having opposed President Nixon's visit to Moscow in May, 1972. Mr. Medvedev implied that another former member of the Politburo, Gennadi I. Voronov, had fallen for similar reasons.

Mr. Medvedev argued that over the long term improved relations would help foster what he termed "socialist democratization" in the Soviet Union although so far it had had the opposite effect.

He wrote: "Although relaxation of international tensions is not accompanied at present in the Soviet Union by broadening of democratic freedoms and is used even by certain circles to intensify pressures on dissidents, the more distant prospect—though this is not too consoling a prognosis—is that international détente will undoubtedly promote broadening of democratic rights and freedoms in our country."

His hopes, he said, were based primarily on the belief that foreign opinion would have great impact on Kremlin leaders in a climate of better ties. But ultimately, he contended, reform in the Soviet Union must come essentially at home and "as a result of initiative from the top," much as the late Premier Nikita Khrushchev's campaign of de-Stalinization had.

Mr. Medvedev, who calls himself a Leninist and who has reportedly had significant links with Communist party officials, reported that there were some officials who had seen the need for liberalization but that they were "at low stages in the hierarchy."

His picture of the present Soviet scene was discouraging. Discontent and dissatisfaction with material standards, the gap between the Soviet Union and the West in economic, social and cultural conditions, he said, are "growing" among ordinary people as well as intellectuals.

A CONSERVATIVE TREND

While free emigration is an important civil right he said, "of more importance is the demand that conditions be created in the Soviet Union in which Soviet people do not want to leave their country." His own twin brother, Zhores, went to England in late 1972 for academic study but has been barred from returning.

In addition to deploring arrests and intimidation of dissidents and use of provocateurs and psychiatric hospitals, Mr. Medvedev reported a conservative trend in intellectual endeavors, where he had found "an explosion of activities" of right-wing elements, especially in the last year.

"We can see an obvious deterioration in historical science, in philosophy, and during the discussion of many economic problems, and also in the sphere of literature and art," he said.

Frustration over such trends, he said, makes people hope that outside pressures can bring improvements. But he said that there was no reason to expect Western leaders to be primarily concerned with internal Soviet reforms, nor for Western business interests to forego the profits of economic deals with Moscow for the sake of Soviet liberalization.

Nor he said, joining a public debate with Mr. Sakharov and Mr. Solzhenitsyn indirectly via Western media, which have carried their statements, did the current frustrations make his two colleagues' statements "indisputable."

He took issue with both, charging Mr. Solzhenitsyn with "Moscow-centrism" and with having exaggerated Soviet internal problems in comparison with those in other countries such as Chile and South Africa.

What Mr. Medvedev found "objectionable" was that the Soviet news media had not printed Mr. Solzhenitsyn's statements and had given only "distorted" snippets from Mr. Sakharov's while printing attacks on him. As a result, he charged that the "overwhelming majority" of people—including ranking intellectuals—who had signed collective denunciations of the scientist "had not read the full texts" of his statements.

Mr. Medvedev an outspoken dissident in recent years became known in the West for his large-scale unofficial history of the Stalinist purges, "Let History Judge," and another book, "A Case of Madness," about his brother Zhores' incarceration in a mental hospital for political dissident.

[From the Baltimore Sun, Nov. 8, 1973]

MEDVEDEV ASSAILS DISSENTERS' TACTICS

(By Michael Parks)

Moscow.—A prominent Soviet historian and political dissident strongly criticized yesterday the tactics of his fellow dissenters who seek broader human rights in the Soviet Union through Western pressure.

Roy A. Medvedev, known in the West for his excoriating account of Josef V. Stalin's rule and other anti-establishment works, argued that change in the Soviet Union must come from within and from the top.

Western pressure can help produce changes he acknowledged, "but pressure from the outside can also have a negative effect," playing into the hands of an influential "right-wing" group within the Soviet leadership that opposes improved relations with the West.

Mr. Medvedev said that this is what is happening now as a result of recent appeals by Andrei S. Sakharov, the nuclear physicist, and Alexander I. Solzhenitsyn, the Nobel prize-winning Russian novelist.

If the United States Congress, for example, refused to grant the reduced tariffs of most-favored-nation treatment to Soviet goods or tied them in unrestricted emigration from the Soviet Union, "it would make even more difficult the democratization of Soviet society," Mr. Medvedev said.

"It would make the problem of emigration much worse and have a serious effect on Soviet-American relations."

Mr. Medvedev does not discount the usefulness of Western pressure, but says that in the long run more good is likely to come from détente.

Mr. Medvedev made his remarks in a 6,000-word assessment of political dissent in the Soviet Union today.

The work urges dissidents to take the long view of their struggle for greater political and civil rights.

"The more distant prospect . . . is that international détente will undoubtedly promote broadening of democratic rights and freedoms in our country."

"But no matter how considerable is the pressure of progressive international public opinion, the basic impulse to conduct democratization in the Soviet Union must emerge from Soviet Society itself, including its present and future leaders," he said.

Mr. Medvedev, 48, was an educator before he became an historian. His twin, Zhores, a biologist and specialist in problems of the aged, was exiled to Britain and deprived of his Soviet citizenship.

Mr. Medvedev said he believes there is "a new generation of leaders, a considerable part of whom may prove capable of looking at problems and prospects of development of the Soviet Union differently from many leaders of the departing generation."

The Soviet Union's economic backwardness and its cultural isolation will be principal factors leading to internal change, he said.

To those who scoff at the prospects for change from within and begun at the top, he cites the limited liberalization begun under Premier Nikita S. Khrushchev in the early 1960's and halted in 1968 when the Soviet Union invaded Czechoslovakia and clamped down at home.

Since then, Mr. Medvedev says, there has been a continuing struggle between liberals and conservatives in the top Soviet leadership, and he attributes the recent crackdown on dissidents to "a concession to the right-wing forces within our leadership, a compromise that allows agreement on foreign policy and economic cooperation with the West."

He takes issue with fellow dissidents for what he calls their "Moscow-centrism."

This, Mr. Medvedev says, is a "refusal to see that in other countries there are just as serious, and, in some countries, more serious internal problems than those that exist in the Soviet Union."

He praises Dr. Sakharov and Mr. Solzhenitsyn for their "bravery in the fact of mounting pressure," but suggests that they have begun to express "extreme views under the influence of strong emotions."

Mr. Medvedev suggests that dissidents choose the targets of their appeals more carefully, directing themselves more to socialist and Communist parties in the West that have a vital interest in seeing a more democratic society in the Soviet Union.

Frequently their appeals are used as "anti-socialist propaganda" by the West, he says. "It should be realized" that President Nixon, British Prime Minister Edward Heath and French President Georges Pompidou "are not really interested in civil rights in Russia, but in the long run defend the interests of the ruling classes of their countries."

He also criticizes the emphasis laid by other dissidents, particularly Jews and Dr. Sakharov, on the right to free emigration from the Soviet Union. "While it is important to have the right to leave the country, it is even more important for conditions to be created in the Soviet Union which Soviet people would not want to leave," he says.

Mr. Medvedev gives a pessimistic analysis for early liberalization of the Soviet political system, writing from the viewpoint of a confirmed Marxist-Leninist although he was expelled from the Communist party several years ago.

"Consistent democratization of Soviet society is an immediate necessity, the most important prerequisite for speeding economic, political, cultural and social development," he says. "Only genuine socialist democratization will give birth to new motive forces that are needed for making the entire system better, reviving it . . .

"But no individuals or even small groups of dissidents are able to give birth to the mass movements capable of producing essential political changes. The masses themselves would go into motion only as a result of several serious economic and political crises—but such crises [are] neither probable nor desirable."

On balance, Mr. Medvedev says, the economic and other problems of Soviet society, including the "growing dissatisfaction" of ordinary people with the way they live, will produce a climate for change, but change will have to come from the top. And here he

places his hope on a new generation of leaders influenced by international détente and not aggravated by Western pressure.

Mr. FULBRIGHT. Mr. President, the latter articles concerning a thorough discussion of Soviet-American relations by Roy A. Medvedev, a prominent historian and intellectual, should be seriously considered by everyone who is genuinely interested in improving the conditions of life for the citizens of the Soviet Union, and particularly the Jewish citizens.

Mr. Medvedev, a close friend of Mr. Sakharov is well qualified to judge the wisdom and effectiveness of the efforts to use trade policies to force a change in the internal affairs of the Soviet Union. His view that such policies could have a negative effect on prospects for emigration from the Soviet Union deserve the most serious attention by all of us.

I believe that Mr. Medvedev's analysis of the psychological and political aspects of the matter is more in accord with reality than is the view of Mr. Sakharov or of those in the Congress who wish to deny nondiscriminatory trade with the Soviet Union.

I believe it is not in our national intent for the Congress to undermine the efforts of the Secretary of State to improve our relations with the Soviet Union with all the implications of that for peace in the Middle East and for better conditions of life for the Jewish people in the Soviet Union.

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

Mr. FULBRIGHT. I yield to the Senator from Missouri.

Mr. SYMINGTON. I respectfully commend the able Senator from Arkansas for the thoughtful message he has presented to the Senate and the American people this morning. I do not agree with all, but do agree with most of the points he made; and what is more important, am confident the Secretary of State, as he goes around the world in his search for peace will appreciate the remarks made on the floor today by the distinguished chairman of the Senate Foreign Relations Committee.

I have here a release of this administration dated a year ago last August, which shows their estimate of U.S. strategic nuclear warheads of that date was 6,000; whereas the estimate for the Soviet Union as of that date was 2,500. This release also shows that it was estimated by 1977 the United States would have 10,000 strategic nuclear warheads, the Soviet Union would have 4,000.

In a block graph, this release also shows—and I refer to this fact especially because these days we hear a lot about throw-weight—that four 1-megaton warheads would equal one 16-megaton warhead in destructive capacity.

The purpose of presenting these figures in conjunction with the able Senator's talk is to emphasize what the Senator is bringing out, namely, in effect, we are now playing, the world is playing, with fire. A fire that could consume us all. It was Clausewitz who said, "war is an extension of policy." Because of the lethal aspect of war today, however, it can no longer be considered merely an extension of policy. In fact, as the late President Eisenhower stated many years ago, nuclear war today is unthinkable.

The obligation of the United States, our commitment to Israel, is clear, the apparent commitment of Russia to the Arab States is also clear.

Finally, let us all consider, as we tell other countries about various matters, that if the Soviet Union attacked the United States tonight with everything they had, and we had no idea they were coming, we would, within 48 hours, wipe that country off the face of the Earth.

On the other hand—and these are figures from the experts—if the United States attacked the Soviet Union tonight with everything we had, and they did not know we were coming, within 48 hours there would be at least 100 million dead Americans.

Under those conditions, Mr. President, I do not see where any future victory is in the cards for anyone as the result of a strategic nuclear war.

We must preserve our national honor. With that premise, it is vitally important for the American people to realize just what would be the conditions when they face a confrontation with another superpower; and there will be additional superpowers, we know, in the not too distant future. What we could really be talking about is suicide for the people of the world, not just a particular country, the world, including the United States. So I again commend the Senator from Arkansas for his thoughtful words and thank him for yielding. He has made a contribution to those who seek, every where, a just and lasting peace.

Mr. FULBRIGHT. I appreciate the Senator's statement. He again has articulated a basic reason why détente is so important. These are reasons which fortify the argument.

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

Mr. FULBRIGHT. I yield.

Mr. ABOUREZK. I want to add my commendation to the Senator from Arkansas for a brilliant speech. I also want to point out that it has been the Senator from Arkansas who for many years has warned of the danger of the kind of policy we have been conducting so far as the Middle East is concerned. I think the Senator once said that we are digging a grave for ourselves in the Middle East. We nearly saw that recently. Whether or not that was an actual confrontation when the alert was called is unimportant at this time; it could easily have been a confrontation that would have signaled the start of a nuclear war, which is something we all want to avoid.

But, along with the Senator from Arkansas, I see no reason why our foreign policy should be so designed. Why, for example, should we antagonize 100 million people in the Arab world? There is no real reason for this country to do that, because most of those 100 million peple have wanted to be friendly with this country, if we would give them a chance. We need not sacrifice our friendship with Israel to maintain good relations with the Arab world, but we should not be so foolish so as to turn our backs on people who want our friendship.

Putting the oil question aside for the moment—and I think it is of no minor significance—the fact is that those people have conducted economic relations with the United States year in and year out. King Faisal of Saudi Arabia has been a strong friend of this country as has Kuwait, Lebanon, and a great many others.

All those factors ought to be taken into consideration before we blindly pour arms into the Middle East, which, in effect, is pouring gasoline on a fire that is already burning much too fiercely.

I think the Senator from Arkansas is accurate in that we ought to keep the normalization of relations with the Soviet Union going, because it did help in this particular crisis. We ought to make certain the Palestinian refugees are dealt with as a party because their problems have been the direct cause of the conflict in the Middle East. The fact that they were forcibly evicted from their lands in 1948 and in prior years is the major underlying cause of the conflict today.

Until those problems, along with the occupation of occupied areas, are dealt with, there can be no peace in the Middle East.

The final point I want to make is that I think we ought to recognize that Israel is going to exist as a state, and I think most of the responsible Arab leaders admit that, and have stated so publicly. If Israel is to have security, that means she must get along with her Arab neighbors. That is the real meaning of security, not a bristling fortress surrounded by people who are constantly in fear of Israeli expansion. I do not want to see one more Arab or one more Israeli die. I do not want to see Israel destroyed, but neither do I want to see the flames of war expanded by further expansion by Israel at the expense of her Arab neighbors.

Mr. FULBRIGHT. I think the Secretary of State and this administration have proceeded on the proper course. I have always said, as I said in 1969, following the Rogers speech announcing what we call the Rogers plan—which is a general outline of the same policy being pursued now—that I approved of this approach. I think the administration has moved in the right direction.

I have felt that the Congress in this instance has not supported the administration in its effort to move in that direction, as evidenced, for example, by the proposed Jackson amendment to the trade bill. There are other evidences of it. Congress has interfered to remove the incentive for a compromise that this administration has been seeking to bring about.

Until I see evidence to the contrary, I think the Secretary of State is following the right course. The news reports that I have placed in the RECORD indicate that. I must say that if he does succeed under these circumstances, it will be a most remarkable achievement.

Yet the story by Mr. Gwertzman is very encouraging, as are other articles concerning the immediate settlement of the question of the October 22 cease-fire lines. This is preparatory to moving onto the negotiated settlement of the war as

a whole, in accordance with the principles of the 1967 Security Council resolution. I believe that to be the administration's and the Secretary's policy.

One of the main points I was trying to make was to convince Congress not to interfere with the policies of détente, which in effect interferes with the solution of the conflict in the Middle East. I know they do not intend to do it—they have other reasons—but I think it does have that effect.

It is remarkable to read Medvedev, one of the leading intellectuals in Russia, in comparison with Sakharov, on the analysis of the psychological and political realities of the Soviet Union.

Do we or do we not promote better conditions, less repression against the Jews or anyone else in the Soviet Union by the kind of policies proposed in the Jackson amendment? What I respond to, and what many of our own people respond to, is in accord with Mr. Medvedev's views of relations between the Soviet Union and the United States. I am convinced that improved relations are in the best interest of all the people of both countries.

Mr. ABOUREZK. Mr. President, I do not think that a cold war will do anything for anyone's freedom in the Soviet Union.

Mr. FULBRIGHT. It will not do anyone any good. It will certainly not do any good for the Jewish citizens of Russia. It will endanger our security and welfare to no end. It endangers the cessation of the arms race.

I am unable to see any justification for this reluctance to move toward better relations with the Soviet Union. There was an article in the newspaper this morning about our ships in the Mediterranean. That article quoted Admiral Murphy of the 6th Fleet in relation to a statement made sometime ago on television to the effect that we are at a great disadvantage in the Mediterranean because the Soviets have 95 ships there and we have 60.

Admiral Murphy, who is the best authority I can think of on the matter, says that that the figures are correct but that a great many—40 percent, I believe—of the Russian ships are support ships, water tankers and little supply ships, whereas only 20 percent of ours are. And the admiral said that we have the edge because ours are bigger and more sophisticated ships, including aircraft carriers. They have nothing comparable to the *John F. Kennedy* aircraft carrier.

It was a complete distortion of facts to lead the American people to be suspicious of the naval situation in the Mediterranean. But this is part of the effort to oppose say move toward a détente with the Russians. I think that it was a great disservice to the American people.

Mr. ABOUREZK. Mr. President, along that line, I think that this kind of foreign policy has also done a great deal to drive a wedge between the Arab world and the United States.

Mr. FULBRIGHT. The Senator is correct.

Mr. ABOUREZK. And it has driven some of them closer to Russia than would ordinarily be the case.

I thank the Senator from Arkansas.

ORDER FOR ADJOURNMENT TO MONDAY

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 12 o'clock meridian on Monday next.

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

(Later in the day this order was changed to provide for the Senate to convene at 10 a.m. on Tuesday, November 13, 1973, instead of on Monday.)

VACATION OF ORDERS FOR RECOGNITION OF SENATORS MANSFIELD AND BENTSEN

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the orders for recognition of Senators MANSFIELD and BENTSEN be vacated.

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

TRANSACTION OF ROUTINE MORNING BUSINESS

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

PETITIONS

Petitions were laid before the Senate and referred as indicated:

By the ACTING PRESIDENT pro tempore (Mr. ALLEN):

A resolution of the Senate of the Commonwealth of Massachusetts. Referred to the Committee on Foreign Relations:

"RESOLUTIONS IN SUPPORT OF THE STATE OF ISRAEL AND LASTING PEACE IN THE MIDDLE EAST

"*Whereas*, True and lasting peace is now, as it has been in the past, the goal of United State policy in the Middle East; and

"*Whereas*, We, as Americans, are committed to peace because we see the dangerous futility and immorality of the continued application of force, aggression and acts of terrorism of the Arab states against Israel; and

"*Whereas*, Continuous acts of aggression have been brought against the State of Israel by neighboring Arab states for twenty-five years; and

"*Whereas*, The Arab nations have created turmoil in the Middle East by refusing to recognize the existence of Israel as a sovereign state and by refusing to enter into direct negotations with the State of Israel and have declared as the purpose of their use of arms the annihilation of the State of Israel; and

"*Whereas*, The State of Israel has legitimately used its armed forces to secure its national existence against a new military war commenced by Egypt and Syria on the High Holy Days of the State of Israel; now, therefore, be it

"*Resolved*, That the Massachusetts Senate respectfully urges the Congress of the United States and the President of the United States to use their best efforts to restore and maintain peace in the Middle East, to insure the survival and independence of the democratic State of Israel and toward this goal bring about an immediate cease-fire which will include the elimination of all Egyptian and Syrian military forces from all areas infamously invaded by them during the High Holy Days of the people of Israel, on October the sixth, nineteen hundred and seventy-three, that the United States sell to the State of Israel Phantom jets and other military equipment to replace the lost military equipment in the current military engagement and declare the firm and unequivocal solidarity of the United States with the people of Israel toward insuring that secure, recognizable and defensible borders be achieved and maintained in a settlement of the Middle East problems; and be it further

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

A resolution of the Senate of the Commonwealth of Massachusetts. Referred to the Committee on Public Works:

"RESOLUTIONS COMMENDING AND ENDORSING THE UNITED STATES ARMY CORPS OF ENGINEERS FOR ITS CHARLES RIVER WATERSHED

"Whereas, The Charles River Watershed includes one tenth of the municipalities and one sixth of the residents of the Commonwealth; and

"Whereas, For the protection of said residents the United States Army Corps of Engineers has completed a survey of the water resources of said watershed; and

"Whereas, The United States Army Corps of Engineers has recommended flood control by the storage of flood waters in seventeen scattered wetlands preserved in their natural state in perpetuity as the most economic and most environmentally acceptable measure; therefore be it

"Resolved, That the Massachusetts Senate hereby commends the United States Army Corps of Engineers and endorses its so-called Natural Valley Storage Proposal; and be it further

"Resolved, That copies of these resolutions be forwarded by the Senate Clerk and Parliamentarian to the President of the United States, to the Secretary of Defense, to the Secretary of the Army, to the presiding officer of each branch of Congress and to the members thereof from this Commonwealth."

A resolution of the Council of the City of Wilmington, Del., urging the support of all nations involved and the United Nations in attempting to achieve an end to the war between Israel and the Arab nations. Referred to the Committee on Foreign Relations.

A petition from David L. Peterson, of Leavenworth, Kans., seeking a redress of grievances. Referred to the Committee on the Judiciary.

A letter from Mrs. Doris I. Schubert, of Pittsford, N.Y., in opposition to the Seabed Treaty. Referred to the Committee on Foreign Relations.

A resolution of the Council of the City of Wilmington, Del., in support of positive action by Congress to limit the powers of the President. Referred to the Committee on Government Operations.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. McGEE, from the Committee on Post Office and Civil Service, without amendment:

H.R. 3801. A bill to extend Civil Service Federal Employees Group Life Insurance and Federal Employees Health Benefits coverage to U.S. nationals employed by the Federal Government (Rept. No. 93-488); and

H.R. 5692. A bill to amend title 5, United States Code, to revise the reporting requirement contained in subsection (b) of section 1308 (Rept. No. 93-489).

By Mr. McGEE, from the Committee on Post Office and Civil Service, with amendment:

S. 2315. A bill relating to the compensation of employees of Senate committees (Rept. No. 93-490).

By Mr. McGEE, from the Committee on Post Office and Civil Service, with amendments:

H.R. 1284. A bill to amend title 5, United States Code, to improve the administration of the leave system for Federal employees (Rept. No. 93-491).

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

H.R. 8219. A bill to amend the International Organizations Immunities Act to authorize the President to extend certain privileges and immunities to the Organization of African Unity (Rept. No. 93-492).

By Mr. ROBERT C. BYRD (for Mr. FULBRIGHT) from the Committee on Foreign Relations:

S. 2681. An original bill to authorize appropriations for the United States Information Agency (Rept. No. 93-493).

By Mr. ALLEN, from the Committee on Agriculture and Forestry, without amendment:

S. 2477. A bill to provide for the conveyance of certain lands of the United States to the State of Louisiana and for use of Louisiana State University (Rept. No. 93-494).

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

S. 2686. An original bill to amend the Economic Opportunity Act of 1964 to provide for the transfer of the legal services program from the Office of Economic Opportunity to a Legal Services Corporation, and for other purposes (with additional views) (Rept. No. 93-495).

EXECUTIVE REPORTS OF COMMITTEES

As in executive session, the following report was submitted:

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

Executive N. 93d Congress, 1st session. Protocol amending the 1928 Convention signed at Paris on November 22, 1928, concerning international expositions, signed at Paris on November 30, 1972, by the United States and 22 other nations party to the 1928 convention (Exec. Rept. 93-24).

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. McGEE (for himself and Mr. FONG (by request):

S. 2673. A bill to insure that the compensation and other emoluments attached to the Office of Attorney General are those which were in effect on January 1, 1969. Referred to the Committee on Post Office and Civil Service.

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

S. 2674. A bill to transfer the functions of the Office of Telecommunications Policy to the Federal Communications Commission and to abolish such Office. Referred, by unanimous consent, to the Committee on Government Operations; and, when reported by that committee, to the Committee on Commerce.

By Mr. HUMPHREY:

S. 2675. A bill for the relief of Mrs. Sunil Ratnayake. Referred to the Committee on the Judiciary.

By Mr. BIDEN:

S. 2676. A bill to authorize the Secretary of Housing and Urban Development to assist local housing agencies in disposing of vacant housing, and to provide rehabilitation funds to individuals and families who are participants in a homestead program. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. FULBRIGHT (by request):

S. 2677. A bill to implement the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property. Referred to the Committee on Foreign Relations.

By Mr. HATHAWAY:

S. 2678. A bill to provide for a special election for the offices of President and Vice President when the offices of President and Vice President are both vacant. Referred to the Committee on Rules and Administration.

By Mr. ROBERT C. BYRD:

S. 2679. A bill to amend title II of the Social Security Act to reduce from 60 to 55 the age at which a woman may become entitled to actuarially reduced widow's insurance benefits thereunder. Referred to the Committee on Finance.

By Mr. MUSKIE (for himself, Mr. RANDOLPH, Mr. BAKER, Mr. BUCKLEY, Mr. BIDEN, Mr. BURDICK, Mr. CLARK, Mr. DOMENICI, Mr. GRAVEL, Mr. MCCLURE, Mr. WILLIAM L. SCOTT, and Mr. STAFFORD):

S. 2680. A bill to amend the Clean Air Act, as amended. Referred to the Committee on Public Works.

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

S. 2681. An original bill to authorize appropriations for the U.S. Information Agency. Placed on Calendar.

By Mr. HOLLINGS (for himself and Mr. THURMOND):

S. 2682. A bill to provide for the control of imported fire ants by permitting the judicious use of Mirex in coastal counties. Referred to the Committee on Agriculture and Forestry.

By Mr. WILLIAMS (for himself, Mr. TOWER, and Mr. BROOKE) (by request):

S. 2683. A bill to amend the Securities Exchange Act of 1934, as amended, to facilitate the collection and public dissemination of information concerning the holdings of and transactions in securities by institutional investors and investment managers, including banks, bank holding companies, insurance companies, trust companies, investment advisers, investment companies, separate accounts, pension-benefit or profit-sharing trust plans, charitable endowment funds, and any other fund maintained or utilized for the purpose of collective investment. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. ERVIN:

S. 2684. A bill to further insure due process in the administrative discharge procedure followed by the Armed Forces. Referred to the Committee on Armed Services.

By Mr. GURNEY:

S. 2685. A bill for the relief of Kam Lin Wong, Shui Ying Wong, his wife, and their child, Seit Kwan Wong. Referred to the Committee on the Judiciary.

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

S. 2686. An original bill to amend the Economic Opportunity Act of 1964 to provide for the transfer of the legal services program from the Office of Economic Opportunity to a Legal Services Corporation, and for other purposes. Placed on Calendar.

By Mr. HUMPHREY:

S.J. Res. 169. A joint resolution to provide for a feasibility study and to accept a gift from the United States Capitol Historical Society. Referred to the Committee on Public Works.

By Mr. HUMPHREY:

S.J. Res. 170. A joint resolution to amend the Export Administration Act of 1969 to protect the domestic economy from the excessive drain of scarce commodities; to continue food commitments to needy nations in times of short supply; to reduce the serious inflationary impact of abnormal foreign demand; and to authorize a validated export licensing system. Referred to the Committee on Banking, Housing and Urban Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

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

S. 2673. A bill to insure that the compensation and other emoluments attached to the Office of Attorney General are those which were in effect on January 1, 1969. Referred to the Committee on Post Office and Civil Service.

Mr. McGEE. Mr. President, I introduce a bill affecting the mechanics of the procedure on the potential nomination of the Senator from Ohio (Mr. SAXBE) as Attorney General. I send the bill to the desk for appropriate reference. I have discussed this matter with the majority whip.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. McGEE. I yield.

Mr. ROBERT C. BYRD. I ask unanimous consent that the time on this matter be taken out of my time under the order.

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

Mr. ROBERT C. BYRD. Mr. President, I have no intention or desire to delay action on the legislation just introduced by the very distinguished Senator from Wyoming (Mr. McGEE). I do have serious reservations with regard to the constitutionality of the legislation. I believe that the Committee on the Judiciary of the Senate ought to have an opportunity to take a look at this legislation and possibly conduct a day or so of hearings on it, and I would like to see that committee satisfy itself as to the constitutionality of the legislation.

I say this without any reflection on my very close and good and true friend the Senator from Wyoming (Mr. McGEE). I have discussed this matter with him. He understands my viewpoint and I understand his. I can only commend him for his desire to expedite the legislation. I think it shows high statesmanship on his part; but I do have serious reservations, as I say, about the constitutionality of the legislation.

I think the Senate would be remiss if it did not send the measure to the Committee on the Judiciary. For these reasons, which I need not go into further at this time, I shall ask unanimous consent that the legislation be jointly referred to the Committee on Post Office and Civil Service and the Committee on the Judiciary.

Mr. McGEE. Mr. President, I have to object. We have discussed the need for that objection with the understanding that the same point would be raised when it is reported out, that this is a

technical aspect and the difference of interpretation.

Mr. HRUSKA. Does the Senator object?

Mr. McGEE. Yes, I am objecting.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. ROBERT C. BYRD. Then, Mr. President, unless I am otherwise convinced in the interim that there is no constitutional question, and I doubt that I shall be so convinced, it will be my intention, when the bill is reported back from the Committee on Post Office and Civil Service and put on the calendar, to again ask that it be sent to the Judiciary Committee, and it will be my intent at that time to move that the bill be referred to the Judiciary Committee.

As I say, I have no desire to hold up the bill. Maybe we can work out an agreement whereby it can be sent to the Judiciary Committee for 2 days or 3, or such.

Mr. McGEE. Or even one.

Mr. ROBERT C. BYRD. But I just want to give notice of my intention to so move if at that time I cannot obtain unanimous consent.

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

S. 2674. A bill to transfer the functions of the Office of Telecommunications Policy to the Federal Communications Commission and to abolish such office. Referred, by unanimous consent, to the Committee on Government Operations; and, when reported by that committee, to the Committee on Commerce.

Mr. WEICKER. Mr. President, in February of 1970, reorganization No. 1 of the executive branch under the direction of the White House created the Office of Telecommunications Policy responsible directly to the President and a subordinate Telecommunications Research Office within the Department of Commerce was organized in September of that year.

The stated purpose of the Office of Telecommunications Policy was threefold,

First. It would serve as the President's principal adviser on telecommunications policy, helping to formulate Government policies concerning a wide range of domestic and international communications issues and helping develop plans and programs which take full advantage of the Nation's technological capabilities.

Second. It would help formulate policies and coordinate operations for the Federal Government's own vast communications systems.

Third. Finally, it would enable the executive branch to speak with a clearer voice and to act as a more effective partner in discussions of communications policy with both Congress and the Federal Communications Commission—It is the President's hope that the new office and the Federal Communications Commission would cooperate in achieving certain reforms in telecommunications policy.

While no one in Congress would quarrel with the Executive's right to have an advisory capacity on this subject, reason one, and neither would we quarrel with the need for an agency to coordinate policies of the Government's own communications network, reason two, it seems that reason three not only exceeded any previous jurisdiction assigned to a Government telecommunications unit, but, in fact, provided a gaping loophole for all kinds of abuse of the first amendment by the executive branch.

Just what was meant by "enable the executive branch to speak with a clearer voice" was made apparent in December of 1972 when the director of the OTP made a speech which charged local broadcasters with purveying the "elitist gossip" and "ideological pluggola" prepared by the networks. In that speech the Director proposed legislation which would "have teeth" and demand service by the broadcasters to "all elements" of the community. He further stated,

> Station managers and network officials who fail to act to correct imbalance or consistent bias from the networks can only be considered willing participants, to be held accountable by the broadcaster's community at license renewal time.

Thus, in developing license renewal legislation, OTP is dangerously intruding into the formation of policy concerning non governmental communications. The intent of the legislation, S. 1589, is expressed in the testimony of the Director of the OTP before the Senate Subcommittee on Communication in February of this year:

> We are going to propose a change that we think is very constructive, in that it gives the licensee a little more stability and provides a little more guidance from the Congress as to how the FCC is going to handle these matters.

The two key words in that quote are "stability" and "guidance."

The "staiblity" would be provided by extending the time period of broadcast licensees from 3 to 5 years. Whether this particular change is a good one or not, is secondary to the fact that this attempt to "provide a little more guidance" is actually an attempt of the executive branch to muscle in on the FCC and set groundrules favorable to the administration.

Today, I am introducing a bill along with Senator RIBICOFF to abolish the OTP and transfer its functions to the Federal Communications Commission.

In the reorganization plan of 1970, the functions relating to assigning frequencies to radio stations belonging to and operated by the United States, as authorized to the President by the Communications Act of 1934, was transferred to the Director of Telecommunications Policy. I submit that a more uniform and coordinated approach to the problem is to consolidate within the FCC, which already allocates commercial frequencies all authority regarding frequency allocation for both governmental and nongovernmental use.

We do not need a branch of the executive office trying to set guidelines for the FCC or trying to cooperate with the FCC, or any of those other high sounding words that usually mean someone has a stick in his hand.

Regardless of how benign the intentions of any OTP may be, or regardless of who is President at the time, such a unit can only represent potential interference with the freedom of the Nation's private systems of communications. That can never be tolerated. And I think we have seen enough in the past year and I might add, in the past 3 years, to say the danger is more than a potential one. Government should not be in the business of reviewing the quality and scope of nongovernmental communications.

So that no one makes the mistake of thinking that I am just concerned with news or news coverage, one of the areas currently being studied by the OTP is the prevalence of reruns on television. I would like to know what business the Government has spending tax dollars to study whether there are too many reruns on television. That is between the stations and the viewers and the advertisers.

If there are in fact too many reruns on television, the solution is the old democratic solution of the marketplace. Turn off the dial or write to the advertisers and tell them you refuse to buy their products. The solution is not having the executive branch come in and tell the media what kind of programing would be best for the viewing public.

That is just a bit too much like the beginnings of big brother. The people who should be passing judgment on the quality of radio and TV are the viewers at home, and not someone in Washington looking out for whatever party happens to be in power.

Consider the following quote which appeared in Broadcasting magazine on February 16, 1970, by the director of the OTP:

> The White House has no qualms about seeking to influence the Commission [FCC], or other so-called independent agencies.

During hearings before a House Subcommittee on Government Operations 1 month later, Representative CLARENCE BROWN, Republican of Ohio, issued the following prophetic warning:

> The method by which the White House could influence the FCC is—establish this office, give it the muscle of direct association with the President and the executive branch, provide it with the wherewithal to do the scientific research or evaluate the scientific research that is being done so that it speaks with the scientific authority in this area, deny the FCC some of the resources through the Bureau of the Budget to provide similar scientific research or the accumulation of scientific research, and pretty soon you have muscle in the office of telecommunications and the FCC becomes a function of the OTP.

This overwhelming power of the OTP has drawn comment on FCC decisions in such diverse areas as cable TV and satellite communications. In his dissenting opinion on the FCC decision concerning cable television, Commission Chairman Nicholas Johnson said:

> When future students of law or Government wish to study the decisionmaking process at its worst . . . when they look for Presidential interference in the operation of an agency responsible to Congress, they will look to the FCC handling of the never ending saga of cable television as a classic case study.

On the domestic satellite issue, even such a normally pro-administration paper as the Wall Street Journal fea-

tured a front-page article on July 11, 1970, charging that—

The Nixon Administration is boldly trying to influence regulatory policy more than any previous administration.

The OTP has at its disposal the staff and expertise of the Office of Telecommunications within the Department of Commerce. Thus, armed with technical and economic analysis, the OTP can justify its policy decisions in a forceful manner in their dealings with other governmental agencies.

While I do not question the need for such economic and technical expertise within the Department of Commerce to insure the effective use of our telecommunication resources, I do question the type of relationship that has developed between OTP and its research adjunct in the Department of Commerce. As noted by Senator PASTORE in the appropriations hearings this year, we have two agencies, one almost subservient to the other. Any project, requested by the White House, must be honored by the Commerce Department. In response to that concern, the Committee on Appropriations limited the use of the Office of Telecommunication's $4 million budget for projects requested by OTP. When highly technical studies are placed within a certain policy framework, their significance is greatly enhanced.

I realize that there are a number of areas of legitimate Government activity which are currently under the jurisdiction of the OTP. These include: First, setting communications policy for the Federal Government's own communications apparatus; second, preparing for communications emergencies in the event of a national disaster; and third, dealing with foreign governments in the resolution of international communications problems. But I see no reason why these and other legitimate concerns could not be handled directly by the FCC with increased staffing and authorization to do the job. And I am hopeful that hearings will be held on this matter to clarify the requirements of such a transfer of authority. These are problems to be ironed out with congressional study and I do not have all the answers about the best methods for doing this.

But I do know one thing. As long as we have an Office of Telecommunications Policy within the executive branch we have a danger to the freedom of the press which is guaranteed in the first amendment.

We in public office should be more concerned with reforming ourselves than with trying to reform the media. In my opinion, OTP needs the eraser's edge.

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

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

S. 2674

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That effective 30 days after the date of enactment of this Act all functions of the Office of Telecommunications Policy in the Executive Office of the President, established by Reorganization Plan Numbered 1 of 1970, are transferred to the Federal Communications Commission, and such Office, together with the Offices of Director and Deputy Director of such Office, is abolished.

SEC. 2. The personnel (other than the Director and Deputy Director), property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, or used by, or available or to be made available to, the Office of Telecommunications Policy shall be transferred to the Federal Communications Commission with the functions transferred by this Act.

Mr. BROCK. Mr. President, will the Senator yield for a question or two?

Mr. WEICKER. I yield.

Mr. BROCK. Just as a matter of curiosity. I learned of the Senator's interest in OTP and I was curious about a couple of points made. First of all, that hearings should be held. I was apprised of the fact that confirmation and oversight hearings have been held in the Commerce Committee on many of the points raised in the Senator's speech. Were they not adequate?

Mr. WEICKER. I was referring to hearings being held on this particular legislation. Obviously, hearings were held as to the OTP's functioning, or that portion which relates to the Department of Commerce; but I am talking about hearings on this legislation to eliminate OTP.

Mr. BROCK. I assume the Senator is suggesting that the committee jurisdiction be the Committee on Commerce since matters relating to the FCC and the OTP are appropriately referred to the committee. Is that correct?

Mr. WEICKER. I am not suggesting anything. It is a matter, of course, for the parliamentarian to decide as to where the bill goes.

Mr. BROCK. My colleague the Senator from Tennessee (Mr. BAKER) is the ranking member of the Communications of the Committee on Commerce Subcommittee, and has had a great deal of interest in the matter. That is why the Senator's remarks caught my attention.

May I inquire on a couple of other points? First, the fact that the Senator thinks that the FCC should assume all the functions——

Mr. WEICKER. No, not all the functions; the specific functions mentioned.

Mr. BROCK. The Senator mentioned three, for example, control of the Government spectrum.

Mr. WEICKER. Right.

Mr. BROCK. Does not that pose a potential for conflict? The FCC has been primarily concerned with the free or commercial aspects of broadcasting. It seems to me that might pose some particular difficulty.

It also bothers me that the Senator suggests, or implies at least, that they might have a greater policy role. It is my judgment that the FCC has already been too deeply involved in programing; that they have exercised, at least indirectly, too much control over commercial radio and commercial television; and I wonder if, in seeking to give them an even broader franchise, that is wise.

Mr. WEICKER. In response to the distinguished Senator from Tennessee, the functions which I have proposed to transfer to the FCC are of a rather technical nature. They do not add in any way to the policy determinations to be made by the FCC. Specifically, as I recall, I advocated intergovernmental functions, an emergency network, and relations in the international field. That is unrelated to any policy insofar as any communications in the United States are concerned.

To respond, however, to the distinguished Senator from Tennessee, I would not care if it was the FCC or the OTP or the President or the Senate of the United States—I do not believe the Government has a right to get into the nongovernmental area and start determining policy as to the content of broadcasting.

Mr. BROCK. But does not the Senator think the FCC has already done that?

Mr. WEICKER. That is a matter of history. I am sure that from time to time they have taken a swing at that particular pitch. I think it is wrong—I do not care who did it.

Mr. BROCK. I am in complete agreement with that——

Mr. WEICKER. Let me be specific. When we had the public broadcasting bill before us, my great concern with that situation was not that we do not need public broadcasting, but that I did not want it tied to Congress or the executive branch of Government.

Mr. BROCK. I agree with that.

Mr. WEICKER. I remember the hearings in the Commerce Committee, when I was a member of that distinguished body—and I might add I would like to get back on that committee; it is one of the great committees of the Congress—when we were sitting there discussing the content of various broadcasts. In one case there was objection, because the New York City Ballet Co. had nudes in the ballet. I am not going to start getting into an argument as to what is a proper ballet and what is not. These are dangerous areas for anyone to get into.

Mr. BROCK. I do not think there is any disagreement between the Senator from Connecticut and myself with regard to Federal interference in the marketplace of ideas and the free exchange of thoughts. I think I was sort of captured by the Senator's remarks as he put them, because I have the feeling that the abolition of the Office of Telecommunications Policy and the incorporation of its functions in the FCC would further strengthen an agency which has, to me, already been too involved in determining program content, access to prime time, and matters of that sort.

First of all, I think the President should determine policy for the executive branch and that the Office of Telecommunications Policy does have functions in coordinating the governmental structure with regard to determination of policies and programs that will promote the public interest. It seems to me the independence of thought that they incorporate, while we may not agree with it, has focused discussion and attention on issues in the communications area that have for too long been ignored or approached in a piecemeal fashion as part of the regulatory process.

While I agree with the Senator's intent in trying to protect the media, I would hope the effect of his proposal would not be to further enhance the power of Government over free communication in the media.

Mr. WEICKER. Again I have to repeat that the only function in my bill goes to the technical functions, but I agree we do not want any office to get into the content-of-program area. I would agree with the Senator. I do not want to see the FCC getting into the business of reruns and matters of that sort.

Mr. BROCK. That is exactly my point.

Mr. WEICKER. As I say, the technical functions would be transferred, but it is the third area the OTP has been charged with that I have transferred to nobody. I hope it dies and does not go to anybody. That is what is so important.

I want to make it clear that it is not a question of this administration, because I think other administrations have always tried to get into this act in one form or another. I just personally feel that it is up to all of us to earn a good press, to earn the respect of the American people; it is not our function to order. We know the tremendous impact telecommunications, television, and radio, have in this Nation, and we are grappling with an extremely dangerous area. It is to eliminate that danger that I propose this bill.

Mr. BROCK. I would agree with that. I do not think there should be any Federal power to order it, but OTP can and is providing a valuable service in directing research and developing a position for the executive branch on the complex communications issues facing our Nation.

Mr. WEICKER. I thank the Senator.

Mr. President, I ask unanimous consent that the bill which I introduce today, transferring the functions of the Office of Telecommunications Policy to the Federal Communications Commission, so as to abolish such office, be referred to the Committee on Government Operations and, if reported out by that committee, that it then be referred to the Committee on Commerce.

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

By Mr. BIDEN:

S. 2676. A bill to authorize the Secretary of Housing and Urban Development to assist local housing agencies in disposing of vacant housing, and to provide rehabilitation funds to individuals and families who are participants in a homestead program. Referred to the Committee on Banking, Housing and Urban Affairs.

Mr. BIDEN. Mr. President, I rise today for the purpose of introducing a piece of legislation regarding housing in America entitled the Urban Homesteading Act.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

Mr. BIDEN. Mr. President, there are Americans living in our central cities who are increasingly unable to find decent, livable housing at prices they can afford. The housing problem there today is characterized by a combination of scarcity, high costs, unavailability, and growing expense of home services such as plumbing and wiring. As middle-income families are abandoning our cities—especially the inner-city areas—those without the money to leave must remain. Unfortunately, however, most such residents are without the financial resources necessary to contribute to the upgrading and improvements of the areas in which they live.

At the same time, for various reasons, others in our cities are abandoning housing. In many cases, if these dwellings are unoccupied for only a short period, they can be made livable again with minor repairs. This has brought forth an imaginative approach known as urban homesteading. It rests on the assumption that such abandoned property in our central cities provides opportunities for new community development. By taking up living in abandoned dwellings and making required improvements over a period of years, families can thereby acquire title to these homes.

In 1862, Congress passed the Homestead Act. The Homestead Act breathed new spirit into the West by fostering optimism, courage, generosity, and willingness to do hard work.

The act entitled any persons who were heads of families or 21 years of age and who were citizens or who had filed a declaration to become a citizen to settle on 160 acres of land held at $1.25 an acre or 80 acres held at $2.50 an acre. The act had its limitations, but it still represented a victory for all those forces in the West that felt the public land should belong to any man who was willing to give it enough time and sweat to make it productive. Our frontiers are different now. But the challenge and sweat equity which settled and populated the West is needed today, and the urban homestead idea provides a means of coping with "a new frontier"—this one in cities.

On May 17, 1973, the Wilmington, Del., City Council became the first municipal body in the country to enact the Urban Homestead Act, with a view to providing housing for families who will in turn build strong communities and to increasing tax revenues by, so to speak, putting empty houses to work. Philadelphia and Baltimore each has enacted a homestead plan; Boston is studying the proposal.

Today, I introduce urban-homesteading legislation that would authorize the Secretary of Housing and Urban Development to assist local housing agencies in (a) making available vacant houses, and (b) providing rehabilitation funds to individuals and families who are participants in a homestead program. Many vacant inner-city homes have been vandalized and need extensive repairs. With the passage of this legislation, the Housing and Urban Development Secretary shall also transfer title of federally owned houses which are suitable for a homestead program to local housing agencies.

In July 1973, HUD held title to 322 single-family properties in Wilmington, 3,261 properties in Philadelphia, 6,906 properties in Seattle, and 15,465 properties in Detroit. In calendar 1972, HUD spent $4.3 million in management fees on single-family dwellings. A National Homestead Program would support and supplement city programs administering homestead programs, and would provide moneys to families or individuals exhibiting traits of independence and willingness to rebuild.

Wilmington officials estimate the average cost of making the first few dwellings habitable would be about $9,000 a unit. This cost may be exceeded in other cities.

I do not introduce this legislation, Mr. President, as a cure-all. It is nothing of the sort. The success of urban homesteading also entails creation of an attractive environment, including steady jobs and good schools. Urban homesteading is, however, one of a number of potentially rewarding undertakings that may well add up to a major resolution of the need for safe, decent and sanitary housing in our core urban areas.

Mr. President, I ask unanimous consent that the text of my bill, the National Homestead Assistance Act, and articles from the Wilmington News-Journal, U.S. News & World Report, Business Week, and the Washington Post be printed in the RECORD at this point in my remarks.

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

S. 2676

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 the "National Homestead Assistance Act."

TRANSFER OF HOUSING

SEC. 2. (a) Notwithstanding any other provision of law, the Secretary of Housing and Urban Development (hereinafter referred to as the "Secretary") shall transfer without payment to a local public agency any real property—

(1) which is improved by a single family dwelling;

(2) to which the Secretary holds title;

(3) which is not occupied;

(4) which is suitable for use by such agency in an urban homestead program which meets the requirements of section 3; and

(5) which is requested by such agency for use in such an urban homestead program.

(b) In the case of any property transferred under this section with respect to which assistance payments under section 235 of the National Housing Act were being made prior to the Secretary's acquisition of title thereto, the Secretary shall, to the maximum extent practicable, make such transfer on terms and conditions which make such housing available under the homestead program to persons who would be eligible for such assistance payments.

PROGRAM CRITERIA

SEC. 3. For the purpose of section 2, the Secretary may approve an urban homestead program carried out by a local public agency which provides for—

(1) the conditional conveyance of abandoned residential property by a local housing agency to an individual or a family without any substantial consideration;

(2) an equitable procedure for selecting the recipients of the abandoned residential property, giving special consideration to the recipients' need for housing and capacity to make or cause to be made the repairs and

improvements required under paragraph (3) (C) of this section.

(3) an agreement whereby the individual or family to whom such property is conveyed agrees to—

(A) occupy such property as a principal residence for a period of not less than 3 years;

(B) make repairs required to meet minimum local standards for occupancy prior to occupying the property;

(C) make such repairs and improvements to the property as may be necessary to meet applicable local standards for decent, safe, and sanitary housing within 18 months after occupying the property; and

(D) permit reasonable periodic inspections at reasonable times by employees of the agency for the purpose of determining compliance with the agreement;

(4) the revocation of such conveyance upon any material breach of the agreement referred to in clause (3);

(5) the conveyance from a local agency of fee simple title in such property without substantial consideration upon compliance with the agreement; and

(6) a coordinated approach toward neighborhood renewal through the homestead program and the upgrading of community services and facilities.

COORDINATION WITH OTHER FEDERAL PROGRAMS

SEC. 4. (a) The Secretary is authorized to enter into agreements with local public agencies to provide for a coordinated application of other programs administered by the Secretary to assist in the revitalization of neighborhoods through an urban homestead program which meets the requirements of section 2 of this Act.

(b) Section 312(a)(1) of the Housing Act of 1964 is amended by adding at the end thereof the following new clause:

"(D)(i) the property is being occupied pursuant to an agreement entered into under section 3(3) of the Homestead Assistance Act, and (ii) the loan is made to assist the occupant in carrying out his responsibilities under that agreement;".

ADMINISTRATION

SEC. 5. The Secretary is authorized to issue such rules and regulations as may be necessary to carry out his functions under this Act.

EVALUATION AND REPORT

SEC. 6. The Secretary shall conduct a continuing evaluation of programs carried out pursuant to this Act, and beginning with the third year following the date of enactment of this Act, shall transmit to the Congress an annual report containing a summary of his evaluation of such programs and his recommendations for future conduct of such programs.

AUTHORIZATION OF APPROPRIATIONS

SEC. 7. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

[From the Wilmington Evening Journal Aug. 25, 1973]

HOMESTEADING

With a flick of the wrist yesterday, Mayor Thomas C. Maloney turned a Pennsylvania lawyer into a Delaware resident.

With two more flicks, Maloney made an apartment renter owner of two city houses.

And, with another flick, Maloney made a suburban wife who works at an automobile dealership the owner of a dream art studio.

Maloney gave these people homes yesterday in a lottery inaugural for the nation's first major homesteading program in more than a generation—since 1934 when the Taylor Grazing Act was passed.

Maloney conducted the lottery in a festival-like atmosphere yesterday before a lunch-time crowd at Rodney Square.

Ten families were given 10 run-down homes owned by the city. The homes are free, but the homesteaders must rehabilitate them within 18 months and must live in them for three years before claiming title.

There were 40 applicants for the 10 homes. Six of the winners were chosen in advance by a homestead board because they were the only qualified applicants for a particular building.

The lottery was for the houses where there were several qualified applicants. For example, William Carter, a house painter and contractor was qualified for two houses and won them both. He had to give one back.

Most of the homes are dilapidated row houses with little or no operable plumbing, electrical wiring or heating. The city estimates it will cost about $9,000 to fix these places.

Most of the applicants for the buildings have building skills or other means to rehabilitate homes.

Eight of the winners are from Wilmington. One is from New Castle, and one, from Devon, Pa.

Eight of the 10 winning families are black.

The homesteaders and homesteads matched by the board are:

James Hadrick, a longshoreman who now lives in suburban Hamilton Park; he'll begin work on his homestead at 607 W. 4th St.

William H. Ceasar, another longshoreman who now lives in Wilmington at 839 Morrow St.; his new home will be 718 W. 9th St. He has a family of six children.

Mrs. Corinne James, now of 1102 Lombard St., Wilmington, a domestic worker, whose family is grown. She'll be renovating 813 Bennett St.

Mrs. Iredell K. Richardson, a school teacher now living at 1723 W. 4th St., who will homestead 217 Delamore Place.

Mrs. Katherine Harris, an assemblyline worker who has a family of six children all grown. She lives at 306 E. 24th St. now; her homestead is 2122 Lamotte St.

Mrs. Annie Mae Barksdale of 1315 W. 6th St., an employe of a home for elderly women; she'll be renovating 835 Windsor St. with the help of a grandson.

The four persons chosen by lottery are:

Daniel Frawley, whose present Pennsylvania address prompted the boos. He works in Wilmington, though, as an attorney for the Du Pont Co. City officials said Frawley, who was not present for the drawing, has always wanted to walk to work. He'll be walking from 801 W. 10th St., the Frawley homestead.

Carter, a house painter with three small children, who won drawings for the house at 1725 Gilpin Avenue and the house at 517 Vandever Ave. He took the second house after consulting with his wife. The Carters now rent an apartment at 2880 Tatnall St.

Mrs. Regina Bonney of suburban Holly Oak won the second drawing for the Gilpin Avenue house after Carter declined it. She works at Brandywine Volkswagen and her husband is an art student at the University of Delaware. The house was once owned by Maloney's great uncle.

Benjamin Freeman of 1212 Apple St., will homestead 526 S. Buttonwood St. He is executive director of the South Wilmington Community Council.

Edward L. Gulczynski, the city's housing coordinator and architect of the Wilmington homestead plan, says the 10 houses to be given away in October will be announced in the next few weeks.

[From Business Week, Sept. 1, 1973]

USING HOMESTEADERS TO RESTORE THE CITIES

Tall, lean, and blond, Daniel S. Frawley fits the image of the hardy pioneers who settled the West more than a century ago with the help of the original Homestead Act. That law offered 160 acres of virgin land to anyone who would live for five years on a tract and developed it. Last week, in a special drawing in Wilmington, Del., Frawley, a tax attorney for E. I. du Pont de Nemours & Co., became the nation's first urban homesteader. He and nine others won the right to rebuild 10 abandoned houses in Wilmington, the first step in an experiment to pump new life into deteriorated neighborhoods.

The Wilmington program awards the homes free of charge, outlines improvements that must be made within 18 months, and requires that the new residents live in the houses for three years before receiving title. The plan makes no special provision to channel houses to low- or moderate-income families.

"These are vacant houses, just sitting here collapsing and destroying property values," says Edward Gulczynski, Wilmington housing coordinator. "We decided to give them to anyone who could restore them and live in them."

Demand is strong. Wilmington received 65 applications for the 10 houses it gave away. But the city is going slow in developing its homesteading experiment. A second block of 10 will be raffled off in two months. "We are developing this program very carefully," says Mayor Thomas C. Maloney. "The city will work closely with these people and learn from their problems."

Wilmington is not the only city seeking homesteaders. This week Philadelphia is expected to finish forming a board to implement a homestead law passed last month. Under the Philadelphia plan, which could help renew 1,200 city-owned, boarded-up houses, buyers must pay at least $1 for legal title. New owners must submit plans to bring the houses up to city code standards and maintain residence for five years to keep the houses. Like Wilmington, Philadelphia will start slowly, with a first phase of about 50 houses. "We wouldn't put one family in a block with 15 abandoned houses," says Councilman Joseph E. Coleman, who pushed the law through Philadelphia's city council.

[From Business Week, Sept. 1, 1973]

INTEREST AND DOUBTS

The homesteading idea is drawing a careful look from housing experts. Officials at the Housing & Urban Development Dept., which holds title to or mortgages on 250,000 abandoned housing units, are interested in the mechanics of the programs. Philadelphia's Coleman recently spent three days in Detroit, where there are more than 15,000 largely HUD-held abandoned dwellings, explaining Philadelphia's scheme to the city's aldermen and private group.

Proponents of urban homesteading see it as one answer to ungrading blighted neighborhoods. Says Coleman: "It will provide much needed housing and bring new economic life into the community. More important, it will cause a renaissance in the spirit of self-reliance and independence in our citizens." Adds Wilmington's Gulczynski: "Done right, the plan can be applied in any size community."

Some housing experts doubt that urban homesteading can have any far-reaching effect on blighted big city areas. In Philadelphia for example, there are an estimated 36,000 abandoned dwelling units, but the city holds title to only 1,200. The reason: In most cities, it takes years to acquire title to a house for tax default, a delay that often reduces homes to rubble before the city can dispose of them. "In many ways, these homesteading programs are anecdotes passing themselves off as bigger programs," says George Sternlieb, Director of the Center for Urban Policy Research at Rutgers University. "The bulk of the houses going through this program are

probably beyond economic reclamation. They're $1 albatrosses."

Nevertheless, the new homesteaders in Wilmington are optimistic. Says Mrs. Annie Mae Barksdale, a nursing home aide who was awarded the smallest of the 10 houses in Wilmington, a two-bedroom row house in a nearly abandoned block: "I'm raising a 13-year-old grandson. Now we will have more room. And the house is in very good shape." Adds Frawley, who estimated repairs on his house at $10,000 and plans to do the work *himself*: "There are houses I could have bought for a song. But I thought the house I won had restorable features, and I would like to see this plan work."

[From the Washington Post, Sept. 28, 1973]

HOMESTEADING, CITY STYLE

In the last century the original Homestead Act, offering free land to settlers, lured thousands of adventuresome folk to the vast spaces of the West. Now urban homesteading, in which a government offers an abandoned house to anyone who will agree to fix it up and live in it, is drawing widespread interest as a way to rejuvenate the inner city and spark a new migration of settlers to now-blighted areas. The first modern homestead programs are getting under way in Wilmington, Baltimore and Philadelphia, and possibilities are being explored in a number of other cities as well.

So far, the programs are small and experimental. Wilmington, which has between 1,500 and 2,000 abandoned and dilapidated homes, has just chosen the first 10 homesteaders by lot from among a flock of applicants. Baltimore is also starting out by offering 10 houses at a dollar each, with plans to enlarge the program gradually to include about 600 properties acquired by the city in tax sales. The homesteads come with strings attached: each buyer must agree to repair the dwelling to meet housing code standards within a specified number of months, and to live there for three to five years. In most cases, the estimated costs of renovation begin around $6,000 even for homesteaders who are able to do much of the work themselves. A key element in the programs, then, is providing low-interest loans for buyers who lack capital, and cannot arrange conventional financing. In Baltimore, a bond issue will provide $2 million for rehabilitation loans.

Homesteading is no panacea for blighted buildings and run-down neighborhoods. A large percentage of the abandoned homes which scar the cities are beyond repair, or unavailable because they remain in private hands or are tied up in other—unsuccessful—housing or renewal plans. In the worst cases, wholesale abandonment has made entire neighborhoods so unhealthy that efforts to rescue individual homes are doomed to failure and frustration. But in carefully chosen areas, the frontier approach of personal commitment and hard labor may succeed where all bureaucracies have not. Homesteading will be worthwhile if it injects even small portions of new life, energy and imagination into the urban scene. In a season when there is little good news on the housing front, this experiment is well worth venturing.

[From U.S. News & World Report, Nov. 5, 1973]

HOMESTEADING IN 1973—CITY HOUSES FOR $1

A strategy devised over a century ago to help settle the vast and empty West now is being tried to save dying neighborhoods in old cities of the East.

The updated idea is homesteading, modeled after the 1862 Homestead Act that helped trigger a mass movement into frontier areas.

The promise of the 1862 Act was 160 acres of land given to anyone who would occupy and cultivate the homestead for five years.

READY SUPPLY

Today the offer is a house—free or for a minimum cost, usually $1—if the family will restore it to decent condition and live in it. Experts say about 9 million houses and apartments lie empty, many of them suitable for rehabilitation by "homesteading."

The new urban-homestead laws are designed to attract families—both poor and middle-income—back into these abandoned houses in the center of the city.

In theory, homesteaders get relatively inexpensive homes. Even with repairs, which may be extensive, it is expected the houses will be cheaper than comparable units on the private market.

For the city, the empty houses would go back on the tax rolls, even though no property taxes will be charged while the house is being refurbished. And the newcomers may stabilize areas that have been losing people and vitality for years.

Wilmington, Del., Baltimore and Philadelphia already have adopted the plan. It is under study in other cities, such as Washington, Detroit, Boston, Cleveland, New York City, Buffalo and St. Louis. Canadian cities such as Toronto and Halifax are considering similar ideas.

LOTTERY SELECTION

First reaction in most cities has been enthusiastic. In Philadelphia, Baltimore and Wilmington, there has been a rush of applicants. The Delaware city held a drawing in August to choose winners of the first 10 houses.

The first urban homesteader selected in Wilmington was a tax attorney for the Du Pont Company. Officials say he is typical of the middle-class persons they hope the program will attract.

The Department of Housing and Urban Development is studying the idea and Representative Marjorie S. Holt (Rep.), of Maryland has introduced a bill authorizing the sale of federally owned housing to low- and moderate-income families as homesteading properties for $1 each if the occupants will rehabilitate them.

One of the attractions of urban homesteading, as its backers see it, is that it won't cost the cities a lot of money. Cities already own many houses taken for nonpayment of taxes. The Federal Government owns many more from foreclosures in subsidized programs, and might make them available.

TAX FORECLOSURES

Mayor William D. Schaefer of Baltimore notes that the 600 houses selected for urban homesteads in his city were acquired through tax foreclosures.

"The city spends approximately $200,000 a year just for boarding up and cleaning these properties which blight some good neighborhoods," he says.

Making a house livable isn't necessarily easy or cheap for a homesteader. A vacant house often has been vandalized. Usually, such improvements as new wiring, new plumbing and kitchen fixtures are required before a family can move in. This may mean a cost of several thousand dollars in the first six months—the period allowed under a typical plan before a family must occupy the house.

Next, the structure must be brought up to the requirements of the local building code within 18 months.

HIGH-COST PROJECTS

Cost of all this work can vary widely. In Wilmington, officials estimated the average work needed in the first 10 houses would run about $9,000 per unit. In other places, it may run as high as $20,000, or more.

The first block of houses selected for urban homesteads in Baltimore consisted of 42 structures, all built in the 1830s. Only eight still were occupied and it was estimated that repairs would run from $18,000 to $25,000 per home.

Finding financing for the repairs may not be a simple matter. "Bankers can afford to back them as a community service as long as you are talking about 10 or so," says one expert, "but when you get into hundreds or thousands, you have to have some kind of governmental or charitable money."

Baltimore voters last November adopted a bond issue creating a 2-million-dollar loan program. This provides up to $15,000 at 6 per cent interest for families rehabilitating abandoned houses. There are no maximum-income restrictions, except that priority goes to those who can't get the money elsewhere.

"For the most part, we are not talking about poor people in our project," says Mrs. Nadine Winters, director of Hospitality House in Washington, a nonprofit community center which is developing an urban-homestead program in co-operation with city officials.

"We are talking about the nurse who has saved $4,000 to $5,000, and who is getting ready to move out of the District of Columbia to Virginia or Maryland," she explains. "Somebody with that level of income can handle it. If they are paying $150 to $200 a month rent already, as many are in the inner city, that's $2,000 to $2,400 a year they could put into a house if they weren't paying rent. Once they get the wiring in, and the plumbing, they can move in and do the rest themselves."

Mrs. Winters says poor families may be able to refurbish the houses, but they will need help. She explains:

"We have some churches ready to help with the financing. We have a lot of volunteer help ready. We have three trade schools to teach them how to do the wiring and plumbing, or do it for them."

PHILADELPHIA'S PLAN

Joseph E. Coleman, Philadelphia city councilman who proposed the urban-homestead idea in 1968, says the new homesteaders will need a lot more support from the Government than the pioneers did.

Mr. Coleman, who is chairman of the city's urban-homestead board, says:

"Before we turn loose a homesteader in an area, we want to have enough going on to turn around the neighborhood. We don't plan to start in the worst areas. We want to start in two ways. One will be a cluster of homesteaded houses in a small area. The other approach will be to scatter one or two to a block, where the neighborhood is relatively stable, but has a few abandoned homes."

There are an estimated 36,000 empty houses in Philadelphia. So far, the city holds title to only about 1,200. Since the program was approved last spring, Mr. Coleman says several hundred more properties have been offered as gifts.

It will still be some weeks before the first Philadelphia homesteaders are selected. Mr. Coleman says upwards of 3,000 applications have overwhelmed his small staff.

"So far," he says, "about 10 per cent of the applicants now live in suburban areas. Another large group is made up of obviously middle-class persons who can move ahead without any help from us. But there are a good many poor people, too. For these, we are trying to get help from foundations in setting up financing."

The city has appropriated $500,000 for the homesteading program.

LEGAL BARRIERS

Even though houses are abandoned and apparently available it is not always easy for the city to take title. Foreclosure for nonpayment of taxes can take years. Experts suggest that some new laws may be needed in this area.

In addition, most slum areas have vacant

houses that would cost more to repair than they would be worth. One expert says:

"In areas where houses sell for $8,000 an abandoned house might require $15,000, at a minimum, to restore. Such a house probably should be demolished."

"The biggest problem is the neighborhood itself," says Dr. George Sternlieb, director, Center for Urban Policy Research, Rutgers University, an early sponsor of the urban-homesteading idea. "The basic reason the houses are abandoned is that no one wants to live in that neighborhood."

"NO CURE-ALL"

Dr. Sternlieb points out that studies of minority property owners in areas of Newark, N.J., showed that even those who had done a first-rate job of keeping up their houses faced potential financial losses as the neighborhoods continued to slide downhill. He says:

"Urban homesteading is no cure-all. There must be an over-all effort to upgrade the whole area. Cities are not declining because houses are being abandoned. Houses are being abandoned because cities are declining. The success or failure of the urban-homestead idea, in the long run, probably depends upon what happens with center-city employment. In cities where it remains stable, or rises, it will work. Where there are no jobs, it will fail."

The hope of many city officials is that, since many high-income workers still are employed downtown, they may want to live close by. This could lead to a rebirth of areas that are now rundown, such as took place in Society Hill in Philadelphia and in Georgetown in the nation's capital.

At any rate, city officials feel that little else is working very well to restore inner-city residential areas. Many of them would echo the assessment of Councilman Coleman:

"We don't say homesteading is going to be easy. But it has the possibilities of providing homes, of removing blight from the inner city. We think it is worth a try."

[From the Wilmington Morning News, Nov. 5, 1973]

WOMAN BECOMES FIRST HOMESTEADER

(By William Weathers)

It's fairly easy to locate 835 Windsor St., although there is no house number visible. The brightly painted white door of the two-story Wilmington house is dead giveaway.

The occupant of the recently renovated brick dwelling is Annie Mae Barksdale, who this weekend became the first urban homesteader in the United States.

"Do or die," Mrs. Barksdale, a 49-year-old widow, said yesterday of her fulfilled plans to move into her homestead house on Saturday. She said the move enables her to realize long held "hopes and dreams of having a home of my own."

Actually, it will be three years until Mrs. Barksdale holds title to the house presently owned by the city, according to the provisions of the homestead program.

The initial 10 homesteaders selected in August were given the houses without charge with the understanding they must be brought up to city housing code standards within 18 months. After making the needed repairs, a homesteader must live in the house for three years before it can be owned.

The city has estimated that most of the houses, which are in poor condition, will require about $9,000 in repairs.

Mrs. Barksdale seemed fairly relaxed yesterday following what she said was a hectic Saturday.

Contractors working on the house didn't finish until 4 Saturday afternoon, she said, while a network television crew followed her around most of the day as she moved things from her old apartment at 615 W. 6th St.

"I like city living," Mrs. Barksdale says of the location of her new home. It is less than a 10-minute walk to the downtown business district.

"I intend to stay here in spite of the neighborhood," she said, referring to the vacant and boarded-up houses that surround her, 10 of the 22 houses in the 800 block of Windsor are vacant.

She says this fact doesn't disturb her, but she would like to see some people move into them. Hopefully, she said, others will notice the improvement in the neighborhood and follow her example.

The renovation of the two-bedroom house where Mrs. Barksdale and her 13-year-old grandson now live is not quite complete, but it is liveable. Brown wood paneling is being placed on the walls and new wood floors are being put down. Mrs. Barksdale said she has already spent about $6,000 for repairs.

Mrs. Barksdale is an employe of a retirement home for elderly women and has been a Wilmington resident for 22 years.

She says she is "thrilled and happy" to finally own her own home and be the nation's first urban homesteader.

By Mr. FULBRIGHT (by request):

S. 2677. A bill to implement the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property. Referred to the Committee on Foreign Relations.

Mr. FULBRIGHT. Mr. President, by request, I introduce for appropriate reference a bill to implement the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property.

The bill has been requested by the Department of State and I am introducing it in order that there may be a specific bill to which Members of the Senate and the public may direct their attention and comments.

I reserve my right to support or oppose this bill, as well as any suggested amendments to it, when the matter is considered by the Committee on Foreign Relations.

I ask unanimous consent that the bill be printed in the RECORD at this point, together with a letter from the Assistant Secretary of State to the President of the Senate dated June 8, 1973, and the sectional analysis.

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

S. 2677

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

SECTION 1. Whenever the President determines that (1) the cultural patrimony of a State Party to the Convention is in jeopardy from pillage of archeological of ethnological materials, (2) the State Party has taken measures for the protection of its cultural patrimony and (3) import controls by the United States would help deter such pillage, the President may enter into an agreement with the State Party, and with other governments as appropriate, to restrict the importation of protected objects of archeological or ethnological interest for so long as may be required to achieve the purposes of the Convention. In making these determinations, the President shall consider the advice of a panel of experts representing the interested art, museum, and scientific communities which he shall appoint for that purpose.

SEC. 2. The Secretary of the Treasury, after consultation with the Secretary of State, by regulation shall promulgate, and when appropriate shall revise, a list of protected objects of archeological or ethnological interest within the meaning of paragraph (b) of section 8 of this Act. Such objects may be listed by type or other classification deemed appropriate by the Secretary.

SEC. 3. (a) No protected object of archeological or ethnological interest listed by the Secretary pursuant to Section 2 of this Act that is exported (whether or not such exportation is to the United States) from the country of origin after the effective date of the regulation listing such object may be imported into the United States unless the government of the country of origin of such object issues a certificate which certifies that such exportation was not in violation of the laws of that country.

(b) If the consignee of any protected object of archeological or ethnological interest is unable to present to the appropriate officer of the customs at teh time of making entry of such object—

(1) the certificate of the government of the country of origin required under paragraph (a) of this section;

(2) satisfactory evidence that such object was exported from the country of origin on or before the effective date of the regulation listing such object pursuant to section 2 of this Act; or

(3) satisfactory evidence that such object is not covered by the list promulgated under section 2 of this Act;

the appropriate officer of the customs shall take the object into customs custody and send it to a bonded warehouse or store to be held at the risk and expense of the consignee, notwithstanding any other provision of law, until such certificate or evidence is filed with such officer. If such certificate or evidence is not presented within 90 days after the date on which such object is taken into customs custody, or such longer period as may be allowed by the Secretary for good cause shown, the importation of such object into the United States is in violation of this Act.

SEC. 4. (a) Any protected object of archeological or ethnological interest imported into the United States in violation of this Act shall be seized and subject to forfeiture. All provisions of law relating to seizure, summary and judicial forfeiture and condemnation for violation of the customs laws shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as applicable, and not inconsistent with the provisions hereof.

(b) Any protected object of archeological or ethnological interest which is forfeited to the United States shall—

(1) first be offered for return to the country of origin and shall be returned if that country bears the expenses incurred incident to such return and delivery and complies with such other requirements relating to the return as the Secretary shall prescribe; or

(2) if not returned to the country of origin, be disposed of in the manner prescribed by law for articles forfeited for violation of the customs laws.

SEC. 5. No article appertaining to the inventory of a museum or religious or secular public monument or similar institution in a State Party to the Convention which is stolen after the effecive date of this Act, or after the date of entry into force of the Convention for the state concerned, whichever is later, may be imported into the United States.

SEC. 6. (a) Any article imported into the United States in violation of Section 5 shall be seized and subject to forfeiture. All pro-

visions of law relating to seizure, summary and judicial forfeiture and condemnation for violation of the customs laws shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as applicable, and not inconsistent with the provisions hereof.

(b) Whenever any person interested in any article seized under paragraph (a) of this Section files with the Secretary of the Treasury a petition for the remission of such forfeiture, the Secretary shall remit the forfeiture if the petitioner establishes that he (1) purchased the article in question for value without knowledge or reason to believe it was stolen or (2) holds valid title to the article under the law applicable in the United States: *Provided, however,* That in such case the forfeiture shall not be remitted if the State Party to the Convention referred to in Section 5 of this Act agrees to pay the petitioner and tenders an amount equal to the price paid (in the case of subparagraph (1)) or the fair value of the article (in the case of subparagraph (2)). Notwithstanding the foregoing, no compensation shall be required, and the forfeiture shall not be remitted, if it is established to the satisfaction of the Secretary of State that the State Party to the Convention, as a matter of law or reciprocity, would, in similar circumstances recover and return an article stolen from an institution in the United States without requiring the payment of compensation.

(c) Any article forfeited to the United States under this section shall—

(1) first be offered for return to the State Party to the Convention in whose territory is situated the institution referred to in Section 5 of this Act and shall be returned if that State Party bears the expenses incident to such return and delivery and complies with such other requirements relating to the return as the Secretary shall prescribe; or

(2) If not returned to said State Party, be disposed of in the manner prescribed by law for articles forfeited for violation of the customs laws.

SEC. 7. The Secretary shall prescribe such rules and regulations as are necessary and appropriate to carry out the provisions of this Act.

SEC. 8. For the purposes of this Act—

(a) the term "United States" includes the states, the District of Columbia, and any territory or area the foreign relations for which the U.S. is responsible.

(b) the term "protected object of archeological or ethnological interest" means any object of archeological or ethnological interest, including any fragment or part thereof, which is subject to export control by the country of origin and is encompassed by an agreement with the country of origin made pursuant to Section 1 of this Act.

(c) the term "country of origin", as applied to any protected object of archeological or ethnological interest, means the country where such object was first discovered.

(d) the term "the Convention" means the Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organizations at its 16th Session.

(e) the term "consignee" means consignee as defined in Section 483 of the Tariff Act of 1930, as amended (19 U.S.C. 1483).

DEPARTMENT OF STATE,
Washington, D.C., June 8, 1973.

Hon. SPIRO T. AGNEW,
President, U.S. Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed for your consideration and appropriate reference is a legislative proposal to implement the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property.

The principal purpose of the Convention is to combat the increasing illegal international trade in national art treasures, which in some countries has led to wholesale pillaging. To this end, the parties to the Convention undertake to protect their own cultural heritage and to establish an export certificate for cultural property designated by each country as being of importance. They are also required to prohibit the import of cultural property stolen from museums, public monuments, or similar institutions and to take appropriate steps, upon request, to recover and return such cultural property. The parties further agree to take what measures they can, consistent with existing national legislation, to prevent museums and similar institutions within their territory from acquiring cultural property originating in another country which has been illegally exported after entry into force of the Convention. Further, states parties to the Convention undertake to participate in a concerted international effort to determine and carry out the necessary corrective measures in cases in which a state's cultural patrimony is in jeopardy from pillage of archeological or ethnological materials.

President Nixon submitted the Convention to the Senate with a view to receiving its advice and consent to ratification on February 2, 1972. The Senate Foreign Relations Committee held hearings on August 3, 1972, and reported the Convention favorably on August 8, 1972 (Executive Report No. 92–29, 92d Cong., Second Sess.). On August 11, 1972, the Senate gave its advice and consent to ratification by a vote of 79 to 0.

Prior to deposit of the United States instrument of ratification to the Convention, the enactment of implementing legislation is required. Accordingly, a draft bill to implement the Convention is herewith submitted.

The draft bill contains eight sections. Sections 1 through 4 implement Article 9 of the Convention, concerning situations in which the cultural patrimony of a state party to the Convention is in jeopardy from pillage of archeological or ethnological materials. Sections 5 and 6 of the draft bill implement Article 7(b) of the Convention, concerning cultural property stolen from a museum or a religious or secular public monument or similar institution in a state party to the Convention. Section 7 contains rule making authority and section 8 contains definitions. The provisions in the draft bill take into account the reservation and understandings set forth in Senate Executive Report No. 92–29, 92d Congress, Second Session, page 9. A fuller explanation of the provisions of the draft bill are contained in the attached sectional analysis.

We hope that this draft will receive early consideration by the appropriate Committee and prompt enactment.

The Office of Management and Budget advises that the enactment of the proposed legislation would be consistent with the objectives of the Administration.

Sincerely,

MARSHALL WRIGHT,
Assistant Secretary for Congressional Relations.

SECTIONAL ANALYSIS

Section 1. This section establishes part of the machinery required to implement Article 9 of the UNESCO Convention. That article allows any state party to the Convention whose cultural patrimony is in jeopardy from pillage of archeological or ethnological materials to call upon other states parties who are affected. The states parties undertake to determine and carry out the necessary concrete measures, including the control of exports and imports and international commerce in the specific materials concerned. Section 1 authorizes the President to enter into agreements with other states parties to the Convention to restrict importation to objects of archeological or ethnological interest for so long as may be required to achieve the purposes of the Convention. Prior to entry into any such agreement, the section requires that the President determine that the cultural patrimony of a state party is in jeopardy from pillage of archeological or ethnological materials, that the state party has taken measures for the protection of its cultural patrimony, and that import controls by the United States would help deter such pillage. In making these determinations, the President is to consider, but is not bound by, the advice of a panel of experts representing the interested art, museum and scientific communities which he shall appoint for that purpose. The requirement that the President make these findings prior to entering into an agreement is meant to ensure that a factual situation does indeed exist where such extreme measures as import controls are appropriate, that less drastic measures are not available, and that import controls by the United States would have the intended effect in remedying the situation. It is anticipated that the authority provided in this section would be used only in serious situations. The President would not use this authority to conclude general agreements prohibiting the entry of all objects of archeological or ethnological interest regardless of size, cultural or scientific importance or monetary value. Generally, specific categories of material would be agreed to, but there may be special situations where a more comprehensive ban may be necessary, at least temporarily, to halt widespread pillage of objects that seriously threatens the cultural patrimony of a state party to the Convention.

Section 2. This section provides for the public notice required to make the provisions in sections 1 through 4 of the implementing legislation effective. After the findings required by section 1 have been made, and after the President has entered into an agreement under that section, this section provides for the promulgation of regulations listing the covered materials. The import of these materials is prohibited by section 3.

Section 3. Section 3 prohibits the import of the materials listed pursuant to section 2 of the draft bill. In addition, the section requires that the material in question must have been exported from the country of origin after the effective date of the regulation listing such object and that the export of that object was in violation of the laws of that country. In such a case, unless the consignee is unable to present evidence that these conditions are not met, the object shall be taken into custody and so held for an additional period of 90 days (which may be extended for cause) during which the consignee may still present evidence that the object in question did not meet the requirements for such seizure.

Section 4. This section completes the scheme of implementation of Article 9 of the Convention. It provides that protected objects of archeological or ethnological interest (those objects listed in a regulation promulgated pursuant to section 2 of the draft bill) imported into the United States in violation of the bill (that is, the prohibition contained in section 3) shall be seized and subject to forfeiture under the customs laws. The seizure is mandatory when the conditions provided for in sections 1 through 3 of the draft bill are met. Petitions for remission of forfeiture under the applicable provisions of the customs laws are allowed for materials so seized.

This section also provides for the disposition of protected objects which are forfeited to the United States. Such objects shall first be offered for return to the country of origin

and shall be returned if that country bears the expenses incurred incident to such return and delivery and compliance with such other requirements relating to the return as may be prescribed. If the object is not returned to the country of origin, either because that country does not accept the offer for return or is unwilling to bear the expenses of return or meet other relevant conditions, the object shall be disposed of in the manner prescribed by law for articles forfeited for violation of the customs laws.

Section 5. This section and the following section implement Article 7(b) of the Convention, requiring the prohibition of imports of cultural property stolen from a museum or a religious or secular public monument or similar institution in another state party to the Convention after the entry into force of the Convention for the states concerned. The requirement that the article in question appertain to the inventory of such an institution will allow appropriate documentation that it was stolen from such an institution. This section prohibits the importation of such objects, and the following section provides the conditions for seizure, forfeiture, and return of such objects.

Section 6. Paragraph (a). This paragraph provides that any article imported into the United States in violation of section 5 shall be seized and subject to forfeiture under the customs laws. The paragraph parallels section 4(a). However, as only stolen items are covered under this paragraph, a regulation listing prohibited objects is not required.

Paragraph (b). This paragraph provides limitations on the remission of forfeiture of articles seized in accordance with paragraph (a). The first sentence implements the requirement in Article 7(b)(i) that an offer of just compensation be made to an innocent purchaser or one holding valid title to the article by the state requesting return of the article. However, as not all such persons may be required to be compensated under the applicable municipal law in the United States, the second sentence provides, in accordance with the fourth understanding adopted by the Senate, that the United States will not require an offer of compensation if under similar circumstances the state requesting return of the item would not require such an offer of compensation from the United States for an article stolen from an institution in the United States.

Paragraph (c). This paragraph provides for the return of objects forfeited in accordance with the previous paragraph of this section. The paragraph parallels section 4(b).

Section 7. This section authorizes the promulgation of rules and regulations necessary and appropriate to carry out the provisions of the draft bill. For example, such regulations will be required under sections 2, 4(b), and 6(c).

Section 8. This section provides definitions for the purpose of this Act.

By Mr. HATHAWAY:

S. 2678. A bill to provide for a special election for the Offices of President and Vice President when the Offices of President and Vice President are both vacant. Referred to the Committee on Rules and Administration.

Mr. HATHAWAY. Mr. President, I am today introducing legislation which would provide for a special Presidential election should the Offices of President and Vice President both be vacant at the same time.

In candor, I must admit that this bill is intended to deal specifically with the potential situation confronting the Congress should the present President resign or be removed from Office before the confirmation of his Vice-Presidential designee. But while the present situation may have engendered consideration of this approach to Presidential succession, the principle it establishes is a sound one of general applicability to circumstances of a similar nature.

In essence, the bill provides that in the case of a vacancy occurring in the Offices of both the President and Vice President, there will be a special Presidential election, with the highest ranking officer of the House of Representatives of the same party as the outgoing President serving as acting President until such election is held. This approach is identical in principle to the Succession Act of 1792 which was enacted in the 2d Congress by some of the same individuals who drafted the Constitution and which remained in force for 94 years. This act was altered in 1886 and again in 1947 with the result that under present law the Speaker of the House succeeds when a double vacancy occurs. I have attempted in the bill to deal with one of the major ambiguities of the 1792 act, which is whether the term of the new President would be 4 years or for the remainder of the unexpired term of his predecessor.

Under the bill I am proposing, the term of the specially elected President would be limited to the time remaining in the outgoing President's unexpired term. In this way, the traditional rhythm of our quadrenial Presidential elections, falling as they do every leap year, would remain undisturbed. As to the procedure to be followed in nominating and selecting candidates, the bill would leave this to State law, as is currently required by the Constitution. I would assume that should this measure be enacted the States would move expeditiously to enact legislation with regard to a possible special election so that the 90-day time table in the bill could be met.

There seems to be little question of the constitutionality of the special election approach to the resolution of a double vacancy problem. The Constitution expressly provides that succession, in the case of a double vacancy, is a matter to be determined by statute and, as noted earlier, the first statute passed in this area did provide for such an election. For the benefit of my colleagues interested in this question, I will have printed in the RECORD at the end of my remarks an excellent memorandum on the question done by the Congressional Research Service as well as a letter from three eminent constitutional scholars, Paul A. Freund, Raoul Berger, and Abram Chayes attesting that—

> In our view, the Constitutional text, the debates at Philadelphia and the practice under the Constitution leave no doubt that the Congress has the power to provide by statute for a special Presidential election in the event the offices of President and Vice President both become vacant.

Assuming the constitutionality of a special election then, why would this approach be better then the presently established system? This question, it seems to me, boils down to one of the legitimacy of government in a democratic society. My introduction of this plan intends no disrespect for the distinguished Speaker of the House, who would fill a Presidential vacancy should one occur under present law. But the Speaker of the House has never sought the Presidency nor have all the voters of the Nation had an opportunity to pass on his qualifications for this awesome Office. Furthermore, my introduction of this plan intends no disrespect for the distinguished minority leader of the House who has been nominated as Vice President by the President. But the same considerations apply—Mr. FORD has never sought the Presidency nor stood before the national electorate. Further, there is something troubling about a President who is under threat of impeachment or forced resignation having the power to name his successor.

In either case—the succession of Mr. FORD or Mr. ALBERT—the country would have a President not elected by the people. This result I find incompatible with the basic principles upon which the Nation was founded and upon which the legitimacy of our form of government rests.

It will be charged, I suppose, that what I am proposing constitutes a political attempt to nullify the mandate of the voters in the last election. I should say first that in making these remarks I indicate no prejudgment of the outcome of the current controversy surrounding the President. My remarks and my proposal are directed solely to what happens if a vacancy occurs, not whether such a vacancy ought to occur. When put in this context, such charges have little merit. The mandate of last November's election belongs to Richard Nixon and Spiro Agnew, not their political party. While winning the White House, Republicans actually lost strength in the Senate and among the Nation's Governors. Given this fact, who is to say with any assurance what the mandate of 1972 was? Second, I cannot accept the charge of "power grab" or "coup" when the question is actually being returned to the people, the ultimate arbiters of power within our system.

If the President leaves office, the mandate of last year is negated; it seems logical to me to allow the people themselves to decide who shall then receive what only they can rightfully give.

Finally, and this is one of the differences between my bill and the original 1792 Succession Act, my proposal would provide that the "interim" President—who would serve between the occurrence of the vacancy and the special election—would in fact be a member of the political party of the outgoing President. In this way whatever party mandate which does attach at the preceding Presidential election would be maintained until the people render their new judgment. In the present case, the highest ranking officer of the House who is of the same party as the previous President, and who would, under my proposal, become Acting President, is GERALD FORD of Michigan.

Before concluding my remarks, I should acknowledge a debt of gratitude to several individuals whose wisdom have made this proposal possible. I refer of course to Professors Freund, Berger, and Chayes, who have provided advice on the constitutionality of the special election,

although they have not considered the specific provisions of this bill, and also especially to Mayor Kevin White of Boston who first discovered the possibilities of this procedure and brought it to the attention of the Nation.

These are troubled and difficult times for all of us. The measure I propose will not settle events finally or immediately. But it will insure that control of our basic decisions and, indeed, our very future will remain directly in the hands of the people.

Mr. President, I ask unanimous consent to have printed in the RECORD the two documents I have mentioned in the course of my remarks, the letter from the law professors and the Library of Congress report on this matter; and I further ask unanimous consent that the bill be printed in the RECORD.

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

LAW SCHOOL OF HARVARD UNIVERSITY,
Cambridge, Mass., November 1, 1973.

HON. KEVIN H. WHITE,
Mayor of Boston,
Boston, Mass.

DEAR MAYOR WHITE: You have asked if, under the Constitution, Congress has the power to provide by statute for a special election to fill the office of President in the event that both the offices of President and Vice President become vacant. In our opinion, Congress has such power.

Article 2, section 1, clause 6 of the Constitution provides:

"In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation, or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected."

The matter was expressly considered in the Constitutional Convention and the debates show conclusively that the Framers intended to empower the Congress to call a special election in those circumstances.

On September 7, 1787, it was moved in the Convention that the Legislature should designate by law which officer of the United States would act as President in the event of vacancies in the offices of both President and Vice President and that "such officer shall arrive." James Madison objected to this language on the ground that it would prevent the vacancy in the Presidency from being filled by a special election. He therefore moved to change the language to read that the officer who was designated to "act as President" do so "until such Disability be removed, or a President shall be elected." Madison's amendment was carried and with minor stylistic changes was incorporated in the final text of the Constitution.

The Second Congress, of which Madison himself was a member, exercised this very power when it enacted the succession Act of March 1, 1972, providing for a special election in the event of a simultaneous vacancy in both Presidential and Vice Presidential offices. 1 Stat. 239. Actions of the First and Second Congresses are traditionally given great weight on questions of Constitutional interpretation. *Myers* v. *U.S.* 272 U.S. 52, 175 (1926).

The text of the relevant sections of the Act of 1792 is attached to this letter. You will note that the Act provided for the special election to be omitted if the double vacancy occurred within six months of the expiration of the Presidential term. It also stipulated that the president pro tempore of the Senate (and if there was none the Speaker of the House) should act in the interim until the special election; and that the person elected should serve for a term of four years from the next inauguration day following the special election. These features are remarked here not to suggest that they are Constitutionally required, but to indicate the flexibility that is available to the Congress in dealing with the practical questions involved in a special election.

The Act of 1792 remained law for almost a century. Then the mechanism of Presidential succession was changed to provide that in the event of the vacancy of both the offices of President and Vice President, one or another member of the Cabinet in the order therein provided should "act as President." But the statute went on to provide that Congress should assemble within twenty days, presumably to consider what further action to take.

The 1886 statute was in turn replaced in 1947 with the present law providing that in the event of the vacancy of both the offices of President and Vice President, the Speaker of the House of Representatives would act as President to be followed by the President pro tempore of the Senate to be followed by ranked Cabinet officers for the remainder of the then Presidential term. 3 U.S.C. 19.

These subsequent enactments are further evidence of the broad and flexible authority available to Congress in fulfilling its Constitutional mandate to provide for continuity in the office of President in case of "removal, death, resignation or inability of both the President and Vice President."

In our view, the Constitutional text, the debates at Philadelphia and the practice under the Constitution leave no doubt that the Congress has the power to provide by statute for a special Presidential election in the event the offices of President and Vice President both become vacant.

Yours very truly,

PAUL A. FREUND.
ABRAM CHAYES.
RAOUL BERGER.

ATTACHMENT

(Second Congress. Session. 1. Ch. 8. 1972, 1 Stat. 239.)

SEC. 9. *And be it further enacted,* That in case of removal, death, resignation or inability both of the President and Vice President of the United States, the President of the Senate pro tempore, and in case there shall be no President of the Senate, then the Speaker of the House of Representatives, for the time being shall act as President of the United States until the disability be removed or a President shall be elected.

SEC. 10. *And be it further enacted,* That whenever the offices of President and Vice President shall both become vacant, the Secretary of State shall forthwith cause a notification thereof to be made to the executive of every state, and shall also cause the same to be published in at least one of the newspapers printed in each state, specifying that electors of the President of the United States shall be appointed or chosen in the several states within thirty-four days preceding the first Wednesday in December then next ensuing: *Provided,* There shall be the space of two months between the date of such notification and the said first Wednesday in December, but if there shall not be the space of two months between the date of such notification and the first Wednesday in December; and if the term for which the President and Vice President last in office were elected shall not expire on the third day of March next ensuing, then the Secretary of State shall specify in the notification that the electors shall be appointed or chosen within thirty-four days preceding the first Wednesday in December in the year next ensuing, within which time the electors shall accordingly be appointed or chosen, and the electors shall meet and give their votes on the said first Wednesday in December, and the proceedings and duties of the said electors and others shall be pursuant to the directions prescribed in this act.

SEC. 12. *And be it further enacted,* That the term of four years for which a President and Vice President shall be elected shall in all cases commence on the fourth day of March next succeeding the day on which the votes of the electors shall have been given.

Approved, March 1, 1972.

CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C.

From: American Law Division.

Subject: Provision for Special Election in Event of Vacancies in Offices of President and Vice President.

This is in response to your request for consideration of the constitutional validity of a provision for special elections to fill the offices of President and Vice President when both become vacant. It appears that the language of the Constitution does not preclude provision for such an election and may be read to support that alternative; when the debates in the Constitutional Convention are reviewed, such support becomes much clearer and stronger. It therefore may be concluded that the proposal under consideration is consistent with the Constitution.

Although the Constitution has been amended twice now in some respects of presidential succession* the pertinent language remains that of Art. II, § 1, cl. 6. "In Case of the Removal of the President from Office, or of his Death, Resignation or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected."

The final clause "or a President shall be elected" is, of course, consistent with the view that the designated officer should serve until the next regular presidential election or with the view that Congress could provide for a special election. In any event, the language does not preclude the calling of such an election. But the Convention materials amply demonstrate that authority for Congress to call a special election in the event of a vacancy in both offices was intended.

The report of the Committee on Detail, which had considered and blended many of the details of various plans offered to the Convention, contained the following language with regard to succession. It will be noted that no provision for a Vice President had yet been made. "In case of his removal as aforesaid, death, resignation, or disability to discharge the powers and duties of his office, the President of the Senate shall exercise those powers and duties, until another President of the United States be chosen, or until the disability of the President be removed." 2 M. Farrand (ed.), *The Records of the Federal Convention of 1787* (New Haven: rev. ed. 1937), 186. Madison reported no debate on this language when the sections on the Presidency were considered on August 24, 25 and 27. It is noted that consideration of the entire clause was postponed because some members were concerned about the ambiguousness of the word "disability". *Id.*, 427, and on August 31 all postponed

*20th Amendment §§ 3, 4; 25th Amendment.

sections were referred to the Committee of Eleven for consideration. *Id.*, 473. The above quoted language thus went to the Committee as reported.

In the report of the Committee of Eleven, the above quoted language was retained with the exception of the substitution of the Vice President for the President of the Senate. *Id.*, 499. No provision for succession beyond the Vice President was included. Farrand's report of the notes of McHenry, one of the Members of the Committee of Eleven contains the following: "No provision in the above for a new election in case of the death or removal of the President." This would appear to negate the inference that the language "until another President of the United States be chosen" would have allowed Congress to provide for one.

When the section was considered on September 7, Randolph of Virginia moved to add the following: "The Legislature may declare by law what officer of the United States shall act as President in case of the death, resignation, or disability of the President and Vice President; and such officer shall act accordingly until the time of electing a President shall arrive."

However, Farrand continues, "Mr. Madison observed that this, as worded, would prevent a supply of the vacancy by an intermediate election of the President, and moved to substitute—'until such disability be removed, or a President shall be elected—'." The motion was then adopted. Further, reports Farrand:

"It seemed to be an objection to the provision with some, that according to the process established for choosing the Executive, there would be difficulty in effecting it at other than the fixed periods; with others, that the Legislature was restrained in the temporary appointment to 'officers' of the U.S.: (They wished it to be at liberty to appoint others than such.)"

"On the motion of Mr. Randolph as amended, it passed in the affirmative." *Id.*, 535.

It seems evident, therefore, that the Convention consciously chose to substitute language which gave Congress the option to provide for a special election if both the Presidency and the Vice Presidency became vacant. But the Committee on Style in reporting what is in essence the clause as it now appears in the Constitution rendered the final passage to read "until the disability be removed, or the period for choosing another President arrive." *Id.*, 599. Without recorded debate, the Convention when it reached this section changed it back to "or a President shall be elected." *Id.*, 626. The decision of September 7 to leave Congress with the power to provide for a special election was thus confirmed.

Apparently, the only reference to the question in the ratifying conventions in the States occurred in Virginia, where George Mason, a delegate who had refused to sign the Constitution, objected that the clause did not require a speedy election of another President in case of vacancy in both the Presidency and the Vice Presidency. Madison responded: "When the President and Vice President die, the election of another President will immediately take place; and suppose it would not,—all that Congress could do would be to make an appointment between the expiration of the four years and the last election, and continue only to such expiration. This can rarely happen." 3 J. Elliot, *Debates on the Adoption of the Federal Constitution* (New York: 1888), 487–488. Obviously, Madison was saying that Congress could provide for a special election but was not required to do so; it could provide for the devolution of the powers and duties of the office upon some other officer until the next regularly scheduled election.

It therefore appears that the Convention consciously chose to recognize power in Congress to provide for a special election in the event of a vacancy in both offices. Nothing has been found in the debates of the Convention or of the ratifying conventions to negate this conclusion, nor does the Twenty-fifth Amendment which made significant changes in this area touch upon this question so as to require a different conclusion.

When in the Act of March 1, 1972, Congress established a policy on succession, it included § 10, 1 Stat. 240, which provided for a special election in the event of a vacancy in both offices. The section read:

"SEC. 10. *And be it further enacted*, That whenever the offices of the President and Vice President shall both become vacant, the Secretary of State shall forthwith cause a notification thereof to be made to the executive of every state, and shall also cause the same to be published in at least one of the newspapers printed in each state, specifying that electors of the President of the United States shall be appointed or chosen in the several states within thirty-four days preceding the first Wednesday in December then next ensuing:

Provided: There shall be the space of two months between the date of such notification and the said first Wednesday in December, but if there shall not be the space of two months between the date of such notification and the first Wednesday in December; and if the term for which the President and Vice President last in office were elected shall not expire on the third day of March next ensuing, then the Secretary of State shall specify in the notification that the electors shall be appointed or chosen within thirty-four days preceding the first Wednesday in December in the year next ensuing, within which time the electors shall accordingly be appointed or chosen and the electors shall meet and give their votes on the said first Wednesday in December, and the proceedings and duties of the said electors and others shall be pursuant to the directions prescribed in this act."

The significance of this enactment for purposes of consitutional interpretation may well be gleaned from the comment of Chief Justice Taft who observed, when the protective tariff was challenged, that the first such law was enacted in the First Congress. "In this first Congress sat many members of the Constitutional Convention of 1787. This Court has repeatedly laid down the principle that a contemporaneous legislative exposition of the Constitution when the founders of our government and framers of our Constitution were actively participating in public affairs, long acquiesced in, fixes the construction to be given its provisions." *Hampton & Co* v. *United States*, 276 U.S. 394, 412 (1928). See also *Myers* v. *United States*, 272 U.S. 52, 175 (1926).

When President Truman recommended in 1945 changes in the law of presidential succession, he included a special election of the President and Vice President when both offices became vacant. H. Doc. No. 246, 79th Cong., 1st sess (1945); 91 *Cong. Rec.* 6272 (1945). A bill was reported to the House embodying this recommendation, H.R. 3587, 79th Cong., 1st sess. (1945), § 3(f), but it was struck on the House floor, primarily because the schedule set out could possibly cause great instability in the country and because the States would be required to legislate a number of changes in their election laws. 91 *Cong. Rec.* 7024–7025 (1945). The House then passed the bill but it was not considered by the Senate; in 1947, however, a bill identical to the House-passed bill, thus omitting the special election provision, was passed by the Senate and accepted by the House.

In conclusion, then, it seems clear that the language of Art. II, § 1, cl 6, especially when considered in light of the events leading to its adoption by the Constitutional Convention, provides adequate support for the proposed bill.

JOHNNY H. KILLIAN,
Legislative Attorney.

S. 2678

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 19 of title 3, United States Code, is amended to read as follows:

"Section 19. Vacancy in the offices of both President and Vice President.

"(a)(1) If, by reason of death, resignation, removal from office, inability, or failure to qualify, there is neither a President or Vice President to discharge the powers and duties of the office of President prior to the 20th day of January in the fourth year of the current Presidential term, and—

"(A) if the Speaker of the House of Representatives is a member of the same political party as the President regularly elected for that term, then the Speaker of the House of Representatives shall, upon his resignation as Speaker and as a Representative in Congress, act as President until the inability is removed or until a President and Vice President take office for the remainder of the term in which the vacancy occurs; or

"(B) if the Speaker of the House of Representatives is not a member of the same political party as the President regularly elected for that term and the Minority Leader of the House of Representatives is a member of the same political party as the President, then the Minority Leader shall, upon his resignation as Minority Leader and as Representative in Congress, act as President until the inability is removed or until a President and Vice President take office for the remainder of the term in which a vacancy occurs.

"(2) If by reason of death, resignation, removal from office, inability, or failure to qualify, there is neither a President or Vice President to discharge the powers and duties of the Office of President, on or after the 20th day of January of the fourth year of the current Presidential term, and—

"(A) if the Speaker of the House of Representatives is a member of the same political party as the President regularly elected for that term, then the Speaker of the House of Representatives shall, upon his resignation as Speaker and as Representative in Congress, act as President until the inability is removed or the end of the term in which the vacancy occurs; or

"(B) if the Speaker of the House of Representatives is not a member of the same political party as the President regularly elected for that term and the Minority Leader of the House of Representatives is a member of the same political party as the President, then the Minority Leader shall, upon his resignation as Minority Leader and as Representative in Congress, act as President until the inability is removed or the end of the term in which the vacancy occurs.

"(b)(1)(A) If under subsection (a) the Speaker of the House of Representatives or the Minority Leader of the House of Representatives fails to qualify as acting President, and if, by reason of death, resignation, removal from office, or inability, there is no acting President to discharge the powers and duties of the office of President prior to the 20th day of January in the fourth year of the current Presidential term, then the officer of the United States who is highest on the following list, and who is not under disability to discharge the powers and duties of the office of President shall act as President until the disability is removed or until a President and Vice President take office for the remainder of the term in which the vacancy occurs: Secretary of State, Secretary of the Treasury, Secretary of Defense, Attorney General, Secretary of the Interior, Secretary of Agriculture, Secretary of Commerce, Secretary of

Labor, Secretary of Health, Education, and Welfare, Secretary of Housing and Urban Development, Secretary of Transportation.

"(B) If under subsection (a) the Speaker of the House of Representatives or the Minority Leader of the House of Representatives fails to qualify as acting President, and if, by reason of death, resignation, removal from office, or inability, there is no acting President to discharge the powers and duties of the office of President on or after the 20th day of January in the fourth year of the current Presidential term, then the officer of the United States who is highest on the following list, and who is not under disability to discharge the powers and duties of the office of President shall act as President until the disability is removed or until the end of the term in which the vacancy occurs: Secretary of State, Secretary of the Treasury, Secretary of Defense, Attorney General, Secretary of the Interior, Secretary of Agriculture, Secretary of Commerce, Secretary of Labor, Secretary of Health, Education, and Welfare, Secretary of Housing and Urban Development, Secretary of Transportation.

"(2) An individual acting as President under this subsection shall continue so to do as specified in paragraph (1) of this subsection, but not after a qualified and prior-entitled individual is able to act, except that the removal of the disability of an individual higher on the list contained in paragraph (1) of this subsection or the ability to qualify on the part of an individual higher on such list shall not terminate his service.

"(3) The taking of the oath of office by an individual specified in the list in paragraph (1) of this subsection shall be held to constitute his resignation from the office by virtue of the holding of which he qualifies to act as President.

"(c) (1) If there is neither a President nor a Vice President to discharge the powers and duties of the office of President because of death, resignation, removal from office, inability, or failure to qualify, occurring prior to the 20th day of January in the fourth year of the current Presidential term, then on the 90th day (excepting holidays) after the date on which the acting President under paragraph (1) of subsection (a) or under paragraph (1)(A) of subsection (b) takes the oath of office of the Presidency, there shall be appointed electors of the President and Vice President in the manner such electors are provided for in a regular election for the offices of President and Vice President.

"(2) Electors appointed on such 90th day shall meet and give their votes on the 7th day following the date of their appointment.

"(d) Subsections (a) and (b) of this section shall apply only to such officers as are eligible to the office of President under the Constitution. Subsection (b) of this section shall apply only to officers appointed, by and with the advice and consent of the Senate, prior to the time of the death, resignation, removal from office, inability, or failure to qualify, of the Speaker or the Minority Leader of the House of Representatives, and only to officers not under impeachment by the House of Representatives at the time the powers and duties of the office of President devolve upon them.

"(e) During the period that any individual acts as President under this section, his compensation shall be at the rate then provided by law in the case of the President."

SEC. 2. (a) Section 101 of title 3, United States Code, is amended by—

(1) striking out "The term" and inserting in lieu thereof the following: "(a) Except as provided in subsection (b), the term"; and

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

"(b) A President and Vice President elected under section 19(c) shall commence their term of office on the second day after the date on which the result of the electoral vote is announced by the President of the Senate and such term shall end at noon on the twentieth day of January next following the next regular election of a President and Vice President."

(b) Item 19 of the table of sections of chapter 1 of title 3, United States Code, is amended to read as follows:

"19. Vacancy in the offices of both President and Vice President."

By Mr. ROBERT C. BYRD:

S. 2679. A bill to amend title II of the Social Security Act to reduce from 60 to 55 the age at which a woman may become entitled to actuarially reduced widow's insurance benefits thereunder. Referred to the Committee on Finance.

Mr. ROBERT C. BYRD. Mr. President, today I am introducing a bill which proposes what I consider to be another badly needed, and long overdue change in the social security system.

This bill would amend the Social Security Act to reduce from 60 to 55, the age at which a woman may become entitled to actuarially reduced widow's insurance benefits.

Throughout my congressional career, I have consistently supported and introduced legislation designed to provide more realistic social security benefits, and legislation designed to improve and strengthen the structure, administration, and financing of the social security system.

Last fall, I also introduced this measure as an amendment to H.R. 1, and it was adopted by the Senate. Unfortunately, the House conferees would not accept this amendment and it, therefore, was not included in the conference-reported bill. While there were many improvements and liberalizations contained in H.R. 1, as finally enacted, I also hope that the need for additional improvements such as would be effectuated by my bill will now be more clearly recognized by Members in both Houses of Congress, so that this bill might receive expeditious consideration and enactment into law this session.

Beyond the 28 million citizens who are already drawing social security benefits, there are many widows between the ages of 55 and 60 who have lost their husbands, and who, at this stage in their lives, are unable to establish a new career, or to reactivate an old one. It is this group of widows that my amendment is aimed at assisting. Under the provision of my amendment which will permit actuarially reduced widows' insurance benefits to be received at age 55, the Social Security Administration estimates that approximately 310,000 widows would claim benefits the first year, creating an initial cost of about $515,000,000. But in the long run, there would be no, or very little, increased cost because it would balance out.

In West Virginia, approximately 5,300 widows would become eligible for actuarily reduced benefits, if the age requirements were lowered from 60 to 55. The increase in benefits for West Virginians would be approximately $9,000,000.

I would like to cite three examples, which have been computed by the experts of the Social Security Administration which show how my amendment would affect widows.

First. Widow A is 55 years old and her husband had average monthly earnings of $500 per month. Her reduced benefits would be $164 per month.

Second. Widow B is 55 years old and her husband had average monthly earnings of $600 per month. Her reduced benefits total $188.30 per month.

Third. Widow C is 55 years and her husband had average monthly earnings of $800. Her reduced benefits total $208.10 per month.

This bill, if adopted and enacted into law, would provide benefits for a group of persons who need it most, widows who are unable to work and who desperately need these benefits, but have been unable to obtain them because of the social security age requirement. In the majority of cases, these widows' husbands paid into the program for a long time, and these are people who deserve to receive some type of benefits now.

By Mr. MUSKIE (for himself, Mr. RANDOLPH, Mr. BAKER, Mr. BUCKLEY, Mr. BIDEN, Mr. BURDICK, Mr. CLARK, Mr. DOMENICI, Mr. GRAVEL, Mr. MCCLURE, Mr. WILLIAM L. SCOTT, and Mr. STAFFORD):

S. 2680. A bill to amend the Clean Air Act, as amended. Referred to the Committee on Public Works.

THE SHORT- AND LONG-TERM ENERGY CRISIS

Mr. MUSKIE. Mr. President, the President announced on Wednesday night a program to deal with both the short- and the long-term energy crisis with which the Nation is confronted. Among other things, the President called for relaxation of some environmental requirements in order to assure an adequate supply of fuel this winter.

While I have not yet seen the basis for the President's conclusion that a relaxation in environmental controls will assist in the short-term energy crisis, I am prepared to anticipate his justification and propose legislation which will facilitate the capability of the administration to deal with the crisis while maintaining our near-term commitment to clean air.

The Subcommittee on Air and Water Pollution will hold hearings on this proposal on Monday morning. Witnesses invited to testify on this measure include the Environmental Protection Agency, the Sierra Club, and the National Coal Association.

We have information which suggests that certain electric powerplants can, in short order, convert from burning oil to burning coal. We know that other powerplants, both utility and industrial, could be converted to coal over time. And most important, Mr. President, we know that coal is the backbone of the Nation's energy reserve.

Unfortunately, the most economic, the most available, the most marketable coal is also high in sulfur content. This means that under present conditions the use of coal in utility and industrial powerplants will contribute to the deterioration of the environment.

If this were the only alternative, the people of the United States whose health is threatened by the chronic exposure to

excessive levels of air pollution should indeed be alarmed. It is true that in the immediate short term—this winter—people who live in the areas in which converted powerplants will operate, will suffer increased exposure to powerplant pollution. If the President's program is adopted, we will have determined as a matter of national policy that a brief exposure to increased concentrations of sulfur dioxide in the air is better than a failure of electric utilities to meet basic demand.

But, Mr. President, this cannot be anything more than an emergency measure of limited duration. If it is, our environment will be damaged significantly from the continued use of high sulfur fuel after the immediate crisis has passed.

But there are other restraints on excessive use of high sulfur fuel. We cannot assume, in the future, that high sulfur oil will be available from the Middle East. And I seriously doubt that the Nation's coal industry will gear up for this new market if that new market is not dependable.

When the Clean Air Act of 1970 was written, we on the Public Works Committee, and especially the chairman, JENNINGS RANDOLPH of West Virginia, and the ranking members, JOHN SHERMAN COOPER of Kentucky and HOWARD H. BAKER, JR., of Tennessee, recognized that stack emissions controls on powerplants and industrial users of coal were an essential element to continued prosperity of the coal regions of the country. We knew that short of a clear commitment to install this pollution control technology, coal would be ignored by the utilities and oil would be substituted in our powerplants.

In this decade, most utilities and industries have continued practices they initiated as a result of early State, local, and Federal clean air initiatives. Rather than clean up what came out of their stacks, they used cleaner fuel in their boilers and by and large that cleaner fuel was oil. The Nation's utilities obviously have never attempted to balance the uncertainty of foreign oil supplies with the long term needs of their consumers.

But, Mr. President, we now have an alternative and an opportunity. We have the opportunity to guarantee the coal industry that their investment in new, safe, deep coal mines will be justified on the basis of a long term commitment from utilities and industries to burn high sulfur coal. And we have the clean air alternative of available technology to cause removal of sulfur from the emissions from stacks of powerplants and industry.

Mr. President, the legislation which I will offer today, on behalf of myself and the distinguished Senator from West Virginia (Mr. RANDOLPH), the distinguished Senator from Tennessee (Mr. BAKER), and other members of the Public Works Committee, will amend the Clean Air Act to facilitate taking advantage of this opportunity to restore national self-sufficiency in our basic energy needs and require utilization of the alternative of continuous controls of emissions from powerplants.

Also, this legislation will provide the Administrator of the Environmental Protection Agency the authority he needs to act expeditiously to assure that environmental controls do not exacerbate the energy crisis.

This legislation is vital. It is absolutely essential that it move along with proposed emergency energy legislation because we must have the ability to move swiftly on all fronts, including clean air law.

Mr. President, there are those who will say that this legislation, which permits adjustment and delay in environmental controls, is an unacceptable compromise. And I must admit that it is an undesirable but apparently necessary setback for our environment. This legislation may, in the short term, adversely impact the programs which were so successfully undertaken as a result of the Clean Air Act of 1970 but, in the long run these amendments will guarantee the public that short term crises in the availability of fuels and wholly private decisions based simply on cost of fuels will not interfere with our effort to clean up the environment.

Mr. President, there is another important aspect of this problem. While the environmental programs have a role in resolving problems created by the energy crisis, I took strong exception to the repeated statements that environmental requirements created that crisis.

The energy companies of the United States have failed to respond to the demands which they have encouraged. They have failed to build the necessary powerplants in time to meet new demands. Plans and decisions by energy companies to deal with this shortage should have been made as much as 10 years ago—tough Federal environmental laws have only emerged in the past 3 years.

The energy companies have failed to plan and provide for the energy needs of this country, to develop alternatives that would make us secure, and to invest their profit in means to satisfy a growing demand.

The energy companies must bear responsibility for our current crisis—for failing to use our abundant coal resources—for failing to consider the alternative technologies and the methodologies to meet America's demand.

More importantly, Mr. President, because they have worked so hard to create that demand, the energy companies bear an additional burden to find acceptable solutions to problems created when that demand exceeds supply—not just the demand for energy, but the demands that increased production of energy places on air, water, and land resources.

I will not stand back and watch the great gains for improvement of the environment in the late 1960's and early 1970's be whittled away by those who would use the energy crisis as an opportunity to delay and defeat environmental regulation. The legislation which I have introduced today is a practical response to a difficult problem, but it should not be considered in any way a compromise of the views of this Senator on the relationship between the environment and the energy crisis.

I would conclude on this point. Energy supplies are limited—fossil fuel supplies are final—they are going to run out eventually. But the same is true of air and water—they are limited too, they are final—no one is manufacturing any more. The same is true of land. Energy, air, water, and land all by their nature impose limitations upon human activity. The energy crisis is just the first crisis. In our attempt to deal with this crisis, we ought not to contribute to the acceleration of potential crises in the supply of air, in the supply of water, and in the supply of land which are all essential to our well-being.

Mr. President, I ask unanimous consent that letters to the Committee on Interior and Insular Affairs relating to this issue be inserted in the RECORD at this point.

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

NOVEMBER 7, 1973.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR SCOOP: After reviewing the legislation now pending before the Committee on Interior and Insular Affairs on the energy crisis, including S. 2652 (the Coal Conversion Bill), Committee Print No. 1 of S. 2589 (the National Emergency Petroleum Act of 1973), and the draft of the Administration's emergency act, we believe that the only language necessary with regard to variances or waivers from the requirements of the Clean Air Act is a clause stating that such "variances" or "waivers" shall be in accordance with procedures established under the Clean Air Act.

It is our intention to introduce legislation and to hold hearings and to complete consideration on such legislation at an early date. Discussions with the Environmental Protection Agency indicate clearly that until such time as one or more of the emergency bills becomes law, the Environmental Protection Agency has sufficient existing authority to handle any temporary need for the use of high sulphur fuels by particular facilities. When the scope and intent of authority to require conversion of fuels is understood, we will act swiftly to provide the Environmental Protection Agency with any necessary supplementary authority.

It is, therefore, our recommendation that in any legislation which you report that language in lieu of the provisions in any of the bills be included which accomplishes the following purpose: Should a Presidential Order to change fuels result in a violation of an air quality implementation plan, a variance may be granted in accordance with the provisions of the Clean Air Act, as amended.

We assure you of our concern for this problem and our mutual desire to avoid energy shortages this winter. We urge your Committee's most prompt action on the basic emergency legislation. It is our belief that we must act quickly and well in the interest of the people of this Country.

With official esteem and best personal regards, we are,

Truly,

HOWARD H. BAKER, JR.
JAMES L. BUCKLEY.
JENNINGS RANDOLPH.
EDMUND S. MUSKIE.

Mr. MUSKIE. Mr. President, I also ask unanimous consent that the text of the bill to which I have referred may 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. 2680

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

SECTION 1. Section 110 of the Clean Air Act, as amended (84 Stat. 1683), is amended by adding the following new subsection:

"(g) (1) During the period commencing November 15, 1973, and ending May 15, 1974, the Administrator is authorized to temporarily suspend any emission limitation, schedule or timetable for compliance contained in any Federal, State or local law, regulation or requirement adopted under this Act as to any fuel burning stationary source which is or would be in violation of such requirement due to actions ordered by the President under the National Emergency Fuels Act, unless the Administrator determines that such suspension will present an imminent and substantial endangerment to the health of persons. Any suspensions given under this subsection shall be exempted from any procedural requirements set forth in this Act or any other provision of local, State or Federal law, and the granting of such suspension shall not be subject to judicial review nor to any proceeding under section 304 of this Act. Nothing in this subsection shall affect the power of the Administrator to deal with sources presenting an imminent and substantial endangerment to the health of persons under section 303 of this Act.

"(2) Upon enactment of this paragraph, the Administrator shall undertake and, after public hearings and within four months, complete an assessment of the probable effect of anticipated fuel shortages on the ability of sources to comply with State implementation plans to achieve the national ambient air quality standards within the deadlines established pursuant to this Act. Such report shall be submitted to the Congress and shall, if the Administrator determines that fuel shortages will interfere with the statutory deadlines, contain recommendations of changes in the Act which will accomplish the purpose of the Act in the most expeditious and practical manner."

SEC. 2. Subsection (a) of section 110 of the Clean Air Act, as amended (84 Stat. 1681) is amended by adding the following new paragraph:

"(5) Whenever the Administrator determines that a source or sources of pollutants for which national ambient air quality standards have been promulgated will not be able to comply with applicable emission limitations through the use of fuels because, in the determination of the President, such fuels are likely to be unavailable due to a continued shortage of fuels, he shall notify the State. If revisions of the implementation plan and local or state regulations necessary to insure the attainment of primary ambient air quality standards protective of public health as expeditiously as practicable are not submitted and approved by the Administrator within 120 days after such notice, the Administrator is authorized to require or promulgate legally enforceable compliance schedules for such source or sources, which schedules shall specify continuous emission reduction measures to be used to achieve compliance, interim steps of progress, and reasonable interim control measures to minimize the emissions of pollutants pending final compliance with applicable emission limitations. Actions taken under this paragraph shall be taken in accordance with procedures prescribed in this Act and shall be subject to judicial review in accordance with the Act; *Provided*, however, that the final date for compliance for sources regulated under this section may not extend beyond July 1, 1977."

Mr. BAKER. Mr. President, I am pleased to cosponsor this legislation, which I support as a necessary measure at this time.

The President's speech Wednesday night dramatically highlighted the opportunities we have as a nation to meet the energy shortages this winter without undue hardship, if we cut back to the bone on unnecessary energy use. The President also recognized that meeting the energy shortage may require some modifications of some State implementation plans under the Clean Air Act.

This legislation would facilitate the procedures for modifying a State's implementation plan during a 6-month period to allow greater use of more abundant fuels, such as coal or higher sulfur petroleum products. The bill, of course, will prevent any changes that would present an "imminent and substantial endangerment" to public health. EPA would be directed to assess within 4 months the impact of such exceptions in terms of whether air quality standards can be met or whether further measures are needed.

The bill also would clarify the intent of the Congress regarding emission standards for individual stationary sources. It would allow the modification of implementation plans, over the long term, to allow the burning of coal so long as the source agrees to a timetable to install effective measures such as stack-gas cleaning equipment for operation by mid-1977.

I want to emphasize that the bill provides interim, short-term methods to be used in concert with other tools in expanding available energy supplies. It does not seek to abrogate our national commitment to clean air. The bill does not provide a way for sacrificing air quality in favor of adequate energy supplies. We can and shall have both.

As part of the Nation's largest industry, electric utilities must raise their spending on new technologies, including emissions control, to the level of such other major industrial sectors as the automobile and steel companies.

The Clean Air Act did not create the energy crisis, as some people may argue. There has been added demand for low-sulfur petroleum products as a result of the act. But that demand was a function of the decisions by various industrial users, not any requirement of the act. The Environmental Protection Agency has demonstrated that effective control technology, within the definition of the law, exists to achieve effective emissions control without fuel switching.

But most users took the easier option of switching fuels. That private decision was the basis for the added demand, not any specific requirement in the law.

I believe that the electric power industry must accelerate consideration of the option of emission-reduction technology, rather than switching to low-sulfur fuels.

In separate areas related to this bill, I am concerned that we not push full tilt into use of high-sulfur coal and unregulated strip mining. In those instances where stack-gas cleaning or other technological solutions are not preferable to fuel switching, we must guard against a complete switch to high-sulfur coal. There is a great deal of low-sulfur coal in the East, as well as the West. It is not being used fully because high-sulfur deposits are larger and easier to mine, and because coal users will not pay a premium for low-sulfur coal.

I am exploring alternatives to encourage the development and use of low-sulfur coal in those cases where stack gas cleaning cannot be used.

In addition, I encourage prompt action on the strip mining legislation which has passed the Senate and is pending in the House. This legislation will assure that strip mining pays its full environmental costs while giving the mining industry a uniform regulatory structure in which to operate.

Mr. President, because of the emergency nature of the energy situation, the Committee on Public Works will hold a hearing on Monday and will act immediately to report this bill. I look forward to receiving the views of the administration and the public on the proposal.

I want to commend the distinguished chairman of the Subcommittee on Air and Water, Mr. MUSKIE, for his leadership in developing the reasonable approach contained in this legislation.

I would also point out that nearly all members of the Committee on Public Works, including the chairman, Mr. RANDOLPH, and the ranking minority member of the subcommittee, Mr. BUCKLEY, have united behind this bill.

Mr. McCLURE. Mr. President, I commend the Senator from Maine for the legislation he has introduced, which legislation I have joined in sponsoring. That legislation addresses the question of the energy crisis in a way which will have as little as possible adverse effect on the environment as we can contrive.

One of the difficulties we have in dealing with the situation that has emerged is a difficulty that has been all too familiar to me for too long now. That is the extremely difficult task of convincing the people of this country that we are in a crisis that is not a crisis which has emerged without warning. It is not a crisis that was without its predictability.

Last April 26 in Boise, Idaho, I gave a speech to an energy symposium dealing with some of the things that I thought it might be possible to do at that time to deal with the emerging energy crisis. I would like to make some reference to that speech.

I made some suggestions about some simple, volunteer efforts such as turning down the heating system in the winter, turning up the air-conditioning system in the summer, buying smaller automobiles and driving them easier. I suggested that we might reduce airline flights and introduce a national automobile speed law of 50 miles an hour.

I proposed some other things which might be difficult, but which might be done, such as relaxing air quality standards for sulfur on a temporary basis, not on a permanent or uncalled for basis, but a very carefully and very prudently drafted one.

Mr. President, that is what the legislation being introduced by the Senator from Maine, myself, and others seeks to do.

I suggested that we reduce the obstacles confronting nuclear powerplants. I pointed out a harsh statistic that is inescapable. To replace a single 1,000-megawatt nuclear powerplant requires the burning of about 1 million barrels of oil each month. We might do that without any threat to our population, and we should do so.

Mr. President, I ended that speech at that time with a quotation from a speech given by former Secretary of the Interior Wally Hickel at Geneva, Switzerland, last spring. He said:

Show me any area in the world where there is a shortage of energy, and I'll show you basic poverty.

I concluded that speech by saying:

And that is what it is all about—do we want to maintain and improve the standard of living for all Americans, do we want to have available the energy and resources necessary to carry out our national goals and policies, do we want to provide the basis on which future generations may enjoy the benefits and opportunities which we have had? I believe the answer of most Americans is "yes."

Mr. President, this proposal—which I am proud to join in cosponsoring—will give us the capacity to respond in a very real way at this time to a crisis that will be upon us more quickly and more harshly than most Americans now realize.

I also serve on the Interior and Insular Affairs Committee which is now sitting in a markup session of emergency legislation dealing with the energy crisis. I am pleased to be able to cosponsor this measure which will go through the Senate Committee on Public Works. It deals with amendments to the Clean Air Act so that we can deal with this crisis in a national way.

I am glad to see that some of the suggestions which have been made and which have now been called for by the President of the United States will be included in a crisis plan to alleviate the very stringent effects upon our life and economy of a dwindling energy supply.

I am sorry that it has taken so long to do this. The crisis would not have been so deep if we had acted sooner.

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

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

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

SENATOR JAMES A. MCCLURE, IDAHO: "THE GOVERNMENT AND ITS ROLE IN THE ENERGY CRISIS"

CONCLUSION

Of course, when we blame the government for anything, we have to be indirectly blaming ourselves.

But, if the government is mainly responsible for getting us into an energy crisis, why can't government get us out? The answer is, of course, it can. And this brings me to the third question, "What do we do now?"

To answer this, I will have to divide the future into four time periods. Each period has its own particular demands and solutions.

Let us start with the most distant time period—the 21st century. Hopefully by then we will have developed the new sources of energy which our R&D is now working on. A possible energy mix would be fusion reactors, solar-powered energy generators, and hydrogen-fueled engines and space heaters. Government can contribute to this effort through continued R&D funding, and appropriate tax provisions, but the major effort will have to come from private individuals and companies.

The false hopes of nuclear energy should have taught us that a government-controlled effort cannot produce an economically feasible, as well as technically-feasible, end product. These systems will have to prove themselves in the market-place if they are to meet future energy needs.

Moving closer to the present, we can consider the period of 1985 to the year 2000. During this period, fast breeder reactors should begin to operate, providing more fuel than they consume. Coal gasification and liquefaction and shale oil should become commercially-producing technologies, and supplemental techniques for energy production should be developed, such as geothermal and magnetohydrodynamics. Here again, government R&D funding and tax advantages will be essential, but with one additional requirement—access to Federal lands. It is not too early now to begin the analysis required so that that access will be available when it is required, so that the questions of environmental protection and public property use will have been answered to the satisfaction of all concerned. One point to remember, though, is that we will continue to rely on fossil fuels for as much as 70 percent of our energy up to the year 2000.

Our next time period, though, has more specific demands—the time between 1975 and 1985. By then, increased exploration and development in offshore lands and other more difficult locations should begin to produce fields of oil and natural gas. The Alaskan pipeline could be providing upwards of 2 million barrels per day. New technology for removal of sulphur from coal and sulphur dioxide from exhaust gases should be proven and available, and solutions to the problems of surface mining and underground mining will have been found. One definite requirement during this period, however, is the operation of nuclear power plants, presently being planned or under construction. And also during this decade we will begin to obtain savings from improved building installation and construction, assuming that the present efforts in that direction continue.

We realize, of course, that none of these energy sources, or savings will become available automatically. They will all require the expenditures of literally billions of dollars, both through government taxes, direct industry outays, and through the consumer's pocket. But the government's role is primarily one of staying out of the way. Seeing to it, in other words, that the road is not blocked by shortsighted or unreasonable policies and regulations. If the demand for energy is there, as we certainly expect it to be, then there will be someone who will fill it—if allowed.

And that brings me to the most difficult period—from April 26, 1973, to 1975. The future energy pictures that I have drawn depend heavily on this brief time. It takes energy to produce energy. Or, it takes the R&D funds produced by energy-consuming individuals and enterprises in order to build the energy systems of the future.

For this immediate period facing us, there are some simple, voluntary efforts which would definitely help. They are so simple, and so often stated, that I hesitate to mention them. But, for the sake of completeness, I will.

They include turning up your air conditioning in the summer, turning down your heating system in the winter, turning off unused lighting, buying appliances based more on efficiency of energy use rather than initial price, and buying smaller automobiles (and driving them easier). In other words, develop an energy consciousness, that will be reflected in our actions involving energy use.

Moving up the scale slightly, there are some actions which help save energy wtih minimum inconvenience, but would require government action. Included would be:

1. Reduce airline flights.

2. Open up urban express lanes for commuter traffic using carpools.

3. Impose a nationwide maximum speed limit of 50 miles per hour.

These all would help, but the major solutions to our present situation will require much more controversial and difficult actions by government. Let's take them one at a time.

First, relax air quality standards for sulphur.

This is obviously something that no one wants to do. But, at the same time, it has become obvious that some government bodies have gone to extremes with sulphur standards. Fortunately, there is some growing realization of this, such as the recent decision by the Missouri Air Conservation Commission to grant Union Electric Company permission to continue using high-sulphur coal for one year. Similarly, during the fuel oil shortage last winter, cities such as New York and Boston decided to relax sulphur standards. And, mine workers in Illinois have petitioned the state legislature to delay implementation of the state's air pollution standards.

What we are faced with is the necessity to relax, temporarily, standards in order to give technology and new fuel supplies time to catch up.

In fact, when Congress passed the Clean Air Act Amendments of 1970, we specifically did not impose a time limit for imposition of secondary air quality standards. We required only that each state implementation plan specify a reasonable time at which such secondary standards be attained.

Relaxed standards would accomplish several worthwhile objectives. First, it would allow substitution of coal for oil and natural gas in some electric power plant boilers. Second, it would allow the use of residual fuel oils with higher sulphur content. Higher, not high. In other words, 1% or 0.7% instead of 0.2%. And third, this would stop the wasting of No. 2 home heating oil as either a blender with No. 6 or as a direct substitute.

Alternatives to this type of relaxation include the recent agreements by two U.S. companies to import low-sulphur coal into the East Coast. Where will this coal come from? Poland, belive it or not. At a time when our domestic coal miners and mines are facing continuing shutdowns and layoffs, we're going to buy coal from Poland.

A second remedy to our short-term shortage would be to remove the obstacles presently confronting nuclear power plants. Some of these plants were scheduled for operation by this summer, but will be delayed because of prolonged regulatory procedures and/or legal challenges. Not only do these delays increase the threat of power blackouts for this summer, they impose an additional burden on oil supples. To replace a single 1,000 megawatt nuclear power plant requires the burning of about one million barrels of oil *each* month. In addition, other plants which are operating have been forced to generate electric energy below their rated capacity. While in some cases such downrating is necessary for safety or health reasons, in view of our present crisis we should determine where increased output could be allowed, without threats to our population, thereby gaining the fuel savings (and increased electric power reliability) which would result from such increases. These ob-

stacles to operation were placed by the government—including the Congress, the Administration, and the Courts. If the public wants them removed, then they can be removed.

In addition, there is a third way to help relieve this short-term energy crisis. It is, however, one that no person in political life today wants even to think about—higher prices. But, by preventing price increases, are we really protecting the consumer? Look at natural gas, for instance. By artificial price ceilings, combined with other regulatory excesses, the government has created a shortage of natural gas. It has now reached the point where we will be buying increased quantities of liquified natural gas—LNG—from countries such as Algeria for prices anywhere from two to three times greater than what American producers are allowed to sell their gas for. In other words, short-ranged political thinking has resulted in both shortages *and* higher prices.

Continued price controls on oil will have the same result.

For instance, due to the gasoline shortage, American suppliers now have to buy in the European marketplace. As should be expected, prices have soared—almost doubled in some cases. As just one example, a recent purchase of imported gasoline cost the U.S. company 20 cents per gallon. Under price ceiling restrictions, it was able to sell that gasoline for only 15 cents, thereby losing a nickel on each gallon. Does anyone honestly expect U.S. companies to continue searching for available stocks in Europe, so that they can lose half a million dollars on each cargo? And, now that we are dependent on imported crude oil, we will surely see continued price increases there, also.

I have not presented a very pleasant picture here this evening. The extent, consequences, and solutions of our energy crisis are distasteful to me and I am sure to you. But, if we do not act now, the results will be more than "distasteful." I believe that Wally Hickel, past Secretary of the Interior, expressed very well the significance of energy during his speech in Geneva, Switzerland, this month, by saying:

"Show me any area in the world where there is a shortage of energy, and I'll show you basic poverty."

And that is what it is all about—do we want to maintain and improve the standard of living for all Americans, do we want to have available the energy and resources necessary to carry out our national goals and policies, do we want to provide the basis on which future generations may enjoy the benefits and opportunities which we have had? I believe the answer of most Americans is "yes."

Mr. EAGLETON. Mr. President, I, too, would like to address my remarks to the energy crisis.

Mr. President, I am pleased that the President finally has acknowledged the energy problems facing this country and at last is proposing steps to deal with them. Even so, I believe he grossly understated the seriousness of the situation and the sacrifices that lie ahead.

Unfortunately, the President could not resist his old habit of shifting blame for his failures to other shoulders. His criticism of Congress in this regard was an attempt to mislead the American people and I think they should know the facts.

They should know, for instance, that much of what the President is now proposing could have been done—and should have been done—6 months ago under an amendment I authored to the Economic Stabilization Act. That amendment gave the President full authority to allocate fuels equitably and gave him unrestricted authority to do whatever he had to do to be sure that people had heat for their homes, farmers could continue to produce food and vital industries could continue to operate.

The administration actively opposed my amendment and even threatened to veto the act, because it contained the amendment. After the bill passed Congress April 30 by overwhelming majorities in both Houses, the President went ahead and signed it. So the Eagleton amendment became law. Their position was that they would just simply refuse to implement the provisions of my amendment.

They said we did not need a program for assuring a fair and equitable distribution of fuel—that we did not need to be worried about establishing priorities for the use of fuel. Administration spokesmen insisted that any fuel shortages which might develop would be temporary and local in nature.

There was a continued stream of statements from the administration to that effect.

That was the same line used when serious heating fuel shortages first hit the Midwest and New England last winter. Despite urgent appeals from Congress and the recommendations of his own task force on oil import quotas, the President refused to permit more oil to come into this country until so many homes and schools were without heat and so many businesses shut down that a national emergency was threatened.

Despite that brush with disaster and the subsequent warnings of energy experts that the situation for the future was precarious, the administration continued to ignore the problem and to oppose legislation meant to deal with it. The problem would go away, we were assured; there was no energy crisis. The administration obstinately refused to implement the provisions of my fuel allocation amendment for a mandatory program until events forced their hand just a few weeks ago. Bear in mind this became law on April 30 of this year. And it was not until a few weeks ago that they began the very first vestige of implementation of this amendment. Even so, the program is so poorly administered that thousands of families and businesses throughout my State are still unable to obtain fuel. I daresay the situation is quite similar in the State of the distinguished Presiding Officer, the Senator from Iowa (Mr. CLARK).

I want to repeat that a great many of the actions now being proposed by the President could have been taken 6 months ago under the broad grant of authority provided by my fuel allocation amendment.

For example, here is what could have been done, under that amendment 6 months ago:

The President clearly could have ordered reductions in airline flights and unnecessary travel by other carriers. He did not do so.

The President could have brought about a reduction in business hours by assigning nonessential business use of fuel a bottom priority. He did not do so.

He could have ordered a Federal program for conserving fuel and even a system of rationing if that was necessary. But he did not choose to do so.

To be sure, some of the President's proposals will require new legislation, such as a year-long daylight savings time. But he should have asked for that a year ago. Other proposals such as his call for a crash research and development program have been pending in Congress for months but have been stalled, because of administration opposition.

As it is, Mr. President, the administration's actions may have come too late to avoid serious hardships this winter. There is considerable doubt, for instance, that coal producers can mine and deliver sufficient fuel to utility companies to allow conversion of their plants from fuel oil before next spring.

The effectiveness of a voluntary conservation program is also in doubt and it may be too late to put together an effectively administered mandatory program.

Mr. President, I am particularly concerned about the sharp disparities in fuel supply that exist among regions of this country. Unless immediate steps are taken to correct the problem, the brunt of the President's proposed cutbacks will fall on the Midwest and New England. It is one thing to reduce fuel oil by 15 percent in an area that has relative abundance such as some of the Gulf States. But it is entirely another thing to require such a cutback in an area like the Midwest which is already critically short. Such action could invite disaster. The situation is particularly serious in view of predictions by the National Oceanic and Atmospheric Administration that we face an exceptionally cold winter this year. Not that these predictions are always uniformly accurate, and let us pray that this one is not; but it is their presumption that this winter is going to be an exceptionally severe one, thereby exacerbating and intensifying the already severe shortages which we face.

Thus the deck is stacked against the Midwest and New England, and there is nothing in the President's proposals which would assure a fair deal for those areas. Once again, the authority to provide for fair and equitable distribution of fuels among all sections of the country is already on the books in the form of the Eagleton amendment, but I question whether any effective action will be taken unless all discretion is removed from the administration. I intend to offer an amendment to do just that.

Finally, Mr. President, this country faces serious social and economic hardships unless we can move quickly to deal with our energy shortage. This problem did not begin with the Arab boycott of oil and it will not end with a relaxation of that boycott. It is a challenge that will be before us for years to come, and I believe it is time the administration faced up to its failure and began to exercise responsible leadership.

Mr. CLARK. Mr. President, I am joining Senator MUSKIE today in introducing a bill which will enable the Administrator of the Environmental Protection Agency

to grant specific and restricted variances from provisions of the Clean Air Act to help us through this energy crisis. But the legislation also will insure that these variances do not subvert the national clean air goal.

Environmental regulations and environmental protection did not create the energy crisis, nor are they creating undue hardships right now.

Because much of this country's high sulfur oil has come from the Mideast, the Arab oil cutoff means we will have to use a higher percentage of low sulfur oil this winter. But in cases where the use of coal is possible—either through present coal burning processes or conversion—the authorization of variances may permit the use of available high-sulfur coal—and thus ease shortages.

The Federal Power Commission has indicated that powerplant conversion from oil to coal could reduce demand for petroleum products by 2.5 percent in 1 year. Certainly, our greatest potential domestic source of energy in the next few decades is coal, and an increased use of coal is going to be necessary. A temporary relaxation of clean air regulations will make the conversion process easier. But conversion to coal does not and must not represent the end of this country's commitment to clean air. The technology is available to clean up the coal burning process and, for any long-term use of high-sulfur coal, utilities must put that technology into operation. The bill being introduced today makes immediate conversion possible, but it must be emphasized that permanent conversion will be acceptable only if available cleanup technology is employed.

Giving this flexibility to the Clean Air Act should increase this country's capacity to insure that this winter is only uncomfortable—not unbearable. We must use effectively the resources we have—but we cannot destroy our other limited resources. We all must make sacrifices to cushion the country from the most severe and detrimental effects of the energy shortage we face—but those sacrifices cannot be unbalanced or permanent, or their long-term effects could be as severe as the effects of today's energy emergency.

By Mr. HOLLINGS (for himself and Mr. THURMOND):

S. 2682. A bill to provide for the control of imported fire ants by permitting the judicious use of Mirex in coastal counties. Referred to the Committee on Agriculture and Forestry.

Mr. HOLLINGS. Mr. President, today I am introducing legislation which would provide for the control of imported fire ants by permitting the use of Mirex in coastal counties.

We must take immediate action to grant some form of relief from the very serious problem of fire ant infestation. The problem is growing more serious and the longer we delay the worse the situation becomes.

The EPA issued a ruling prohibiting the aerial spraying of Mirex, the best proven killer of fire ants. In order to be effective, Mirex needs to be spread over a wide area and airborne distribution is the only feasible method. However, the EPA has prohibited the aerial application of Mirex in the coastal counties of this country. So while we wait, the fire ants are taking over.

This problem did not develop overnight. I have been in contact with officials of the EPA and the USDA about restrictions on programs to eradicate the fire ants in coastal counties but they just do not seem to understand the seriousness of the situation. They continually refer to the fire ant as a people pest but deny the adverse economical impact of the ants. Because of this attitude, we have reached an impasse.

The last thing I want to see is the pollution of our coastal waterways. But EPA with this arbitrary ruling allows no one regardless of where they live in a coastal county to tackle the fire ants effectively. It just does not make sense to tell a farmer in Horry County who lives 30 miles from the Intercoastal Waterway that he cannot spray Mirex for fear of waterway pollution.

At the same time, EPA is making the situation even more unbearable for the coastal residents. The ants are being driven from the interior parts of the State by Mirex spraying and they are migrating into the coastal areas. In effect, EPA is driving more and more ants to the coast but not letting the residents take any action.

Farmers in the coastal areas are being told they can't spray Mirex in their fields and pastures. They are being assured that the fire ants are just "people pests" as if that were unimportant. But I welcome Mr. Train, the EPA Administrator, to visit South Carolina and see the calves and full-grown steers being attacked and killed by the ants. I urge the officials to talk to human victims of the vicious ant attacks. It certainly is not a case of a mere "pest."

I feel we can control the ants and still not pollute our waterways. This legislation specifically prohibits the aerial spraying in the areas where the natural runoff would result in pollution. But this allows the rest of the county to fight the ants while still preserving the waterways.

We need some action and if EPA will not act, it is the duty of Congress to stand up for the people we represent. We are in Washington to serve the people of America, not intimidate them, tie their hands and ignore the problems.

I urge all of my colleagues to support this legislation giving the people of America the right to protect their properties and lives.

I ask unanimous consent that the regulations referred to and the bill, which I am introducing, be printed at this point in the RECORD.

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

[I. F. & R. Docket No. 146]

ENVIRONMENTAL PROTECTION AGENCY

Products containing the insecticide Mirex; determination and order of the Administrator

Published herewith is my determination and order issued May 3, 1972, concerning the registration of products containing the insecticide "Mirex."

Done this 25th day of May 1972.

WILLIAM D. RUCKELSHAUS,
Administrator.

Before the Environmental Protection Agency, In regard Allied Chemical Co., Petitioner, Regs. Nos. 218–495, 516, 548, 564, 565, 585, 586, 628, and 638; I. F. & R. No. 146; Determination and Order of the Administrator.

This proceeding, which arises under section 4.c of the Federal Insecticide, Fungicide, and Rodenticide Act (the FIFRA) (7 U.S.C. 135b(c)), involves a challenge by Allied Chemical Co. to a notice canceling its registration of a number of pesticides containing Mirex. For the reasons that follow, I have determined to issue the following order: The cancellation of Allied Chemicals registration is affirmed, but those registrations will be reinstated if Allied Chemical complies with the conditions outlined herein.

A. On March 18, 1971, this Agency issued a notice of cancellation of Allied's 10 registrations of pesticides containing Mirex for use against the imported fire ant and certain other insects. The grounds for cancellation were that evidence primarily from the laboratory, concerning the effect of Mirex on human health and on animals raised serious questions about the safety of continued use of pesticide products containing Mirex. The Agency determined to commence the administrative process in order to resolve these questions. Accordingly, the Agency canceled all registrations of products containing Mirex on the grounds that continued registration of these products was contrary to the provisions of the Act (see 7 U.S.C. 135 (z)(2)(c), (d), and (g)). Allied Chemical chose to challenge the order by petitioning, on April 16, 1971, for referral of the matter to a scientific advisory committee (pursuant to 7 U.S.C. 135b(c)). The Advisory Committee was appointed on September 24, 1971, and received the relevant data and its charge on October 5, 1971. The committee was charged with considering and evaluating all relevant scientific evidence concerning both benefits and risks from the use of Mirex and, based thereon, expressing its opinion and recommendations. Specifically, with respect to benefits, it was to consider, inter alia, (1) the nature and extent of the problem posed by the fire ant and other insects at issue; (2) the effectiveness of the several types of control measures which utilize Mirex; (3) the benefits expected to be achieved by each such control program, measured against the damage which would occur if no control were undertaken; and (4) the availability and effectiveness of, and the hazards connected with, alternative control measures. With respect to the hazards associated with the several uses of Mirex, the committee was charged to consider, inter alia, the nature, scope and possibility of occurrence of any (1) direct hazard to the user and to the general public; (2) hazard to vegetation; (3) hazard to nontarget vertebrate and invertebrate animals; and (4) hazard to the environment generally.

The committee submitted its report on February 4, 1972. With my approval, the committee later submitted revisions of certain statements which had inadvertently appeared in the initial report as a result of the press to meet the statutory time deadline. A revised version of the report, dated March 1, 1972, and containing, as an addendum, a letter from the chairman explaining each of the revisions, has been printed. Under the law, I am required within 90 days of my receipt of the report to "make [a] determination and issue and order, with findings of fact, with respect to registration * * *." 7 U.S.C. 135b(c).

B. The committee discussed in detail the evidence pertaining to Mirex and, based thereon, made a number of findings regarding Mirex. Those findings are summarized below:

1. The imported fire ant, which infests more than 126 million acres in nine Southern States, is both a major nuisance pest because of its sting and a health hazard due to dangers of secondary infection and allergic reaction.

2. The imported fire ant is a minor agricultural pest because the threat of its sting interferes with hand labor on some crops and its mounds may damage agricultural machinery.

3. The imported fire ant is an aggressive predator to an unknown extent of both pests and beneficial species, and is also a scavenger.

4. Mirex bait is effective for fire ant control to a degree correlated with the size of the area treated and the number of applications. For example, three applications at 6-month intervals virtually eliminates all mounds exposed to treatment.

5. The goal which should be sought is control of the fire ant, through publicly sponsored programs involving application of Mirex bait as needed, rather than total elimination of the pest. The latter is not feasible, given the financial and environmental problems involved.

6. Mirex baits provide highly effective and comparatively selective control for a number of other pests, including certain species of ants, yellow jackets, and, indirectly, aphids, scale insects, and mealy bugs.

7. The only effective alternatives to Mirex for control of the fire ant are even more persistent chlorinated hydrocarbons, e.g., chlordane, aldrin, dieldrin, and heptachlor. Inasmuch as their effective dosage rates far exceed the rate used in Mirex bait, their substitution is inadvisable. No possible method of biological control shows immediate promise.

8. No instance of acute Mirex poisoning of humans has been reported in more than a decade of use, nor is there any evidence of damage to vegetation from the use of Mirex bait.

9. Insufficient data are available on most mammals for an accurate evaluation of Mirex acute toxicity. No data are available on the chronic toxicity of Mirex to experimental animals.

10. Mirex has caused significant reproductive effects in rats when fed at relatively high levels, but none when fed at rates likely to occur in treated food or feed applied to control the fire ant.

11. Based on preliminary data, no metabolites of Mirex have been detected in rats. Mirex is stored in animal adipose tissue, and appears to have biological half life of at least 25 days.

12. Mirex has been demonstrated to be tumorigenic to mice at high dosages.

13. Insignificant residues of Mirex have been detected in the human food chain in treated areas.

14. Laboratory experiments have shown exceedingly toxic effects on juvenile crustaceans, especially shrimp and crabs, exposed to low concentrations of Mirex, indicating the chemical presents a hazard to the aquatic environment.

15. Mirex residues in both soil and water in areas of normal treatment are minimal, but may have some biological importance in water because of the probable ingestion of organic detritus and other components by bottom feeding crustaceans.

Based on its findings, the committee made recommendations which can be summarized as follows: (1) Mirex registrations should be continued with labeling restrictions to minimize environmental contamination; (2) publicly supported control programs should be limited to infested areas where the imported fire ant is a problem because of use by people or interference with agricultural operations; (3) where publicly sponsored programs are unavailable [nonaerial] broadcast treatment of lawns, pastures, schoolgrounds, parks, and similar areas by individuals is recommended instead of mound treatment; (4) more information should be obtained in order to establish economic or nuisance threshold levels requiring Mirex treatment as well as information regarding rates of reinfestation and population recovery in areas receiving a single bait treatment and (5) more research should be conducted on the possible hazards of Mirex to man and his environment in order that the role of Mirex as a pesticide may be accurately assessed.

There is no basis in the data currently before me to disregard these findings. Accordingly, I accept the findings stated above and adopt them as my own. I believe, however, that additional discussion is in order inasmuch as I have decided to depart in some degree from the committee's further recommendations.

The acute toxicity of Mirex to man is low. Though Mirex is capable of being stored in adipose tissue (as are DDT and other related compounds), recent gas chromatograph analyses of more than 700 adipose tissue samples collected in 23 States showed that only 12 samples contained residues which could possibly have been Mirex. Those 12 were tentative identifications, and only two samples have been confirmed as containing Mirex.

Subacute toxicity studies in rats and mice have shown some evidence of chronicity and reproductive effects but only at high dosage levels. Mirex was clearly tumorigenic in one experiment in mice; the results were comparable to those obtained from known carcinogens used as positive controls. The Advisory Committee avoided referring to this as carcinogenic because only one species of animal was involved. With the essentially nondetectable level of human exposure, the risk to man's health must be considered very low in relation to the benefits, particularly those relating to human health, to be derived from use of Mirex.

Mirex is highly toxic to some species of invertebrates, but is apparently very low in toxicity to other closely related species. Residues of Mirex have been found in some invertebrates and vertebrates, especially those that are predaceous on ants and other insects. There have been some population declines demonstrated in terrestrial invertebrates, most of which apparently feed directly on the Mirex bait. In spite of its persistence, troublesome concentrations of Mirex are not apt to build up in the terrestrial environment in the near future because of the extremely small dosages used (far less than 1 ounce per acre and seldom more than one application per year).

On the other hand, Mirex is most apt to do significant damage in the aquatic environment. Significant adverse effects to crustaceans have resulted from laboratory exposure to Mirex. In the wild, however, the lethal effects to some aquatic species, such as the commercial blue crab, are delayed so that such effects would be difficult to discover in the natural environment. Consequently, although troublesome concentrations of Mirex have not yet been demonstrated in the aquatic environment, the hazard to aquatic organisms cannot be disregarded, particularly in view of the fact that Mirex is apt to be recycled, especially in estuaries, and because of the sensitivity of some economically important species of crustaceans to Mirex.

As a result of the potential threat to the aquatic environment posed by Mirex, I am naturally reluctant to permit distribution of Mirex bait in a manner that might contaminate estuaries, lakes, and streams. Those who are familiar with aerial application techniques believe that it is practical, by the use of proper cutoff mechanisms and guidance systems in the aircraft, to avoid contamination of streams and lakes in upland areas where such aquatic environments cover a rather small proportion of the land. Judicious use of aerial application is preferable to hand distribution of bait, which often results in overtreating obvious mounds but missing inapparent young colonies with a resultant rapid reinfestation.

At the same time, maximum caution must be exercised to prevent damage to the aquatic environment. All broadcast application, aerial or otherwise, must be prohibited in coastal counties or parishes and on or near rivers, streams, lakes, ponds, and other aquatic areas. I also believe it necessary to restrict aerial or other broadcast application in noncoastal, nonaquatic areas to Federal, State, county, or local authorities. Thus, I depart from the recommendation of the Advisory Committee that nonaerial broadcast treatment by individuals be authorized where publicly supported control programs are unavailable. All broadcast treatment by private individuals must be prohibited.

By prohibiting aerial application, I do not wish to eliminate completely the use of Mirex from coastal counties or parishes. Should we do so, the homeowners, farmers, and others affected by the ants would in all likelihood apply heptachlor, dieldrin, or another chlorinated hydrocarbon as a control chemical. This alternative could be worse from the standpoint of environmental safety than would applications of Mirex. Therefore, I have determined to authorize the private use of Mirex for application on a mound-to-mound basis only.

For the foregoing reasons, the cancellation of Allied Chemical's registrations is affirmed, but the registrations will be reinstated upon submission by Allied Chemical, and acceptance by the Agency, of amended labeling which conforms to the conditions set forth in this decision,[1] and submission by the company for a 2-year plan to monitor Mirex in the environment to insure that run-off, leaching and erosion of soil in mound-treated areas are not resulting in aquatic contamination.

[FR Doc. 72-8228 Filed 5-31-72; 8:56 am]

S. 2682

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding any other provision of law, the Administrator of the Environmental Protection Agency is hereby authorized and directed to delete from his Mirex orders of May 3 and June 30, 1972, the prohibition against aerial application of Mirex within coastal counties or parishes except in areas within the coastal counties or parishes where natural runoff would result in pollution by the Mirex of coastal waterways, and to apply instead the same standards applicable to noncoastal counties.

By Mr. WILLIAMS (for himself, Mr. TOWER, and Mr. BROOKE) (by request):

S. 2683. A bill to amend the Securities Exchange Act of 1934, as amended, to facilitate the collection and public dis-

[1] The evidence presently available indicates that the hazard to aquatic organisms from current use of Mirex in aquatic areas does not approach the "imminent" stage. In other words, I am not faced with a highly dangerous situation which needs to be corrected immediately, prior to the completion of the cancellation proceedings. Consequently, I have no reason to suspend the aquatic use immediately. Instead, I am merely canceling the aquatic use. Under the FIFRA, this cancellation order is not effective until, at the earliest, the expiration of the 60 days allowed for the filing of an administrative appeal from this decision. Thus, even if Allied does not appeal from this decision, it will have 60 days to conform its labeling to the newly imposed conditions.

semination of information concerning the holdings of and transactions in securities by institutional investors and investment managers, including banks, bank holding companies, insurance companies, trust companies, investment advisers, investment companies, separate accounts, pension-benefit or profit-sharing trust plans, charitable endowment funds, and any other fund maintained or utilized for the purpose of collective investment. Referred to the Committee on Banking, Housing and Urban Affairs.

Mr. WILLIAMS. Mr. President, at the request of the Securities and Exchange Commission, I am today introducing a bill to require institutional investors and institutional investment managers to disclose their securities holdings and large equity transactions.

The proposed legislation is similar to S. 2234, which Senators BROOKE, TOWER, PROXMIRE, and MCINTYRE and I introduced on July 23, 1973. The Commission's bill, however, sets somewhat different cutoff levels for reporting and takes a different approach to the public disclosure of information. This legislation also limits the reach of the Commission's powers in comparison with those provided by S. 2234.

The differences between the two bills do not, however, appear to me to be fundamental. Both bills proceed on the same premise; namely, the pressing need for the establishment of a mechanism whereby the regulatory agencies and the public may obtain regular and comprehensive information regarding institutional holdings and transactions in securities. I am certain that it will be a relatively easy matter to reconcile the differences between the two bills, and I am confident that in the near future we will be able to agree upon a single bill embodying the best features of both approaches.

Mr. President, I ask unanimous consent that letters from the Chairman of the SEC be included in the RECORD as well as the text of the bill.

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

SECURITIES AND EXCHANGE COMMISSION,
Washington, D.C., October 5, 1973.

Hon. JOHN SPARKMAN,
Chairman of the Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I am pleased to submit the Commission's proposed amendments to the Securities Exchange Act of 1934, which would require institutional investors to disclose their portfolio holdings and transactions.

As you know, the Commission first endorsed the concept of institutional disclosure in its Letter of Transmittal of the *Institutional Investor Study Report*. After having found that "gaps [existed] in information about the purchase, sale and holdings of securities by major classes of institutional investors", we concluded that the Securities Exchange Act should be amended to provide the Commission with general authority to require reports and disclosures of such holdings and transactions. Since then the Commission has given a great deal of additional thought to this subject, and we are convinced of the need for the disclosures which the proposed legislation would provide.

As you know, the Commission submitted a draft bill dealing with this subject to Senator Williams on July 19, 1973. At that time we emphasized that that draft did not reflect the final position of the Commission but had been prepared to satisfy his urgent request. Subsequently, Senator Williams introduced S. 2234, which embodied many of the provisions furnished in our draft bill but also departed from it in several substantive respects. The bill we are recommending today differs in several important respects from that draft and from S. 2234. To assist you in your consideration of the proposal, we intend shortly to submit to you a section-by-section analysis, including a discussion of the differences between it and S. 2234.

In submitting this proposal to you today we wish to emphasize a very critical factor for your consideration. Subsequent to the Institutional Investor Study Report, various approaches to implementation of this proposal were considered by the Commission in late 1971 and 1972. All were tabled, however, because of the projected costs of processing disclosure filings and because of the other legislative priorities which the Commission had at that time. Achieving proper utilization of the reports and the data provided by this legislation, if enacted, will require a significant budgetary commitment on the part of the Commission, which will be possible only if the Commission's budget is appropriately increased or if the program is made self-financing. We are now attempting to develop analyses of our needs in this regard.

Very truly yours,
RAY GARRETT, JR., *Chairman.*

SECURITIES AND EXCHANGE COMMISSION,
Washington, D.C., October 5, 1973.

Hon. HARRISON A. WILLIAMS, JR.,
Chairman, Subcommittee on Securities, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, D.C.

DEAR SENATOR WILLIAMS: On behalf of the Commission, I am pleased to enclose a copy of several proposed amendments to the Securities Exchange Act of 1934, designed to require institutional investors to disclose their portfolio holdings and transactions. You will recall that in our letter to you, dated July 19, 1973, which accompanied an earlier draft bill on this subject submitted pursuant to urgent request, we emphasized that the bill as then worded might not reflect the final position of the Commission. We also referred to a number of issues and alternatives which the Commission had not resolved at that time. The legislation which we are submitting today resolves those issues as follows:

1. *Whether it would be practicable and desirable to propose measures for the control of institutional trading, in the absence of more adequate information concerning institutional holdings and trading.* Our proposed legislation adheres to the conclusions announced both in the Commission's 1971 Institutional Investor Study Report and in our July 19 letter that disclosure should be the first step in the process. Only after the results of such disclosure have been analyzed would it be appropriate to attempt to determine whether or not statutory limitations should be imposed upon the manner in which institutional fiduciaries trade for their beneficiaries.

2. *Whether the Commission will need additional resources to make a meaningful analysis of data concerning institutional trading.* We would like to emphasize that the resources available to the Commission to carry out a meaningful program with respect to data obtained pursuant to this legislation will be a critical factor for your consideration. The proper utilization of the reports and the data this legislation will provide will require a significant budgetary commitment by the Commission. This will only be possible if this program is made self-financing or if the Commission's budget is appropriately increased. We are now attempting to develop cost analyses of our needs in this regard.

3. *Whether institutional disclosure legislation should be phrased generally, granting the Commission maximum flexibility or whether such legislation should be framed more precisely.* As you will note, the bill we propose combines both approaches.

4. *Whether the legislation should take the form of an amendment to the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, or a separate statute.* The enclosed legislation takes the form of an amendment to Section 13 of the Securities Exchange Act of 1934.

The bill we are recommending today differs in several important respects from the July 19th draft bill and from S. 2234. We are now preparing a section-by-section analysis of our proposal, including a discussion of the differences between it and S. 2234.

Very truly yours,
RAY GARRETT, JR., *Chairman.*

S 2683

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 13 of the Securities Exchange Act of 1934, 15 U.S.C. 78m, is amended by inserting after subsection (e) thereof the following new subsection:

"(f)(1) Every investment manager which uses the mails, or any means or instrumentality of interstate commerce, or any facilities of a national securities exchange, directly or indirectly, in the course of its business as an investment manager, and which exercises investment discretion for or has investment authority over any account or accounts which contain equity securities having an aggregate fair market value at any time during the preceeding 12 months of at least $100 million, or such other amount not less than $10 million as the Commission may by rule determine having due regard for the public interest, the protection of investors or the maintenance of fair and orderly markets, shall file periodic reports with the Commission, in accordance with such rules and regulations as the Commission may prescribe, pursuant to paragraph (3) of this subsection, as necessary or appropriate in the public interest or for the protection of investors or to insure fair dealing in securities. For purposes of this subsection, the term "equity securities" shall not include equity securities in an account subject to the investment discretion or authority of an investment manager which have been issued by any company with respect to which such investment manager has the power through beneficial ownership of its equity securities to exercise a controlling influence over its management or policies.

"(f)(2) For purposes of this subsection, the term 'investment manager' shall include:

(A) any bank, or any bank holding company as defined in the Bank Holding Company Act of 1956, as amended, or any subsidiary thereof;

(B) any insurance company or any insurance holding company, or any subsidiary thereof;

(C) any investment company;

(D) any broker or dealer;

(E) any investment adviser, as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940, whether or not required to register with the Commission pursuant to that Act;

(F) any person, other than a natural person, investing in or buying and selling securities for its own account; and

(G) any person, including a trustee, officer, director or employee, or any group of persons, that exercises investment discretion for or has investment authority over any account or accounts of:

(i) any employees' stock bonus, pension or profit-sharing trust which is described in

Section 401 of the Internal Revenue Code of 1954, as amended, whether or not it meets the requirements for qualification thereunder;

(ii) any fund, trust, or company within the meaning of Section 202(a)(5) of the Investment Advisers Act of 1940, which is organized and operated for religious, charitable, educational benevolent, civic, fraternal, or any of the other purposes described in Section 501(c) of the Internal Revenue Code of 1954, as amended, whether or not it meets the requirements for qualification thereunder;

(iii) any fund, trust, or company within the meaning of Section 202(a)(5) of the Investment Advisers Act of 1940, which is organized and operated for the benefit of federal, state or municipal employees;

(iv) any other fund or pool of assets maintained or utilized for the purpose of collective investment; or

(v) any person or persons other than the person or persons exercising such discretion or having such authority.

"(f)(3) The Commission, by rule or regulation, may require every investment manager subject to paragraph (1) of this subsection, to file reports with the Commission, in such form and at such times as the Commission may prescribe, but in no event shall the Commission require periodic reports to be filed more often than monthly. Such reports may contain the following aggregated information by type of account with regard to accounts over which such investment manager exercises investment discretion or has investment authority:

(A) the name of the issuer, the title and class, the number of shares or principal amount and the aggregate fair market value of each security held by such accounts; and

(B) with respect to any transaction effected for such account or accounts, involving an equity security described in Section 13(d)(1) of this title, having a market value of at least $500,000 or such other amount as the Commission may by rule determine, having due regard for the public interest, the protection of investors or the maintenance of fair and orderly markets;

(i) whether the transaction involves a purchase or a sale;

(ii) the trade date;

(iii) the brokers or dealers through which the trade was executed;

(iv) the name of the issuer and title and class of security;

(v) the number of shares of the security traded;

(vi) the price at which the security was traded;

(vii) the market in which the trade was executed; and

(viii) such other substantially related information as the Commission, by rule or regulation, may prescribe.

"(f)(4) The Commission by rule or regulation, or by order, as it deems necessary or appropriate in the public interest and consistent with the protection of investors and to insure fair dealing in securities, either unconditionally or upon specified terms and conditions or for specified periods, may exempt from the requirements of this subsection any investment manager, security, class of investment managers or class of securities.

"(f)(5) The information contained in all reports filed with the Commission pursuant to this subsection shall be available publicly in such form as the Commission, by rule or regulation, may prescribe; *Provided, however,* That the Commission, where appropriate, may permit any or all information filed in such reports to remain confidential in accordance with Section 24 of this title; *Provided, further,* That information identifying the holdings of equity securities of any natural person, trust or estate, other than a business trust, which is filed with the Commission pursuant to this subsection, shall be confidential.

"(f)(6) The Commission may adopt such rules or regulations or orders as it deems appropriate in the public interest and consistent with the protection of investors and to insure fair dealing in securities to avoid unnecessarily duplicative reporting pursuant to this subsection by two or more investment managers which exercise investment discretion or have investment authority over the same account or accounts or by investment managers which are required or those advisory accounts are required to file reports pursuant to any other provision of this title, any provision of the Investment Company Act of 1940, or any provision of the Investment Advisers Act of 1940.

"(f)(7) The Commission shall have authority, by rule or regulation, to define terms used in this subsection insofar as such definitions are not inconsistent with the provisions of this title."

By Mr. ERVIN:

S. 2684. A bill to further insure due process in the administrative discharge procedure followed by the Armed Forces. Referred to the Committee on Armed Services.

MILITARY ADMINISTRATIVE DISCHARGE PROCEDURES ACT OF 1973

Mr. ERVIN. Mr. President, I am introducing today a bill which provides a comprehensive structure for the award of discharges in the military. Despite the fact that the Vietnam war has ended and the number of men in uniform has been reduced, the administrative discharge remains the most commonly used tool to separate the serviceman whose performance has, in some way, been unsatisfactory. With the new emphasis on obtaining career-oriented personnel, the necessity that these proceedings be marked by fundamental fairness has now become more critical than ever. Military personnel now faced with discharge proceedings will likely stand more to lose from separation—most will have approached it as a career.

Over the years the Subcommittee on Constitutional Rights has received literally thousands of complaints concerning the procedures by which persons are eliminated from the services with undesirable or general discharges. These discharges are deleterious to the individuals who receive them. The undesirable discharge is just as harmful as a bad conduct discharge which can only be awarded by a court-martial after a trial characterized by the procedural and due process safeguards provided for those tribunals by Congress.

The fact that any discharge other than fully honorable is harmful to the individual throughout his lifetime is illustrated by the results of a survey conducted by the Constitutional Rights Subcommittee several years ago. Upon questioning several large employers in the Washington metropolitan area, it was discovered that when an applicant for employment revealed he had any type of discharge other than "honorable" he was automatically removed from consideration. This was because there were always other applicants with honorable discharges and it was not worth the time and effort needed to "go behind the discharge" to discover the circumstances of its issuance. The evidence provided by this survey has been confirmed in countless individual examples which have been brought to our attention over the years. It is clear that before the services issue discharges which have such a devastating and permanent impact on a citizen they should be required to comply with fundamental due process and fair play concepts in determining the justification for such action.

Under present practice, the armed services are governed by service regulations only and not by any laws passed by Congress. As a result of the numerous complaints we have received over the 10-year study and investigation by the Subcommittee on Constitutional Rights, it is clear legislative reform is vitally needed.

For example, under the procedures now followed for the issuance of administrative discharges for fault or misconduct:

The respondent has no right to confront the witnesses against him.

He has no right to compel the attendance of witnesses or to compel the production of evidence.

There is no requirement that any competent evidence be in the record to support the findings.

In short, the proceedings are almost completely lacking in what we in Anglo-American jurisprudence think of as fundamental due process.

This bill merely provides that elementary notions of fairness will be accorded by the military administrative tribunal. It is the culmination of over 12 years of study and investigation by the Subcommittee on Constitutional Rights. Originally, the bill was introduced in the 90th Congress as title I to S. 2009, which contained comprehensive proposals for reform of the military justice system. Many of these reforms were subsequently enacted into law in the Military Justice Act of 1968. The proposals contained in title I, however, were not enacted at that time, nor have they been enacted since, despite my introducing them in succeeding Congresses. The latest of these was S. 2247, introduced in the 1st session of the 92d Congress. It, too, was never acted upon in committee.

This new bill, while very similar to its predecessors, has been revised somewhat to recognize subsequent shifts in the position of the military, and to incorporate some needed additions.

Perhaps the greatest difference in it and the previous bills is that this new bill applies to discharges for unsuitability as well as discharges for unfitness and misconduct. Although such a discharge can occasion no worse than a general discharge certificate, I feel that any discharge which is not by its own terms "honorable," can be detrimental to the departing serviceman. Under such circumstances, a general discharge should be awarded only after a hearing governed by traditional due process guarantees.

The new bill also spells out the grounds for award of administrative discharges. It attempts to limit them to situations where the serviceman has demonstrated a pattern of conduct which indicates that he should not be retained in service. Administrative discharges should

not be given as punishment. An act or acts which violate the Uniform Code of Justice should be punished, but only after trial by court-martial, with its attendant procedural safeguards. Too often commanders are tempted to avoid the strictures of court-martial by instituting an administrative discharge proceeding which is procedurally less rigorous, but, in a practical sense, can be just as devastating to the serviceman.

The remainder of the bill prescribes in detail procedures to govern administrative discharge proceedings. To my mind, it establishes a framework which is workable administratively and yet accords the serviceman the rights of due process to which he is entitled. It would indeed be a travesty if we continue to deny such basic rights to those who are defending our own.

Mr. President, the Congress has already waited too long to enact legislation in this field. The longer we wait, the more damage is done. While I would not deny that the armed services have a right to discharge administratively servicemen who do not satisfactorily perform their military duties, I am equally convinced that they must do so in accordance with the due process guarantees of the fifth amendment. At present, they are not so bound.

Mr. President, I prepared an article on this subject which appeared last year in the San Diego Law Review. While the article deals primarily with the provisions of S. 2247, the predecessor of this bill, it is still a highly relevant discussion of the legislative issues involved. Many of the criticisms of S. 2247 found in the article were the basis for changes in the new bill. I would ask unanimous consent therefore that the text of this law review article, entitled "Military Administrative Discharges: Due Process in the Doldrums," as well as the text of the bill and its accompanying sectional analysis, be printed in the RECORD at the conclusion of my remarks.

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

MILITARY ADMINISTRATIVE DISCHARGES: DUE PROCESS IN THE DOLDRUMS

(By Hon. SAM J. ERVIN, JR.) *

INTRODUCTION

Since 1967, an average of 50,000 men each year have been administratively discharged from the armed services, as compared with an average of roughly 4,000 discharged annually as a result of courts-martial.[1] Many of those administratively discharged were homosexuals, many were drug users, many shirked their military duties, some failed to pay their legal debts, and others were simply unsanitary.

Of those discharged administratively, roughly 25% were labelled as "undesirable" and were returned to a civilian society to face family, friends, and prospective employers with that stigma.[2] They found, too, that they were ineligible for veterans' benefits to continue their schooling, or buy a new home, or if so inclined, to begin flying lessons.

The armed services have long reserved the right to discharge administratively any individual who, for one reason or another, cannot measure up to accepted standards of performance, whether or not that failure involves conduct subject to trial by court-martial. Such discharges are processed in accordance with regulations drawn by the services, enforced by the services, and reviewed by the services. If there are abuses, they typically are not challenged judicially.[3] But they have not gone unnoticed.

The Subcommittee on Constitutional Rights began its study of administrative discharges in 1961 in response to an increasing number of complaints that the system was unfair and left an irreparable stigma on those it affected. Exploratory hearings were conducted in 1962 [4] and more extensive hearings were held in 1966.[5] Several legislative proposals grew out of these hearings; however, no bills dealing with this subject have as yet become law.

Meanwhile, letters from discharged servicemen unable to find jobs, from those who cannot get the job they desire, and from those who wanted a military career but were returned to a civilian world with little marketable experience continue to reach the subcommittee. Their common complaint is that the administrative discharge system has unfairly condemned them to an inferior condition—whether it be in terms of a job or simply the respect of their family and friends—in violation of their constitutional rights to due process under the law.

Those who defend our rights must not be the only citizens who are denied their protections and, as a consequence, are returned to a civilian world that holds little promise for them. We must not ignore those servicemen who are daily eliminated in administrative settings which accord less than what the due process clause of the fifth amendment guarantees and less than what we owe those who are prepared to give their lives to safeguard our freedoms and our rights.

THE EXISTING FRAMEWORK

Chapter 59 of Title 10, United States Code, provides for separation of servicemen prior to the expiration of their term of service by reason of a sentence of court-martial or in accordance with the regulations of the Secretary concerned.[6]

Service regulations provide for five types of discharges which implement the general language of Chapter 59—dishonorable, bad conduct, undesirable, general, and honorable. The first two are given only as a result of a sentence of courts-martial.[7] The latter three are awarded as an administrative act of separation, which may or may not have been directed by an administrative board. The services further distinguish these categories by designating the first two as "punitive," and the latter three as nonpunitive, or simply administrative.

Not until 1959 was there a Defense Department directive dealing with administrative discharges.[8] Even then it provided uniformity only with respect to the grounds upon which separation could be based. The services by and large were left with the discharge procedures which had evolved through decades of use. In 1965, largely in response to the subcommittee's hearings, a revision of the basic directive did provide substantial uniformity both in terms of substantive grounds and the procedural processing of administrative discharges.[9] It established minimum standards to govern such action, but left each service room to tailor its system to its own views and, if the service felt it desirable, to provide for more stringent procedures. The directive, with certain minor changes, remains the authority upon which administrative discharges are currently based.

The directive provides that such discharges may be given for unsuitability, unfitness, misconduct, and in the interest of national security. These categories are broken down still further.[10]

Those discharged for unsuitability may receive only an honorable or a general discharge, depending upon the character of their service record. Both discharges are considered "under honorable conditions." Those discharged on grounds of unfitness, misconduct, and security, however, may receive undesirable discharges, as well as honorable and general, again depending on the character of their service.

An undesirable discharge, which is administrative, carries with it the same loss of veterans' benefits as a bad conduct discharge, which is punitive. While there may be disagreement as to which carries the greater stigma,[11] it is undisputed that being labelled an "undesirable" is a considerable obstacle to reckon with in one's future.[12] Retired Commander Penrose L. Albright, former president of the Judge Advocates Association, has called the undesirable discharge "the scarlet letter of this generation" [13] and, indeed, it is a brand which is likely to repulse employers and friends alike. Where the harm is so potentially devastating, it is imperative that undesirable discharges be bestowed only pursuant to a system which is characterized by our traditional notions of due process.

Honorable and general discharges, in contrast to the "undesirable," are both considered as discharges "under honorable conditions" and entitle their recipients to the same veterans' benefits. The directive provides that those separated for unsuitability (who can at most receive only a "general" discharge) do not have a right to a board hearing unless they have more than eight years of service experience,[14] while others facing separation for unfitness or misconduct do have such a right regardless of service experience. The Defense Department contends that since a general discharge is under honorable conditions and does not deprive a serviceman of veterans' benefits, it need not be awarded under the same protections as the undesirable discharge which does result in loss of benefits. This is not persuasive. There is an implied stigma which attaches to any discharge other than one labelled as fully "honorable." [15] This is due in part to the fact that 97% of all discharges are indeed honorable.[16] The public understandably reasons that there must be some defect in an individual who fails to obtain one.[17] It is interesting to note that despite the provision in the DOD directive, the Army and to a lesser degree the Air Force both permit a board hearing in cases of unsuitability even though a general discharge is the worst that can be recommended.[18] These services properly recognize that even a general discharge brings with it certain opprobrium.[19]

Because servicemen facing administrative discharges receive different protections according to the particular branch of service which they happen to be part of, legislation is needed not only to bring discharge procedures up to a higher standard of procedural due process, but also to provide uniformity of protection to all servicemen regardless of the branch to which they belong. Uniformity is desirable not simply for uniformity's sake. To accord a Navy seaman certain rights and not accord them to an Army private facing discharge on the same grounds raises a constitutional, if not a moral, question of equal protection among servicemen. While Defense Department directives do provide some uniformity and are obviously more desirable than no guidance at all, they are subject to change at the whim of the Department, whose interests must be weighted towards operational efficiency rather than justice for the individual.

Two bills dealing with administrative discharges are currently pending before the Senate Armed Services Committee. One is H.R. 10422, introduced by Congressman Charles E. Bennett of Florida and passed by the House of Representatives on October 6, 1971. The other is S. 2247 which I proposed on July 12, 1971, during the last session of Congress. The Bennett bill deals with administrative discharges on a broader, more general level than does S. 2247, which consti-

Footnotes at end of article.

tutes a comprehensive and detailed legislative framework within which to deal with the problem. In order to evaluate critically what each bill attempts to do, it is first necessary to discuss the different philosophies regarding the role of the administrative discharge in a system of military justice and military personnel administration.

THE ROLE OF THE ADMINISTRATIVE DISCHARGE

Position of the military

The military prefers to regard the administrative discharge as a purely administrative act.[20] It is seen as a tool through which the services can rid themselves of undesirable members prior to the expiration of their terms of service. The military points to the reduced efficiency entailed by maintaining in the services those with "two left feet" who, try as they might, cannot meet minimum standards of performance, and those who are continually involved in misconduct which, whether serious or not, requires inordinate amounts of supervision and discipline.[21] It also points to the erosion of discipline and morale among its hard-working members by retaining "troublemakers" after repeated misconduct, whether they be homosexuals or shirkers.[22]

Given the alleged harm to military efficiency and morale which the retention of undesirable members entails, the military insists that it needs a simple, expeditious means to separate them.[23] The value of a separation to the military thus decreases in inverse proportion to the length of time required for the process since the individual remains to cause problems.

These justifications for administrative discharges are understandable and might well serve as sound principles for any course in personnel management. Yet the matter does not end here. The military claims that the administrative discharge should not be considered as punishment for misconduct.[24] It is only a determination, claim the services, that a serviceman's record does not merit his retention. But despite the claim that administrative discharges are not punishment, the administrative board, in effect, places a sanction on acts of misconduct. It freely considers evidence of misconduct, established in no other judicial or quasi-judicial setting, and may issue an undesirable discharge resulting in the loss of substantial veterans' benefits and the lifelong burden of the "undesirable" stigma.[25]

Regardless of the punitive consequences of the administrative proceeding, the military insists upon its right to consider misconduct in a setting which accords less than what is required by traditional notions of due process, and further insists on its right to characterize resulting discharges as "undesirable".

If military insistence on either of these conditions—the consideration of conduct not established in a judicial setting or the characterization of discharges as undesirable—were dropped, the administrative discharge proceeding would become far less objectionable in terms of the way in which it is conducted and the harm it does to the individual. The services' insistence on these two points thus requires some further critical comment.

Characterization of discharges

Several witnesses at the 1966 hearings raised the possibility of altering or doing away with the present system of characterizing discharges.[26] This idea has been seriously considered from time to time by the services as well, but it has never been formally adopted. Although the suggestions varied, their common purpose was the elimination of the "undesirable" characterization. Such an alternative would not purify the administrative discharge procedures to the satisfaction of a constitutional stickler, but the fact that the stigma which an undesirable discharge entails might be dissipated would make the procedures more palatable because its sting would be removed.

Military spokesmen have justified characterizing discharges in terms of providing an incentive for "honorable" service and a deterrent for "undesirable" service.[27] One of the greatest recognitions that a man can obtain, claim the services, is an "honorable" discharge, and it is a notion which the American public generally seems to accept. But since roughly 97% of servicemen receive "honorable" discharges, the real mark of distinction is not being among those who fail to obtain one. Granting the military position, the question is whether a system can be devised which provides an incentive for honorable service and yet leaves no stigma on those who are administratively separated.

Eliminating the "undesirable" category would have the virtue of eliminating the repugnant connotations of the word "undesirable" but it might well mean that once the public becomes generally aware of the change, the stigma would only shift to recipients of the general discharge. There is evidence even now of a stigma attaching to a general discharge since it is not precisely an "honorable" one.[28]

Another possibility would be simply to have one category of "honorable" or another more neutral term to describe an administrative discharge. But while this would eliminate the stigma, it would not provide the incentive for service that the honorable discharge affords—again, assuming the validity of that claim.

A third possibility would be to use a less colorful term than "undesirable" since that term conjures up all sorts of perverse traits and defects. An "unsatisfactory performance" discharge would be an example. This alternative might possibly prevent some of the abhorrence evoked by the adjective "undesirable," but it would still leave the recipient with a damaging label carried over to civilian life.

Compounding the problem of characterization is the matter of veterans' benefits, which attach only at the completion of "honorable" service. The award of benefits militates against a system having only one category of administrative discharge. If it is agreed that benefits should not go to one who has not earned them, and there were only one category of discharge, some system would have to be devised to separate the recipients from the nonrecipients. In a system having only honorable and general discharges, veterans' benefits might attach only to honorable and not to general. This would, however, represent a change in the present structure which accords benefits to recipients of general discharges and, thus, may cause substantial headaches in terms of retroactive effect for the Veterans Administration.

In conclusion, there seems to be no completely satisfactory way to recharacterize discharges which effectively avoids the stigma effect and yet preserves the status of the discharge as an incentive to honorable service, and the consequent award of veterans' benefits.

If, then, the military is to continue to discharge servicemen as "undesirable," at least we must insure that such an onus is bestowed only in accordance with traditional notions of due process. One way this might theoretically be accomplished is to permit misconduct to be considered only in a judicial setting which already incorporates such safeguards, *i.e.*, by courts-martial. But to have such a situation, the grounds for discharge must be brought under the Uniform Code. On this point, the military demurs on the grounds that such action is neither possible nor appropriate.

"Judicializing" administrative discharges

A serviceman who continually refuses to complete his assigned tasks could theoretically find himself facing a court-martial for failing to obey an order, or an administrative discharge for shirking.[29] In a proceeding brought under the *Uniform Code of Military Justice* (either non-judicial punishment or a court-martial), the likelihood of a discharge for such an offense is remote, while if the conduct were considered administratively, the likelihood of discharge is almost guaranteed. What is more important, in the administrative proceeding the serviceman finds himself immersed in a procedure which falls short of fully guaranteeing traditional rights of due process, rights which are for the most part incorporated into courts-martial procedures. At present, a commander theoretically has absolute discretion to choose either avenue to treat the offending conduct. The arbitrary use of this discretion might well be adjudged a violation of the due process clause of the fifth amendment.[30] In fact, the subcommittee continually receives cases in which commanders have successfully recommended administrative separation when conviction and discharge by a court-martial would have been uncertain because of difficulties in meeting the legal requirements of the Uniform Code. The use of administrative process to avoid the strictures of the Code has been a perennial problem ever since the Code was enacted.[31]

The military contends that not all conduct which may be grounds for administrative discharge can be brought under the provisions of the Code (and consequently be subject to a court-martial or non-judicial punishment), and therefore the administrative route is a necessary alternative.[32] They point specifically to homosexual acts and drug abuse as examples of conduct which are claimed not to be punishable under the Code.[33] Furthermore, most of the grounds for administrative discharge, says the military, are concerned with "patterns" of conduct rather than single acts of misconduct, and there is nothing in the Code that effectively allows a commander to deal with repeated instances of misconduct.[34] The military is on shaky ground with both of these contentions. Whatever difficulty there may be in "pigeonholing" grounds for discharge as undesirable into the punitive articles of the Uniform Code is largely semantic. They might be included simply by amending the articles or perhaps by expanding the grounds of Article 134 in the *Manual for Courts-Martial*, which makes punishable "all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces." The issue is not simply whether it can be done, but whether it should be done.

The military contends that even if all conduct which constitutes grounds for administrative discharge could be brought under the Code, it would be either inappropriate or ineffective, or both, to do so. Their reasoning takes three primary tacks:[35]

First of all, the military claims that even if misconduct is repeatedly punished under the Code, a discharge—either a bad conduct or dishonorable—is highly unlikely to ensue in the vast majority of cases, and thus the serviceman will return to his duties with no more than a fine or reduction in rank.[36] Without a liberalization of the award of a bad conduct discharge at courts-martial, the services contend they would have virtually[37] no means of ridding themselves of undesirable personnel by sentence of courts-martial.

Second, to discharge only through courts-martial would also mean that in order for the services to consider discharge for conduct which has been the subject of civil court conviction, the serviceman would have to be tried twice for the same offense, which runs afoul of the constitutional prohibition against double jeopardy.[38] The holding in *O'Callahan v. Parker*,[39] which prohibits military trial of acts which were not "service-connected," also militates against trial by courts-marital for misconduct committed

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outside of military control. Yet the military feels it must have the means to discharge servicemen convicted by civil courts who must serve long prison sentences or who have brought substantial discredit upon their service.

Finally, discharge by court-martial, where a bad conduct discharge is issued, also requires review by a Court of Military Review under the present regulations and possibly also by the Court of Military Appeals. Furthermore, the trial process itself requires a substantial amount of time. To provide that discharges may issue only from a court-martial will mean a long period of time between initiation of the action and actual discharge. In the military view, it will negate the value of the discharge.[40]

To the extent that these arguments support the military's contentions that it must be permitted to administratively discharge "undesirables" and that such discharges cannot or should not always be based on misconduct cognizable under the Uniform Code, they are equally persuasive in showing that there is little difference in the breadth of inquiry of a court-martial and an administrative board, and that both occasion similar damaging consequences. Given this, the services cannot avoid the constitutional mandate requiring due process simply by calling the process "administrative," when its real function is to try issues of fact and impose punishment for wrong-doing.

S. 2247, which I introduced in the last session of Congress, attempts to insure that the guarantees of due process are incorporated in the military's administrative proceedings, first, by defining what may be considered by the administrative board and, secondly, by insuring that what is considered by the board is heard in accordance with traditional notions of due process. The remainder of this article will deal with how S. 2247 and the Bennett bill, H.R. 10422, both now pending in the Senate Armed Services Committee, attempt to deal with these problems.

THE ADMINISTRATIVE DISCHARGE BILLS

Limitations on conduct considered by administrative boards

S. 2247 restricts undesirable discharges to cases in which the serviceman has perpetrated a serious act of misconduct which was tried by other than a military tribunal, and to cases where the serviceman has demonstrated a "pattern" of misconduct or failure of performance, whether or not the repeated conduct was adjudicated by a civil or military tribunal.

By providing for administrative discharges for cases involving serious misconduct tried by civilian authorities,[41] whether the conduct is cognizable under the Uniform Code or not, the bill recognizes the military's contention that it must have a means of discharging those committing serious acts of misconduct where those acts are tried by civilian authorities. This avoids the double jeopardy issue which is raised if discharges were only to issue as a result of courts-martial. The provision has the added advantage of insuring that the misconduct was adjudicated in a procedural setting which accorded due process. It would be the province of the military administrative board to decide only if the undesirable discharge is warranted.

The bill also limits the administrative board's consideration to "patterns" of conduct as opposed to single acts of misconduct. It provides that no administrative discharge will issue for an act of misconduct which constitutes an offense under the Uniform Code (except those tried by civilian authorities).[42] On the other hand, it provides that administrative discharges may issue for unfitness on grounds of (1) frequent involvement of a discreditable nature with civil or armed force authorities, (2) sexual perversion, (3) an established pattern for shirking official duties and responsibilities, and (4) an established pattern showing dishonorable failure to pay debts or to contribute adequate support to dependents, or failure to comply with orders, decrees, or judgments of a civil court concerning support of dependents.[43]

These provisions should be read as complementary rather than contradictory. They seek to do three things. First, they seek to insure that commanders will not be able to avoid bringing charges under the Code to punish misconduct. This means that servicemen will be entitled to all of the due process guarantees which a courts-martial offers, and will not be subject to a punishment (discharge) harsher than what a court-martial might give. Secondly, they recognize the military's view that there must be some means of getting rid of those servicemen who demonstrate their unfitness for military service by repeated misconduct or failure to perform. Thirdly, they implicitly recognize that all misconduct cannot or should not be brought under the Code, since they allow acts of misconduct which establish a "pattern" of behavior to be considered by the administrative board.

Since the bill was first introduced as Title I of the proposed omnibus Military Justice Act of 1967, it has been reviewed by a number of experts in military law. Those reviews have raised a number of questions which remain to be resolved in any future hearings on the bill. For instance, the question of who decides whether certain conduct contributes to a pattern or stands alone to be processed under the Code is unanswered by the bill. The commanding officer must obviously make this determination initially. But should the serviceman be able to raise such an objection to an administrative board? If so, who should rule on the matter?[44]

Further problems are posed initially to the commander, and could subsequently be posed to a board, by the relative vagueness of the grounds specified in the bill upon which the discharge must be brought. The phrase "frequent involvement of a discreditable nature," for instance, must at the very least mean convictions in military and civilian courts, *e.g.*, for offenses less serious than those which provide for one year imprisonment or a punitive discharge. But should it also include non-judicial punishment? Letters of reprimand? Oral reprimands? Traffic tickets?

The phrase "sexual perversion" also offers semantic difficulty to the conscientious commander or the administrative board. Does it mean one act of sexual perversion or a pattern of conduct which establishes a condition of sexual perversion? And what is sexual perversion in the first place?

Although these terms are taken from existing service regulations and presumably incorporate the practice which has developed over the years, the questions illustrate areas for further legislative perfecting. However, the basic objectives sought by these provisions of the bill, which represent a balance between operational efficiency and the protection of the serviceman's interests, are nonetheless valid.

It is to be noted that the Bennett bill, H.R. 10422, makes no attempt to define what kinds of conduct represent an appropriate basis for convening an administrative board. On the contrary, it provides that in four specific situations misconduct automatically requires undesirable discharge—the respondent is entitled to no hearing whatsoever.[45] In my opinion, these provisions are unwise, and may well be unconstitutional since the basic right to a hearing is summarily denied. S. 2247, in each of these cases, would require a board to determine whether the circumstances, however grievous, justified an undesirable discharge.

Due process in the administrative proceeding

In addition to limiting the type of misconduct which can be used as a basis for convening the administrative board, S. 2247 also prescribes procedures which seek to incorporate many of the traditional features of due process into the administrative proceeding. To a considerable extent it merely incorporates into statutory language procedural requirements already provided by regulations of the services. Defense Department regulations, for instance, already provide that a respondent appearing before an administrative board has the right to be represented by the counsel of his choice, to submit any sort of statement in his behalf, to question any witnesses who are present, and to remain silent if he chooses. Evidence is admissible if reasonably relevant, competent, and material.[46] Beyond this, however, other rights of procedural due process rest precariously upon the judicial knowledge and integrity of the board, which in the vast majority of cases is composed of officers with little or no training in law.

Rights prior to hearing

All branches of service now provide that notice of a forthcoming board hearing be given the respondent.[47] The Bennett bill provides only that the notice be "reasonable" and that it state the grounds upon which the proposed discharge is based.[48] S. 2247 provides that notice of a hearing will be given at least 15 days in advance and that the notice must include the nature of the hearing, a statement of the allegations and evidence against the respondent, the applicable law, a statement of his rights before the board, and the possible actions which may be taken by the board.[49] S. 2247 also has a special provision for notification of the parents of respondent if he is under 21, or for any other reason is unable to appreciate the nature of the proceedings against him.[50] This provision would be an important safeguard against an imprudent waiver of the board proceeding in favor of an immediate discharge. It is not uncommon for young, immature servicemen who are dissatisfied with their present assignment to seek administrative discharge to escape their immediate situation without regard for the consequences in ensuing years. In many cases, the immature serviceman is incapable of appreciating his predicament and is easily persuaded to waive his rights and accept a discharge which will be detrimental to him for the rest of his life. Even the advice of a JAG officer is often perfunctory and has little impact on the young serviceman's decision. This safeguard against improvident waiver of rights is worth the small clerical act it would require.

Under the Defense Department regulations, the respondent, having been notified of the board hearing and having consulted with counsel, many waive his rights to a hearing and accept a discharge in lieu of the board proceeding.[51] This provision is carried over in both of the proposed bills.[52] S. 2247, however, provides in addition that no waiver can be made within 24 hours of the notice of the hearing, and that the waiver may be rejected by the convening authority if he considers it improvident. It furthermore provides that where the hearing is waived, the ensuing discharge cannot be an undesirable one, unless the board action would have supported it. These are additional safeguards against improvident waivers of rights.

Under present procedures, oral and written depositions may be obtained with the permission of the convening authority for use by the board.[53] There are no formal procedures, however, which apply specifically to depositions for administrative boards. Presumably, the requirements may be less

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stringent than those used at court-martial, since the evidentiary requirements themselves are less stringent.

Depositions are not a commonly used device at administrative proceedings primarily because the boards allow *ex parte* statements to be admitted into evidence. Why go through getting both sides together to question a witness who will be unavailable at the hearing, when one side may simply introduce his uncontested statement if it so desires? S. 2247 prohibits the use of *ex parte* statements altogether, thus making the deposition a much more important device in the administrative setting.

S. 2247 provides for the taking and use of oral and written depositions by the administrative board, forbidden only for good cause, as prescribed by the Secretary of Defense.[54] The Bennett bill provides only that the secretaries of each branch of service will prescribe regulations to govern the taking and use of depositions.[55]

The liberal use of depositions to preserve or discover evidence comports with the practice in federal courts and administrative agencies.[56] There is perhaps an even greater need for such a device to preserve evidence in a military setting since servicemen are continually subject to transfer and termination. Use of depositions should reduce the number of personnel on administrative hold.

At present, administrative boards do not have the power to subpoena witnesses and real evidence. They may invite a witness to attend if he is reasonably available and his testimony materially adds to the case.[57] Civilian witnesses cannot be compelled to attend at all and military witnesses appear only if their commander permits. Both proposed bills provide the administrative board with subpoena power.[58] They provide that both sides will have equal access to subpoenas, and that the provision will be implemented by regulation of the services.

The objection of the military to such a provision in the past has been that the respondent could block prompt administrative action by requesting numerous unnecessary witnesses or documents to delay the proceeding. The fact that the implementation of the subpoena rules would be left to the services, which thereby implicitly allows them to require a showing of necessity in order to obtain a subpoena, has caused the military to drop an objection[59] which was not well founded in the first place.

The subpoena and deposition provisions together assure the respondent of a means of obtaining and preserving evidence in his favor as well as discovering that lodged against him.

Rights at the administrative hearing

Both bills provide that the respondent has the right to present evidence in his own behalf, to examine witnesses and all documentary evidence presented to the board, and to remain silent if he so chooses.[60] He also has the right to be represented by legal counsel of his choice. These rights are largely accorded by present regulations,[61] and thus their incorporation in statute should occasion no opposition from the services.

The bills also provide that rules of evidence in administrative discharge procedures will be drawn and reported to the Congress. S. 2247 provides that the Secretary of Defense will prescribe such regulations but specifies that the evidence admitted must be relevant, material, and probative.[62] The only change this represents in the present rule is the addition of the word "probative."[63] The bill goes further by prohibiting four specific uses of certain evidence regardless of their relevancy, materiality, or probative value.

The first limitation is a restriction of evidence considered by a board to those actions which took place three years prior to the date the board was convened, or from the date of the current enlistment or tour of duty, whichever is longer.[64] The limitation is thought necessary to protect the serviceman from having to defend himself against actions which occurred far in the past. It is based on the requirement presently contained in service regulations that the character of an administrative discharge may be determined only on the serviceman's record during the current enlistment. Since an administrative discharge is presumably based on repeated conduct which establishes a pattern or condition, such a pattern or condition should be established over a defined period of time. Otherwise, it should not be the basis for discharge.

The second limitation complements the first. It provides that misconduct occurring in a previous enlistment or tour of duty may be considered if the second enlistment or tour of duty was fraudulently obtained.[65]

The third limitation bars the admission of evidence relating to acts for which the respondent has been acquitted or cannot be tried again by reason of former jeopardy.[66] The purpose of the provision is simply to prevent the services from attempting to separate servicemen administratively on the same grounds as an unsuccessful court-martial. In the past, the subcommittee has seen numerous instances in which a commander has ordered successive administrative board hearings in a determined effort to separate a serviceman. This provision is designed to guard against such patent abuses of the discharge process.

The last prohibition has three features: (1) no information adverse to the respondent may be presented to a board over objection unless the respondent has had an opportunity to confront and cross-examine the source of the information; (2) no investigative report may be presented unless the respondent has an opportunity to cross-examine the person making the report and has an opportunity to rebut; and (3) no classified information can be presented unless first released to the respondent.[67] These provisions insure that the respondent will have ample opportunity to confront and rebut all adverse evidence presented to a board. It applies the simple justice of the sixth amendment.

These proposals effectively eliminate all adverse hearsay and *ex parte* statements from consideration by the boards. They have been criticized as "too severe" because the military may be unable to locate the person who made the statement or, if out of the service, he could not be compelled to appear.[68] Furthermore, it is argued, the provision would only encourage delay on the part of the respondent in hopes that certain evidence would not be available.[69]

The arguments may have some surface merit, but they do not account for certain factors peculiar to the administrative setting. Allowing hearsay and *ex parte* statements does not give a respondent fair opportunity to rebut the evidence against him. It raises due process issues because of the consequent denial of the right of confrontation and cross-examination. What is worse, the present rules encourage the presentation of such evidence by the military. One alternative which has been suggested is to allow only hearsay which would be admissible in a court-martial.[70] But this would require a highly technical knowledge of the law of evidence and would necessitate a legally qualified representative to the board to make such determinations. It may also lead to the necessity for legally qualified advocates on both sides to argue the evidentiary points. Perhaps a rule which allows for the admission of hearsay and *ex parte* statements but which provides that the decision of the administrative board cannot be based solely upon them is a preferable alternative.[71] But this too would be a meaningless protection if the board's decision were not subjected to review by a legally-qualified officer or review board, which now does not exist.

The use of hearsay and *ex parte* statements of any type is less important in an administrative discharge proceeding than in a court-martial and it poses even more of a potential injustice. Misconduct which establishes a pattern or condition will often have been adjudicated in a prior proceeding,[72] such as a court-martial, civil trial, or non-judicial punishment. In these cases, extraneous evidence relating to other acts will often simply not be required. In cases where the discharge is not predicated upon prior proceedings, there is typically no way to rebut hearsay allegations other than with simple denials. There is no means of offering contradictory proof. For example, allegations of homosexual acts performed in private cannot be disproved, since there are typically no witnesses other than the participants and no tangible evidence of the act. Similarly, allegations of a failure to pay just debts are difficult to disprove since only the parties typically have knowledge of the transaction. Allowing hearsay and *ex parte* allegations which the respondent cannot rebut with proof or cast doubt upon by questioning his accuser, leaves him at the mercy of anonymous accusers, rumors and vague accusations. Given the difficulties presented by allowing hearsay and *ex parte* statements under some limitations, it is preferable to simply rule out such evidence altogether and force the military to present its case in testimony or by deposition.

In addition to the evidentiary restrictions specified in S. 2247, there are other compelling limitations which, if not included in the statute, should be included in service regulations. For example, no evidence obtained by an illegal search or seizure should be admissible before an administrative board. The Supreme Court has already applied this principle to the administrative arena[73] and it should be applied as well to administrative discharge boards. Discharge regulations now allow such evidence to be admitted and this often induces the commander to elect to separate administratively because he knows that a conviction by court-martial cannot be obtained with illegal evidence. The commander who seizes drugs or contraband illegally should not be able to avoid the strictures of the fourth amendment simply by a resort to the administrative board. Not only does this violate fair play and simple justice but it subverts the integrity of the court-martial as well.

A similar problem is presented by the practice of admitting into evidence self-incriminating statements obtained in violation of Article 31 and the fifth amendment. This practice has been justified on the basis that Article 31 and the fifth amendment guarantee apply specifically to "criminal" trials alone.[74] This may be technically true, but this argument avoids the reality of a board proceeding which indeed pronounces a judgment on acts of misconduct. To adopt a restriction on self-incriminating statements in board proceedings would bring them in line with an important constitutional precept.

A third restriction which deserves consideration is the prohibition of evidence which relates to conduct which is not "service-connected." The case of *O'Callahan v. Parker*[75] established the principle that the military cannot try a man for misconduct which is not "service-connected." Can he nonetheless be discharged for such conduct? There is no disagreement that the services can and should use civil convictions as a basis for discharge, but the introduction of evidence relating to conduct not connected with the service presents a more compelling question. S. 2247 does not provide such a limitation and, in fact, provides that boards may consider conduct which took place within three years prior to the convening of the board. This may well mean that conduct could be

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considered which took place prior to the serviceman's entry into active duty.

Whatever evidentiary restrictions are incorporated into statute or regulation, there must be some authority or some body to determine if proposed evidence violates these standards. Both bills answer this need by providing for the appointment of a legal advisor to the administrative board to rule on such questions. The Bennett bill makes such appointment mandatory except where physical exigencies do not permit.[76] S. 2247 provides that the appointment is mandatory when requested by the respondent or the board, unless compelling reasons for refusing the request are present. Otherwise, the appointment is discretionary with the convening authority.[77]

The military was initially opposed to the concept of a legal advisor because it would further drain the supply of legal officers. They contended that the right to legal representation offered the respondent adequate protection at the hearing.[78] At the House hearing on the Bennett bill, however, the Defense Department dropped its opposition and affirmatively proposed such a provision.[79] The House committee added the provision for a legal advisor to the original bill after the hearings were completed.[80]

There may indeed be cases where there are no evidentiary questions, no motions, no challenges, and no other legal issues for a legal advisor to rule upon. This situation may well be obvious prior to the hearing. The convening authority, under the provisions of S. 2247, may thus refuse a request for the appointment of a legal advisor. In this sense, S. 2247 actually comes closer than the Bennett bill in limiting the requirement for legally qualified personnel for detail to board proceedings to those instances in which one is necessary.

Post hearing rights

Under present regulations, the findings and recommendations of an administrative board are typically sent through the chain of command to the discharge authority, who may or may not follow the board's recommendation and who may or may not receive a legal opinion on the validity of the board proceeding.[81]

The pending bills both provide for some type of review of the board's determination before final action is taken by the discharge authority. The Bennett bill provides that the Judge Advocate General of each service will establish review boards to which the serviceman may appeal the board's decision.[82] S. 2247 provides that the Secretary of Defense will provide by regulation that all administrative board decisions recommending a less than honorable discharge be subject to a mandatory review for legal sufficiency. It further provides that the Court of Military Appeals will establish grounds for discretionary appeal of administrative decisions.[83] Both bills provide that a decision on review may not be less favorable than that adjudged by the administrative board.

Until the 1971 hearings, the military had consistently opposed any review of administrative board decisions on the grounds that there already exist instrumentalities to review discharges, namely, the Discharge Review Boards and Boards for Correction of Military Records found in each branch of service.[84] The difficulty with this argument was that review took place after the serviceman had been discharged, and often took as long as two years after application for review was filed. What is more, these boards did not have the power of reinstatement and could not give complete relief even in clear cases of improper discharges.

The military claimed that review would only delay the discharge still longer and further reduce its value as a personnel tool.[85] They further argued that appeals of administrative decisions should be kept out of the judicial sector of the military which has little knowledge of the administrative area and which has too burdensome a workload without this added responsibility.[86]

The military has now dropped its opposition to review of administrative board decisions by legally-qualified personnel.[87] It has in fact supported a proposal to establish three-man boards which would review board decisions as a matter of law. The review board under the Defense Department's proposal would be restricted to consideration of the verbatim record of the hearing and written legal arguments, but may, in its discretion, require a hearing. The military's new approach to this issue is to be applauded. While some delay in obtaining the discharge is inevitable, the delay need not be any longer than what is now often required for review by the staff judge advocate of the convening authority or higher levels of command where it is in fact performed. Pre-discharge review provides additional safeguards for the respondent and assures that the procedures established by regulation and statute will be conscientiously observed.

The military still continues to balk at the judicial review of administrative boards' actions, even on a discretionary basis, provided for in S. 2247. They react negatively to the additional time required for such review [88] and the injection of the administrative proceeding into the criminal justice structure which they claim neither has the time nor the expertise to deal with such problems.[89]

The latter objection is not convincing in light of the testimony of Chief Judge Quinn of the Court of Military Appeals who candidly stated at the 1966 hearings that the workload of the court was not heavy, and that the court possessed sufficient expertise—especially in regard to issues of due process—to consider appeals from a review board's decisions.[90]

Court of Military Appeals review will involve further delay of the discharge. But the time could be shortened by providing that petition for discretionary review be made first to an intermediate Court of Military Review or the boards established under S. 2247 or the Bennett bill rather than directly to the Court of Military Appeals.

The discretionary nature of the review authorized by S. 2247 is designed to minimize the number of cases which run the entire appellate process. Only those cases will be chosen which present novel or compelling issues of law. It is common knowledge that the court has always handled its caseload expeditiously and seldom has a backlog.

The Court of Military Appeals review enables a superior military court of distinguished quality and unquestioned integrity to ensure that the rules of all the services comport with the statutory requirements and that the board hearings are conducted according to applicable law. Only by means of such an ultimate judicial review can we assure the necessary conformity contemplated by the Department of Defense directives and the statutory reforms. Review by the Court of Military Appeals would go far to assure servicemen and the general public alike that the administrative discharge process is indeed operated fairly and justly. It would obviate the need for special injunctive intervention by federal courts into the administrative process and do much to restore the often tarnished reputation of the administrative discharge process. While S. 2247 does not specifically require review by "legally-qualified" personnel at the intermediate stage, it does provide that the board's decision will be reviewed for legal sufficiency. Review by legally-qualified personnel is therefore implied but not obligatory. At some stage, and certainly at the final stage, undesirable discharges must be subject to review by a fully competent judicial body. Absent this, there is the danger that all the protections ostensibly granted by statute and regulation may be lost in practice.

CONCLUSION

Former Assistant Secretary of Defense for Manpower Thomas D. Morris made the following statement in his testimony before the Subcommittee on Constitutional Rights in 1966:

"The Department of Defense, no less than this committee, holds that military service in the Armed Forces of the Nation should not abridge or deprive any American citizen of the substance of constitutional rights to which he would otherwise be entitled as a private citizen, insofar as this is compatible with his status as a member of the Armed Forces. We further recognize that our system of military justice must be responsive to the special conditions of current military service as well as to constitutional essentials. Our administrative discharge and separation procedures likewise should be guided by the sense of justice and fairplay that every American has a right to expect from his Government." [91]

It is this very sense of "justice and fair play," tempered by the recognized necessity for a strong and efficient military, which S. 2247 attempts to bring to an area which has been riddled with abuse and inconsistency. The military has demonstrated, if at times reluctantly, that it is amenable to change in the interests of protecting the constitutional rights of its members. It is time now for the Congress to at last take the initiative to insure that the guarantees of the Constitution are not slighted by the military administrative discharge procedure.

FOOTNOTES

* United States Senator, North Carolina; Chairman, Senate Subcommittee on Constitutional Rights. The author wishes to acknowledge the valuable assistance of Lewis B. Snider, LL.B. University of Virginia Law School, 1969, Assistant Counsel to the Subcommittee, in the preparation of this article.

[1] *Hearings on H.R. 523 Before Subcommittee No. 3 of the House Armed Services Committee*, 92d Cong., 1st Sess. 5868–5869 (1971) [hereinafter cited as *1971 Hearings*].

[2] *Id.* at 5868.

[3] *See* Harmon v. Brucker, 355 U.S. 579 (1958) (per curiam) and Beard v. Stahr, 370 U.S. 41 (1962) (per curiam) as examples of judicial challenges to discharge procedures. Also, a general discussion of judicial review of military determinations can be found in Sherman, *Judicial Review of Military Determinations and the Exhaustion of Remedies Requirement*, 55 VA. L. REV. 483 (1969).

[4] *Hearings on the Constitutional Rights of Military Personnel Before the Senate Subcommittee on Constitutional Rights*, 87th Cong., 2d Sess. (1962) [hereinafter cited as *1962 Hearings*].

[5] *Joint Hearings on Military Justice Before the Senate Subcommittee on Constitutional Rights and a Special Subcommittee of the Armed Services Committee*, 89th Cong., 2d Sess. (1966) [herinafter cited as *1966 Hearings*].

[6] 10 U.S.C. § 1169 (1970).

[7] *See generally*, MANUAL FOR COURTS-MARTIAL, para. 126 (rev. ed. 1969). Officers do not receive dishonorable discharges but can be dismissed by a general court-martial. Similarly, officers do not receive bad conduct discharges, but are subject to discharge as undesirable.

[8] DoD Directive 1332.14, *Administrative Discharges*, January 14, 1959.

[9] DoD Directive 1332.14, *Administrative Discharges*, December 20, 1965.

[10] *Id.*

G. *Unsuitability.* Discharge by reason of unsuitability, with an Honorable or General Discharge as warranted by the individual's military record. Such discharge may be effected when it has been determined that an individual is unsuitable for further military service because of:

1. *Inaptitude:* Applicable to those persons

who are best described as inapt due to lack of general adaptability, want of readiness of skill, unhandiness, or inability to learn.

2. *Character and Behavior Disorders.*

3 *Apathy, defective attitudes, and inability to expend effort constructively:* As a significant observable defect, apparently beyond the control of the individual, elsewhere not readily describable.

4. *Enuresis.*

5. *Alcoholism.*

6. *Homosexuality and other aberrant tendencies.*

7. *Financial Irresponsibility.*

H. *Security.* Discharge, with the character of discharge and under conditions and procedures stipulated by the Secretary of Defense as set forth in reference (c) which deals explicitly with this matter, when retention is not clearly consistent with the interest of national security.

I. *Unfitness.* Discharges by reason of unfitness, with an Undesirable Discharge, unless the particular circumstances, in a given case warrant a General or Honorable Discharge, when an individual's military record in his current enlistment or period of obligated service includes one or more of the following:

1. Frequent involvement of a discreditable nature with civil or military authorities.

2. Sexual perversion including but not limited to (1) lewd and lascivious acts, (2) homosexual acts, (3) sodomy, (4) indecent exposure, (5) indecent acts with or assault upon a child, or (6) other indecent acts or offenses.

3. Drug abuse as defined in DoD Directive 1300.11.

4. An established pattern for shirking.

5. An established pattern showing dishonorable failure to pay just debts.

6. An established pattern showing dishonorable failure to contribute adequate support to dependents or failure to comply with orders, decrees, or judgments of a civil court concerning support of dependents.

7. Unsanitary habits.

J. *Misconduct.* Discharge by reason of misconduct, with an Undesirable Discharge, unless the particular circumstances in a given case warrant a more favorable discharge, when one or more of the following conditions have been determined:

1. Conviction by civil authorities (foreign or domestic) or action taken which is tantamount to a finding of guilty of an offense for which the maximum penalty under the Uniform Code of Military Justice is death or confinement in excess of one year; or which involves moral turpitude; or where the offender is adjudged a juvenile delinquent, wayward minor, or youthful offender or is placed on probation or punished in any way as the result of an offense involving moral turpitude. If the offense is not listed in the MCM Table of Maximum Punishments or is not closely related to an offense listed therein, the maximum punishments authorized by the U.S. Code or the District of Columbia Code, whichever is lesser, applies.

2. Procurement of a fraudulent enlistment, induction or period of active service through any deliberate material misrepresentation, omission or concealment which if known at the time might have resulted in rejection.

3. Prolonged unauthorized absence. When unauthorized continuous absence of one year or more has been "established."

[11] Statement of Maj. Gen. James S. Cheney, Judge Advocate General, Air Force, *1971 Hearings, supra* note 1, at 5900: "I think you have to say legally the bad conduct discharge is more serious than the undesirable. The practical effects is [sic] something else." *See also Id.* at 5899, 5967; *1962 Hearings, supra* note 4, at 188, 328; *1966 Hearings, supra* note 5, at 293, 335.

[12] Former Congressman Clyde Doyle, *1962 Hearings, supra* note 4, at 328:

[If a man is undesirable,] you don't want anything to do with him. You don't go into detail to find out what makes him undesirable. You think he may be a thief, he may be a homosexual, he may not be supporting his children, his family in the minds of some people, but he is undesirable, you don't want him around. And I think the ordinary patriotic, sound-thinking American citizen doesn't want to have anything to do with an undesirable man and that applies to an undesirable man from the military. Something has occurred there in the military for which he has gotten an undesirable discharge. It is a stigma. It is a liability and a heavy one.

See also 1971 Hearings, supra note 1, at 5835.

[13] *1966 Hearings, supra* note 5, at 411.

[14] DoD Directive 1332.14, Section VIII(C) (1965).

[15] The Department of the Air Force itself acknowledges that a "general discharge has been found to be a definite disadvantage to an airman seeking civilian employment." AFR 39–10, para. 8a (March 17, 1959). *See also: 1966 Hearings, supra* note 5, at 341; *1971 Hearings, supra* note 1, at 5983, 5988; Bland v. Connally, 293 F.2d 852 (D.C. Cir. 1961).

[16] *1971 Hearings, supra* note 1, at 5870.

[17] Everett, *Military Administrative Discharges—The Pendulum Swings,* 1966 DUKE L.J. 44.

[18] Army Regulation 635–212, § IV(10) (15 July 1966).

[19] General discharge certificates, as all discharge certificates, are annotated with "separation program numbers" which indicate the reason for discharge. Employers who are aware of the codes would thus be informed of the reason for discharge even though it is not evident from the term "general."

[20] Statement of Maj. Gen. Leo E. Benade, Deputy Assistant Secretary of Defense for Military Personnel Policy, *1971 Hearings, supra* note 1, at 5865: "In the case of undesirable discharges which have been given for security, unfitness, and misconduct, we believe that this is an administrative procedure. It does not carry with it the punitive aspects of a dishonorable or bad conduct discharge." *See also, 1966 Hearings, supra* note 5, at 356.

[21] *1966 Hearings, supra* note 5, at 356.

[22] *Id.* at 360.

[23] *Id.*

[24] *1971 Hearings, supra* note 1, at 5835, 5836; *1966 Hearings, supra* note 5, at 87.

[25] Statement of Maj. Gen. Kenneth J. Hodson, formerly Assistant Judge Advocate General, Army, *1966 Hearings* at 388:

"The unfit, the unsuitable, should be separated from the military service. . . . The only problem we have is how do we characterize his service. It is the position of the Department of Defense that we should be allowed to characterize a man's service as either honorable, general, or undesirable by an administrative proceeding."

[26] *1966 Hearings* at 119–122, 130, 209–210, 423.

[27] Statement of Maj. Gen. Leo E. Benade, Deputy Assistant Secretary of Defense for Military Personnel Policy, *1971 Hearings, supra* note 1, at 5866:

"The trouble with it [eliminating a characterization of discharges] is that it lowers the prestige. It diminishes the value of the discharge to the man who has given honorable service. You need a way to characterize the service for what it truly is. To lump them all together into one discharge, an honorable discharge, or whatever terms would apply to it, you would have no way of distinguishing or recognizing the man who has really performed his service honorably." *See also, 1966 Hearings, supra* note 5, at 88.

[28] *See* note 15, *supra.*

[29] *See* note 10, *supra.*

[30] *1971 Hearings, supra* note 1, at 5864.

[31] In 1960 the judges of the Court of Military Appeals warned against this method of subverting the Code in their annual report. S. 2247 would resolve the problem by prohibiting an administrative discharge based on grounds which amount to a violation of the Uniform Code. *See* § 943(b).

[32] *1966 Hearings, supra* note 5, at 361–80.

[33] *Id.* at 367–71.

[34] *Id.* at 365.

[35] The military contends with less justification that all misconduct should not be brought under the Code because some misconduct—homosexual acts, for example—typically cannot be proved by evidence admissible in a court-martial. They further add that some acts of misconduct which form a basis for discharge do not involve moral turpitude, but represent only an inordinate expenditure of administrative time, and therefore, a court-martial from which a federal conviction may issue, is an inappropriate and possibly too severe alternative. *See generally 1966 Hearings, supra* note 5, at 360–80.

[36] *1966 Hearings, supra* note 5, at 84, 362.

[37] Article 127(c)(B) of the *Manual for Courts-Martial* provides that a court-martial may authorize as an additional punishment a bad conduct discharge to servicemen who have two prior court-martial convictions on their record. The use of this provision is discouraged, however, unless the prior convictions have been for serious misconduct. *Id.* § 76a.

[38] *1966 Hearings, supra* note 5, at 84.

[39] 395 U.S. 258 (1969).

[40] *1971 Hearings, supra* note 5, at 5915.

[41] S. 2247, 92d Cong., 2d Sess. § 964(c) (1971).

[42] *Id.* § 944(b).

[43] *Id.* § 964(c).

[44] Section 946 of the bill provides for the detail of a legal advisor to the administrative board who would make such a determination. The role of the advisor will be discussed in detail later in this article.

[45] H.R. 10422, 92d Cong., 2d Sess. § 1161(a) (3–6) (1971).

[46] DoD Directive 1332.14, § IX(c) (1965).

[47] Army Regulation 635–212, § 17; Bureau of Naval Personnel Manual, Part C, § C–10311 (4); Air Force Manual 39–12, § D(1–25c); Coast Guard Personnel Manual, § 12–B–14(a).

[48] H.R. 10422, *supra* note 45, § 1161(b) (1971).

[49] S. 2247, *supra* note 41, § 952.

[50] *Id.* § 953.

[51] DoD Directive 1332.14, § VIII(D) (1965).

[52] H.R. 10422, *supra* note 45, § 1161(a)(2); S. 2247, *supra* note 41, § 955(c).

[53] DoD Directive 1332.14, § IX(C)(4) (1965).

[54] S. 2247, *supra* note 41, § 960.

[55] H.R. 10422, *supra* note 45, § 1161(a).

[56] *See* FED. R. CIV. P. 30(a), and FED. R. CRIM. P. 15(a). *See also,* 16 C.F.R. 3.33(a) and 18 C.F.R. 124(a), (c), as examples of liberal deposition procedures in federal agencies.

[57] DoD Directive 1332.14, § IX(c)(3) (1965).

[58] H.R. 10422, *supra* note 45, § 1161(b)(2); S. 2247, *supra* note 41, § 960(a).

[59] *1971 Hearings, supra* note 1, at 5854. Statement of Maj. Gen. Leo E. Benade, Deputy Assistant Secretary of Defense for Military Personnel Policy: "The Department of Defense strongly favors empowering boards with what amounts to subpoena power."

[60] H.R. 10422, *supra* note 45, § 1161(c); S. 2247, *supra* note 41, § 952.

[61] DoD Directive 1332.14, Sec. IX(C) (1965). Army Regulation 635–212, Sec. 17(c); Bureau of Naval Personnel Manual, Part C, § C–10311 (5); Air Force Manual 39–12, § 3–6(c).

[62] S. 2247, *supra* note 41, § 959(d).

[63] DoD Directive 1332.14, § IX(B) (1965).

[64] S. 2247, *supra* note 41, § 959(a).

[65] *Id.*

[66] *Id.* § 959(b).

[67] *Id.* § 959(d).

[68] Lane, *Evidence and the Administrative Discharge Board,* 55 MIL. L. REV. 105 (1972).

[69] *Id.*

[70] *Id.*
[71] This standard is incorporated into the administrative procedures statute of California. CAL. GOV. CODE ANN. § 11513(c) (West 1966).
[72] *1966 Hearings, supra* note 5, at 86. Maj. Gen. Kenneth J. Hodson, then Assistant Judge Advocate General, Department of the Army, called this the "typical" case.
[73] Camara v. Municipal Court, 387 U.S. 523 (1967).
[74] Judge Advocate General of the Army Opinion, 1967/3727, 31 March 1967.
[75] 395 U.S. 258 (1965).
[76] H.R. 10422, *supra* note 45, § 1161(d).
[77] S. 2247, *supra* note 41, at § 946.
[78] *1966 Hearings, supra* note 5, at 357.
[79] *1971 Hearings, supra* note 1, at 5854.
[80] H.R. 10422, *supra* note 45, § 1161(d).
[81] DoD Directive 1332.14, § IX(D) (1965); Army Regulation 635–212, § 13–15; Air Force Manual 39–12, § 2–18. The Navy and Coast Guard require review of all administrative discharges by the Chief of Naval Personnel and the Coast Guard Commandant, respectively. Bureau of Naval Personnel Manual, Part C, § C–10313A; Coast Guard Personnel Manual, § 12–B–16.
[82] H.R. 10422, *supra* note 45, § 1161(e).
[83] S. 2247, *supra* note 41, § 996.
[84] *1966 Hearings, supra* note 5, at 89.
[85] *1971 Hearings, supra* note 1, at 5925–26.
[86] *1966 Hearings, supra* note 5, at 89.
[87] *1971 Hearings, supra* note 1, at 5837.
[88] *Id.* at 5915.
[89] *Id.* at 5910.
[90] *1966 Hearings, supra* note 5, at 283–87.
[91] *Id.* at 12.

S. 2684

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

SHORT TITLE

SECTION 1. That this Act may be cited as the "Military Administrative Discharge Procedure Act of 1973."

SEC. 2. Title 10, United States Code, is amended by adding after chapter 47 thereof a new chapter as follows:

"Chapter 48.—ADMINISTRATIVE DISCHARGE BOARDS

"Sec.
"941. Definitions.
"942. Persons subject to this chapter.
"943. Restrictions on discharges under other than honorable conditions; restrictions on administrative discharges for unsuitability, misconduct, unfitness, or security.
"944. Jurisdiction of administrative discharge boards; functions; composition.
"945. Who may appoint administrative discharge boards; who may serve on such boards.
"946. Detail of legal adviser to board.
"947. Detail of counsel to represent respondent.
"948. Detail of recorders; duties.
"949. Detail or employment of reporters.
"950. Secretary of Defense to prescribe rules.
"951. Unauthorized attempt to influence board actions.
"952. Notice to respondent.
"953. Notice to parents of respondent.
"954. Notice to counsel of respondent.
"955. Waiver of rights by respondent; discharge for the good of the service.
"956. Sessions of the board.
"957. Challenges.
"958. Oaths.
"959. Prohibition on use of certain evidence.
"960. Opportunity to obtain witnesses and other evidence.
"961. Voting and rulings.
"962. Record of the board proceedings.
"963. Action of the discharge authority.
"964. Type and character of administrative discharges; grounds for awarding.
"965. Discharge for the convenience of the Government.
"966. Review of administrative discharge actions.

"§ 941. Definitions

"In this chapter:

"(1) 'Member' means an enlisted member, a warrant officer, or a commissioned officer of the armed forces.

"(2) 'Administrative discharge board' is an administrative board appointed under regulations of the Secretary concerned for the purpose of making findings and recommendations with respect to whether or not a respondent should be retained in the armed forces or administratively discharged therefrom and to recommend the type of discharge to be furnished when discharge is recommended.

"(3) 'Board' means an administrative discharge board unless otherwise indicated.

"(4) 'Respondent' means a member of the armed forces against whom action has been initiated with a view to administratively discharging him from the armed forces pursuant to the provisions of this chapter.

"(5) 'Discharge authority' is the official authorized to order the administrative discharge of any respondent.

"(6) 'Appointing authority' is any official designated by regulations of the armed force concerned to appoint an administrative discharge board.

"(7) 'Administrative discharge' or 'administratively discharged' means discharge by administrative action as provided in this chapter or by other provisions of law, but does not include discharge or dismissal from military service pursuant to the sentence of a general or special court-martial.

"(8) 'Discharge' means complete severance of a member from the Armed Forces or his separation from active duty.

"(9) 'Legal adviser' means a commissioned officer qualified under section 827(b)(1) of this title (article 27(b)(1)) and certified by the Judge Advocate General of the Armed Force of which such officer is a member to be qualified for duty as a legal adviser to administrative discharge boards.

"(10) 'Honorable discharge' means discharge from an Armed Force with honor.

"(11) 'General discharge' means discharge from an Armed Force with honor.

"(12) 'Undesirable discharge' means discharge from an Armed Force under conditions other than honorable.

"§ 942. Persons subject to this chapter

"The provisions of this chapter are applicable to all members of the Armed Forces who are serving on active duty and to all members of the Armed Forces not serving on active duty who are serving in a Reserve component.

"§ 943. Restrictions on discharges under other than honorable conditions; restrictions on administrative discharges for unsuitability, misconduct, unfitness, or security

"(a) Unless otherwise authorized by law, no member may be discharged under other than honorable conditions except for misconduct, unfitness, or security, and no member may be discharged for unsuitability, misconduct, unfitness, or security except in accordance with the provisions of this chapter.

"(b) Except as provided in section 964 (b), (c), (d), (e) and (f) of this title, no member may be administratively discharged for unsuitability, misconduct, unfitness, or security by reason of conduct which constitutes an offense punishable under chapter 47 of this title.

"§ 944. Jurisdiction of administrative discharge boards; functions; composition

"(a) An administrative discharge board is a factfinding body whose function it is to—

"(1) conduct a fair and impartial hearing of the alleged grounds for the proposed administrative discharge of a respondent;

"(2) receive and consider evidence on the question of whether a respondent should be administratively discharged;

"(3) make findings on the basis of the evidence presented to it;

"(4) determine, on the basis of its findings whether the respondent should be retained in the Armed Forces or administratively discharged therefrom;

"(5) recommend to the discharge authority that the respondent be retained in the Armed Forces or administratively discharged therefrom;

"(6) recommend the type of discharge to be issued if the board recommends that the respondent be discharged; and

"(7) specify the reasons for its recommendations.

"(b) An administrative discharge board shall be composed of not less than three commissioned officers at least one of whom shall be serving in the grade of major, or the equivalent thereof, or higher. If the respondent is a commissioned officer, no voting member of the board shall be junior to him in rank or grade when it can be avoided. If the respondent is an enlisted member who holds an appointment as a Reserve commissioned or warrant officer, the membership of the board shall be composed of a majority of Reserve officers if reasonably available; and if a majority is not available, the voting membership of the board shall include at least one Reserve component officer. Voting members of the board shall be senior to the respondent's Reserve grade. If the respondent is an enlisted woman, the board shall include a female officer as a voting member.

"§ 945. Who may appoint administrative discharge boards; who may serve on such boards

"(a) Administrative discharge boards may be appointed by the President of the United States, the Secretary of any armed force or by any commanding officer designated as an appointing authority by the Secretary concerned.

"(b) Any commissioned officer on active duty is eligible to serve on an administrative discharge board convened under authority of this chapter.

"(c) When appointing an administrative discharge board, the appointing authority shall detail as members thereof such members of the armed forces as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of an armed force is eligible to serve as a member of an administrative discharge board if he is a complainant against the respondent, is to give testimony before the board concerning the respondent, has information or knowledge concerning the respondent which may affect his judgment in the proceedings before the board, or served as a member or recorder of a board before which the respondent previously appeared as a respondent.

"§ 946. Detail of legal adviser to board

"Except where military exigencies do not permit, the appointing authority shall detail a legal adviser to any administrative discharge board appointed by him. The person detailed as legal adviser shall be a commissioned officer qualified under section 827(b)(1) of this title (article 27(b)(1)) and certified to be qualified for such duty by the Judge Advocate General of the armed force of which he is a member. A person qualified as a military judge under chapter 47 of this title shall be qualified as a legal adviser under this chapter. In any case in which the appointing authority, for reasons of military exigency, does not detail a legal adviser to the board, the appointing authority shall submit a statement in writing explaining the reasons for his failure to detail such ad-

viser and such statement shall be included as a part of the record.

"§ 947. Detail of counsel to represent respondent

"The appointing authority shall detail counsel to represent any respondent ordered to appear before an administrative discharge board. Counsel detailed to represent a respondent shall be qualified under section 827(b)(1) of this title (article 27(b)(1)). A respondent may be represented by military counsel of his choice if reasonably available or by civilian counsel at the expense of the respondent.

"§ 948. Detail of recorders; duties

"Under such regulations as the Secretary concerned may prescribe, the appointing authority shall detail a person to serve as recorder to every administrative discharge board. The recorder shall not be a member of the board and shall have no vote. It shall be the duty of the recorder to present evidence to the board and to perform such other duties not inconsistent with the provisions of this chapter as the Secretary of Defense may prescribe by regulation.

"§ 949. Detail or employment of reporters

"Under such regulations as the Secretary of Defense may prescribe, the appointing authority shall detail or employ qualified reporters to record the proceedings of and testimony taken before administrative boards appointed by such appointing authority.

"§ 950. Secretary of Defense to prescribe rules

"(a) The Secretary of Defense shall prescribe by regulation the rules of procedure, including the kinds of evidence which may be presented, to be followed in cases before administrative discharge boards. All rules and regulations made under this section shall be uniform insofar as practicable, shall not be contrary to or inconsistent with the provisions of this chapter, and shall be reported to the Congress. The procedural safeguards prescribed in this chapter shall be considered minimum requirements in the case of all board proceedings conducted under this chapter, and nothing herein shall be construed as prohibiting the Secretary of Defense from providing any procedural safeguard for the benefit of the respondents not required by this chapter.

"(b) Regulations promulgated by the Secretary of Defense regarding evidence shall require the following:

"(1) no evidence shall be admitted before any administrative board unless such evidence is relevant, material, and probative of the case under consideration;

"(2) the burden of establishing the facts alleged as the basis for administratively discharging the respondent from the armed forces is on the armed force concerned;

"(3) the findings and recommendations of the board and the action of the discharge authority shall be based on the preponderance of the evidence presented to the board;

"(4) no evidence adverse to the respondent shall be presented to the board over objection unless the respondent has had an opportunity, through counsel, to cross-examine by deposition or in person before the board the person giving such evidence;

"(5) no investigative report shall be admitted into evidence at any such hearing unless a copy of the report has been made available to the respondent and his counsel a reasonable period of time in advance of the hearing, and an opportunity has been given to cross-examine the person who conducted the investigation on which such report is based. Matter contained in investigative reports which, for security reasons, is denied to respondent, shall not be presented to the board;

"(6) respondent has the right to remain silent at the board hearing;

"(7) no evidence will be considered by the board which has been obtained from respondent by coercion; and

"(8) no evidence will be considered by the board which is the product of an unlawful search and seizure of respondent's property.

"(c) The Secretary of Transportation shall prescribe the rules and regulations required under the first two subsections of this section for the Coast Guard when not operating as a service in the Navy.

"§ 951. Unauthorized attempt to influence board actions

"(a) No appointing authority, nor any other commanding officer, may censure, reprimand, or admonish any administrative discharge board, other board, court of inquiry, or commission, or any member, legal adviser, recorder, or counsel thereof, with respect to the findings and recommendations made by such board, court, or commission, or with respect to the exercise of its functions and duties in the conduct of any past, pending, or future proceedings before such board, court, or commission. The foregoing provisions of this subsection shall not apply with respect to general instructional or informational courses relating to board, court, or commission proceedings if such courses are designed solely for the purpose of instructing members of a command in the substantive or procedural aspects of proceedings before any such board, court, or commission.

"(b) No person subject to this chapter may attempt to coerce or, by any unauthorized means, influence the action of any administrative discharge board, court of inquiry, or commission, or of any member of such board, court, or commission in reaching the findings or recommendations in any proceeding before such board, or the action of any appointing, approving, or reviewing authority with respect to his acts of approval or disapproval of the findings or recommendations made by any such board, court, or commission.

"(c) Any person subject to this chapter who is guilty of violating subsection (a) or (b) of this section shall be punished as a court-martial may direct.

"(d) In the preparation of an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the armed forces, or in determining whether a member of the armed forces should be retained on active duty, no person subject to this chapter may, in preparing any such report (1) consider or evaluate the performance of duty of any such member as a member of a board, court, or commission, or (2) give a less favorable rating or evaluation of any member of the armed forces because of the zeal with which such member, as counsel, represented any respondent before any such board court, or commission.

"§ 952. Notice to respondent

"(a) An administrative discharge board may not begin consideration of the case of any respondent unless such respondent has been notified, as provided in this section, that action has been initiated to administratively discharge him from the armed forces. Such notice shall be given in writing not less than fifteen days prior to the date on which the board is to begin consideration of the case and shall inform the respondent of (1) the nature of the board hearing, (2) the allegations and evidence against him, including the names and addresses of all persons expected to present evidence before the board for the Government, (3) the applicable statutes and regulations, (4) his right to be represented by counsel, (5) his right to present evidence in his own behalf, to call witnesses, to cross-examine all witnesses called by the board (6) his right to remain silent, and (7) actions which may be taken by the board.

"(b) If a respondent is in civil confinement, and such fact is known by the appointing authority, notice of proposed board hearing must be sent to the respondent by registered mail not less than thirty days prior to such proposed board hearing. Such notice shall include the provision contained in § 955(b).

"(c) If a respondent is absent without official leave, notice of the proposed board hearing shall be mailed to him at his last known address and to his next of kin, if known. Such notice shall include the provision contained in § 955(b).

"§ 953. Notice to parents of respondent

"In any case in which a member is ordered to appear as respondent before an administrative discharge board and such respondent is under twenty-one years of age, or is twenty-one years of age or older and is unable for any reason to understand and appreciate the nature, purpose, and possible consequences of the proposed board hearing, written notice of the proposed board hearing shall be sent by registered mail to the last known address of the parents of the respondent or to his next of kin if both parents are deceased.

"§ 954. Notice to counsel of respondent

"A copy of all notices and other information relating to the administrative discharge proceeding shall be given by the appointing authority to the officer detailed, or otherwise designated, as counsel for the respondent.

"§ 955. Waiver of rights of respondent; discharge for the good of the service

"(a) A respondent may waive his right to a hearing before an administrative discharge board if he certifies in writing that he understands the consequences of such action and has consulted with counsel qualified under section 827(b)(1) of this title (article 27(b)(1)) and detailed to represent him. A waiver shall not be accepted if executed by a respondent within a period of twenty-four hours after receipt of notification of the proposed board hearing, or if the appointing authority determines that the waiver was improvidently made or that the respondent does not fully comprehend the consequences of his decision.

"(b) A respondent who is in civil confinement or who is absent without official leave and who fails to respond within a period of thirty days after the date on which notice has been mailed to him may be deemed to have executed a written waiver of his right to a board hearing under this chapter.

"(c) A respondent who waives a hearing before a discharge board as provided by subsection (a), shall receive a discharge for the good of the service. The discharge will be characterized in accordance with the provisions of § 964.

"§ 956. Sessions of the board

"(a) When an administrative discharge board deliberates or votes, only the voting members of the board may be present. All other proceedings of the board shall be made a part of the record and, except as otherwise provided in subsection (b) of this section, shall be in the presence of the respondent, his counsel, and the legal adviser if one has been detailed.

"(b) In any case in which the respondent is unable to appear before the board because of civil confinement, the board may convene and hear the case of such respondent in absentia if the appointing authority so directs and the respondent is represented before the board by counsel qualified under section 827(b)(1) of this title (article 27(b)(1)) or by counsel of his choice.

"§ 957. Challenges

"Members of an administrative discharge board, the recorder, and the legal adviser, if one has been detailed, may be challenged by the respondent for cause. The legal ad-

viser shall normally determine the relevancy and validity of such challenges. Where no legal adviser has been detailed, the members will decide the challenge by a majority vote, with the challenged member not voting. A tie vote disqualifies the member challenged.

"§ 958. Oaths

"(a) Members of an administrative discharge board, the recorder, the legal adviser, if one has been detailed, military counsel, and the reporter shall take an oath prescribed by the Secretary of Defense to perform their duties faithfully. The Secretary of Defense may provide by regulation that once an oath to perform faithfully duties as legal adviser, military counsel, and recorder has been taken by an officer certified to be qualified or competent to perform any such duties, such an oath need not be taken each time such officer is detailed to perform such duties.

"(b) Each witness before any such board shall be examined under oath.

"§ 959. Prohibition on use of certain evidence

"(a) No act or omission on the part of any respondent shall be admitted in evidence against him before any administrative discharge board if such act or omission did not occur while a member of the armed forces and took place more than three years prior to the date of the order directing such board to hear the case of the respondent, or prior to the current enlistment or current tour of active duty of the respondent plus any voluntary or involuntary extensions thereof, whichever period is longer; and no such act or omission shall be alleged or mentioned in any evidence presented to the board.

"(b) Notwithstanding the provisions of subsection (a) of this section, evidence relating to an act or omission of the respondent which occurred in the enlistment preceding the respondent's current enlistment or tour of active duty may be alleged and admitted in evidence against the respondent in showing that his current enlistment or tour of active duty was based upon a material misrepresentation or fraud which would have prevented or delayed his enlistment or tour of active duty and could not have been discovered by the exercise of due diligence on the part of the armed force concerned.

"(c) No act or omission on the part of any respondent shall be admitted in evidence against him before any administrative discharge board if such act or omission was wholly or in part the basis of any charge for which he was tried by a civil court or a court-martial and acquitted; or for which he was not acquitted or convicted but for which he cannot again be tried by reason of former jeopardy.

"§ 960. Opportunity to obtain witnesses and other evidence; depositions; right to present and examine evidence

"(a) An administrative discharge board and respondent shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the Secretary of Defense may prescribe. Process issued in board cases to compel witnesses to appear and testify and to compel the production of other evidence shall be similar to that which courts of the United States having criminal jurisdiction may lawfully issue and run to any part of the United States, territories, Commonwealths, and possessions.

"(b)(1) At any time after a respondent has been notified that he is to appear before an administrative discharge board, any party may take oral or written depositions unless the appointing authority forbids it for good cause.

"(2) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

"(3) The Secretary of Defense shall issue regulations governing the taking and use of depositions under this chapter. The regulations shall provide for the appointment where necessary of assistant counsel to represent a party in the taking of depositions.

"(c) Subject to the criteria contained in § 950(b)(1), the respondent shall have the right to submit to the board any sworn or unsworn statement, affidavit, certificate, or stipulation in his own behalf. He may, if he chooses, submit to examination by the board under oath. He and his counsel shall be given the opportunity to examine all witnesses called before the board and shall be permitted to examine all documents, papers, exhibits, and other evidence presented to the board.

"§ 961. Voting and rulings

"(a) The findings and recommendations of administrative discharge boards shall be by majority vote.

"(b) The legal adviser shall rule on the admissibility of evidence and on all interlocutory motions. Where no legal adviser has been detailed, the board shall rule on all interlocutory motions by majority vote.

"§ 962. Record of the board proceedings

"(a) A record of the proceedings before an administrative discharge board shall be kept. The record shall be authenticated in such manner as may be prescribed by the Secretary of Defense. A copy of the authenticated record shall be given the respondent.

"(b) An undesirable discharge may not be recommended unless a verbatim record is kept of all proceedings before the administrative discharge board by the reporter detailed to such board. A verbatim record shall be kept in any other case in which (1) the board determines that a verbatim record is necessary for a fair and impartial review of the board proceedings, (2) the discharge authority so orders, or (3) regulations of the Secretary of Defense require such action.

"§ 963. Action of discharge authority

"(a) In any case in which the administrative discharge board recommends that the respondent be discharged from the service, the appointing authority may—

"(1) approve the recommendations of the board if he determines that the findings and recommendations of the board are supported by a preponderance of the evidence in the record;

"(2) disapprove the recommendations of the board with respect to the type of discharge to be given the respondent and order a more favorable discharge if he determines that such action is warranted by the evidence in the record or in the interests of justice;

"(3) approve the board's recommendations for discharge but change the basis therefor if the record indicates such action would be appropriate, but he may not designate unfitness or misconduct as the basis of the discharge if the board has recommended discharge for unsuitability;

"(4) disapprove the recommendations of the board and appoint a new board to consider the case of the respondent if he determines that a legal error was committed prejudicial to the rights of the respondent or that the interests of justice would be served by such action, but he may not approve any finding or recommendation made by the new board which is less favorable to the respondent than the finding and recommendations made by the previous board if the evidence before the second, or subsequent, board is substantially the same as the evidence that was before the previous board;

"(5) disapprove the recommendations of the board and order that the respondent be retained in the service; or

"(6) approve the board's recommendation for discharge but suspend the execution of the discharge for such period of probation as he deems appropriate.

"(b) In any case in which an administrative discharge board recommends that the respondent be retained in the service, the appointing authority may not order discharge, and no new board may be appointed to consider the case of the respondent if the evidence before the second, or subsequent, board is substantially the same as the evidence before the previous board.

"(c) Notwithstanding subsection (b), in any case in which the findings and recommendations of an administrative board were based in whole or part on fraudulent information or evidence submitted by the respondent, the appointing authority may appoint a new board to consider the case of the respondent and the findings and recommendations of the subsequent board shall not be limited by the findings and recommendations of the previous board.

"(d) The Secretary of Defense shall provide by regulation the procedures for vacating the suspension of a discharge authorized under paragraph (6) of subsection (a) of this section.

§ 964. Type and character of administrative discharges; grounds for awarding

"(a) The type and character of administrative discharges shall be based solely on a member's military record during the current enlistment or term of service plus extensions and shall be determined according to the following standards:

"(1) The issuance of an honorable discharge will be conditioned upon proper military behavior and proficient performance of duty with due consideration for the member's age, length of service, grade, and general aptitude.

"(2) The issuance of a general discharge is appropriate when a member's military record is not sufficiently meritorious to warrant an honorable discharge as prescribed by the regulations of the military department concerned.

"(3) An undesirable discharge may be issued for misconduct, unfitness, or security reasons based on the approval of the recommendations of an administrative discharge board, or waiver of the right to board action, or resignation or request for discharge for the good of the service as provided in subsection 955 of this chapter.

"(b) A member discharged from the service on the grounds of unsuitability shall receive an honorable or general discharge. The type of discharge issued such member shall be based on his military record taking into consideration his mental and physical capabilities. A discharge for unsuitability may be given for the following reasons:

"(1) a pattern of conduct which indicates the serviceman does not possess the skill, aptitude, or adaptability necessary to perform his assigned tasks;

"(2) a pattern of conduct which indicates the serviceman is apathetic or has other defective attitudes which prevent his performing his assigned tasks;

"(3) a pattern of conduct which indicates the serviceman is addicted to or is a frequent user of harmful or habit-forming drugs or chemicals;

"(4) a pattern of conduct which indicates the serviceman suffers from chronic alcoholism which prevents him from performing his assigned tasks; and

"(5) a pattern of conduct which indicates the serviceman is a homosexual.

"(c) A member discharged from the service on the grounds of misconduct shall receive an undesirable discharge unless the circumstances in his case warrant a more favorable type of discharge. A discharge for misconduct may be given a member convicted by civil authorities for a crime, the penalty for which under chapter 47 of this title is one year imprisonment or more; or a crime for which a punitive discharge may be awarded by a court-martial under chapter

47 of this title. A discharge for misconduct may also be given if the member was adjudged a juvenile offender, wayward minor, or juvenile delinquent by civil authorities for a crime involving sexual perversion or narcotics, the penalty for which under chapter 47 of this title is one year imprisonment or more. A discharge for misconduct may also be given a member convicted by civil authorities for an offense not listed in chapter 47 of this title, the maximum penalties for which authorized by title 18, United States Code, or the District of Columbia Code, whichever is lesser, is one year imprisonment or more.

"(d) A discharge for misconduct may also be given for any unauthorized absence from jurisdiction of the armed force of one year or more, or for the procurement of a fraudulent enlistment, induction, or extension of a period of active duty through any deliberate material misrepresentation, omission, or concealment which if known by the appropriate authorities at the time of the procurement would have resulted in rejection of the member for service.

"(e) A member discharged from the service on the grounds of unfitness shall receive an undesirable discharge unless the circumstances warrant a more favorable type of discharge. A discharge for unfitness may be given a member for one or more of the following:

"(1) Frequent involvement of a discreditable nature with civil or armed force authorities. Evidence of such involvement shall be limited to convictions by civilian and military courts, non-judicial punishment, and written reprimands.

"(2) A pattern of conduct showing sexual perversion, which includes sodomy, indecent exposure, indecent acts with or assault upon a child, homosexual acts with unconsenting partners, and other lewd and lascivious acts.

"(3) An established pattern for shirking official duties and responsibilities.

"(4) An established pattern showing dishonorable failure to pay debts or to contribute adequate support to dependents, or failure to comply with orders, decrees, or judgment of a civil court concerning support of dependents.

"(f) A member discharged from the service on the grounds of security shall receive an undesirable discharge unless the circumstances warrant a more favorable type of discharge. A discharge for security reasons may be given a member when the retention of such member is not consistent with the interests of national security.

"(g) In any case in which an undesirable discharge is authorized under this chapter, a member may be awarded an honorable or general discharge, as appropriate, if during his current enlistment, period of obligated service, or any voluntary or involuntary extensions thereof, or period of prior service he has been awarded a personal decoration as defined by the armed force of which he is a member, or if otherwise warranted by the circumstances of his case.

"(h) No member may be discharged from the service for misconduct under subsection (c) of this section if an appeal of the conviction has been filed and such appeal is still pending. Notwithstanding the foregoing, in any case in which the discharge authority receives a written opinion from the Judge Advocate General of the armed force concerned stating that an appeal by any member is frivolous or without legal merit, the discharge authority may order the discharge of such member without waiting for final disposition of such appeal. If a member is discharged pursuant to the authority of the foregoing sentence and his conviction is reversed on appeal, or his case is returned for retrial and is not retired, or if any other action is taken on appeal which results in the member not having been legally convicted of a felony, he shall receive all pay, allowances, and other benefits, insofar as practicable, he would have received had he not been discharged. The Secretary concerned shall, in any case in which an undesirable discharge was issued, change such discharge to an honorable or general discharge, as warranted by the service record of the respondent; if a general discharge was issued the Secretary may change it to an honorable discharge if the service record of the respondent warrants such action.

"§ 965. Discharge for the convenience of the Government

"A member may be discharged from the armed forces for the convenience of the Government with an honorable or general discharge as warranted by his service record, for reasons other than those prescribed in this chapter, pursuant to regulations promulgated by the Secretary of Defense or as otherwise authorized by law.

"§ 966. Review of administrative discharge action

"(a) The Secretary of Defense shall provide by regulation for review of administrative discharge board proceedings and of discharge authority actions by legally-qualified personnel prior to discharge to determine that the procedures and actions of the board were consistent with the provisions of this chapter and with the regulations promulgated under it. In no case may the decision on review be less favorable than the action ordered by the discharge authority. The regulations shall provide that no discharge except an honorable discharge shall be issued until affirmed upon such review and, where so ordered in cases reviewed by it, the Court of Military Appeals.

"(b) The Court of Military Appeals shall prescribe by rule for the review prior to discharge under section 867(b)(4) of this title (article 67(b)), by the court of cases which raise novel and compelling issues of law. The rule shall specify the grounds upon which such a review may be obtained by the respondent or the armed force concerned and the time within which any such review must be requested. In no case may the decision by the Court of Military Appeals be less favorable than the action ordered by the discharge authority."

SEC. 3. (a) The table of chapters at the beginning of subtitle A (relating to general military law) of title 10, United States Code, is amended by inserting immediately below

"47. Uniform Code of Military Justice.. 801"

the following:

"48. Administrative Discharge Boards.. 941".

(b) The table of chapters at the beginning of part II of subtitle A of title 10, United States Code, is amended by inserting immediately below

"47. Uniform Code of Military Justice.. 801"

the following:

"48. Administrative Discharge Boards.. 941".

SEC. 4. (a) Subsection (b) of section 867 (article 67) of title 10, United States Code, is amended by—

(1) striking out "all cases" at the beginning of clauses (1), (2), and (3), and inserting in lieu thereof "all court-martial cases";

(2) striking out "and" at the end of clause (2);

(3) striking out the period at the end of clause (3) and inserting in lieu thereof a semicolon and the word "and"; and

(4) adding after clause (3) a new clause as follows:

"(4) such cases arising under chapter 48 of this title as are authorized for review pursuant to section 966(b) of such chapter and with respect to which (A) respondents have petitioned the Court of Military Appeals for review and on good cause shown such court has granted a review, or (B) the armed force concerned has ordered sent to such court for review."

(b) Subsection (d) of such section is amended by (1) striking out the word "case" in the first, second, and third sentences and inserting in lieu thereof "court-martial case" and (2) inserting after the third sentence thereof the following new sentence: "In any case referred to in subsection (b)(4) of this section which is reviewed upon petition of a respondent, the court shall take action only with respect to issues of law, and in any such case ordered sent to the court for review by the armed force concerned, the court shall take action only with respect to the issues of law raised by the armed force."

(c) The first sentence of subsection (e) of such section is amended by striking out "sentence" and inserting in lieu thereof "sentence of a court-martial case".

(d) The first sentence of subsection (f) of such section is amended by striking out "case" and inserting in lieu thereof "court-martial case".

(e) Such section is further amended by redesignating subsection (g) as subsection "(h)" and adding after subsection (f) the following new subsection:

"(g) After it has acted on any case referred to in subsection (b)(4) of this section, the Court of Military Appeals may return the record to any reviewing officer or body designated under section 966(a) of this title to review cases arising under chapter 48 of this title for further consideration or action in accordance with the decision of the court, or may, in any case appealed by a respondent, return the record to such officer or body designated under such section 966(a) or directly to the appropriate discharge authority for further consideration or action in accordance with the decision of the court."

SEC. 5. (a) Subsection (c) of section 870 (article 70) of title 10, United States Code, is amended by inserting "in a court-martial case" immediately after "shall represent the accused".

(b) Subsection (d) of such section is amended by inserting "in a court-martial case" immediately after "The accused".

(c) Such section is further amended by adding at the end thereof the following new subsections:

"(f) Appellate counsel shall represent before the Court of Military Appeals a respondent whose case is before the court pursuant to the provisions of section 867(b)(4) of this title (article 67(b)(4))—

"(1) when he is requested to do so by the respondent;

"(2) when the armed force concerned is represented by counsel;

"(3) when the armed force concerned has sent the case to the Court of Military Appeals.

A respondent has the right to be represented before the Court of Military Appeals by civilian counsel if provided by him.

"(g) The armed force concerned may be represented by counsel before the Court of Military Appeals in any case reviewed by such court pursuant to section 867(b)(4) of this title (article 67(b)(4))."

SEC. 6. Section 801 (article 1) of title 10, United States Code, is amended by adding at the end thereof a new paragraph as follows:

"(13) 'Respondent' means a member of the armed forces against whom administrative discharge proceedings have been initiated under chapter 48 of this title."

SEC. 7. (a) Subsection (a) of section 266 of title 10, United States Code, is amended by striking out "Each" and inserting in lieu thereof "Subject to the provisions of chapter 48 of this title, each".

(b) Subsection (b) of such section is amended by striking out "Each" and inserting in lieu thereof "Subject to the provisions of chapter 48 of this title, each".

SEC. 8. (a) Section 1161 of title 10, United

States Code, is amended by adding at the end thereof a new subsection as follows:

"(c) No commissioned officer may be discharged under the authority of section 3814, 3818, 6392, 6393, 8814, 8817, or 8818 of this title or under section 321 of title 14, United States Code, for misconduct, unfitness, or security (as described in chapter 48 of this title) or discharged under conditions other than honorable except pursuant to the provisions of chapter 48 of this title."

(b) The catchline of section 1161 of such title is amended to read as follows:

"§ 1161. Commissioned officers: limitations on dismissal and discharge".

(c) The table of sections at the beginning of chapter 59 of such title is amended by striking out

"1161. Commissioned officers: limitations on dismissal."

and inserting in lieu thereof

"1161. Commissioned officers: limitations on dismissal and discharge."

SEC. 9. Section 1162(a) of title 10, United States Code, is amended to read as follows:

"(a) Subject to the provisions of chapter 48 and other provisions of this title, Reserve commissioned officers may be discharged at the pleasure of the President. Subject to the provisions of chapter 48 of this title, other Reserves may be discharged under regulations prescribed by the Secretary concerned."

SEC. 10. (a) The first sentence of subsection (a) of section 1163 of title 10, United States Code, is amended by striking out "An" and inserting in lieu thereof "Subject to the provisions of chapter 48 of this title, an".

(b) Paragraphs (1) and (2) of subsection (c) of such section are amended to read as follows:

"(1) he is discharged under conditions other than honorable pursuant to an approved sentence of a court-martial or pursuant to the approved findings and recommendations of an administrative discharge board appointed under chapter 48 of this title; or

"(2) he consents to a discharge under conditions other than honorable with a waiver of proceedings of a court-martial or an administrative discharge board (as provided in chapter 48 of this title), as the case may be."

SEC. 11. Section 1165 of title 10, United States Code, is amended by adding at the end thereof a new sentence as follows: "No warrant officer may be discharged under the authority of this section or section 1166 of this title for misconduct, unfitness, or security (as described in chapter 48 of this title) or discharged under conditions other than honorable except pursuant to the provisions of chapter 48 of this title."

SEC. 12. Section 1166 of title 10, United States Code, is amended by adding at the end thereof a new sentence as follows: "The burden of justifying the separation for cause of any permanent Regular warrant officer shall be on the armed force of which he is a member."

SEC. 13. (a) Sections 3781, 3782, and 3783 of title 10, United States Code, are amended to read as follows:

"§ 3781. Selection boards: composition; duties

"The Secretary of the Army may at any time convene a board of officers to review the record of any commissioned officer on the active list of the Regular Army to determine whether he should, because the performance of his duty has fallen below standards prescribed by the Secretary, be removed from the active list.

"§ 3782. Boards of inquiry: composition duties

"(a) Boards of inquiry, each composed of three or more officers, shall be convened at such places as the Secretary of the Army may prescribe, to receive evidence and make findings and recommendations with respect to whether an officer shall be removed from the active list of the Regular Army whenever such action has been recommended by a board of officers pursuant to section 3781 of this title.

"(b) If the board of inquiry determines that there was sufficient evidence before the board of officers convened under section 3781 of this title to support a recommendation that the officer be removed from the active list, the board of inquiry shall conduct a fair and impartial hearing to determine whether the officer should be removed from the active list.

"(c) If a board of inquiry determines that the officer should not be retained on the active list, it shall send the record of its proceedings to a board of review.

"(d) If a board of inquiry determines that the officer should be retained on the active list, his case is closed. However, at any time after one year from the date of that determination, his case may again be considered under section 3781 of this title.

"§ 3783. Boards of review: composition; duties

"(a) Boards of review, each composed of three or more officers, shall be convened by the Secretary of the Army, at such times as he may prescribe, to review the records of cases of officers recommended by boards of inquiry for removal from the active list of the Regular Army under section 3782 of this title.

"(b) If, after reviewing the record of the case, a board of review determines that the evidence before the board of inquiry was sufficient to justify a recommendation of the officer's removal from the active list, it shall send its recommendations to the Secretary for his action.

"(c) If, after reviewing the record of the case, a board of review determines that the evidence before the board of inquiry was insufficient to justify a recommendation of the removal of such officer from the active list, his case is closed. However, at any time after one year from the date of that determination, his case may again be considered under section 3781 of this title."

(b) Section 3785 of title 10, United States Code, is amended—

(1) by striking out "Each" and inserting in lieu thereof "(a) Each";

(2) by striking out clause (1) and inserting in lieu thereof the following:

"(1) notified in writing, at least thirty days before the hearing of his case by a board of inquiry, that a hearing will be held to determine whether he should be removed from the active list;"; and

(3) by adding at the end thereof the following new subsections:

"(b) In addition to the rights and procedures prescribed in subsection (a) of this section, all rights and procedures prescribed in chapter 48 of this title (relating to administrative discharge boards) shall be applicable to boards of inquiry convened under section 3782 of this section.

"(c) The burden of justifying the removal for cause of any officer from the active list of the Regular Army shall be on the Department of the Army."

SEC. 14. (a) Sections 3791, 3792, and 3793 of title 10, United States Code, are amended to read as follows:

"§ 3791. Selection boards: composition; duties

"The Secretary of the Army may at any time convene a board of general officers to review the record of any commissioned officer on the active list of the Regular Army to determine whether he should, because of moral dereliction, professional dereliction, or because his retention is not clearly consistent with the interests of national security, be removed from the active list.

"§ 3792. Boards of inquiry: composition; duties

"(a) Boards of inquiry, each composed of three or more general officers, shall be convened at such places as the Secretary of the Army may prescribe, to receive evidence and make findings and recommendations with respect to whether an officer shall be removed from the active list of the Regular Army whenever such action has been recommended by a board of officers pursuant to section 3791 of this title.

"(b) If the board of inquiry determines that there was sufficient evidence before the board of officers convened under section 3791 of this title to support a recommendation that the officer be removed from the active list, the board of inquiry shall conduct a fair and impartial hearing to determine whether the officer should be removed from the active list.

"(c) If a board of inquiry determines that the officer should not be retained on the active list, it shall send the record of its proceedings to a board of review.

"(d) If a board of inquiry determines that the officer should be retained on the active list, his case is closed. However, at any time after one year from the date of that determination, his case may again be considered under section 3791 of this title.

"§ 3793. Boards of review: composition; duties

"(a) Boards of review, each composed of three or more general officers, shall be convened by the Secretary of the Army, at such times as he may prescribe, to review the records of cases of officers recommended by boards of inqury for removal from the active list of the Regular Army under section 3792 of this title.

"(b) If, after receiving the record of the case, a board of review determines that the evidence before the board of inquiry was sufficient to justify a recommendation of the officer's removal from the active list, it shall send its recommendations to the Secretary for his action.

"(c) If, after reviewing the record of the case, a board of review determines that the evidence before the board of inquiry was insufficient to justify a recommendation of the removal of such officer from the active list, his case is closed. However, at any time after one year from that date of that determination, his case may again be considered under section 3791 of this title."

(b) Section 3795 of title 10, United States Code, is amended—

(1) by striking out "Each" and inserting in lieu thereof "(a) Each";

(2) by striking out clause (1) and inserting in lieu thereof the following:

"(1) notified in writing, at least thirty days before the hearing of his case by a board of inquiry, that a hearing will be held to determine whether he should be removed from the active list;"; and

(3) by adding at the end thereof the following new subsections:

"(b) In addition to the rights and procedures prescribed in subsection (a) of this section, all rights and procedures prescribed in chapter 48 of this title (relating to administrative discharge boards) shall be applicable to boards of inquiry convened under section 3792 of this section.

"(c) The burden of justifying the removal for cause of any officer from the active list of the Regular Army shall be on the Department of the Army."

SEC. 15. Clause (1) of section 3811(b) of title 10, United States Code, is amended to read as follows:

"(1) as provided in chapter 48 of this title;".

SEC. 16. Section 5864 of title 10, United States Code, is amended by adding at the end

SEC. 6. Section 801 (article 1) of title 10, United

thereof the following: "However, no officer may be discharged under authority of this section unless the board proceedings conducted under section 5862 of this title were conducted in accordance with the procedural requirements prescribed in chapter 48 of this title."

SEC. 17. (a) The first sentence of section 6407 of title 10, United States Code, is amended by striking out "Each" and inserting in lieu thereof "(a) Each".

(b) Such section 6407 is further amended by adding at the end thereof a new subsection as follows:

"(b) No officer shall be removed from the active list of the Navy or Marine Corps for reasons of misconduct, unfitness, or security pursuant to the action of a selection board convened under chapter 543 of this title unless the proceedings were conducted in accordance with the procedural requirements prescribed in chapter 48 of this title."

(c) The catchline of such section 6407 is amended to read as follows:

"§ 6407. Communication with selection board; justifying removal from active list"

(d) The table of sections at the beginning of chapter 573 of title 10, United States Code, is amended by striking out—

"6407. Communication with selection board."

and inserting in lieu thereof

"6407. Communication with selection board; justifying removal from active list."

SEC. 18. (a) Sections 8781, 8782, and 8783 of title 10, United States Code, are amended to read as follows:

"§ 8781. Selection boards: composition; duties

"The Secretary of the Air Force may at any time convene a board of officers to review the record of any commissioned officer on the active list of the Regular Air Force to determine whether he should, because the performance of his duty has fallen below standards prescribed by the Secretary, be removed from the active list.

"§ 8792. Boards of inquiry: composition; duties

"(a) Boards of inquiry, each composed of three or more officers, shall be convened at such places as the Secretary of the Air Force may prescribe, to receive evidence and make findings and recommendations with respect to whether an officer shall be removed from the active list of the Regular Air Force whenever such action has been recommended by a board of officers pursuant to section 8781 of this title.

"(b) If the board of inquiry determines that there was sufficient evidence before the board of officers convened under section 8781 of this title to support a recommendation that the officer be removed from the active list, the board of inquiry shall conduct a fair and impartial hearing to determine whether the officer should be removed from the active list.

"(c) If a board of inquiry determines that the officer should not be retained on the active list, it shall send the record of its proceedings to a board of review.

"(d) If a board of inquiry determines that the officer should be retained on the active list, his case is closed. However, at any time after one year from the date of that determination, his case may again be considered under section 8781 of this title.

"§ 8783. Boards of review: composition; duties

"(a) Boards of review, each composed of three or more officers, shall be convened by the Secretary of the Air Force, at such times as he may prescribe, to review the records of cases of officers recommended by boards of inquiry for removal from the active list of the Regular Air Force under section 8782 of this title.

"(b) If, after reviewing the record of the case, a board of review determines that the evidence before the board of inquiry was sufficient to justify a recommendation of the officer's removal from the active list, it shall send its recommendations to the Secretary for this action.

"(c) If, after reviewing the record of the case, a board of review determines that the evidence before the board of inquiry was insufficient to justify a recommendation of the removal of such officer from the active list, his case is closed. However, at any time after one year from the date of that determination, his case may again be considered under section 8781 of this title."

(b) Section 8785 of title 10, United States Code, is amended—

(1) by striking out "Each" and inserting in lieu thereof "(a) Each";

(2) by striking out clause (1) and inserting in lieu thereof the following:

"(1) notified in writing, at least thirty days before the hearing of his case by a board of inquiry, that a hearing will be held to determine whether he should be removed from the active list;"; and

(3) by adding at the end thereof the following new subsections:

"(b) In addition to the rights and procedures prescribed in subsection (a) of this section, all rights and procedures prescribed in chapter 48 of this title (relating to administrative discharge boards) shall be applicable to boards of inquiry convened under section 8792 of this section.

"(c) The burden of justifying the removal for cause of any officer from the active list of the Regular Air Force shall be on the Department of the Air Force."

SEC. 19. (a) Sections 8791, 8792, and 8793 of title 10, United States Code, are amended to read as follows:

"§ 8791. Selection boards: composition; duties

"The Secretary of the Air Force may at any time convene a board of general officers to review the record of any commissioned officer on the active list of the Regular Air Force to determine whether he should, because of moral dereliction, professional dereliction, or because his retention is not clearly consistent with the interests of national security, be removed from the active list.

"§ 8792. Boards of inquiry: composition; duties

"(a) Boards of inquiry, each composed of three or more general officers, shall be convened at such places as the Secretary of the Air Force may prescribe, to receive evidence and make findings and recommendations with respect to whether an officer shall be removed from the active list of the Regular Air Force whenever such action has been recommended by a board of officers pursuant to section 8791 of this title.

"(b) If the board of inquiry determines that there was sufficient evidence before the board of officers convened under section 8791 of this title to support a recommendation that the officer be removed from the active list, the board of inquiry shall conduct a fair and impartial hearing to determine whether the officer should be removed from the active list.

"(c) If a board of inquiry determines that the officer should not be retained on the active list, it shall send the record of its proceedings to a board of review.

"(d) If a board of inquiry determines that the officer should be retained on the active list, his case is closed. However, at any time after one year from the date of that determination, his case may again be considered under section 8791 of this title.

"§ 8793. Boards of review: composition; duties

"(a) Boards of review, each composed of three or more general officers, shall be convened by the Secretary of the Air Force at such times as he may prescribe, to review the records of cases of officers recommended by boards of inquiry for removal from the active list of the Regular Air Force under section 8792 of this title.

"(b) If, after reviewing the record of the case, a board of review determines that the evidence before the board of inquiry was sufficient to justify a recommendation of the officer's removal from the active list, it shall send its recommendations to the Secretary for his action.

"(c) If, after reviewing the record of the case, a board of review determines that the evidence before the board of inquiry was insufficient to justify a recommendation of the removal of such officer from the active list, his case is closed. However, at any time after one year from the date of that determination, his case may again be considered under section 8971 of this title."

(b) Section 8795 of title 10, United States Code, is amended—

(1) by striking out "Each" and inserting in lieu thereof "(a) Each";

(2) by striking out clause (1) and inserting in lieu thereof the following:

"(1) notified in writing, at least thirty days before the hearing of his case by a board of inquiry, that a hearing will be held to determine whether he should be removed from the active list;"; and

(3) by adding at the end thereof the following new subsections:

"(b) In addition to the rights and procedures prescribed in subsection (a) of this section, all rights and procedures prescribed in chapter 48 of this title (relating to administrative discharge boards) shall be applicable to boards of inquiry convened under section 8792 of this section.

"(c) The burden of justifying the removal for cause of any officer from the active list of the Regular Air Force shall be on the Department of the Air Force."

SEC. 20. Clause (1) of section 8811(b) of title 10, United States Code, is amended to read as follows:

"(1) as provided in chapter 48 of this title;".

SEC. 21. (a) Sections 321, 322, and 323 of title 14, United States Code, are amended to read as follows:

"§ 321. Review of records of officers

"The Secretary may at any time convene a board of officers to review the record of any officer of the Regular Coast Guard to determine whether such officer should be removed from active duty—

"(1) because his performance of duty has fallen below the standards prescribed by the Secretary, or

"(2) because of moral dereliction, professional dereliction, or because his retention on active duty is not clearly consistent with the interests of national security.

"§ 322. Boards of inquiry

"(a) Boards of inquiry shall be convened at such places as the Secretary may prescribe to receive evidence and make findings and recommendations with respect to whether an officer shall be removed from active duty whenever such action has been recommended by a board of officers pursuant to section 321 of this title.

"(b) If the board of inquiry determines that there was sufficient evidence before the board of officers convened under section 321 of this title to support a recommendation that the officer be removed from active duty, the board of inquiry shall conduct a fair and impartial hearing to determine whether the officer should be removed from active duty.

"(c) If a board of inquiry determines that the officer should be removed from active duty, it shall send the record of its proceedings to a board of review.

"(d) If a board of inquiry determines that the officer should be retained on active duty,

his case is closed. However, at any time after one year from the date of the determination in a case arising under section 321, an officer may again be considered for removal from active duty.

"§ 323. Boards of review

"(a) Boards of review shall be convened at such times as the Secretary may prescribe to review the records of cases of officers recommended by boards of inquiry for removal from active duty.

"(b) If, after reviewing the record of the case, a board of review determines that the evidence before the board of inquiry was sufficient to justify a recommendation of the officer's removal, it shall send its recommendations to the Secretary for his action.

"(c) If, after reviewing the record of the case, a board of review determines that the evidence before the board of inquiry was insufficient to justify a recommendation of the removal of such officer, his case is closed. However, at any time after one year from the date of the determination in a case arising under section 321, an officer may again be considered for removal from active duty."

(b) Section 325 of title 14, United States Code, is amended—

(1) by striking out "Each" and inserting in lieu thereof "(a) Each";

(2) by striking out clause (1) and inserting in lieu thereof the following:

"(1) notified in writing, at least thirty days before the hearing of his case by a board of inquiry, that a hearing will be held to determine whether he should be removed from active duty."; and (3) by adding at the end thereof the following new subsections:

"(b) In addition to the rights and procedures prescribed in subsection (a) of this section, all rights and procedures prescribed in chapter 48 of title 10, United States Code (relating to administrative discharge boards), shall be applicable to boards of inquiry convened under section 322 of this title.

"(c) The burden of justifying the removal for cause of any officer from active duty in the Regular Coast Guard shall be on the Coast Guard."

SEC. 22. The amendments made by this Act shall become effective on the first day of the sixth calendar month following the month in which it is enacted.

SECTIONAL ANALYSIS

Section 1 provides that the Act may be cited as "The Military Administrative Discharge Procedure Act of 1973."

Section 2 adds a new chapter 48, title 10, United States Code, prescribing the minimum procedural due process applicable in administrative discharge boards considering discharges under conditions other than honorable. Chapter 48 consists of 25 sections as follows:

Section 941 contains the definitions applicable for chapter 48.

Section 942 makes chapter 48 applicable to all members of the armed forces whether in active status or serving in the reserve forces.

Section 943 provides that no member may be discharged under conditions other than honorable except for reasons of misconduct, unfitness, or security. It also provides that discharges for such reasons and for reason of unsuitability must be given in accordance with the procedures set forth in the chapter. It further provides that except as provided in the chapter, no administrative discharge will be awarded by reason of conduct otherwise punishable under the Uniform Code of Military Justice.

Section 944 defines the administrative discharge board as a factfinding body consisting of three or more officers whose duty it is to conduct a fair and impartial hearing, receive evidence, find facts based upon a preponderance of the evidence, and recommend on the basis of the evidence and the facts found, whether a member should be retained or discharged from the armed forces. The board is also to recommend the type of discharge and to specify reasons for its recommendations.

Section 945 authorizes the President, the Secretary of each service and officers designated by them as appointing authorities. Members of the board are required to be officers of mature judgment and temperament. Officers who have participated in previous hearings at which the member was a respondent may not be members.

Section 946 provides that the appointing authority shall detail a legal adviser to any administrative discharge board which he appoints, except where military exigencies do not permit. When no legal adviser is appointed, the appointing authority will submit a written explanation of his failure to do so, which shall be made a part of the board's record. The legal adviser shall be a lawyer qualified under the Uniform Code of Military Justice.

Section 947 requires the appointment of legally qualified counsel for the respondent. The member may have military counsel of his own choice if reasonably available and may also retain civilian counsel at his own expense.

Section 948 authorizes the appointment of a non-voting recorder to present evidence to the board.

Section 949 provides for the appointment of reporters to record the proceedings and testimony presented at the hearing.

Section 950 authorizes the Secretary of Defense to prescribe rules and regulations for implementing chapter 48. The Secretary of Transportation is similarly authorized to prescribe rules for the Coast Guard when it is not operating as a service in the Navy. The section states that the procedural safeguards established in subsection (b) are to be considered minimums and that the Secretary may grant additional procedural safeguards to respondents. The rules are to be as uniform as possible and are to be reported to the Congress.

Section 951 parallels section 827 of title 10 (article 37 of the Uniform Code of Military Justice) in prohibiting improper interference with the independence and impartiality of discharge boards, courts of inquiry and military commissions.

Subsection (a) prohibits any reprimand of a board because of the findings or recommendations arrived at in a case. General instructions relating to the duties and reponsibilites of board members are permitted.

Subsection (b) prohibits coercion or improper influencing of boards with a view to affecting the impartiality of the proceedings.

Subsection (c) makes violation of this section punishable as a court-martial offense.

Subsection (d) prohibits the evaluation of a member's performance as a board member for purposes of promotion or assignment. Also, the zeal with which counsel represents a respondent may not be regarded as an adverse factor for promotion or assignment.

Section 952 requires that 15 days notice be given to a member against whom administrative discharge proceedings have been initiated. The notice must inform him of his rights to have legal counsel to present evidence and cross-examine adverse witnesses, and to remain silent if he chooses. The notice must also inform him of the nature of the action contemplated, the charges and evidence against him, the names of prospective government witnesses, the applicable regulations, and the possible consequences of the proceedings.

Section 953 requires that the parents of respondents less than 21 years old must be notified of the initiation of discharge action. Such notice is also to be sent when the respondent is over 21 but is considered unable to appreciate the nature of the action being taken.

Section 954 requires that counsel be sent copies of all notices and other information sent to the respondent.

Section 955(a) provides that a written waiver of the right to a board may be made only after consultation with counsel. The waiver is not valid if made within 24 hours of notice under section 952. The appointing authority may also reject a waiver if he determines that it was improvidently made.

Subsection (b) permits the appointing authority to deem a waiver of a board hearing to have been made if a respondent in civil confinement or absent without official leave fails to respond within 30 days of notice.

Subsection (c) provides that any respondent who waives his right to a hearing before a discharge board, as provided for in subsection (a), shall receive a discharge for the good of the service. Such discharge shall be characterized in accordance with the provisions of section 964.

Section 956 requires that all proceedings of the board be recorded and that, except when the board deliberates or votes, they occur in the presence of counsel, the respondent, and the legal advisor if one has been detailed. Only the voting members of the board may be present when the board deliberates or votes. The board may hear the case in absentia only if the respondent is represented by qualified counsel.

Section 957 provides for challenges to board members only for cause. Challenges are to be determined by the legal adviser. If none has been appointed, the challenge will be decided by a majority vote of the board members, with the challenged member not voting.

Section 958 requires members of the board, counsel and reporter to take an oath to perform their duties faithfully. Witnesses are examined under oath.

Section 959 prohibits the admission into evidence of acts occurring prior to the respondent's becoming a member of the armed forces and those which took place more than three years prior to the convening of the board, or more than three years prior to the current enlistment or tour of active duty of the respondent, whichever is longer. However, evidence of fraud or misrepresentation affecting the current enlistment is admissible if the service could not have discovered the misrepresentation or fraud.

Section 960(a) grants equal rights to the respondent to obtain witnesses and evidence under regulations prescribed by the Secretary of Defense. Subpena power is authorized.

Subsection (b) permits the taking of depositions upon reasonable notice unless forbidden upon good cause. The Secretary of Defense is to issue regulations governing the taking of depositions.

Subsection (c) grants the respondent the right to submit any sworn or unsworn statement in his own defense and to submit to examination under oath if he chooses. Cross-examination of all witnesses and examination of all documents and other evidence submitted is permitted respondent and counsel.

Section 961 provides that all findings and recommendations of the board shall be decided by majority vote. The legal adviser shall rule on the admissibility of evidence and all interlocutory motions. Where no legal adviser has been appointed, such decisions shall be made by a majority vote of the board.

Section 962 requires that a record be kept of all proceedings and that a copy be presented to the respondent. The record must be verbatim in cases of undesirable discharges and in all other cases where ordered by the appointing authority, required by regulations, or where required for a fair and impartial review of the board proceedings.

Section 963(a) authorizes the appointing authority to approve the findings of the board if he determines that they are supported by a preponderance of the evidence

in the record. He may disapprove the discharge recommended and issue a higher type of discharge or order a new hearing if he determines the existence of error prejudicial to the respondent, or in the interests of justice. He may not approve findings or recommendations of the new board less favorable to the respondent if the evidence presented is substantially the same as that presented in the earlier hearing. The authority may also retain the member or suspend the execution of a discharge. The basis for the discharge may be changed, but no discharge recommended on the grounds of unsuitability may be changed to the grounds of unfitness or misconduct.

Subsection (b) provides that when a board recommends the retention of the respondent, the case is closed, and no subsequent board may again consider the charges if the evidence presented is substantially the same as that presented earlier.

Subsection (c) permits a subsequent board unlimited by previous findings or recommendations only if fraudulent evidence submitted by the respondent formed the basis in whole or in part for the findings of the first board.

Section 964(a) prescribes the standards for the types of discharges permitted.

Subsection (b) provides that a member may be discharged for unsuitability with either an honorable or general discharge. It furthermore specifies the grounds upon which such a discharge will be based.

Subsection (c) authorizes an undesirable discharge on the grounds of misconduct after a civil conviction for a crime where State law authorizes imprisonment for one year or more; after conviction of a crime classified as a felony under title 18, United States Code, or the District of Columbia Code, or for which the Uniform Code of Military Justice authorizes the award of a punitive discharge; or after conviction of a crime of sexual perversion for which the respondent was adjudicated a juvenile offender.

Subsection (d) authorizes a discharge for misconduct for unauthorized absence of more than one year or for fraud or misrepresentation at the time of enlistment which if known at the time would have resulted in the rejection of the member by the service.

Subsection (e) authorizes an undesirable discharge on the grounds of unfitness based upon frequent involvement with authorities, a pattern of conduct showing sexual perversion, a pattern of shirking duties, or a pattern of dishonorable failure to pay debts.

Subsection (f) authorizes an undesirable discharge on the grounds of security.

Subsection (g) permits the issuance of a discharge other than undesirable in cases where the respondent has received a personal decoration by his service, or where otherwise warranted by the facts of the case.

Subsection (h) prohibits the execution of a discharge for misconduct for civil conviction if an appeal is still pending unless the Judge Advocate General of the service certifies that the appeal is frivolous or without merit. If a discharge is executed prior to the final disposition of the appeal and the latter results in the member not having been legally convicted of a felony, he must receive all pay and benefits he would have received if he was not so discharged. An undesirable discharge so issued shall be changed to a general or honorable discharge, and a general discharge may be changed to an honorable discharge if warranted by the individual's record.

Section 965 authorizes honorable or general discharges based upon grounds other than those prescribed in this chapter, as prescribed by law or provided in regulations issued by the Secretary of Defense.

Section 966 authorizes the Secretary of Defense to issue regulations providing for the review of discharge actions by legally-qualified personnel to determine that all proceedings were fair and impartial and that they were conducted consistent with the provisions of the chapter. No decision on review may be less favorable than the action ordered by the discharge authority. Review by the Court of Military Appeals may be obtained. No decision upon review by the Court may be less favorable than the action ordered by the discharge authority.

Section 3 conforms the table of chapters of subtitle A, title 10, United States Code to the changes made by the addition of chapter 48.

Section 4(a) amends section 867 of title 10 to provide for review by the Court of Military Appeals of cases in which petition for review is made under section 966(b).

Subsection (b) limits review of such cases to issues of law specified in the grant of review or raised by the armed force.

Subsection (c) specifies that cases reviewed by the Court of Military Appeals are to be returned to the reviewing authority specified by section 966(a) for further consideration or action in accordance with the decision of the court.

The other subsections of section 4 make technical changes in accordance with these provisions.

Section 5 provides for the amendment of section 867(b)(4) to authorize the representation by appellate military counsel of respondents whose cases are before the Court of Military Appeals.

Section 6 adds the definition of "respondent" to section 801.

Section 7 makes section 266 of title 10, relating to the composition of boards for appointment, promotion, demotion and involuntary release of Reserves, subject to the provisions of chapter 48.

Section 8 amends section 1161 of title 10, relating to dismissals of commissioned officers, to provide that no commissioned officer may be discharged for reasons of misconduct, unfitness, or security under conditions other than honorable, except pursuant to chapter 48.

Sections 9–11 amend sections 1161–1165 of title 10 to make discharges under those provisions subject to provisions of chapter 48.

Section 12 amends section 1166 of title 10 to require that in actions considering the separation of regular warrant officers the burden of justifying the separation is on the government.

Section 13 amends sections 3781, 3782, 3783 and 3785 of title 10 to require that in the proceedings of selection boards, boards of inquiry, and boards of review considering the removal of regular commissioned officers because of substandard performance of duty, the burden of justifying the removal is on the government. All rights and procedures set forth in chapter 48 govern those proceedings.

Sections 14–15 make similar changes with respect to such boards considering the removal of general officers.

Sections 16–20 make similar changes in the sections of title 10 concerning analogous proceedings in the Navy, Marine Corps, and the Air Force.

Section 21 amends sections 321–323, and 325 of title 14, United States Code, to make similar changes in analogous proceedings in the Coast Guard.

Section 22 provides that the amendments made by the Act are to be effective on the first day of the sixth calendar month following the month in which it is enacted.

By Mr. HUMPHREY:

S.J. Res. 169. A joint resolution to provide for a feasibility study and to accept a gift from the U.S. Capitol Historical Society. Referred to the Committee on Public Works.

Mr. HUMPHREY. Mr. President, I am introducing today a joint resolution which would provide for the authorization of a feasibility study to determine the desirability of installing within the U.S. Capitol grounds all items of equipment and other facilities required for a sound and light performance. The study would be paid for by the U.S. Capitol Historical Society, and reviewed by the Architect of the Capitol.

A companion resolution has been introduced in the U.S. House of Representatives, sponsored by Congressmen O'NEILL, GERALD FORD, MCFALL, ANDERSON of Illinois, PICKLE, STEPHENS and PETTIS. The resolution was referred to the Committee on Public Works and hearings have been scheduled for November 14.

Mr. President, towns, cities, counties, and States throughout the country are planning activities to commemorate the country's 200th anniversary. A sound and light show as described in this resolution would be a fitting way of having the U.S. Capitol participate in the celebration. The show would be seen by many thousands of people who will visit Washington during the 1976 Bicentennial celebration.

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

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

S.J. RES. 169

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding any other provision of law, the United States Capitol Historical Society is authorized, under direction of the Architect of the Capitol, to prepare a feasibilty study to determine the desirability of installing within the United States Capitol Grounds, at the east front of the United States Capitol, all items of equipment and other facilities required for a sound and light performance, consisting of an interplay of light, music, narrative, and sound effects (without the use of live actors), which, when projected onto the imposing facade of the east front of the United States Capitol, will re-create the evolution of American history, based on a foundation of thorough historical research, subject to the following conditions:

(1) Such study and all expenditures connected therewith will be borne by the United States Capitol Historical Society.

(2) Upon completion of such study, the United States Capitol Historical Society, at its expense, will furnish the Architect of the Capitol a report detailing the results of such study, installations and programs proposed, and estimates of cost required to implement such project without expense to the United States, including maintenance and operating expenses.

(3) The project may not be implemented, beyond the report stage, except as provided in Section 2 hereof.

Sec. 2. The Architect of the Capitol shall review such report and submit the same, with his recommendations, to the Speaker and majority and minority leaders of the House of Representatives and to the majority and minority leaders of the Senate.

If the project, as presented, with or without modifications, meets with the approval of such House and Senate officials, the Architect of the Capitol, notwithstanding any other provision of law, is authorized after such approval—

(1) To accept in the name of the United States from the United States Capitol Historical Society, as a gift, such sum or sums

as may be required to further implement such project, and such sum or sums when received, shall be credited as an addition to the appropriation account "Capitol Buildings, Architect of the Capitol".

(2) Subject to Section 3 hereof, to expend such sum or sums for all items of equipment and other facilities required for the sound and light performance, and for any other items in connection therewith.

Sec. 3. The Architect of the Capitol, under the direction of the House and Senate officials designated in Section 2 hereof, is authorized to enter into contracts and to incur such other obligations and make such expenditures as may be necessary to carry out the provisions of said Section 2.

Sec. 4. Sums received under this joint resolution, when credited as an addition to the appropriation account "Capitol Buildings, Architect of the Capitol", shall be available for expenditure and shall remain available until expended. Following completion of the installation, such sums may thereafter be used by the Architect of the Capitol, in whole or part, to defray any expenses which he may incur for maintenance and operation.

By Mr. HUMPHREY:

S.J. Res. 170. A joint resolution to amend the Export Administration Act of 1969 to protect the domestic economy from the excessive drain of scarce commodities; to continue food commitments to needy nations in times of short supply; to reduce the serious inflationary impact of abnormal foreign demand; and to authorize a validated export licensing system. Referred to the Committee on Banking, Housing and Urban Affairs.

EXPORT CONTROL AMENDMENTS

Mr. HUMPHREY. Mr. President, today I am introducing a series of amendments to the Export Administration Act of 1969, as amended, which I believe are both urgently needed and which address some of the more important shortcomings, in my judgment, of existing law.

While I believe the entire act of 1969 needs review and revision, I do not believe now is the best time for that type of comprehensive review and change. Rather, I believe that certain limited changes should be made in the act now, and that Congress should hold off on other changes until early next year when renewal of the entire act will have to be considered.

The joint resolution I am introducing would provide for the following: First, it would partially relax present tight requirements for imposing export controls, as it relates to agricultural commodities only. It would not change current requirements of existing laws relating to nonagricultural commodities, articles, or goods. In the case of agricultural commodities, my bill would provide that either "abnormal foreign demand" or "domestic inflationary pressure" plus evidence of "shortages within the United States, as certified by the Secretary of Agriculture" would be required evidence before the executive branch could impose any type of export controls involving the actual curtailment of such exports.

Presently, all three elements—abnormal foreign demand, domestic inflationary pressure, and domestic shortages as certified to by the Secretary of Agriculture—must simultaneously be present before any type of export control action can be taken regarding agricultural commodities, whether such action be limited to initiation of a 100-percent export licensing system or extended to a 100-percent embargo.

In my judgment, requiring that all of these elements be present before any export control action can be taken is too stringent. Such a requirement unduly ties the hands of the Executive in taking such action in a timely manner when needed. It forces the Executive to wait too long before any meaningful action can be taken to protect American consumers and users in times of sharp drawdowns in U.S. supplies made available for export.

While I am very much opposed to placing any limits on what we export from the United States as a matter of general rule, I also recognize that there may be times of unusual condition, when some limits may have to be imposed to protect U.S. consumers and to provide for equitable sharing of available supplies among foreign buyers. While I subscribe to imposing certain limits on the Executive in the exercise of such authority—I also believe that making those requirements too severe can do as much damage as making them too loose or too easy to impose.

Second, my bill would provide the Executive with authority to continue to make food and agricultural export shipments to needy nations in times when export constraints are being imposed on such commodities generally. During Senate consideration of the Foreign Assistance Act of 1973 (S. 2335) an amendment of mine was adopted which will permit the Secretary of Agriculture to continue to make available to needy nations some of our Nation's exportable supplies of agricultural commodities even in times of short supply generally. The provisions I am providing in my bill today are designed to reinforce my amendment to section 401 of the Agricultural Trade Development and Assistance Act of 1954, now embodied in S. 2335, Under present law, anytime agricultural commodities are found to be in short supply they cannot be made available to needy nations under Public Law 480. However, under the amendment now embodied in S. 2335 and the amendment I am now offering to the Export Administration Act, our Government could continue to make needed supplies of agricultural commodities available to such nations even during periods when export constraints are being imposed generally. Failure to make these particular changes in existing law will mean that the neediest nations of the world will be cut off from food aid shipments when they most need them; namely, during periods when they are in short world supply, and when, due to such short supply, prices for them are the highest. During our Nation's recent export embargo on soybeans, all Public Law 480 shipments of soybean oil had to be halted, which created severe hardships on many poor nations that depended and needed such export shipments to feed their people.

The third, and I believe the most important amendment contained in the bill I am introducing today, is an amendment which would provide the Secretary of Commerce with the authority to initiate a 100-percent validated export licensing system anytime the President anticipates a short or tightening supply of any commodity or good. Again, under existing law, even the imposition of a 100-percent export licensing system would require that the three elements I mentioned earlier would have to be evident before such action could be taken regarding any agricultural commodity—only abnormal foreign demand and domestic inflationary pressure would have to be evident in the case of nonagricultural goods or commodities.

By giving the Secretary of Commerce greater flexibility to impose a 100-percent licensing system, I believe the following objectives could be achieved:

First, earlier action could be taken by the Executive through such a licensing system, to obtain hard and timely data on export shipments, thus giving him "facts" rather than "estimates" of what is occurring in that regard, and

Second, in the event that factual data on export shipments produced through the imposition of such a licensing system indicated a movement toward severe shortages developing, this data could be used by the executive branch either to exhort foreign buyers to voluntarily constrain their purchases, or—failing to get them to do so—used to document to the world the necessity of imposing some level of constraints on continued exports.

As the term implies, a 100-percent licensing system would not in any way permit the Executive to curtail exports, or negate export contracts already entered into. But, imposition of such a system would permit the Executive to get an early handle on what is occurring with respect to exports anytime a tight supply situation may be in the offing due to various United States or world supply-demand conditions. I believe had the Executive had this licensing flexibility earlier this year it could have avoided alto-together the export embargo it imposed recently on soybeans and other high protein food and feed supplies. Having had such authority earlier, it could have, in my judgment, also have avoided the negation of many export contracts that already were consummated by exporters at the time of the imposition of embargoes.

In my judgment, if we are to avoid a repeat of those developments in the future, the Executive must be given greater flexibility in this regard as it relates to agricultural commodities.

Mr. President, I have given this entire matter of export controls a great deal of thought. The bill I am introducing today reflects what I believe should be done now to better protect both the U.S. consumer and the foreign buyers against any future periodic shortage that might occur relating to U.S. exportable supplies of goods and services.

The United States must restore its integrity as a reliable supplier in world markets. It must also clarify its commitment to the poorer nations of the world that by necessity must continue to rely upon us to help them meet their emergency needs in times of short sup-

ply. And our nation must provide for a better system of procedure by which it can protect its own consumers and foreign buyers against short supplies of essential goods or commodities. The changes embodied in the bill I am introducing today in my judgment would help us as a nation to achieve those objectives. And that is not to say that there are not other steps that can or should be taken to insure that adequate supplies of these essential commodities are always made available whether for domestic or foreign use. For instance, the establishment of both a United States and international grain reserve system could greatly minimize the need for export controls in times of future production downturns in United States or world agricultural supplies. Also, improved informational exchanges among nations regarding production and inventories of essential commodities could probably greatly reduce overbuying practices in times of short supply.

On July 30, 1973, the Subcommittee on Foreign Agricultural Policy, of which I serve as chairman, issued a special report on the question of export control policy following hearings we held on the subject. The subcommittee in its report outlined a set of guidelines which it felt should be followed with respect to export control policy. I request unanimous consent, Mr. President, that those guidelines be printed at this point in the RECORD.

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

CONCLUSIONS AND RECOMMENDATIONS OF THE SUBCOMMITTEE ON FOREIGN AGRICULTURAL POLICY WITH RESPECT TO EXPORT CONTROLS

Export controls are not something which a nation can or should impose casually. Such controls necessarily have an impact on economic conditions and well-being in foreign countries as well as within the nation imposing them. As a responsible economic power, the United States must take such an impact into account and must make sure that the measures taken are consistent with its international obligations, particularly those stipulated under such agreements as that of the General Agreement on Tariffs and Trade (GATT).

Changing economic conditions—particularly the prevalence of full employment with inflation, rather than widespread unemployment and deflation—has, today, brought the question of the dependability of sources of supply toward the center of the stage. Clearly, any threat to foreign sources of supply raises real economic problems for countries increasingly dependent on such sources for their economic well-being.

The recent imposition of export controls by the United States, particularly those on exports of soybeans, could raise serious economic problems for some foreign countries and adversely affect the degree to which they view the United States as a responsible economic partner and dependable military ally.

Proposals to regulate softwood log and lumber exports, no matter how well intentioned, will not cure the problem they seek to address at home. Even more they pave the way for other nations applying these same principles to us on other raw commodities we seek and need. Such proposals that deal only with demand and do not recognize broader issues of supply, treat symptoms not causes.

To avoid a retreat to the destructive economic nationalism of the 1930's, the United States should take the lead in keeping the use of export controls to a minimum and, when the use becomes essential, apply such controls in a way which takes full and sympathetic account of the implications of the controls on all importing countries.

More specifically, we recommend that the Executive Branch take the initiative in proposing to the OECD and the GATT a new set of rules governing export controls. The substance of such rules would be as follows:

1. Governments have an obligation to avoid where possible and otherwise to foresee the development of situations requiring export controls.

The implications of this principle are that better methods of reporting and forecasting are needed. While this is essentially a task for national governments, international organizations, such as GATT, the OECD, and the U.N. Food and Agriculture Organization, have a role to play.

One further implication of this principle is that it may be necessary for the nations of the world to develop and maintain their own system of *reserve stocks* to meet their domestic emergency needs as well as to provide at least some minimum capability to supply regular customers. Until recently, the United States had such stocks. But this is no longer the case. Thus, serious consideration should be given both by the United States and other nations of the world to the rebuilding and financing of such stocks to deal with crop failures at home and as have been experienced in Africa and South Asia and such as other areas of the world the past two years.

2. Related to the first principle above, as early as possible, the country considering the imposition of export controls should *consult beforehand* with the importing nations. Such consultations would have the following objectives:

(a) To exchange information on both supply and demand of the commodity.

(b) To get advice on what to do about the potential shortfall.

(c) To coordinate and improve production policies if this could usefully reduce the burden of controls.

(d) Where appropriate, to agree to joint action on both production and allocation of scarce supplies.

(e) Whenever possible, before imposition of mandatory export controls, "voluntary agreements" should be sought.

3. Export controls—like increased restrictions on imports—should be permitted only under *special circumstances* and then only for a *temporary* period of time.

The special circumstances would be limited primarily to a supply failure, at home or abroad, putting extraordinary pressure on domestic availabilities.

4. Export controls should treat all nations equitably. This principle has several implications:

(a) Each nation should be entitled to its historic share of the available supply.

(b) In addition, provision should be made for new customers. (For example, the Soviet Union and China have recently become importers of grain).

(c) Special consideration should be given to sharing available supplies—especially food supplies—with poorer nations, who often must rely on other nations to obtain needed imports on either a grant or concessional sale basis.

(d) Finally, and perhaps most important, the country applying the export controls should also *limit domestic consumption* of the product in a reasonable proportion to the curtailment of foreign availabilities.

In the judgment of the Subcommittee, none of the bills now pending before Congress relating to export control authority effectively address themselves to the above stated principles. Some of these bills (S. 1033 and H.R. 8547) are too restrictive and would likely be difficult to administer. S. 2053, on the other hand is too broad, leaving almost entirely up to the Executive when, and under what conditions, export controls might be imposed. Furthermore S. 2053, contains no monitoring and forecasting requirements regarding available supplies. Nor does it make clear that preconsultation with foreign buyers should be a requirement prior to the imposition of such controls. And finally, neither S. 2053 nor H.R. 8547 provide specific language to insure that countries dependent upon us for obtaining needed supplies of food commodities either on a grant or concessional sale basis will be guaranteed any equitable sharing or treatment whenever export controls are invoked.

As a partner in the world community of nations, the Subcommittee believes that the matter of developing rules for governing export controls should be a matter for that entire community to decide and not to be legislated on individually by each nation. While the United States today may feel compelled to limit the exportation of soybeans or logs to protect domestic users of those products from shortages caused by our own nation's mismanagement or miscalculations, tomorrow such action may be used by other nations as a basis or precedent for limiting exports of such critical important products such as petroleum to the United States.

Therefore the Subcommittee recommends that the Executive Branch be authorized and directed to initiate formal consideration of these matters, within GATT and OECD with the understanding that whatever rules are agreed upon under such agreement will be subject to ratification by Congress. Similar efforts should be initiated by the United States regarding this matter with non-OECD or non-GATT member nations such as the Soviet Union on which our nation may become somewhat dependent in future years regarding selected materials and commodities such as gas and oil.

Mr. HUMPHREY. Mr. President, I also would like to take this opportunity to urge the Senate Committee on Banking, Housing and Urban Affairs to give early consideration to my bill. In drafting this legislation, I have consulted directly with appropriate officials of the executive branch and many others. Those consultations have convinced me of the urgency of providing the executive with added but limited flexibility provided in my bill.

For instance, I am convinced that the executive should have a 100-percent validated export licensing system operating now with respect to U.S. fertilizer export shipments.

Similar action may also be required with respect to U.S. wheat export shipments if weekly export shipments continue at current rates. Cotton export shipments may also have to be subjected to such licensing if a resurgence of recent export demand occurs.

To summarize, Mr. President, I believe early action by Congress is called for regarding the adoption of the type of amendments contained in my bill relating to export control authority. Continued delay in dealing with these important questions may precipitate additional rounds of disruptive export constraints if existing law is not soon amended.

Mr. President, I ask unanimous consent that the full text of the measure I am introducing today be printed at this point in the RECORD.

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

S.J. RES. 170

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Emergency Export Administration Act Amendments of 1973".

Sec. 2. Clause (A) of section 3 (2) of the Export Administration Act of 1969 is amended by striking out the comma at the end of such clause and inserting in lieu thereof the following: "in the case of nonagricultural commodities, goods, articles or technology, and to the extent necessary to protect the domestic economy from the excessive drain of scarce materials or to reduce the serious inflationary impact of abnormal foreign demand in the case of agricultural commodities.".

Sec. 3. Section 4 of the Export Administration Act of 1969 is amended by adding at the end thereof the following new subsections:

"(f) No action taken by the Secretary of Commerce with the approval of the Secretary of Agriculture under this Act shall be construed to limit the authority of the President to sell or otherwise dispose of any agricultural commodity under the Agricultural Trade Development and Assistance Act of 1954 if such sale or other disposition is made to a friendly foreign country and is determined by the President to be necessary to further significantly the foreign policy of the United States and to fulfill its international responsibilities.

"(g)(1) Notwithstanding any other provision of this Act the Secretary of Commerce is authorized to initiate a 100 percent validated export licensing system with respect to any article, material, or supply whenever the President determines the initiation of such systems with respect to such article, material, or supply is necessary to protect the United States against a future shortage thereof or to protect the economy of the United States. The Secretary is also authorized to initiate, either in conjunction with or independent of a 100 percent validated export licensing system, any reporting system he deems appropriate with respect to any article, material, or supply.

"(2) As used in paragraph (1) of this subsection the term '100 percent validated export licensing system' means a licensing system under which (A) the Secretary of Commerce authorizes the exportation of a quantity of any article, material, or supply only when the application for a license to export such article, material, or supply is accompanied by a certified copy of a contract for the export from the United States of a quantity of such article, material, or supply equal to the quantity of such article, material, or supply for which the export license is requested, and (B) licenses are issued, unless otherwise provided by the Secretary of Commerce, to cover exports anticipated for the current month or the current and immediate suceeding month."

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 1326

At the request of Mr. WILLIAMS, the Senator from Connecticut (Mr. RIBICOFF) was added as a cosponsor of S. 1326, the Hemophilia Act of 1973.

S. 1844

At the request of Mr. ABOUREZK, the Senator from Vermont (Mr. STAFFORD) was added as a cosponsor of S. 1844, the national folklife preservation bill.

S. 2589

At the request of Mr. ROBERT C. BYRD (for Mr. JACKSON), the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 2589, the National Emergency Petroleum Act.

S. 2598

At the request of Mr. DOMENICI, the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 2598, the Car Pool Incentives Act of 1973.

S. 2652

At the request of Mr. ROBERT C. BYRD (for Mr. JACKSON), the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. 2652, the Coal Conversion Act of 1973.

SENATE RESOLUTION 200—SUBMISSION OF A RESOLUTION RELATING TO THE NATIONAL SECURITY OF THE UNITED STATES

(Considered and agreed to.)

Mr. HUMPHREY (for himself, Mr. AIKEN, Mr. BENTSEN, Mr. ROBERT C. BYRD, Mr. HUGH SCOTT, Mr. JAVITS, Mr. MCGEE, Mr. NUNN, Mr. INOUYE, Mr. MAGNUSON, Mr. BUCKLEY, Mr. MCINTYRE, Mr. BAKER, Mr. BROOKE, Mr. BURDICK, Mr. CASE, Mr. GURNEY, Mr. NELSON, Mr. PERCY, Mr. PACKWOOD, Mr. FONG, Mr. PROXMIRE, Mr. STAFFORD, Mr. STEVENSON, Mr. TAFT, Mr. YOUNG, Mr. PEARSON, Mr. GRIFFIN, Mr. MONDALE, and Mr. TOWER) submitted the above resolution.

(The text of the resolution and the remarks Senator HUMPHREY made on its submission are printed earlier in the RECORD at the point where the resolution was debated and agreed to.)

THE WATER POLLUTION CONTROL AMENDMENTS OF 1973—AMENDMENT

AMENDMENT NO. 646

(Ordered to be printed and referred to the Committee on Public Works.)

Mr. STEVENSON. Mr. President, last week I was pleased to join Senators GURNEY and CHILES as a cosponsor of S. 2531, a bill to amend the Water Pollution Control Act. S. 2531 would allow any community to begin construction of waste treatment facilities, with the assurance that it would qualify for future Federal reimbursement. This bill would be retroactive to January 1, 1973. Today, I am introducing an amendment to S. 2531 which would simply move the January 1, 1973, effective date back to July 1, 1972.

Just over a year ago, in October of 1972, the Congress enacted—over a Presidential veto—Public Law 92-500, the Water Pollution Control Act Amendments of 1972. The stated purpose of that act is to "restore and maintain the chemical, physical, and biological integrity of our Nation's waters." This was, and still is, a firm commitment. To accomplish this goal, Congress authorized $18 billion to be spent over a 3-year period for the construction of municipal waste treatment facilities.

It has become all too apparent that the administration does not share in this commitment. When Congress passed the amendments—over the President's veto—the President then proceeded to impound half of the $18 billion. The President's action is an attempt to accomplish by Executive fiat what could not be accomplished by veto.

The President's veto, and now his impoundment of congressionally appropriated funds, are a matter of record. And that record speaks for itself to all who are concerned with preserving the integrity of our Nation's waters. Mr. Nixon has said to the communities of the Nation that, despite a congressional mandate, the construction of sorely needed waste treatment facilities is not a high priority.

The President's action has undermined the intent of the law. Under this legislation, the Federal share in the cost of construction of waste treatment facilities is 75 percent. In order to qualify for these funds, communities must apply to the U.S. Environmental Protection Agency before any phase of the project is begun. USEPA disburses funds to local governments only after an application has been approved.

This procedure would work well if the full $18 billion provided by the Congress were still available. But as of now, many communities face an impossible situation in the absence of the full funding intended by the Congress.

Many local governments could proceed with the construction of their facilities immediately. They are even willing to commit local resources to cover the 75-percent Federal share of the cost of construction. The full weight of such local action is obvious when one considers how financially pressed many of our communities already are.

These communities realize that the problem of water pollution is serious. They understand that immediate action must be taken in order to prevent our already polluted waters from becoming worse. They should be commended.

Instead of commendation, the local governments are being penalized. Any community that begins construction now, without a firm commitment of Federal funding, waives any right to future Federal assistance.

I know that there are several communities in Illinois that have already forfeited their right to Federal assistance, simply because they proceeded to construct facilities without the benefit of EPA approval for the 75-percent funding. This is a most inequitable way to treat communities that are making a good faith effort to eliminate pollution.

Other communities cannot afford the luxury of forfeiting Federal assistance. They are forced to wait several months, or even years, for a grant from the USEPA. During that time, the waters in a given community remain polluted, or become more polluted. Meanwhile, construction costs continue to rise at an alarming rate. In the end, it will cost the Federal Government far more than if these communities were allowed to proceed with construction immediately.

To illustrate the problem in my own State of Illinois, I ask unanimous consent that two statements be placed in the RECORD at the conclusion of my remarks. The first is testimony by Mr. John Marco,

the acting director of the Illinois Environmental Protection Agency, before the House Subcommittee on Water Resources on October 30. The second item to be submitted is a statement on the same subject by Governor Daniel Walker.

I believe that S. 2531 is a partial answer to this dilemma. This bill would at least allow communities to be eligible for future Federal reimbursement, even if they begin construction of waste treatment facilities now. It would only be a "partial answer" because it would not guarantee such reimbursement. The final decision on such reimbursement would await the EPA approval of an application.

As introduced last week, however, S. 2531 would still leave a slight time gap whereby certain communities might be precluded from eligibility for reimbursement. Public Law 92–500 already provides for reimbursement to communities that began construction of their facilities before June 30, 1972. And S. 2531 would provide reimbursement for facilities begun on or after January 1, 1973.

To correct this slight oversight, I am proposing an amendment to S. 2531. The amendment would simply move the effective date of the reimbursement eligibility feature in S. 2531 from January 1, 1973 to July 1, 1972. Any gap in the reimbursement feature, therefore, would be eliminated.

Mr. President, the need for a reimbursement feature is clear. The construction of municipal waste treatment facilities is an expensive undertaking. Many communities simply do not have that kind of money available. It is unjust for the Federal Government to set stringent antipollution standards, and then deny local governments the financial assistance needed to meet those standards.

It is up to the Congress to take the initiative. A campaign to clean up our waters is ineffectual in the absence of massive Federal spending. Any sign of faltering on the part of the Federal Government creates a breach of faith between the Federal Government and the local officials who must meet the water quality standards set by the legislation. I believe that S. 2531, and my proposed amendment, can only serve to reaffirm our commitment to clean water. I hope that favorable action on these proposals will be forthcoming in the near future.

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

STATEMENT OF JOHN M. MARCO, ACTING DIRECTOR, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

Mr. Chairman: I appreciate the opportunity to testify before this Committee on the survey of needs for construction of municipal water pollution control facilities. As you know, the survey was conducted by the states at the request of the United States Environmental Protection Agency.

This survey is required by Public Law 92–500, the Federal Water Pollution Control Act Amendments of 1972, and was intended to provide state-by-state information on the amount of funds needed by local and state government.

Section 205(a) of the 1972 Amendments suggests that the dollar needs by this survey will determine allotment among the states of Fiscal Year 1975 and Fiscal Year 1976 construction grant appropriations. Congress must decide soon if it wishes to affirm this tentative decision expressed in the 1972 law.

I will discuss the findings of the 1973 Needs Survey in Illinois, the adequacy of the Survey findings as an indication of total needs in Illinois, and the desirability of using the survey results for allotment of grant dollars to the states. I then will offer general comments on the 1972 Amendments and their implementation by the Nixon Administration.

In 1970, the estimated cost for needed publicly owned wastewater treatment facilities in Illinois was $3 billion. As a result of the 1973 Needs Survey, this estimate has been increased to $4.1 billion. At the current rate of allocation of Federal funds by the Nixon Administration, even without inflation, at least 17 years will pass before these Federal promises are fulfilled. Such foot-dragging by the Administration is clearly inconsistent with the goal of eliminating water pollution due to municipal wastes by 1983.

But beyond this, the 1973 Needs Survey completely ignored several important classes of water pollution problems whose rectification will be eligible for Federal grant assistance under present regulations and which will be necessary if we are to achieve the water quality objectives set out in the Federal Law. I cite the following specific examples:

1. Treatment or other control measures to eliminate pollutants carried into our waters by stormwater runoff from urban areas.

2. Control of acid drainage from mine-related sources located on publicly owned land, such as the many county and township roads in Southern Illinois which were constructed using acid-forming spoil material from nearby mines.

3. Thermal discharges from publicly owned electric utility power plants.

While we do not yet have total cost estimates for dealing with these problems, it is certain that the total dollar figure for Illinois' grant needs will increase very substantialy when these and other "non-traditional" classes of projects are fully considered.

The results of the 1973 Needs Survey must be viewed with skepticism for another reason. The Illinois Environmental Protection Agency received its first guidelines from the United States Environmental Protection Agency concerning the Survey on May 30, 1973. The Survey questionnaire forms were not received for distribution until June 5. The deadline by which USEPA insisted the completed survey forms must be returned to them was July 20. Thus, we were allowed only 51 days to plan and carry out the completion of 883 complicated survey questionnaires, 34 pages each, for 735 different units of government. To accomplish this task, it was necessary for the entire field surveillance staff of our Division of Water Pollution Control to devote virtually full time to the survey for four weeks to the neglect of almost all other duties.

Needless to say, the quality of our Survey results very likely reflects the amount of time available to us for planning and execution of the work I have just described.

I urge the Congress to devise an alternate method for alloting grant funds because of the inherent disadvantages of any estimate of "needs" as a basis for allocating Federal grant appropriations and because of the inadequacies of the 1973 Needs Survey I have just described. The disadvantages of a needs-based formula are:

1. States which already have achieved substantial progress in the control of water pollution are penalized, while states which have done little to solve their problems themselves are rewarded by the relatively larger shares of Federal dollars they receive.

2. State programs of grant assistance are discouraged, as are local financial contributions at a level greater than the minimum required 25 percent. This is because each extra dollar contributed by state or local government reduces the outstanding eligible needs for facilities by a dollar, and consequently reduces the state's future share of available Federal funds.

3. A needs-based formula encourages the states to inflate construction cost estimates and to ignore nonconstruction alternatives for solution of problems so that the maximum Federal dollars will be made available each year for construction grants.

Alternate bases for allotting grant funds to the states which I suggest Congress may wish to consider are:

Total population;

Urban population;

Population adjusted for *per capita* personal income;

The Revenue Sharing formula, or some modification of it.

We are all aware of the impoundment of municipal construction grant funds by President Nixon. This impoundment can only work to the detriment of an effective water pollution control program. As long as the funds are impounded, and as long as inflation increases costs we will continue to watch helplessly while the pollution of our rivers and streams remains beyond control. I do not need to dwell upon the effect of this policy on the water pollution control effort in Illinois; you are already cognizant of this. Rather, I wish to emphasize the importance of Congressional action to restore the provision allowing reimbursement of communities who proceed with construction to solve their problems without waiting for Federal grant funds. Now without this important reimbursement provision, we have an absurd situation where many communities are ready to initiate construction of needed facilities, but cannot proceed because to do so will forever foreclose hope of obtaining Federal construction grant assistance to which they are entitled.

Furthermore, state-operated revolving funds, conceived to allow pre-financing of needed projects so construction can proceed as rapidly as possible without the constraint of a Federal grant priority list, cannot function because the flow of Federal reimbursement dollars into the revolving fund is blocked under the present law.

I urge Congress to take immediate action to adopt amendments to Public Law 92–500 similar to those proposed in Senate Bill 2531, so that those far-sighted communities who are ready to proceed with construction may do so without further delay.

There is another roadblock, in addition to impoundment of grant funds, for which the Congress must share some of the responsibility. Section 201(g)(3) of the 1972 Amendments requires demonstration to the United States Environmental Protection Agency that a reduction of excessive infiltration or inflow of clear water to a sewer system is a less economical alternative than construction of large facilities to treat this excessive flow. This requirement is based on a sound principal with which we heartily agree. Unfortunately, though, the infiltration/inflow study requirement has guaranteed that even communities with high priority for available grant funds will, for the most part, be unable to initiate construction this fiscal year.

Sewer system studies must first be completed, requiring a year's time, or more, in

order to establish the most economical combination of sewer system rehabilitation work and treatment facility construction. The cost of the studies themselves will be substantial, offsetting to a large degree any cost savings the studies achieve.

More importantly, the infiltration/inflow study requirement will introduce yet another year's delay in construction of even our highest priority projects.

I urge you to reconsider whether the dollars which may be saved by this requirement justify the additional year's delay in construction of critically needed facilities. In my opnion this provision of the law should be changed to apply only to projects where flow data strongly suggest that excessive infiltration/inflow may be present.

As though the problems with the Needs Survey and impoundment and infiltration/inflow studies have not introduced enough disruption into state programs for control of water pollution, the USEPA now insists that all state activities for controlling water pollution take a back seat to the issuance of all National Pollutant Discharge Elimination System permits by December 31, 1974. The presumption seems to be that no state has a viable permit program, and therefore issuance of Federal permits by the states must take precedence over all other activities.

Permits don't clean water! Treatment facilities do! The planning and grants needed to assist in the building of these treatment facilities are being neglected in favor of the new Federal permit program.

Illinois has had a workable, effective, and enforceable permit program in operation for many years. It includes all the best features of the Federal permit system. It is an essential part of our water pollution control program. But a permit program cannot and will not achieve our water quality objectives unless accompanied by other critical program elements, such as planning, grants, and operator assistance.

Federal regulations will force Illinois to spend an estimated $2 million just to rewrite permits already issued by the state to make them NPDES permits. Illinois taxpayers will not receive one additional mile of cleaner streams for this $2 million.

While Illinois supports the Federal permit program in concept, we believe a more deliberate approach to implementation is necessary. Specifically, we urge Congress to extend until December 31, 1975, the time available for issuance of NPDES permits in order that these permits may be given the careful consideration they deserve. This will also allow time for the water quality analysis and planning needed before we can issue permits that will be sufficiently stringent to control pollutional discharges, but will not impose unnecessary hardships on applicants.

Much of the difficulty Illinois is experiencing with implementation of the 1972 Amendments stems from the repeated lateness of the USEPA in issuing the regulations and guidelines necessary for the states to carry out the law. Virtually every important deadline for issuance of regulations has been missed by USEPA but in typical bureaucratic fashion, the states are expected to comply with every deadline or risk loss of Federal funds. We suggest Congress consider means of rectifying the hypocrisy of this situation.

Another aspect of the Nixon Administration's failure to comply with the letter and the spirit of the 1972 Amendments is the unbearable paperwork mentioned by Governor Walker. To illustrate the extent to which the Adminstration is ignoring the obligation placed upon it by Section 101(f), consider these two examples:

1. The Fiscal Year 1974 Program Plan submitted to USEPA by Illinois as required to obtain Federal grant funds is 1,015 pages in length, nearly 2½ times as long as the 441-page Fiscal Year 1973 Program Plan.

2. The proposal of the State of Michigan, outlining its plan for participation in the NPDES, a document prepared according to USEPA guidelines, is more than 600 pages in length.

It is clear that no one could read the mountains of paper being generated to meet Federal requirements, even if he had a reason to try. We are choking ourselves to death with documents.

Something must be done to reduce this mindless Federal appetite for paper if we are to succeed in restoring our waters to a clean and healthful condition.

In summary, we recommend Congress take the following action:

1. Adopt a basis other than the 1973 Needs Survey alone for allotment to the various states of grant funds for constructing municipal water pollution control facilities.

2. Amend Public Law 92–500 to allow reimbursement of communities which have the initiative to proceed with construction without waiting for Federal grant funds to be offered.

3. Amend Section 201(g)(3) of the Act to require infiltration/inflow studies only where there is clear evidence that such a study is needed.

4. Extend the time allowed for issuance of the first round of NPDES permits to December 31, 1975.

5. Require that the USEPA publish regulations and guidelines in a timely manner, and extend deadlines imposed upon the states whenever Federal guidance is delayed.

6. Consider measures to force compliance with Section 101(f) of the Act by the Nixon Administration so as to reduce needless paperwork.

Thank you for the opportunity to testify before this committee. Be assured we want to continue progressive, effective programs for control of water pollution in Illinois, but first we must have the freedom and the federal assistance promised under the new law.

STATEMENT OF DAN WALKER, GOVERNOR OF THE STATE OF ILLINOIS

OCTOBER 30, 1973.

Mr. CHAIRMAN: Thank you for the opportunity to testify concerning the Needs Survey.

I believe the Needs Survey, conducted by the states at the request of the United States Environmental Protection Agency, has determined point sources of pollution, but the survey has failed to consider several important types of water pollution problems confronting Illinois. Problems caused by acid mine waste and urban stormwater runoff are completely ignored, yet these are serious causes of water pollution in Illinois.

The people of Illinois are concerned about the quality of their rivers, streams and lakes and demonstrated that concern by approving a $750 million anti-pollution bond issue. The State bond money is being spent in coordination with the federal funds to assure a united anti-pollution effort. But that coordination has not been easy.

Illinois' efforts to assure cleaner waters have been thwarted by the impoundment of promised Federal dollars, and I include in the term "impoundment," defacto impoundment; that is, the long delay in issuing the federal regulations that would enable communities in Illinois to qualify for federal sewage treatment construction grants. Federal bureaucracy and contradictory regulations of the United States Environmental Protection Agency for implementing the Federal Water Pollution Control Act Amendments of 1972 have further hindered action on the pollution problems themselves. Due to these factors, sewage treatment construction has come to a standstill over the past year—not only in Illinois, but throughout the Midwest.

During the next three years I intend to reduce the mountains of paperwork which stand between governmental agencies and the people those agencies are supposed to serve. I ask your help in eliminating the unnecessary red tape with which the United States Environmental Protection Agency has bound our efforts to reduce water pollution in Illinois.

Congress could also help the states help themselves by amending Public Law 92–500 to allow future federal reimbursement and state pre-financing of municipal water pollution control facilities.

Illinois is willing—and able—to pre-finance construction costs for communities eligible for federal grants and ready to begin construction. If these communities begin construction now without an actual commitment of federal funds, they waive their rights to any such funds. Pre-financing by the State with future reimbursement by the federal government would allow projects to start now. With such an approach, concrete results could be achieved sooner.

I contend that clean water can best be accomplished if the states and the federal government agree on the goals and the timetable for achievement of those goals, but then the states should have the freedom to tailor their individual programs to meet the agreed goals.

I have asked Mr. John M. Marco, Acting Director of the Illinois Environmental Protection Agency, to present more detailed testimony to the committee.

SOCIAL SECURITY AMENDMENTS OF 1973—AMENDMENT

AMENDMENT NO. 647

(Ordered to be printed and referred to the Committee on Finance.)

Mr. NELSON. Mr. President, I am offering an amendment to H.R. 3153 as amended by the Senate Finance Committee which would restore the present deduction allowed for State and local gasoline taxes, proposed to be eliminated by the committee, and offer in its stead a revision of the minimum tax which would disallow deductions for regular income taxes paid before preferred income is subject to the minimum tax. Whatever the merits of the proposed elimination of the deduction for State and local gasoline taxes, this proposal was not subject to any testimony or hearings before the Senate Finance Committee this year and was proposed by the committee principally as a revenue producing measure to pay for other proposed changes contained in H.R. 3153.

The revenue effect of these two amendments is almost identical. It is estimated that the revision of the minimum tax which I proposed will increase tax revenue by $580 million whereas elimination of the State and local gasoline tax deduction will increase revenues by $589 million. While their revenue effects are the same, the consequences for the ordinary American taxpayer are radically different. The minimum tax, even with the revisions I propose today, applies only to wealthy individuals who have more than $30,000 in preferred income each year, regardless of how much regular income they also have. The State and local gasoline tax deduction, on the other hand, is of benefit to low income Americans.

Mr. President, I ask unanimous consent to insert in the CONGRESSIONAL REC-

ORD at this time a table showing the amount of deductions taken in 1972 for State and local gasoline taxes for various income tax brackets.

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

Income tax deductions taken for State and local gasoline taxes

Income tax bracket:	*Amount of deduction (in millions)*
$0–$3,000	1
3,000–5,000	7
5,000–7,000	27
7,000–10,000	83
10,000–15,000	165
15,000–20,000	136
20,000–50,000	147
50,000–100,000	19
100,000–over	6

Mr. NELSON. Mr. President, this table shows that individuals with taxable income of $20,000 or less receive the benefit of $419 million of the $589 million deducted for State and local gasoline tax. This amounts to 71.1 percent of the total amount deducted.

The committee proposal would therefore add substantially to the tax burden of low and average income taxpayers. It is much more equitable to raise additional revenues by taxing, income which escapes taxation entirely rather than adding to the tax burden of middle income Americans.

Probably nothing discredits the tax system more than the knowledge that many wealthy people are paying little or no income taxes. The Secretary of the Treasury heralded a "taxpayer revolt" when he disclosed that in 1967, 155 Americans with incomes of over $200,000 paid no Federal income tax and in fact 21 of them made incomes in excess of $1 million each. In 1969, some 300 individuals with incomes of more than $200,000 paid no Federal income tax.

In an attempt to correct, to a limited extent, this inequity Congress in 1969 established a minimum tax providing for a flat 10 percent tax rate on income that had escaped entirely being subject to tax. Congress enacted the minimum tax on tax preference income because, regardless of the individual merit of the provision which established such preferences, we did not want them to be pyramided by wealthy individuals to allow them to escape tax liability entirely.

It is not at all inconsistent to take the position that while certain tax subsidies may be desirable, a taxpayer who takes advantage of such subsidies in an excessive amount or who reduces his tax contribution to an insignificant amount should be required to include such excess in his tax base. The purpose of this amendment is not to reduce the amount of the tax subsidies except in those cases in which taxpayers take undue advantage of such subsidies through excessive manipulation of the tax code.

It is generally agreed, however, that the minimum tax has not achieved its stated purpose that every wealthy individual and corporation should pay at least a minimum tax on his preference income.

In 1970, the first year when the minimum tax was in effect, 106 individuals with adjusted gross incomes exceeding $200,000 still paid no Federal income tax. Incredibly, three taxpayers with adjusted gross incomes of more than $1 million each paid no income tax at all. In 1971, 276 taxpayers with incomes over $100,000 paid no Federal income tax at all.

The effective tax rate in 1970 for individuals who paid the minimum tax on their preferred income was 4 percent rather than the statutory rate of 10 percent. In 1971, individuals paid $163 million in minimum tax on total preference income of $6.2 billion for an overall effective tax rate of 2.63 percent and 98,000 individuals reported tax preferences but only 24,000 of them actually paid a minimum tax on their preference income for an effective rate of 4.13 percent.

In 1970, 6,000 corporations paid $280 million in minimum tax on preference income of $4.1 billion for an effective rate of 6.7 percent; 75,000 corporations, however, paid no minimum tax on preference income of $1.6 billion for an overall effective minimum tax rate of 4.8 percent.

When the minimum tax was enacted, it was estimated that it would raise $590 million in calendar year 1970, $600 million in 1972, and $635 million in the long run. In fact, actual revenue gains are far below these estimates. In 1970, it raised only $117 million from individuals and $280 million from corporations. In 1971, it raised only $163 million from individuals.

The minimum tax has failed in part because of crippling amendments adopted on the Senate floor allowing deductions for other income taxes paid.

Although there were several different minimum tax proposals submitted to Congress, the one finally adopted was that of the Senate Finance Committee which applied a flat 5 percent tax rate on all preference income in excess of $30,000. The Finance Committee bill was amended on the Senate floor by an amendment offered by Senator Miller of Iowa to raise the rate from 5 percent to 10 percent and to allow a deduction of other Federal taxes paid. A year later, in December 1970, a further floor amendment by Senator Miller, was passed under which this minimum tax exclusion was broadened to incorporate a 7-year carryover of regular income tax liability to the extent not initially utilized to offset tax preferences. It is this deduction of other Federal taxes paid that my amendment would eliminate.

The basic rationale for the minimum tax is that it is needed because certain taxpayers have amassed certain items of income which are not included in their regular tax base. These excluded items stand apart from, and in addition to, the items normally taxed. The reason the taxpayer is subject to the minimum tax is that his effective tax is too low in relation to his real income due to the amount he received from tax preference items. To give him credit for the tax that he pays on his regular income defeats the purpose of the minimum tax. The tax on "regular" income is simply unrelated to the tax on excluded items of tax preference. It is illogical to establish a tax on the preferred income escaping taxation, and then allow a deduction for taxes paid on regular income.

The proposed amendment does not in any way change the structure or composition of the present minimum tax. It does not:

First, change or raise the statutory rate of 10 percent;

Second, reduce or eliminate the deduction of $30,000 presently available to every taxpayer before calculating income subject to the minimum tax;

Third, add a single new item of preference income to the base of the minimum tax, for example, intangible drilling and development cost as has been proposed from time to time.

This amendment merely tries to guarantee that the minimum tax achieve its stated goal and raise additional revenue not by taxing already overburdened average American taxpayers but by taxing forms of incomes that escape taxation entirely.

Mr. President, I ask unanimous consent to insert in the RECORD at this time a table describing the effect of existing minimum tax provisions and the Nelson proposals on three examples.

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

EXAMPLES OF THE EFFECT OF EXISTING MINIMUM TAX PROVISION AND NELSON PROPOSALS

(All examples involved married man with two children filing a joint return and assuming that itemized deductions amount to 10% of total income.)

CASE I

A has a $60,000 salary and $60,000 in capital gains;

Tax liability under present minimum tax is zero;

Tax liability under Nelson proposed minimum tax is also zero.

CASE II

B has a salary of $200,000 and other regular income of $400,000 and capital gains of $1 million;

Under present minimum tax law his tax liability is zero:

Preference income $500,000; regular taxes 621,880; preference income subject to minimum tax—0.

Under Nelson proposed minimum tax, his tax liability would be $47,000;

Preference income	$500,000
Deduction	−30,000
Total	470,000

Preferred income subject to Nelson's minimum tax proposal tax liability—$47,000.

CASE III

C has a salary of $300,000 and other regular income of $60,000 and capital gains of $2 million.

Under present minimum tax law, his tax liability is zero.

His regular tax liability is $1,080,880; preference income is $1,000,000; preference income subject to tax—0.

Under the Nelson minimum tax proposal:

Preference income	$1,000,000
30,000 deduction	−30,000
Total	970,000

Less 10 percent his tax liability would be $97,000.

TAX TREATMENT FOR MEMBERS OF ARMED FORCES—AMENDMENT

AMENDMENT NO. 648

(Ordered to be printed and referred to the Committee on Finance.)

Mr. TUNNEY. Mr. President, the amendment I am introducing today to H.R. 8214 parallels legislation introduced in the other body by my colleague from California, Congressman JAMES C. CORMAN. The purpose of this amendment is to permit a DISC in a controlled group to transfer the accounts receivable arising from its export transactions to a related financing subsidiary in that group and allow the financing subsidiary to qualify as a DISC even though it holds the transferred accounts receivable as its only assets. Present law allows a DISC to hold the accounts receivable it receives on the sales of its export property. This is the case even where the accounts receivable are the only assets of the selling corporation. Accounts receivable and evidences of indebtedness, however, can only be treated as qualified export assets for purposes of DISC status if they arose from transactions of the DISC itself. Because of a peculiarity in the present DISC provisions, if the DISC that sold the export property should transfer the accounts receivable from these transactions to a related financing corporation, the related financing corporation could not qualify for DISC treatment if these were the only assets it held. This distinction presents problems in those cases where a corporation may want to have its sales operations in one DISC and its financing operations in another DISC.

This amendment would simply allow the second, related financing corporation to hold these accounts receivable and qualify as a DISC. The Treasury Department has indicated that it does not object to its enactment and has stated that the tax consequences will be "insignificant."

I ask unanimous consent that this amendment be printed in the RECORD.

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

AMENDMENT NO. 648

At the end of the bill insert the following new section:

SEC. —. QUALIFIED EXPORT ASSETS.

(a) Qualified Export Assets of DISCs.—Section 993(b)(3) of the Internal Revenue Code of 1954 (relating to qualified export assets) is amended by striking out "such corporation" and inserting in lieu thereof "such corporation or of another corporation which is a DISC and which is a member of a controlled group which includes such corporation".

(b) The amendment made by this section shall apply with respect to taxable years beginning after December 31, 1973. Such amendment shall, at the election of the taxpayer made within ninety days after the date of the enactment of this provision, also apply to any taxable year beginning after December 31, 1971, and before January 1, 1974.

ADDITIONAL COSPONSORS OF AN AMENDMENT

AMENDMENT NO. 640

At the request of Mr. MUSKIE, the Senator from California (Mr. CRANSTON), the Senator from Florida (Mr. GURNEY), the Senator from Oregon (Mr. HATFIELD), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from New Mexico (Mr. MONTOYA) were added as cosponsors of amendment No. 640, intended to be proposed to H.R. 3153, a bill to amend the Social Security Act to make certain technical and conforming changes.

SENATOR RANDOLPH ANNOUNCES HEARING DATES FOR S. 2581, RANDOLPH-SHEPPARD ACT AMENDMENTS OF 1973

Mr. WILLIAMS. Mr. President, the Senator from West Virginia (Mr. RANDOLPH), chairman of the Subcommittee on the Handicapped, Committee on Labor and Public Welfare, has asked me to announce the commencement of hearings on S. 2581, the Randolph-Sheppard Act Amendments of 1973. The subcommittee intends to hold 3 days of hearings on this measure. The first 2 days are Friday, November 16, 1973, beginning at 11 a.m., and Monday, November 19, 1973, beginning at 10 a.m. The hearing location will be room 4200, Dirksen Office Building. It is anticipated that the third and final day of hearings will be in early December.

NOTICE OF HEARINGS ON INDIAN COMMISSIONER

Mr. JACKSON. Mr. President, I wish to announce that the Committee on Interior and Insular Affairs has scheduled hearings to consider the nomination of Mr. Morris Thompson for the post of Commissioner of the Bureau of Indian Affairs. The hearings will be held on November 14 at 10:00 a.m. in room 3110 of the Dirksen Senate Office Building and is open to the public.

The committee has received numerous requests from tribal leaders and others interested in testifying during Mr. Thompson's confirmation hearings. Unfortunately, we are unable to accommodate this number of witnesses at the November 14 hearings.

Because the Commissioner's post has remained open for approximately one year, and Indians and others are anxious to have a nominee confirmed and sworn in in order to bring a degree of stability to the Indian field, I shall direct the committee to concentrate its time on the question of Mr. Thompson's nomination for the Commissioner's post and, as an alternative to those desiring to present testimony, I shall direct that the hearing record remain open for a period of 2 weeks to receive written testimony from interested parties with the assurance that such testimony will become a part of the printed hearings.

I ask unanimous consent that the biographical sketch of the nominee be printed in the RECORD at this point.

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

BIOGRAPHICAL SKETCH OF MORRIS THOMPSON

President Nixon submitted the nomination of Morris Thompson to be Commissioner of the Bureau of Indian Affairs to the United States Senate on October 30, 1973.

Thompson was instrumental in formulating and implementing Indian policy as Assistant to the Secretary of the Interior from 1969 to 1971. In this position he assisted in developing the President's Indian message of 1970; was involved in the return of Blue Lake to the Taos Pueblo Indians; the return of Mt. Adams to the Yakima Indians, and he helped formulate the administration's position on the Alaska Native Claims Settlement Act.

For the past two years Morris Thompson has been Juneau Area Director, top line official for the Bureau of Indian Affairs in Alaska. In this capacity he has had full responsibility for administering the total range of Bureau programs with an annual budget of 40 million dollars and approximately 1200 employees. Significant activities include accomplishing a Tribal enrollment of well over 80,000 Alaska Natives within a two year deadline and implementing other Departmental and Bureau authorities relative to the Alaska Native Claims Settlement Act. Regular on-going Bureau programs and facilities in Alaska include 53 day schools, two Boarding schools, 5 field offices and a 10 ton cargo ship.

Thompson, an Athabascan Indian, at age 31 was the youngest man in BIA history to be named an Area Director. No, at 34 will be the youngest Commissioner when appointed.

From 1967 to 1969 he was Executive Secretary to the ten-man NORTH Commission. He was responsible for establishing policies and defining a comprehensive program to implement and promote the human and economic development of Northern Alaska. Additionally, he coordinated the activities for the Commission-economic research and evaluation of the work done by consulting firms—and acted as a liaison between State and Federal agencies.

Before accepting appointment to the NORTH Commission Thompson was Deputy Director of the Rural Development Agency for the State of Alaska. He assisted in the establishment of the Rural Affairs Commission which is a forum of Native leaders who advise the State administration on matters of policy regarding the Indian community. In his role as Deputy Director he also helped with the coordination of emergency relief programs created to alleviate disasters such as floods, fires, poor fishing seasons, etc.

Morris Thompson was born in 1939, in Tanana, Alaska, a community 150 miles west of Fairbanks on the Yukon River. Here he attended school through the eighth grade. During high school years he attended Mt. Edgecumbe BIA Boarding School, graduating as a member of the National Honor Society in 1959. For the next two years he attended the University of Alaska majoring in civil engineering with a minor in political science.

At this time BIA Employment Assistance was recruiting students interested in electronics technical training. Thompson took advantage of this opportunity and moved to Los Angeles, California, for training at RCA Institute. Here he met his future wife, Thelma Mayo from Fairbanks, Alaska, who was also in Los Angeles for a BIA training program.

Upon completing the Electronics course in 1963, he returned to Fairbanks, married Thelma, and worked as a technician at the RCA satellite tracking facility at Gilmore Creek near Fairbanks until 1967.

The Thompsons now have three daughters—Sheryl Lynn, age seven; Nicole Rae, three; and Allison May, 18 months.

Thompson has served on numerous boards and commissions during his career as a public servant including the Rural Affairs Commission, the Alaska Village Electrification Co-op and the Alaska Business Council. Currently he is President of the Juneau Federal Executive Association, a Board member of the Alaska Native Foundation, and a member of the National Congress of American Indians. He was formerly a Board member of the Fairbanks Native Association, and the Alaska Federation of Natives.

MORRIS THOMPSON PROFILE

Birthplace—Tanana, Alaska.

Birthdate—September 11, 1939; one-half Athabascan Indian.

SCHOOLS ATTENDED

1. Tanana Day School—Grade 1–8.

2. BIA Mt. Edgecumbe Boarding High School—Grade 9–12.

National Honor Society member.

Graduated 1959.

HIGHER EDUCATION

1. University of Alaska—9/59 to 1/62, Major—Civil Engineering, Minor—Political Science.

2. RCA Institute, Los Angeles, California—1/62 to 8/63.

Completed 18 month course in Industrial and Communications Electronics.

EMPLOYMENT

1. 1963–1967 Electronic Technician at the National Aeronautics and Space Administration's Satellite Data Acquisition Facility at Gilmore Creek near Fairbanks, Alaska.

2. 1967–1968 Deputy Director of Rural Development Agency for State of Alaska in Juneau, Alaska.

3. 1968–1969 Executive Secretary of NORTH Commission for State of Alaska in Juneau, Alaska.

4. 1969–1971 Assistant to the Commissioner (actually Assistant to the Secretary of Interior, Walter J. Hickel) in Washington, D.C.

5. 1971–1973 Area Director of BIA Juneau Area Office in Juneau, Alaska.

SPECIAL QUALIFICATIONS

1. Public Speaking.

2. Extensive knowledge of Indian groups and Tribes. Knows many Indian leaders personally.

3. Extended travel throughout Indian country.

MEMBERSHIPS AND ASSOCIATIONS PRESENT

1. Alaska Native Foundation.

2. National Congress of American Indians.

3. President of Juneau Federal Executive Association.

4. Governor's Labor Market Advisory Council.

5. Policy and Evaluation Council of the Center for Northern Education (University of Alaska.)

6. State Manpower Planning Council.

7. Alaska Health Manpower Committee.

PAST

1. Rural Affairs Commission.

2. Alaska Village Electrification Cooperative.

3. Alaska Business Council.

4. Fairbanks Native Association.

5. Alaska Federation of Natives.

NOTICE OF HEARINGS ON SMALL BUSINESS PROBLEMS UNDER THE MANDATORY FUEL ALLOCATION PROGRAMS

Mr. NUNN. Mr. President, notice is hereby given that the Subcommittee on Environmental, Rural and Urban Economic Development of the Select Committee on Small Business will conduct hearings under my chairmanship on the impact of mandatory fuel allocation programs on small business on November 27, 28, and 29. For those Members of this body and the general public who are concerned, I would like to set forth the subcommittee's objectives in conducting these hearings.

BACKGROUND

Under the leadership of the distinguished Senator from Nevada (Mr. BIBLE) and before him the distinguished Senator from Alabama (Mr. SPARKMAN), the Select Committee has a long history of being concerned with petroleum and energy matters. In its annual report for 1972, the committee pointed out on this subject that the United States was entering an "energy crisis," as illustrated by an 11.7-percent reduction in inventories of distillate fuels, especially No. 2 heating oil, between October 1971 and October 1972.

The Middle East situation and other factors have severely aggravated these shortages.

SMALL BUSINESS ORGANIZATIONS CONSULTED

On November 1 of this year, I convened our subcommittee in an informal working session with the representatives of 17 small business organizations to gain insights into their most pressing problems, including shortages of fuels. Although the mandatory allocation programs for propane and distillate oils were announced only during October, it has become apparent that energy shortages will have major effects on small business profitability and survival. It also appears that the extent of this impact is not yet fully realized.

SHORTAGES ALREADY BEGINNING TO HURT

We already know from press reports that factory closings have tripled in recent weeks because of shortages of petroleum products as fuels and raw materials. The following examples of industry shutdowns were recently cited in the national press:

Ammonia fertilizer plants are closing because they are unable to obtain natural gas which they require as feedstocks to make ammonia. This will cause still more shortages of fertilizers next spring.

With natural gas in short supply, it is becoming more difficult to obtain propane, a derivative of natural gas, which is used in the vital drying process of many grain crops.

During the past few weeks, as many as 30 small plastics plants have closed in New York, New Jersey and New England.

A nationwide steel shortage has caused many construction firms to switch to plastic pipe, which is now in such critical supply that some contractors have had to slow down housing starts. Six building projects in Houston have been almost halted because the contractors cannot get plastic pipe.

In addition to plastics, two other products made from petroleum are expected to be in short supply this winter—anti-freeze and asphalt. Both are critical in the winter, anti-freeze for obvious reasons and asphalt because it is used to repave roads damaged by winter weather.

These press reports loom as the tip of an iceberg on which countless small businesses could be wrecked during a cold winter of 1974. Recent events and the resulting steps announced by the President on November 7 will undoubtedly make the situation even tighter for millions of small businesses across the country. The President has stated that rationing of heating oil and gasoline were probable.

CONGRESS HAS ATTACKED THE PROBLEMS

Several committees of Congress have done an excellent job over the last year in putting together the background of our gathering energy storm and in advancing specific legislative proposals to the point of enactment. In the Senate, under the able leadership of the chairman of the Interior Committee (Senator JACKSON), the Permanent Investigations Subcommittee has just completed a comprehensive study of more than 1 year, which was the basis of a far-reaching bill—S. 1507, The Emergency Petroleum Allocation Act of 1973—which is presently in conference. The Senate Banking Committee under the direction of Senator SPARKMAN and Senator MCINTYRE attempted both last year and this year to gain the administration's cooperation in addressing the problems of independent gasoline and fuel distributors.

NEED FOR TIMELY INVESTIGATION OF IMPACT ON SMALL ENTERPRISES

There is a vast community of small businesses virtually all of which depend upon petroleum products as fuels or raw materials. The economic importance of small businesses is indicated by the fact that they furnish more than 50 percent of the jobs in our economy and close to 40 percent of our gross national product. They are also the mainstays of the viability of our small and rural towns and cities across the country, and their best hope for economic development.

However, there has not yet been a good case study of what is happening to small businesses as a result of these shortages and allocation programs. Our committee, and others with whom we have conferred, feel that it would be very constructive to take an early look at the impact of these mandatory fuel allocation programs on this vital segment of the American economy.

We feel that unless Congress and the administration cooperate in getting the facts and quickly addressing the varied problems of the small business community, the lights will be turned out permanently in thousands of firms. This can only result in the strength of our economy being severely damaged.

Our subcommittee cannot, of course, manufacture nonexistent energy supplies. We can, in careful exploratory hearings, attempt to gather information as to what small businesses are actually experiencing.

The hearings will provide small businessmen, State and Federal officials a chance to respond at early stages of this energy crisis, rather than at a later stage when it may be too late. This seems to me particularly important because it has been our national experience that in every shortage or allocation program small businesses have the greatest prob-

lems and the lowest priorities. We hope that a timely input by the small business community through the efforts of our subcommittee can lead to avoiding some of the worst problems of controls, thereby preserving small firms in their vital roles as suppliers of goods and services to our priority uses and other citizens.

REMOVAL OF INJUNCTION OF SECRECY FROM THE PROTOCOL TO THE CONVENTION FOR THE INTERNATIONAL COUNCIL FOR THE EXPLORATION OF THE SEA, AND THE CONVENTION ON INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA

Mr. ROBERT C. BYRD. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the protocol to the Convention for the International Council for the Exploration of the Sea, done at Copenhagen on August 13, 1970 (Ex. V, 93d Cong., 1st sess.); and the Convention on the International Regulations for Preventing Collisions at Sea, 1972, done at London October 20, 1972 (Ex. W, 93d Cong., 1st sess.); transmitted to the Senate today by the President of the United States.

I also ask unanimous consent that the protocol and convention, with accompanying papers, be referred 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 (Mr. ABOUREZK). Without objection, it is so ordered.

The text of the President's 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 Protocol to the Convention for the International Council for the Exploration of the Sea, done at Copenhagen on August 13, 1970.

This Protocol amends the Convention for the International Council for the Exploration of the Sea, done at Copenhagen September 12, 1964, with respect to the vote required by the Council for approving its annual budget. 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, *November 9, 1973.*

To the Senate of the United States:

I transmit herewith, for the advice and consent of the Senate to acceptance, the Convention on the International Regulations for Preventing Collisions at Sea, 1972, done at London October 20, 1972. The report of the Department of State is enclosed for the information of the Senate.

The Convention is designed to revise and bring up to date the International Regulations for Preventing Collisions at Sea, 1960, in the light of technological developments and increased use of the marine environment since those Regulations were concluded.

International concern for the protection and effective management of our oceans has been growing in recent years. The international community has also become more aware that the effects of marine casualties are not confined to the men and vessels immediately involved but, through the increased risk of marine pollution, can extend well beyond. I recommend that the Senate give prompt consideration to this Convention and consent to its acceptance.

RICHARD NIXON.

THE WHITE HOUSE, *November 9, 1973.*

SHOCKING NEGLECT OF MENTALLY RETARDED AT THE DISTRICT OF COLUMBIA'S FOREST HAVEN FACILITY

Mr. HUMPHREY. Mr. President, I invite the attention of the Senate to a matter of great concern to me and to many other citizens of this country, particularly the residents of the District of Columbia, Maryland, and nearby areas.

In the midst of many expressions of concern on Capitol Hill about abuses of national elective office, only 22 miles away there is a shocking case of governmental abuse of 1,300 people through neglect or totally inadequate efforts to improve services of care and habitation.

I refer to the mentally retarded persons who are resident at Forest Haven, the facility operated by the District of Columbia at Laurel, Md. The District of Columbia government and Congress must share the blame for the incredible conditions reported at this institution, for low staff morale, and for a treatment of the mentally retarded that all too often amounts to nothing more than survival from day to day.

This startling case of hundreds of people forgotten by society and seemingly barely tolerated by government was brought sharply to my attention by a recent series of outstanding articles by reporter Michael Satchell, and appearing in the Washington Star-News. Mr. Satchell relates the story of a black youth, given the name Lonnie Jackson, who "became ensnared in a system that failed when it took him in and continued to fail by keeping him for 13 years, knowing that he did not belong."

At the age of 5, after his mother died, Lonnie Jackson was placed in an institution at Forest Haven for the mentally retarded. As a result of totally incorrect testing, he was labeled "mentally retarded, irremediable." Yet this "hopeless case"—as far as administrative personnel at Forest Haven were concerned—graduated 20th in the 1973 class at McKinley High School, after concerned brothers of a Catholic religious order finally secured his release under their supervision 2 years ago. The rest of Lonnie's struggle for life is a chronicle of repeated physical mistreatment, harsh conditions, and frustrated attempts to obtain staff recognition of his academic interests and capabilities. The only excuse given for this saga of neglect was that Lonnie could not be placed in a home because the District of Columbia Child Welfare Division was already overburdened.

Mr. President, I know that in these days of the Middle East crisis and in these days of concern over the governmental crisis, it does not seem statesmanlike or even of any significant importance to get up here in the Senate and talk about things that relate directly to people's lives. But I want to say to my colleagues and to this community that if we are unable to do our job here in the District of Columbia, the Nation's Capital, which should be the center of all that is good in this country, what makes us think that we can help the rest of the world?

It seems to me that we are practicing a form of escapism. When we look around and see communities in our own States, and particularly here in this great Capital area, failing in its responsibilities, we immediately charge off to see whether we can save Africa, Asia, or Latin America, knowing little about those areas, and little enough about their way of life.

So, Mr. President, I am going to spend some time here in the Senate directing my attention toward problems not only of the people in the State I am privileged to represent—and, might I say, I travel a great deal in my State and I know the people and I care about them—but I am also going to talk about some of the problems here in the District of Columbia.

Millions of Americans visit the Nation's Capital every year. There are great newspapers in this city, and television stations. Hundreds of thousands of people come from abroad to the District of Columbia, the Nation's Capital, yet we seem to neglect all too often the many facilities and services that this great city should have.

I rise today to talk about this matter out at Forest Haven because it is an insult to God's children. It is an insult to this Government. It is an insult to any sense of decency.

It is about time that some of us who are more fortunate speak up for those who are less fortunate.

Apart from people who have everything our concern should be for those people who just want something. Apparently that concern is not often expressed.

The PRESIDING OFFICER (Mr. CLARK). The time of the Senator from Minnesota has expired.

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

The PRESIDING OFFICER. Five minutes.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the time for morning business be extended an additional 15 minutes, with statements therein limited to 5 minutes; and I ask to be recognized and I will yield my time to the Senator from Minnesota.

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

Mr. HUMPHREY. Mr. President, I am pleased to get this additional time because I am not speaking today for just this RECORD. I am speaking out of my heart. I am speaking out of my concern,

and I intend to get something done about it.

I want to serve notice on the District of Columbia government and I want to serve notice on this Congress that I am going to be at this until something happens.

Some years ago, I found that the schools of the District of Columbia had school books so out of date that they should have been placed in a museum. I remember in the 1960's, when we were concerned with these school books, that they finally recognized that electric refrigeration had arrived. The school books had pictures showing the Ford trimotored plane of the 1920's and 1930's. They did not even get up to the point where they had four-engine propeller planes, or even jet propulsion. The atomic age had not even arrived so far as the school books in the District of Columbia were concerned in the science classes in the early 1960's.

I stood here, Mr. President, day after day, and harassed Congress and the District of Columbia government until we got some school books that were up to date.

I am going to do exactly the same thing about cleaning up the Nation's Captial, and about the instances of gross neglect of the unfortunate, the sick, the handicapped, and the mentally retarded.

The profoundly regrettable fact is that the situation at Forest Haven is not—repeat is not—the exception to the rule. The rule, according to the Washington Star-News articles, is official neglect, totally insufficient and inadequately trained staff, shockingly poor medical treatment, buildings in serious disrepair—except for the $3 million Curley Building opened 2 years ago but never utilized as intended. The rule is a pervasive apathy afflicting at least 900 residents simply warehoused day and night, frequently unattended. It is alleged that when some staff members have occasionally tried to improve conditions and initiate activities, they have confronted a "gag rule" from higher up and the possible loss of their jobs. Meanwhile, tranquilizing drugs too often take the place of therapy and behavioral modification programs.

It is incredible that so close to the Nation's Capital, supposedly the site of efforts to improve health care across America and launch advances in the treatment of millions of handicapped Americans, there should be a sprawling complex which is housing forgotten people, where a severely retarded man can be found sitting in a chair with maggots in an open ulcer, where a boy can receive first- and second-degree burns from being scalded in a shower by other residents in the prolonged absence of a counselor, and where retarded people collapse from working in an old laundry where temperatures can hit 114 degrees.

The explanations given for all this range from a lack of money, to the citation of plain facts of serious and extensive overcrowding—as evidenced where the medical facility at Forest Haven must also serve 2,000 residents of the District of Columbia Children's Center, and to the assertion that treatment really is adequate.

The fact remains, however, that conditions at Forest Haven are a shameful disgrace. They must no longer be ignored by Congress.

Mr. President, I think the Senate of the United States should rise up and demand that something be done.

I say to the distinguished Presiding Officer now occupying the chair, the Senator from Iowa (Mr. CLARK), a man of compassion, how in the name of commonsense can we in this body permit people to be scalded and burned, to permit people to sit there as if they are animals or vegetables, eaten up by maggots. We talk about a health department. We talk about billions for health in this country.

Staff work at Forest Haven is very hard and poorly paid. On August 3, 1973, Congress completed action on legislation—H.R. 8658—providing for appropriations for the District of Columbia in fiscal 1974, and which included funds for 50 additional staff positions at Forest Haven, instead of 100 positions as proposed earlier by the Senate. An original budget request, under the District of Columbia Department of Human Resources, for $1 million would have been used to support the addition of these 100 positions—primarily counselors, social workers, special education teachers, nurses, occupational therapists, and psychologists, in addition to other professional medical, therapy, and job placement personnel—to the 642 budgeted positions at Forest Haven. A further small capital budget request called only for the renovation of food services facilities, constructed in 1938.

I regard these requests as an absolute minimum. They do not begin to take account of the decree of Judge Joseph C. Waddy, concerning the responsibility of the department of education to provide education for all children, including the handicapped, and the consequent reponsibility of the Department of Human Resources to evaluate children in need of special school placement, to which director Joseph P. Yeldell himself made reference in an initial budget statement.

Mr. Yeldell, in testimony last May before the Senate Appropriations Subcommittee on the District of Columbia, chaired by Senator BAYH, also stated flatly that—

> Forest Haven presently has one-half the budgeted positions necessary to meet minimum standards of accreditation.

And he frankly recognized what he termed a "custodial approach" at Forest Haven, in urging a major change to a therapeutic-rehabilitative approach. He also stated that "current staffing permits psychological therapy for only 50 or 60 residents," where an estimated 200 or more additional residents would be greatly benefited by this therapy. Job training and placement services and behavior modification programs could be expanded by the addition of these positions, and a long-overdue emphasis could be placed on the development of community-based facilities for the mentally retarded.

I firmly believe all these steps should be taken immediately.

Mr. President, more than 200,000 retarded persons in the United States currently live in publicly operated residential programs. While there are examples of good institutional care and rehabilitation, the reported conditions at Forest Haven indicate everything that can become profoundly wrong under this approach. It would be a serious mistake to assume that this facility cares only for orphaned children or those from very poor families. The harsh fact is that for many families earning a good income, there is no other choice for the care of a loved one or child, due to the prohibitive expense or long waiting lists of private institutions.

We have yet to see implemented in this Nation an historic action policy proposal on "residential services for the mentally retarded," adopted by the President's Committee on Mental Retardation in 1970. That proposal called for facilities designed to serve residents' needs in a comprehensive program, with healthful and safe living quarters providing maximum opportunity for privacy, and located within the community served, offering opportunity for normal contacts with the life of the community.

In the major portion of the complex at Forest Haven, these standards are totally ignored.

The President's Committee saw a basic obligation of residential services to assure the legal rights of each retarded person. It stated that the prime purpose of these services must be to enable the individual to develop his or her physical, intellectual, and social capabilities to the fullest extent possible; to develop emotional maturity commensurate with social and intellectual growth; whenever possible, to develop skills, habits, and attitudes essential for return to contemporary society; and to live a personally satisfying life within the residential environment.

On the basis of the newspaper articles to which I have referred, one can only conclude that neither these legal rights nor these basic purposes are given more than scant attention at Forest Haven.

There are immediate steps that can and must be taken to address this crisis of human neglect. I serve notice here and now of my intention to take the following actions.

First, I will request the Comptroller General, General Accounting Office, to initiate an immediate investigation of the possible misuse of congressionally appropriated funds where such funds provide assistance for programs at Forest Haven.

Second, I will request Mr. Joseph P. Yeldell, director of the Department of Human Resources, government of the District of Columbia, to respond in writing on the statements and allegations set forth in the four-part series of articles on Forest Haven, appearing in October 1973 issues of the Washington Star-News. I will also request Mr. Yeldell to outline for me a reasonable program, with cost estimates, for staff expansion and reorganization and for facility im-

provements at Forest Haven, as well as for specific therapeutic and behavioral modification programs that can be initiated and expanded at this facility in the immediate future. And I will ask that he indicate the status of plans for directing future services toward community-related facilities.

Third, I will urge Senator THOMAS F. EAGLETON, chairman of the Senate Committee on the District of Columbia, to give immediate consideration to the feasibility of scheduling committee hearings on conditions at Forest Haven, which may lead to recommendations on appropriate corrective administrative or legislative action.

And fourth, I will ask Senator BIRCH BAYH, chairman of the Senate Appropriations Subcommittee on the District of Columbia, to consider committee action to propose the incorporation of such additional funds as may be required to meet the initial request for 100 additional staff positions at Forest Haven, in the first appropriate supplemental appropriations legislation for fiscal 1974 to be reported to the Senate. I will also urge early committee consideration of further funding requirements to implement program and facility improvements, as called for in my previously mentioned communication to Mr. Yeldell.

Mr. President, I trust that my outrage over reported conditions at Forest Haven has been very clearly communicated to those in positions of responsibility and who can and should act to end this nightmare without delay.

Mr. President, I ask unanimous consent that an editorial, entitled "Out of Sight, Out of Mind," published in the October 30, 1973, issue of the Washington Star-News, and the four-part series of articles on Forest Haven, also appearing in this newspaper, be printed at this point in the RECORD.

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

[From the Washington Star-News, Oct. 30, 1973]

OUT OF SIGHT, OUT OF MIND

"Realistically," a male nursing assistant at Forest Haven said the other day, "nothing is happening here."

He referred, of course, to the institution out at Laurel, Maryland, where the District of Columbia stores away some 1,300 mentally retarded citizens, most of whom were long ago forgotten by everyone else—congressmen and councilmen, parents and public.

It was a casual observation and a highly perceptive one. Nothing much *is* happening at Forest Haven, and that is its tragedy.

We don't intend to review here all the findings made by our reporter Michael Satchell in his heartbreaking four-part series on Forest Haven—the shabbiness of the older "cottages," the sterile emptiness of the newer wards, the lack of privacy with its crushingly paradoxical lack of supervision, the endless boredom and apathy, and the kind of easy neglect that is fostered by a sense of defeat. As one nursing assistant said of officialdom's attitude, "They feel our people are so severely retarded *they don't need things.*"

Or a therapist, speaking of the prevailing reliance on tranquilizing drugs: "I can't work with these kids when they're zombies."

The diversity of Forest Haven's problems is as staggering as the diversity of its residents—ranging from those who shouldn't be there at all (witness the misdiagnosed boy who, after 13 years in limbo, was rescued in time to graduate 20th in his class at McKinley High this year), to the moderately retarded (several hundred of whom probably could make it on their own outside if given proper training), the severely retarded and whose are also physically grotesque.

Well, what *is* needed at Forest Haven?

First of all, more attention must be paid—by Congress and city officials and citizen volunteers.

Second, it needs a massive infusion of money to rebuild the rundown plant and to double the staff. It needs highly qualified and dedicated people, and this means higher salaries.

Further, it needs an enlightened administration under a top-flight superintendent who is capable of generating new and exciting programs that will attract new talent to take up the challenge, while stimulating the flagging morale of those now on the job. It needs a major effort to help the mildly retarded to get out of there and into some kind of rewarding life in the community, and it needs to do something about the shockingly empty world in which the others live. It is hard to say which is more disheartening, the partitionless toilets and peeling paint of the old buildings or the bare walls, bare floors, bare furniture and barren lives of the newer ones.

Finally, it needs more friends, volunteers who will visit from time to time, bringing with them—along with such worldly trappings as toys and games—some fresh affection, help and cheer.

Without all this, the future of the "children" at Forest Haven is, in the words of Human Resources Director Joseph Yeldell, "not very bright."

[From the Washington Star-News, Oct. 21, 1973]

THE "RETARDED"—"NO OTHER PLACE TO GO"

(By Michael Satchell)

(NOTE.—This is the first of a four-part series about Forest Haven, the District's home for the retarded in Laurel, Md. To examine the institution and its problems, its patients and employees, Star-News Staff Writer Michael Satchell made several visits to Forest Haven and worked there as a nursing assistant. Today: The story of Lonnie, a recent high school graduate who spent 13 years in Forest Haven because he had "no other place to go.")

"My name is Lonnie Jackson, a black youth. I was born at Freedman's Hospital in Washington, D.C. on June 18, 1953. My mother died when I was about 5 years old. I was placed in an institution at Forest Haven, Laurel, Md.

"It is an institution for the mentally retarded. I am not a retarded person. I was put there because I had no other place to go. I stayed at the institution for about 13 years. . . ."

Thus begins "My Struggle For Life," the private autobiography of 19-year-old Lonnie (not his real name) who became ensnared in a system that failed when it took him in and continued to fail by keeping him for 13 years, knowing that he didn't belong.

When Lonnie entered the District's home for the retarded as a child, he was tested, given a bottom drawer I.Q. rating of 35, and labelled "mentally retarded, irremediable."

Today, two years after being taken out of Forest Haven by a group of Catholic brothers, Lonnie is a high school graduate—20th in the 1973 class at McKinley High—working in an office job for the government. He is contemplating college. He wants to be a political scientist.

Lonnie's story is an example of a system with problems. Yet it is a single anecdote in the over-all story of Forest Haven, a sprawling, threadbare institution which is called "home" for 1,300 mentally retarded persons—infants to persons in advanced age.

Like any large public institution, Forest Haven has its strengths and weaknesses, its good points and bad, its successes and failures. But there are major, undeniable problems existing there.

Forest Haven, many of its employes protest, is overcrowded, understaffed and underfunded. A majority—not all—of the residents simply are being warehoused, their years spent in aimless, pointless activity. Medical care, from the viewpoint of many observers, including parents and registered nurses at the institution, needs to be improved.

Worst of all, Forest Haven and its problems have a long history of being ignored—by Congress, by the District government, by the public, and even by most of the parents and relatives of the 1,300 residents.

It is 22 miles from downtown Washington to Forest Haven, and those who have fought for years to focus public concern on the institution say bitterly that the D.C. home for the retarded might as well be located in Siberia for all the attention that is paid to it.

Lonnie's account of his 13 years in Forest Haven offers a rare and lucid glimpse of the 48-year-old institution through the eyes of the residents who rarely get the opportunity to express their opinions to the outside world.

The youth is today an intense, lonely and religious young man living in Northeast Washington in a Catholic halfway house. He still is learning to readjust to life outside Forest Haven. Helping him are the Catholic religious order brothers and a psychiatrist.

Lonnie says he isn't bitter that he was cheated out of 13 years of his life, but through his autobiography, written last year while a senior at McKinley, run threads of anger and resentment, born of his inability to get out of a place where he didn't belong.

In "My Struggle For Life," he lists instances of brutality by counselors, his own downward spiral and unhappiness, his progression through the Forest Haven school, through classes with "juvenile delinquents" in the Maple Glen section of the D.C. Children's Center at Laurel, and finally into D.C. public schools.

He relates his frustration at being a misfit and his attempts to convince the Forest Haven administration of his abilities.

The attempts included writing to the administration and entering a National Spelling Bee.

It was to no avail. Finally, two years ago, a volunteer worker named Mike Donahue learned of Lonnie's existence and brought him out of the institution.

Donahue, a member of the LaSalette religious order, was able to get Lonnie out of Forest Haven by becoming his legal guardian. The Catholic brothers, in effect, adopted the youth.

When Lonnie was first brought out of Forest Haven, Donahue recalled, he hadn't even been taught to use the telephone, and when he got on a D.C. Transit bus, he used to ask the driver—out of institutional habit—to drop him off at his destination.

Here are excerpts from "My Struggle For Life," as Lonnie wrote them.

On life in the institution:

"During Christmas time (in the nursery) I used to love toys. I thought about toys as the gods of the world. Summer during my kindergarten days used to be a time of joy because those days were comfortably warm."

"From 1960 to 1965 in Poplar (cottage) rules were very strict. The counselors used to have us turn around and they would hit you with a big platter. Life was pretty harsh

. . . because of the punishment, rules and regulations. I was the target of sarcasm. I left Poplar College on February 7, 1965. It was a Friday. . . .

"Life at Maple (cottage) was very harsh. I was the servant of . . . a heavyset black boy. He used to have me do his dirty work. Disobedience led to cruel punishment. . . . The counselor used to hit us with a hard rubber stick on the feet—sometimes on the 'hindy' if we disobeyed. This form of punishment never changed until I moved to a new cottage.

"On May 22 (1967), I was transferred to Oak Cottage. Life changed. I was putting on airs, I used to smoke cigarettes . . . use profane language . . . steal. I took part in a truck theft (stealing buns from a truck) and was sentenced to a day in detention. Life at Oak Cottage was pretty rough but we did not have as much physical punishment."

In 1970 Lonnie was transferred to Jones Hall, for the mildly retarded, and given a private room.

"My first few days (in Jones) were happy because it was the end of getting in line, going to bed early, and life in the dorm. The boys were respectful, nonaggressive and honest. My one year and a half at Jones Hall were nothing but physical peace, independence, freedom and respect. My progress in Jones was dramatic."

One chapter of "My Struggle For Life," chronicles Lonnie's school experiences. As a youngster, he zipped through the simplified courses at the Mary Ziegler School at Forest Haven in record time and was sent to the school at Maple Glen, the District's institution for juvenile offenders.

"1967 was a year of academic competition," he wrote. "In January that year I got the idea of entering the National Spelling Bee. I managed to get a dictionary and studied hard. The Bee was held at the Departmental Auditorium (on Constitution Avenue). I was not eliminated (for several rounds) until the word 'dominion' threw me. It gave me confidence entering the Bee.

"In April 1968 I wrote to (the administration) about the possibility of going to junior high but I was put in the Maple Glen study program. It was a school for juvenile delinquents. . . . When I became adjusted to the program I made many enemies because I was academically inclined.

"For the whole school year, I had a 3.0 grade point average. It was considered the honor role. I came up again for institutional review (to attend public school outside of the D.C. Children's Center) and was turned down.

"This time I became very upset because I didn't want to spend another year in a program below my academic ability. I was too advanced for the program."

On September 10, 1970, Lonnie was finally allowed to attend Rabaut Junior High although he still lived at Forest Haven among the retarded. In September 1971 he transferred to McKinley and graduated last June.

Lonnie, once said to have an I.Q. of 35, notes in his story that he studied French, physical science, philosophy, psychlogoy, education and theology. He admits to having trouble with algebra.

The superintendent of Forest Haven for most of Lonnie's 13 years there was Guy Puntch, who was moved from the institution in 1971 and now works in the bureau of developmental disability of the D.C. Department of Human Resources.

Puntch was asked why, after Lonnie was identified as being mentally normal, he wasn't removed from Forest Haven and found a home elsewhere.

"Our institution never operated a foster home program and he had no family," Puntch said. "We depended on the District Child Welfare Division and they were always so overwhelmed with bright, lovable youngsters. He was doing all right. . . . There was no way we could pressure them (child welfare). . . . There was no real need to raise hell about his case."

Puntch also was asked what effect he thought 13 years among the retarded might have on Lonnie's mental development.

"I suspect that if it did anything to him," Puntch said, "it gave him a few more successes than most of us experience. Everywhere he went people told him he was clever, wonderful. He had adulation. He had staff and teachers whom he could talk to . . . relate to."

Lonnie today is trying to put Forest Haven behind him, get the experience out of his system. He says he is not bitter toward those who were responsible for the lost years.

In the summary of "My Struggle For Life," he writes:

"I lived in an institution with a mixture of delinquents, retardates and the homeless. I have seen some extremely terrible things. Once when I walked past Dogwood and Holly cottages I saw people who were outside and stripped naked.

"It is downright ridiculous. We should ask the federal government for more money to help these profundly retarded people . . . people like that should not be forgotten. They should be helped and cared for just like parents care for their children."

[From the Washington Star-News, Oct. 22, 1973]

IGNORED BY OFFICIALS, PUBLIC—FOREST HAVEN IS VICTIM OF APATHY

(By Michael Satchell)

(NOTE.—This is the second of a four-part series about Forest Haven, the District's home for the retarded in Laurel, Md. To examine the troubled institution's problems, Star-News Staff Writer Michael Satchell worked there as a nurse's assistant. Today: The apathy problem.)

After years of being ignored by officialdom and the public, Forest Haven, the District's home for the mentally retarded, today is an institution in trouble. It is worn out and seemingly without direction, a victim of apathy and neglect.

"Forest Haven," admits D.C. Human Resources Department (DHR) boss Joseph Yeldell, "is a huge problem." Of its future, Yeldell adds, "Not very bright."

When it comes to public help for the handicapped, the District's retarded have languished at the bottom of the priority list. In his six years as the District's chief executive, some Forest Haven staffers point out, Mayor Walter Washington has made only one brief visit to the institution, located 22 miles from downtown Washington near Laurel, Md.

A consensus of Forest Haven staff is that virtually none of the D.C. City Council or Congressional District Committee members has ever taken more than a cursory interest in the place. A few have made quick, carefully supervised tours, but were not heard from again.

The institution has been without a permanent superintendent for 18 months. For the past year, it has been run by Mrs. Regina Wintermoyer, a registered nurse. Yeldell says the District has been looking for a clinical psychologist to head Forest Haven, but without success.

Forest Haven is a sprawling complex of 17 buildings, many of which appear to be in dangerous disrepair. Forest Haven is home to 1,300 persons—from infants to the elderly. But the institution has a mailing list of only 400 relatives of these residents and, of these 400, only about half are quickly traceable, by one staffer's estimate.

Thus, the majority of the residents have no one on the outside looking after their interests or welfare. Many of them, youngsters included, simply have been dumped there by uncaring families and forgotten.

A parents' task force that has been trying to get improvements for the past four years has, at most, a dozen active members. "Friends of Forest Haven,"—the institution's PTA—meets every two months. If six people show up, that's an average attendance. The record attendance is 20, one member said.

A few deeply concerned employes have tried to buck the inertia and force change. They say they haven't succeeded. Their efforts instead have drawn censure from superiors, threats of dismissal or transfer to bottom rung jobs in other DHR programs, and orders not to talk to the news media. Many have ignored the gag order and have discussed Forest Haven in depth. Others, apparently fearful of losing their jobs, have refused.

It is against this backdrop of apathy that Forest Haven must be viewed. It's fundamental problems—understaffing, inadequate funding, low morale and rundown physical plant—cannot be corrected quickly by a massive infusion of money. The patient, as one staffer noted, has been sick too long for an overnight cure.

These basic problems in turn have spawned a host of abuses and negative conditions that give Forest Haven a dismal record.

A month-long investigation by the Star-News turned up a score of allegations by staff and parents of poor medical treatment. It revealed instances of profoundly retarded persons suffering for years from serious and painful medical conditions without any corrective surgery or regular treatment.

It found a bored population that for the most part does nothing all day but sit or roll around the floors. These are human beings warehoused in ramshackle cottages often dirtier and more crowded that some of the animal quarters at the National Zoo.

In the Curley Building, a $3 million "showpiece" opened two years ago to house 200 profoundly retarded persons, most of the population is locked in bare, tiled day rooms. Many of them sit in stupors having been administered heavy doses of tranquilizers. Youngsters who spend most of their lives tied up in straitjackets—euphemistically called "mummies"—also are tied to benches with strips of cloth. They are able only to move their legs and heads.

The probe found at least 50 retarded persons who work long hours, without pay, in an ancient laundry where temperature's during last month's two-week heat wave reached as high as 114 degrees—conditions that would have forced the closure of any office or factory on the outside. At Forest Haven, work continued, despite the hellish conditions and the fact that workers were dropping out after lapsing into heat-induced convulsions.

Documented were a series of recent accidents, incidents and abuses basically brought about by the lack of spervision and overcrowding: Youngsters who were beaten and injured by other residents; an old man found with maggots crawling in an open and untreated leg sore; at least four young men badly burned or scalded because of lack of supervision; a young man electrocuted when he plugged in a defective fan with the insultation stripped from the flex.

By Yeldell's estimate there are as many as 400 persons who shouldn't even be there. Most of them are mildly retarded young adults who, if money were available, could be trained for jobs on the outside and placed in group homes in the District.

There also are residents who aren't even retarded. Yesterday, in the first installment of this series, the Star-News described the experiences of a 19-year-old youth who spent 13 years in Forest Haven, despite the administration's awareness that he was quite normal.

Staffers say there are a number of persons in Forest Haven today suffering from emotional illness—not retardation—and from such handicaps as cerebral palsy, deafness, blindness. They are in Forest Haven because the District has nowhere else to put them.

During a tour, a young boy in Lower Poplar Cottage was found lying on a concrete floor in a bare isolation room. There was blood on his arm. None of the counselors present in the entire building knew why he had been locked away, how long he had been there, or how he had been hurt.

Outside Azalea Cottage, which houses older women, a resident shuffled around a garbage can, picking out bits of garbage and eating them—not because she was hungry but because she was retarded and there was no one around to stop her. One staff member said the woman does it all the time.

No more than 400 of the 1,300 residents participate in regular school programs, job training at the Occupational Training Center in Northeast Washington, or have jobs outside or in the institution. Close to 900 persons spend their days doing nothing, sitting in drab dayrooms, watched over by a lone counselor or nursing assistant. Entertainment is a fuzzy black-and-white television. Once a week there is a dance at the school, sometimes a movie. Occasionally there are trips for a few, the money usually coming from fundraisers staged by volunteer workers and staff.

Regina Wintermoyer, acting superintendent for the past year, says Forest Haven is a "safe" institution. "We are doing an adequate job, but not the superior job I'd like to do," she said. She blamed the problems of the institution on a lack of money and staff.

She was asked why she hadn't ordered simple improvements to make life a little more comfortable for residents—a coat of paint in the dayrooms, plywood screens in the toilets for privacy, a few toys for the younger residents, better maintenance to spot such things as the defective fan that killed the young man a few weeks ago.

"We just don't have the money," she said. "These things cost."

Yeldell, in acknowledging that Forest Haven was beset with problems, stressed that the Department of Human Resources was aware of them and was dedicated to improving things.

Congress recently approved 50 new positions at Forest Haven, an encouraging sign but in Yeldell's words, "not enough to have an immediate effect" on an institution that is presently operating with about half the staff it should have.

He noted that he had exempted Forest Haven from economic freezes affecting other D.C. government agencies, adding that the District had not received a hoped-for $6 million in federal funds due to government financial clamps—money that was earmarked for the program to get the mildly retarded out of Forest Haven and into the community.

Yeldell said he would do all that he could to find new funds or to keep from cutting back even further on Forest Haven's financial lifeline. "Certainly," he said, "the picture for Forest Haven for the next few years is not a very bright one."

[From the Washington Star-News, Oct. 23, 1973]

SICK KIDS GO UNTREATED

(By Michael Satchell)

(NOTE.—This is the third of a four-part series about Forest Haven, the District's home for the retarded in Laurel, Md. To examine the institution and its problems, Star-News Staff Writer Michael Satchell worked at Forest Haven as a nurse's assistant. Today: Medical care.)

"I am concerned about the caliber of person in the medical program," says Joseph Yeldell, director of the D.C. Department of Human Resources. "The care needs improving."

Dozens of staff members at Forest Haven, which is home for 1,300 retarded persons of all ages, echo Yeldell's statement. And so do many parents and relatives of those housed in the troubled institution. Some of the complaints:

"Kids die out there and it is swept under the rug," said Mrs. Betty Evans, a leader of the Forest Haven parents group.

"Sick kids often go untreated," said a registered nurse who is a staff member.

Several parents said they had visited their sons or daughters and found them bruised, bleeding or worse.

Staff members recounted examples of taking Forest Haven residents to the medical center only to have them receive cursory attention when "it was obvious they needed medical help."

Many parents recounted their bad experiences with Forest Haven, then demanded not to be publicly identified because they believed their children could become targets of retaliation by vindictive staff members. Several Forest Haven administrators scoffed at this parental attitude, calling it nonsense. But the fact remains several parents said they feared being identified for their children's sake.

Several observers said they were puzzled by the attitudes of Forest Haven's acting superintendent, Mrs. Regina Wintermoyer, and Dr. James Boyland, the chief of medical services, with regard to their handling of complaints from staffers and parents and relatives.

One situation mentioned by several staffers and confirmed by the registered nurse who discovered it, concerns a severely retarded man who was spotted in a cottage one day by the nurse.

"I was making rounds and he was sitting in a chair," said the nurse, who asked not to be identified for fear of losing her job. "There were flies around his leg. I lifted up his gown and found an open ulcer on his leg. When I looked closer I saw maggots in the ulcer, crawling around. He had had no treatment.

"I took him to the hospital but no one appeared startled. No one appeared shocked."

Asked about the nurse's charge, Dr. Boyland said, "You should remember that years ago maggots were used to clean up wounds. If this indeed happened it was only because it was not brought to the attention of the staff."

Another incident involved reports that a teen-age girl had been forcibly douched with Lysol disinfectant by a counsellor as punishment for sexual promiscuity. Asked about this, Mrs. Wintermoyer also said she hadn't heard of it, but added:

"Lysol diluted used to be a common antiseptic treatment for post partum care some years ago when I was nursing. We used to spray it on the mother's stitches. It could be that it was diluted in this case—I don't really know."

Parents of Forest Haven patients repeated complaints about care of their sons and daughters when they discovered injuries. They said they could never get satisfactory explanations from the institution, and that serious medical situations were not brought to their attention.

Tom Lannon, a Washington attorney who says he has tried to work quietly behind the scenes in an attempt to improve conditions at Forest Haven, recited a catalogue of troubles suffered by his 18-year-old son, Michael, a cerebral palsy victim.

"First, Mike was pushed into a shower by other boys and boiling water was turned on him," Lannon related. "There were no counselors around to stop it. He received first- and second-degree burns and spent six weeks in the hospital.

"Last February we went out to visit him and found he had the biggest, worst-looking black eye. Mike told us a counselor had hit him. I asked for a complete report of the incident but I still haven't received it. The counselor denied it but I know my son wasn't lying.

"Three weeks ago, we went out to see him and found his upper front tooth had been extracted. We knew nothing about it. They never even notified us. Residents of Forest Haven are not even receiving minimal custodial care. It's reached the point today of criminal negligence. There just aren't enough staff."

Over the last two years, three other boys at Forest Haven have been badly scalded or burned in incidents that staffers traced to lack of supervision. Law suits were filed in such case. One was settled out of court, one was won by the plaintiff, and the other is pending.

The pending suit involves a youth, paralyzed from the waist down, who was burned twice. The first time, he was allegedly placed in a bathtub by a counselor and left. Someone turned on boiling water, causing severe burns from his chest down. The second occasion, he was similarly scalded in a shower.

His family's attorney said the investigation showed only one counselor was working at the time and was responsible for supervising 80 retarded youths and men.

The mother of another youth who requested anonymity described medical care at Forest Haven as "very poor" and related her son's problems.

In a memo to attorney Lannon, she wrote: "On picking (our son) up for a home visit, we found that his two front teeth had been broken off. The explanation elicited from the counselors and the medical record was that he had had an epileptic seizure. He had never had an epileptic seizure in his life."

On another occasion, she related, she went to pick up her son to take him to a private dentist and found him in the clinic with a swollen eye, cheek and upper lip. "The explanation from a Forest Haven physician was that the boy was suffering from "upper respiratory infection."

Several days later, the family got permission to take their son out of the clinic. The family dentist examined the swelling and found an abscessed root canal, not "upper respiratory infection" as diagnosed at the Forest Haven clinic.

A few weeks ago, in an incident that touched off a lot of grumbling among the staff, a young boy who was having difficulty walking due to pain in his leg, was taken to the Forest Haven clinic three times in three weeks by a staff member.

X Rays were taken at the clinic but they showed nothing, according to Dr. Boyland, and the boy received no treatment. In desperation, the staff member took the boy to her own private physician. New X Rays revealed a fractured kneecap.

Another staff member described medical services as "totally and frighteningly inadequate." The staffer further described personal knowledge of a teen-age girl, found in pain and apparently in labor. The staffer rushed the girl to the institution's clinic.

"We were received somewhat less than cordially," the staffer said. "I was told in no uncertain terms that I was not qualified to know when medical attention was needed, that the girl was not in labor and that she should be returned to her cottage. I was frightened and very angry. I demanded to see the doctor, but there wasn't one on duty."

Minutes later, the girl delivered.

The 1,300 residents of Forest Haven are treated in a clinic and hospital located on the ground. The clinic also serves 2,000 resi-

dents of the D.C. Children's Center. Those with "serious medical problems" are referred to D.C. General Hospital.

Dr. Boyland, who heads a staff of five other physicians, defended his program. "To my knowledge, nobody is suffering, unhappy or mistreated," he said. "Nowhere that I know of is a patient here not receiving good medical care.

"Part of our problem is that we often don't know when the residents are sick.

"The counselors and nursing assistants in the cottages are our eyes and ears and, unless they bring problems to our attention, we can't treat them. Our biggest shortcoming, as in other programs in Forest Haven, can be attributed to lack of staff.

"Medically, I wouldn't alter it (the medical program) at all."

Yeldell, questioned about the quality of medical services at Forest Haven, said there was adequate medical staff to handle the care.

"The basic problem is that if physicians are there (in an institution) for a long time, they get no peer review, I think Dr. Boyland and the others need somebody looking over their shoulders. There is no rationale why there should be lack of care."

[From The Washington Star-News, Oct, 24, 1973]

LIVES OF MISERY HARD TO BRIGHTEN

(By Michael Satchell)

(NOTE.—This is the last of a four-part series about Forest Haven, the District's home for the retarded in Laurel, Md. To examine the institution and its problems, Star-News Staff Writer Michael Satchell worked there as a nurse's assistant. Today: A day on the job.)

The face peers through the unbreakable glass panel in the day room door. Hands clasped across the chest. Dull hooded eyes silently begging the attention of the two visitors.

Thornton Kidrick unlocks the door and we step inside a barren, sterile room with tile walls. The air is as offensive as an old dog's breath. Flies circle lazily. Several naked bodies shuffle around us, grunting, clutching, lurching.

I recoil instinctively. All that comes to mind is a group of groaning inmates of the Asylum of Charenton in "Marat/Sade." But this is 6:30 a.m. in the Curley Building for the severely retarded at the District's Forest Haven institution, and the score of residents of Unit West 2, men 21 years and older, are ready for bath and breakfast.

Kidrick locks the door behind us and, suddenly, the idea of spending eight hours working as a nurse's assistant in Curley is almost painful to contemplate. At that moment, I want to get out.

Curley is a $3 million low-slung, red brick building opened two years ago to house 200 profoundly retarded men, women and children. It is Forest Haven's air conditioned showpiece. Visitors are trotted through the carpeted lobby and invited to admire the brightly decorated walls of the corridors that contrast starkly with the shabby cottages in which most of Forest Haven's 1,300 residents live.

Before Curley was built, the same residents were crowded into the shabby cottages, living with the stench of urine and excrement in the classic "Snakepit" conditions once prevalent in all institutions for the retarded and still depressingly present in too many today.

All that was supposed to end at Forest Haven when Curley was opened. The new building was to be a model of progressive care for the profoundly retarded, replete with adequate staff, instructional aids, structured training and recreation and, most important of all, behavioral modification programs to transform a population of animalistic human beings into functioning human beings, mentally limited, but able to feed, dress, clean, learn and perhaps even get a little enjoyment out of life. Today the stench has gone, but little else has changed.

"It hasn't worked," said Kidrick. "At least, not yet it hasn't."

The residents of West 2 include three men who are blind, in addition to being profoundly retarded. They have to be led from their beds to the toilets. The others find their own way.

From here, they move to the bath area where Kidrick scrubs them down with an antiseptic soap solution and sends them into the shower. As usual, he has to use paper towels because the laundry hasn't sent any washcloths. My job is to dry them when they come out of the shower. There aren't enough towels, so I use sheets.

Their bodies are scarred, a realization that startles me. Some have heads and chests like roadmaps, crisscrossed with scar tissue. Many have fresh wounds, swellings, contusions, open cuts "They fight, hurt each other, and some have seizures and fall down a lot," Kidrick explains.

First out of the shower is Eddie, a powerfully built black man who stands a head taller than I stand. He glowers as I reach to dry him. I'm not afraid that he'll hurt me. The fear is more that I won't be able to do the job, that I'll have to apologize to Kidrick and leave.

But Eddie bends his head and I wipe the water out of his eyes. He smiles and suddently the repulsion vanishes. Somehow it's like caring for a frightened child. When he's dry, Eddie lifts his arms and I can't understand what he wants. Kidrick comes to the rescue.

"Grab the deodorant," he yells. After a couple of strokes with the roll-on deodorant, Eddie ambles off happily and the line from the showers starts moving toward me.

Working as a counselor or nurse's assistant at Forest Haven is difficult, emotionally taxing and damned hard work. It means doing everything a mother or father does for a young child, but doing it instead for 20, 30, even 50 people each day. And the offspring are retarded.

The pay is scant, generally somewhere between $5,000 and $7,000 a year, depending on seniority. The shifts are spaced around the clock. There is no public transportation between the District and Forest Haven, which is 22 miles from downtown Washington near Laurel, Md.

The institution, by the estimate of Joseph Yeldell, director of the D.C Department of Human Resources, needs twice as many staff members as it now has. The problems spawned by the consequent lack of supervision are enormous, he admits.

Working as a nurse's assistant in Curley is particularly tough. Says nursing chief Gladys Ness, "Most of our employes are working mothers with families of their own. They've got a list of problems a mile long before they even get out here. The work is difficult. Absenteeism is high. An awful lot of sick leave is used. A lot of the people aren't trained . . ."

After two hours with the residents of West 2, some definite characters begin to emerge. Terry is the court jester. He is a tiny man, about three feet tall with matchstick legs and a perpetual grin. He waddles along like a penguin and follows everywhere, telling me every two minutes that we're buddies, reaching up each time to pat me on the back.

After an hour, it gets tiresome. I think about how Kidrick hears it year in and year out.

Terry seems to be the brightest resident I've met so far, and he's the only one who is able to speak in sentences. Eddie, the black man, roars constantly, trying to sing the words to "When the Saints Go Marching In."

Michael, who is mongoloid, carries a bundle of rags around with him and never lets them go. James has difficulty walking and stumbles around. Herbert, an old man, spends an hour or more patiently lacing a pair of boots.

After breakfast, the medication is brought around—phenobarbitol, Thorazine. Everybody gets a dose of tranquilizer.

"Realistically, nothing is happening here," Kidrick says. "There's not enough staff to have programs such as simple games. The kids love music, but there aren't any radios and the record players are all broken. We're supposed to get toys, but most of the stuff they send us is useless—games that normal kids would have trouble handling.

"I don't buy this tranquilizer business. If you're going to dope up kids 24 hours a day, you're retarding them further. I can't work with these kids when they're like zombies. Most of them have been on drugs for so long, you'd never get them off now."

Mrs. F. W. Jacobik, Curley's nursing supervisor, disagrees. "Without tranquilizers it would be sheer madness," she said.

Nursing assistant Rozella Parsons, an intense woman who says she treats her retarded charges just as she does her own children and loves them just as much, disagrees with Mrs. Jacobik.

"They tranquilize them so heavy here that I can't work with them in my behavior program," she complains. "There's an attitude at this institution—they feel our people are so severely retarded they don't need things. We're always the last to get clothing, linen. Morale is bad. Younger staff people leave because they get disgusted with being unable to change things. There's bad feeling between the nurses and the nursing assistants. The registered nurses sit up front and never come back into the day rooms where the real work is being done."

The behavioral modification program Mrs. Parsons has organized is strictly her own effort to improve things. It doesn't have enough staff members to function in the textbook manner, although several agree that she has done amazing things with her charges.

Forest Haven nursing chief Gladys Ness says, "Ideally all 200 Curley residents should be participating in behavior modification. Instead, because of the staff shortage, there are exactly seven."

It's obvious to me that Kidrick and company are right. Curley is a beautiful building, but it is nothing more than a fancier warehouse than the other cottages. My job simply is to watch the residents, keep them out of trouble, change diapers if needed. There isn't so much as a ball to roll around or a book or magazine to show them.

The only breaks in the routine are meals. Day room doors are unlocked, they troop down the hall to a small dining room and wolf down their food. Mealtimes are used to reinforce good eating habits. Spoons, not fingers, must be used.

James, who stumbles about and has difficulty walking, breaks the rules and eats with his fingers. An attendant shoves the spoon in his hand three times. The fourth time James' fingers go into the food, he is yanked from the table and hustled back to the day room. James fights all the way because he's still hungry.

By this time, James is thoroughly angry, shrieking and clawing to get back to the eating area. A nurse's assistant, a young girl, joins the struggle and James bites her finger. Nothing serious. The skin isn't broken.

The attendant loses his temper, grabs James by the shoulder, trips him and pushes him to the floor. I'm amazed that he does this in front of me. It is a cruel thing to watch, but somehow the attendant's actions are understandable; I can feel the frustration myself.

After lunch, a middle-aged woman—possibly a volunteer worker—breezes into the unit. I've been trying unsuccessfully to teach Terry to form a square with four sticks. The newcomer greets Terry effusively. "Terry sweetheart, I see you've been sitting in a puddle again," she gushes. And Terry, who has no bladder control and wets regularly, grins happily in agreement.

"He doesn't like people to know that he wets himself," she whispers.

The woman then distributes the afternoon's recreational materials—two copies of Sports Illustrated.

At 2:30 p.m., my shift is over. But, before leaving, I make another tour of the building, escorted by Clarence E. Lee, who is in charge of the Curley Building.

In the women's and girls' sections, there is even less activity than on the men's side. Apparently heavily tranquilized, the women sit, and sprawl around, hardly moving. At least on the men's side they walk, argue or fight.

One girl, maybe 12 years old, is straining inside the straitjacket and pulling on her bonds, biting her lips, tugging uselessly against her bonds. I ask Lee why such confinement is necessary.

"She scratches the other girls," he replies.

"Why don't you cut her nails?"

"She still scratches."

Mr. HUMPHREY. Mr. President, I ask unanimous consent that the following items be printed in the RECORD: A letter I have written to the Comptroller General, Mr. Elmer B. Staats, asking for a full-scale investigation; a letter to Senator THOMAS EAGLETON, chairman of the District of Columbia Committee; a letter to Senator BIRCH BAYH, chairman of the Subcommittee on the District of Columbia; and my letter to Mr. Joseph Yeldell, Director of the Department of Human Resources.

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

NOVEMBER 9, 1973.

Hon. ELMER B. STAATS,
General Accounting Office,
Washington, D.C.

DEAR ELMER: I am deeply disturbed by reported conditions at Forest Haven, a facility in Laurel, Maryland, operated by the Government of the District of Columbia, for the care and treatment of some 1,300 mentally retarded persons. Enclosed are tear sheets from the Congressional Record, containing a statement I made in the Senate on this matter in response to a recent series of articles appearing in the Washington Star-News.

By this letter I am formally requesting that the General Accounting Office investigate the possible misuse of funds appropriated by Congress, where such funds provide assistance for programs at Forest Haven, approved under the terms and conditions of specified Federal programs.

Sincerely,

HUBERT H. HUMPHREY.

Hon. THOMAS F. EAGLETON,
Chairman, Committee on the District of Columbia, U.S. Senate, Washington, D.C.

DEAR TOM: I have no doubt that you share fully my concern over outrageous conditions reported at Forest Haven, the facility operated by the Government of the District of Columbia for the care and treatment of mentally retarded persons. Enclosed are tear sheets from the Congressional Record, containing a statement I made in the Senate on this serious matter, and a series of articles appearing in recent issues of the Washington Star-News.

I request that immediate consideration be given to scheduling committee hearings on conditions at Forest Haven, with a view to developing recommendations on appropriate corrective administrative or legislative action. To this end, you may be assured of my full support and my readiness to be of assistance.

Sincerely,

HUBERT H. HUMPHREY.

NOVEMBER 9, 1973.

Hon. BIRCH BAYH,
Chairman, Subcommittee on the District of Columbia, Committee on Appropriations, U.S. Senate, Washington, D.C.

DEAR BIRCH: Recently, a series of articles in the Washington Star-News reported what I frankly regard as inhumane conditions at Forest Haven in Laurel, Maryland—the facility operated by the Government of the District of Columbia for the care and treatment of some 1,300 mentally retarded persons.

In a statement in the Senate, I spelled out several courses of action to correct these conditions. Enclosed are tear sheets from the Congressional Record, containing my remarks and the newspaper articles.

My statement makes reference to testimony on Forest Haven last May before your subcommittee by Mr. Joseph P. Yeldell, director of the D.C. Department of Human Resources. It is clear from your colloquy with Mr. Yeldell, and the subcommittee's recommendation to the Senate that his request for the addition of 100 staff positions at Forest Haven be approved, that you have a full appreciation of the great need for corrective action to provide decent living conditions for residents at Forest Haven, good medical treatment, and maximum feasible opportunities for participation in therapeutic and behavioral modification programs—all as a minimum requirement for any residential facility for the mentally retarded.

I request that you consider committee action to propose the incorporation of such additional funds as may be required to meet the initial request for 100 additional staff positions at Forest Haven, in the first appropriate legislation providing for supplemental appropriations for Fiscal 1974 to be reported to the Senate. This would be only an absolute minimum request, to make up the short-fall in Fiscal 1974 appropriations for the District of Columbia as enacted by Congress in August, 1973, which allowed for 50 additional staff positions at Forest Haven.

I further request that early committee consideration be given to further funding requirements to implement program and facility improvements at Forest Haven. To assist this process, I have requested Mr. Yeldell to outline for me measures that could be taken in the immediate future, with cost estimates. In addition to making such information available to the subcommittee, I am prepared to give full support to efforts by the subcommittee to help assure that adequate funds are made available by Congress to achieve the major reforms and improvements at Forest Haven that are now mandatory.

Sincerely,

HUBERT H. HUMPHREY.

NOVEMBER 9, 1973.

Mr. JOSEPH P. YELDELL,
Director, Department of Human Resources, Government of the District of Columbia, Washington, D.C.

DEAR MR. YELDELL: In a recent statement in the Senate, I have called for several actions to correct what I believe are shocking conditions at Forest Haven, the facility operated by the Government of the District of Columbia for the care and treatment of mentally retarded persons. Enclosed are tear sheets from the Congressional Record, containing my remarks.

I request that you reply to me in writing on the statements and allegations set forth in the four-part series of articles on Forest Haven, appearing in October, 1973 issues of the Washington Star-News.

I further request that you outline for me a reasonable program, with cost estimates, for staff expansion and reorganization and for facility improvements at Forest Haven, as well as for specific therapeutic and behavioral modification programs that can be initiated and expanded at this facility in the immediate future.

Finally, I request that you advise me on the status of plans for directing future services for mentally retarded persons toward community-related facilities.

You will note from my statement in the Senate that I have reviewed your testimony of last May before the Senate Appropriations Subcommittee on the District of Columbia, and your colloquy on problems at Forest Haven with Senator Birch Bayh, subcommittee chairman. I believe your remarks at that time were candid and forthright, and that you indicated a sincere concern that facility, staff, and program improvements be undertaken. I greatly regret that the final legislation enacted by Congress providing appropriations for the District of Columbia in Fiscal 1974, did not contain the full amount requested by your Department for 100 additional staff positions at Forest Haven. However, I am recommending Senate action on supplemental appropriations to meet this request.

Nevertheless, it would appear that action can and must be taken by responsible officials of the Government of the District of Columbia without delay to initiate corrective procedures to address the incredible conditions reported at Forest Haven. I strongly urge that your Department pursue this course with diligence and dispatch.

Sincererly,

HUBERT H. HUMPHREY.

Mr. HUMPHREY. Mr. President, this is only the beginning. There will be more.

I thank the Washington Star. I thank a great newspaper in this city for being sufficiently concerned about people that it took time to put on page 1, day after day, this story.

I want to say, as a Member of Congress, that I am ashamed that we have not done what ought to be done about this matter to correct this miserable situation. There is no reason on God's green Earth why this should go on. All we need to do is to practice a little sense of decency, a little sense of compassion, a little sense of care, and we can correct all this. I ask that the appropriate committees of Congress go to work, dig into this matter, and see that it is corrected; and I will have some more suggestions for them a little later.

FED BEARS HEAVY RESPONSIBILITY FOR INFLATION

Mr. PROXMIRE. Mr. President, the Federal Reserve Board deserves central responsibility for the serious inflation that has become the Nation's No. 1 economic problem. The mammoth increase in the money supply created by the Federal Reserve in 1972 contributed seriously to the present inflation.

A detailed 28-page letter of November 6, defending that policy, from Chairman Arthur Burns to me, shows that the FED has no defense for an appallingly timed explosion of money into the economy when the economy already was beginning to expand at a rapid pace.

The 1972 money supply increase of

$19.5 billion was easily the biggest growth in the money supply in the Nation's history. The percentage increase of 8 percent was one of the biggest ever. Much of our present inflation is a consequence of that action. And the Chairman of the Federal Reserve Board has not, in my judgment, been able to defend it.

In my letter to Chairman Burns, I pointed out that a recent poll of 415 members of the National Association of Business Economists found an overpowering 80 percent that characterized our monetary policy of the past year as fair to poor, while a pathetic 16.6 percent rated it good to excellent.

In other words, it was about 5 to 1 on the basis of the expert opinion that the Federal Reserve Board had not done a good job.

I also told Dr. Burns that the crux of the criticism was that there was too much variation from time to time in the rate of increase in the money supply, that monetary policy was too erratic, too much characterized by stops and starts.

I asked him to comment on this serious criticism.

Governor Burns' response, as I paraphrase it, was as follows:

There were many factors causing the worldwide inflation over which monetary controls could have little influence, i.e. two devaluations, sudden and drastic shifts in worldwide food supply and demand, a series of material shortages at a time of international boom conditions.

Of course, Governor Burns is right, but he does not address the fundamental point that, given these highly inflationary conditions, the monetary response of the Federal Reserve was a blunder of the first order. That is exactly the time it should not let the money supply go through the ceiling. Once again, the FED was caught leaning the wrong way.

Throughout 1972, when the economy was picking up an inflationary head of steam, the pace of money growth continued at a reckless speed. It did, indeed, slow down from quarter to quarter, but the pace was still breakneck throughout the year. After the money supply was expanding in each quarter of the year at more than 7 percent, a rate that was feeding, not restraining, inflation.

About all that can be said of that policy is that it served a useful political role. Unlike another election year, 1960, when a restrained monetary policy against Burns' advice may have cost the incumbent Republican Party the wafer-thin margin by which they lost the election, the 1973 monetary policy gilded the economic expansion lily and helped assure the Nixon landslide. It also converted a year of strong economic progress into a serious inflation.

While it is certainly true that nonmonetary factors contributed heavily to the extent of the 1973 inflation, monetary policy—far from counteracting these inflationary forces—aggravated them.

Mr. President, I ask unanimous consent that my letter to Chairman Burns and his detailed response to my letter be printed in full at this point in the RECORD.

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

SEPTEMBER 17, 1973.

Hon. ARTHUR F. BURNS,
Chairman, Board of Governors of the Federal Reserve System, Federal Reserve Building, Washington, D.C.

DEAR MR. CHAIRMAN: Two articles in the financial section of the *New York Times*, today, were very disturbing to me and I'm sure must have concerned you also.

I would be most grateful if you would give me your response.

One article was based on a poll of some 415 members of the National Association of Business Economists. The question asked was this:

"How would you rate monetary policy over the past year?".

These were the results:

	Percent
Excellent	1.4
Good	15.2
Fair	38.8
Poor	41.2
No opinion	3.4

The article failed to specify very much in the way of specific complaints except for two main points:

1. The argument that there was too much variation from time to time in the rate of increase in the money supply, that monetary policy was too erratic, too much characterized by stops and starts.

2. The argument that the money supply had increased much too much last year, in fact that the increase would have been too much even if we had been in the depths of a recession instead of enjoying a fairly vigorous economic expansion.

The second article carried the following lead:

"The Federal Reserve Open Market Committee has done such a bad job in the last eight years—at least in the eyes of its critics—that a group of 11 economists has banded together to tell the real central bankers what they should be doing."

This group paid its discrespects to the general economic policy followed by the Administration and the Congress but they were also particularly critical of what they construe to the current Federal Reserve policy, and call for a steady growth in the money supply instead of "fine tuning".

In addition to these criticisms, I must say, Mr. Chairman, that I have found extraordinarily intense criticism of the present high level of interest rates both in the Congress and out in Wisconsin and elsewhere in the country. The present policy is already causing distress for home buyers and home builders and there is increasing apprehension that the worst may be yet to come.

I would very much appreciate whatever response you could give me both with respect to the criticism of the Federal Reserve Board to which I have referred and the painful results of present monetary policies.

Sincerely,

WILLIAM PROXMIRE,
U.S. Senator.

FEDERAL RESERVE SYSTEM,
Washington, D.C., November 6, 1973.

Hon. WILLIAM PROXMIRE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR PROXMIRE: I am writing in further response to your letter of September 17, 1973, which requested comments on certain criticisms of monetary policy over the past year.

As stated in your letter, the criticisms are: (1) "that there was too much variation from time to time in the rate of increase in the money supply, that monetary policy was too erratic, too much characterized by stops and starts"; and (2) "that the money supply had increased much too much last year, in fact that the increase would have been too much even if we had been in the depths of a recession instead of enjoying a fairly vigorous economic expansion."

These criticisms involve basic issues with regard to the role of money in the economy, and the role that the money supply should play in the formulation and execution of monetary policy. These issues, along with the specific points you raise, require careful examination.

CRITICISM OF OUR PUBLIC POLICIES

During the past two years the American economy has experienced a substantial measure of prosperity. Real output has increased sharply, jobs have been created for millions of additional workers, and total personal income—both in dollars and in terms of real purchasing power—has risen to the highest levels ever reached.

Yet the prosperity has been a troubled one. Price increases have been large and widespread. For a time, the unemployment rate remained unduly high. Interest rates have risen sharply since the spring of 1972. Mortgage money has recently become difficult to obtain in many communities. And confidence in the dollar at home and abroad has at times wavered.

Many observers have blamed these difficulties on the management of public economic policies. Certainly, the Federal budget—despite vigorous efforts to hold expenditures down—continued in substantial deficit. There has also been an enormous growth in the activities of Federally-sponsored agencies which, although technically outside the budget, must still be financed. The results of efforts to control wages and prices during the past year have been disappointing. Partial decontrol in early 1973 and the subsequent freeze failed to bring the results that were hoped for.

Monetary policy has been criticized on somewhat contradictory counts—for being inflationary, or for permitting too high a level of interest rates, or for failing to bring the economy back to full employment, or for permitting excessive short-term variations in the growth of the money supply, and so on.

One indication of dissatisfaction with our public policies was provided by a report, to which you refer in your letter, on a questionnaire survey conducted by the National Association of Business Economists. Of the respondents, 38 per cent rated fiscal policy "over the past year" as "poor"; 41 per cent rated monetary policy "over the past year" as "poor"; only 14 per cent felt that the wage-price controls under Phase IV were "about right." If this sampling is at all indicative, the public policies on which we have relied are being widely questioned. Many members of the above group, in fact, went on record for a significant change in fiscal policy. In response to a question whether they favored a variable investment tax credit, 46.5 per cent said "yes," 40 per cent said "no," and 13.5 per cent expressed "no opinion."

Let me turn now to the questions raised in your letter and in some other recent discussions about monetary policy. I shall discuss, in particular, the role of money supply in the conduct of monetary policy; the extent and significance of variability in the growth of the money supply; and the actual behavior of the money supply during 1972–73.

ROLE OF MONEY SUPPLY

For many years economists have debated the role of the money supply in the performance of economic systems. One school of thought, often termed "monetarist,"

claims that changes in the money supply influence very importantly, perhaps even decisively, the pace of economic activity and the level of prices. Monetarists contend that the monetary authorities should pay principal attention to the money supply, rather than to other financial variables such as interest rates, in the conduct of monetary policy. They also contend that fiscal policy has only a small independent impact on the economy.

Another school of thought places less emphasis on the money supply and assigns more importance to the expenditure and tax policies of the Federal Government as factors influencing real economic activity and the level of prices. This school emphasizes the need for monetary policy to be concerned with interest rates and with conditions in the money and capital markets. Some economic activities, particularly residential building and State and local government construction, depend heavily on borrowed funds, and are therefore influenced greatly by changes in the cost and availability of credit. In other categories of spending—such as business investment in fixed capital and inventories, and consumer purchases of durable goods—credit conditions —play a less decisive role, but they are nonetheless important.

Monetarists recognize that monetary policy affects private spending in part through its impact on interest rates and other credit terms. But they believe that primary attention to the growth of the money supply will result in a more appropriate monetary policy than would attention to conditions in the credit markets.

Needless to say, monetary policy is—and has long been—a controversial subject. Even the monetarists do not speak with one voice on monetary policy. Some influential monetarists believe that monetary policy should aim strictly at maintaining a constant rate of growth of the money supply. However, what that constant should be, or how broadly the money supply should be defined, are matters on which monetarists still differ. And there are also monetarists who would allow some—but infrequent—changes in the rate of growth of the money supply, in accordance with changing economic conditions.

It seems self-evident that adherence to a rigid growth rate rule, or even one that is changed infrequently, would practically prevent monetary policy from playing an active role in economic stabilization. Monetarists recognize this. They believe that most economic disturbances tend to be self-correcting, and they therefore argue that a constant or nearly constant rate of growth of the money supply would result in reasonably satisfactory economic performance.

But neither historical evidence, nor the thrust of explorations in business-cycle theory over a long century, give support to the notion that our economy is inherently stable. On the contrary, experience has demonstrated repeatedly that blind reliance on the self-correcting properties of our economic system can lead to serious trouble. Discretionary economic policy, while it has at times led to mistakes, has more often proved reasonably successful. The disappearance of business depressions, which in earlier times spelled mass unemployment for workers and mass bankruptcies for businessmen, is largely attributable to the stabilization policies of the last thirty years.

The fact is that the internal workings of a market economy tend of themselves to generate business fluctuations, and most modern economists recognize this. For example, improved prospects for profits often spur unsustainable bursts of investment spending. The flow of personal income in an age of affluence allows ample latitude for changes in discretionary expenditures and in savings rates. During a business-cycle expansion various imbalances tend to develop within the economy—between aggregate inventories and sales, or between aggregate business investment in fixed capital and consumer outlays, or between average unit costs of production and prices. Such imbalances give rise to cyclical movements in the economy. Flexible fiscal and monetary policies, therefore, are often needed to cope with undesirable economic developments, and this need is not diminished by the fact that our available tools of economic stabilization leave something to be desired.

There is general agreement among economists that, as a rule, the effects of stabilization policies occur gradually over time, and that economic forecasts are an essential tool of policy making. However, no economist—of school or economies—has a monopoly on accurate forecasting. At times, forecasts based largely on the money supply have turned out to be satisfactory. At other times, such forecasts have been quite poor, mainly because of unanticipated changes in the intensity with which the existing money stock is used by business firms and consumers.

Changes in the rate of turnover money have historically played a large role in economic fluctuations, and they continue to do so. For example, the narrowly-defined money stock—that is, demand deposits plus currency in public circulation—grew by 5.7 per cent between the fourth quarter of 1969 and the fourth quarter of 1970. But the turnover of money declined during that year, and the dollar value of GNP rose only 4.5 per cent. In the following year, the growth rate of the money supply increased to 6.9 per cent, but the turnover of money picked up briskly and the dollar value of GNP accelerated to 9.3 per cent. The movement out of recession in 1970 into recovery in 1971 was thus closely related to the greater intensity in the use of money. Occurrences such as this are very common because the willingness to use the existing stock of money, expresed in its rate of turnover, is a highly dynamic force in economic life.

For this as well as other reasons, the Federal Reserve uses a blend of forecasting techniques. The behavior of the money supply and other financial variables is accorded careful attention. So also are the results of the most recent surveys on plant and equipment spending, consumer attitudes, and inventory plans. Recent trends in key producing and spending sectors are analyzed. The opinions of businessmen and outside economic analysts are canvassed, in part through the nationwide contracts of Federal Reserve Banks. And as assessment is made of the probable course of fiscal policy, also of labor-market and agricultural policies, and their effects on the economy.

Evidence from all these sources is weighed. Efforts are also made to assess economic developments through the use of large-scale econometric models. An eclectic approach is thus taken by the Federal Reserve, in recognition of the fact that the state of economic knowledge does not justify reliance on any single forecasting technique. As economic research has cumulated, it has become increasingly clear that money does indeed matter. But other financial variables also matter.

In recent years, the Federal Reserve has placed somewhat more emphasis on achieving desired growth rates of the monetary aggregates, including the narrowly-defined money supply, in its conduct of monetary policy. But we have continued to give careful attention to other financial indicators, among them the level of interest rates on mortgages and other loans and the liquidity position of financial institutions and the general public. This is necessary because the economic implications of any given monetary growth rate depend on the state of liquidity, the attitudes of businessmen, investors, and consumers toward liquidity, the cost and availability of borrowed funds, and other factors. Also, as the nation's central bank, the Federal Reserve can never lose sight of its role as a lender of last resort, so that financial crises and panics will be averted.

I recognize that one advantage of maintaining a relatively stable growth rate of the money supply is that a partial offset is thereby provided to unexpected and undesired shifts in the aggregate demand for goods and services. There is always some uncertainty as to the emerging strength of aggregate demand. If money growth is maintained at a rather stable rate, and aggregate demand turns out to be weaker than is consistent with the nation's economic objectives, interest rates will tend to decline and the easing of credit markets should help to moderate the undesired weakness in demand. Similarly, if the demand for goods and services threatens to outrun productive capacity, a rather stable rate of monetary growth will provide a restraining influence on the supply of credit and thus tend to restrain excessive spending.

However, it would be unwise for monetary policy to aim at all times at a constant or nearly constant rate of growth of money balances. The money growth rate that can contribute most to national objectives will vary with economic conditions. For example, if the aggregate demand for goods and services is unusually weak, or if the demand for liquidity is unusually strong, a rate of increase in the money supply well above the desirable long-term trend may be needed for a time. Again, when the economy is experiencing severe cost-push inflation, a monetary growth rate that is relatively high by a historical yardstick may have to be tolerated for a time. If money growth were severely constrained in order to combat the element of inflation resulting from such a cause, it might well have seriously adverse effects on production and employment. In short, what growth rate of the money supply is appropriate at any given time cannot be determined simply by extrapolating past trends or by some preconceived arithmetical standard.

Moreover, for purposes of conducting monetary policy, it is never safe to rely on just one concept of money—even if that concept happens to be fashionable. A variety of plausible concepts merit careful attention, because a number of financial assets serve as a convenient, safe, and liquid store of purchasing power.

The Federal Reserve publishes data corresponding to three definitions of money, and takes all of them into account in determining policy. The three measures are: (a) the narrowly-defined money stock (M_1), which encompasses currency and demand deposits held by the nonbank public; (b) a more broadly-defined money stock (M_2), which also includes time and savings deposits at commercial banks (other than large negotiable time certificates of deposits); (c) a still broader definition (M_3), which includes savings deposits at mutual savings banks and savings and loan associations. A definition embracing other liquid assets could also be justified—for example, one that would include large-denomination negotiable time certificates of deposit, U.S. savings bonds and Treasury bills, commercial paper, and other short-term money market instruments.

There are many assets closely related to cash, and the public can switch readily among these assets. However money may be defined, the task of determining the amount of money needed to maintain high employment and reasonable stability of the general price level is complicated by shifting preferances of the public for cash and other financial assets.

VARIABILITY OF MONEY SUPPLY GROWTH

In the short-run, the rate of change in the observed money supply is quite erratic, and cannot be trusted as an indicator of the

course of monetary policy. This would be so even if there were no errors of measurement.

The record of hearings held by the Joint Economic Committee on June 27, 1973 includes a memorandum which I submitted on problems encountered in controlling the money supply. As indicated there, week-to-week, month-to-month, and even quarter-to-quarter fluctuations in the rate of change of money balances are frequently influenced by international flows of funds, changes in the level of U.S. Government deposits, and sudden changes in the public's attitude towards liquidity. Some of these variations appear to be essentially random—a product of the enormous ebb and flow of funds in our modern economy.

Because the demands of the public for money are subject to rather wide short-term variations, efforts by the Federal Reserve to maintain a constant growth rate of the money supply could lead to sharp short-run swings in interest rates and risk damage to financial markets and the economy. Uncertainties about financing costs could reduce the fluidity of markets and increase the costs of financing to borrowers. In addition, wide and erratic movements of interest rates and financial conditions could have undesirable effects on business and consumer spending. These adverse effects may not be of major dimensions, but it is better to avoid them.

In any event, for a variety of reasons explained in the memorandum for the Joint Economic Committee, to which I have previously referred, the Federal Reserve does not have precise control over the money supply. To give one example, a significant part of the money supply consists of deposits lodged in nonmember banks that are not subject to the reserve requirements set by the Federal Reserve. As a result there is some slippage in monetary control. Furthermore, since deposits at nonmember banks have been reported for only two to four days in a year, in contrast to daily statistics for member banks, the data on the money supply—which we regularly present on a weekly, monthly, and quarterly basis—are estimates rather than precise measurements. When the infrequent reports from nonmember banks become available, they often necessitate considerable revisions of the money supply figures. In the past two years, the revisions were upward, and this may happen again this year.

Some indication of the extent of short-term variations in the recorded money supply is provided below. Table 1 shows the average and maximum deviations (without regard to sign) of M_1 from its average growth rate over a three and a half year period. As would be expected, the degree of variation diminishes as the time unit lengthens; it is much larger for monthly than for quarterly data, and is also larger for quarterly than for semi-annual data.

TABLE 1.—DEVIATIONS IN M_1 FROM ITS AVERAGE RATE OF GROWTH, 1970 THROUGH MID-1973

Form of data	Annual rates of change in percent	
	Average deviation	Maximum deviation
Monthly	3.8	8.8
Quarterly	2.4	5.5
Semiannual	1.8	4.1

In our judgment, there need be little reason for concern about the short-run variations that occur in the rate of change in the money stock. Such variations have minimal effects on the real economy. For one thing, the outstanding supply of money is very large. It is also quite stable, even when the short-run rate of change is unstable. This October the average outstanding supply of M_1, seasonally adjusted, was about $264 billion. On this base, a monthly rise or fall in the money stock of even $2½ billion would amount to only a 1 per cent change. But when such a temporary change is expressed as an annual rate, as is now commonly done, it comes out as about 12 per cent and attracts attention far beyond its real significance.

The Federal Reserve research staff has investigated carefully the economic implications of variability in M_1 growth. The experience of the past two decades suggests that even an abnormally large or abnormally small rate of growth of the money stock over a period up to six months or so has a negligible influence on the course of the economy—provided it is subsequently offset. Such short-run variations in the rate of change in the money supply may not at all reflect Federal Reserve policy, and they do not justify the attention they often receive from financial analysts.

The thrust of monetary policy and its probable effects on economic activity can only be determined by observing the course of the money supply and of other monetary aggregates over periods lasting six months or so. Even then, care must be taken to measure the growth of money balances in ways that temper the influence of short-term variations. For example, the growth of money balances over a quarter can be measured from the amount outstanding in the last month of the preceding quarter to the last month of the current quarter, or from the average amount outstanding during the preceding quarter to the average in the current quarter. The first measure captures the latest tendencies in the money supply, but may be distorted by random changes that have no lasting significance. The second measure tends to average out temporary fluctuations and is comparable to the data provided on a wide range of non-monetary economic variables, such as the gross national product and related measures.

A comparison of these two ways of measuring the rate of growth in M_1 is shown in Table 2 for successive quarters in 1972 and 1973. The first column, labeled M, shows annual rates calculated from end-months of quarters; the second column, labeled Q, shows annual rates calculated from quarterly averages.

TABLE 2.—GROWTH RATES OF MONEY SUPPLY ON 2 BASES

	Annual rate of change, in percent	
	M	Q
1972:		
I	9.2	5.3
II	6.1	8.4
III	8.2	8.0
IV	8.6	7.1
1973:		
I	1.7	4.7
II	10.3	6.9
III	.3	5.1

As may be seen, the quarterly averages disclose much more clearly the developing trend of monetary restraint—which, in fact, began in the second quarter of 1972. Also, the growth of M_1, which on a month-end basis appears very erratic in the first three quarters of 1973, is much more stable on a quarterly average basis. For example, while the level of M_1 did not expand significantly between June and September, the quarterly average figures indicate further sizable growth in the third quarter. For purposes of economic analysis, it is an advantage to recognize that the money available for use was appreciably larger in the third quarter than in the second quarter.

EXPERIENCE OF 1972–73

During 1972, it was the responsibility of the Federal Reserve to encourage a rate of economic expansion adequate to reduce unemployment to acceptable levels. At the same time, despite the dampening effects of the wage-price control program, inflationary pressures were gathering. Monetary policy, therefore, had to balance the twin objectives of containing inflationary pressures and encouraging economic growth. These objectives were to some extent conflicting, and monetary policy alone could not be expected to cope with both problems. Continuation of an effective wage-price program and a firmer policy of fiscal restraint were urgently needed.

The narrowly-defined money stock increased 7.4 per cent during 1972 (measured from the fourth quarter of 1971 to the fourth quarter of 1972). Between the third quarter of 1972 and the third quarter of 1973, the growth rate was 6.1 per cent. By the first half of 1973, the annual growth rate had declined to 5.8 per cent, and a further slowing occurred in the third quarter.

Evaluation of the appropriateness of these growth rates would require full analysis of the economic and financial objectives, conditions, and policies during the past two years, if not longer. Such an analysis cannot be undertaken here. Some perspective on monetary developments during 1972–73 may be gained, however, from comparisons with the experience of other industrial countries, and by recalling briefly how domestic economic conditions evolved during this period.

Table 3 compares the growth of M_1 in the United States with that of other industrial countries in 1972 and the first half of 1973. The definitions of M_1 differ somewhat from country to country, but are as nearly comparable as statistical sources permit. It goes without saying that each country faced its own set of economic conditions and problems. Yet it is useful to note that monetary growth in the United States was much lower than in other major industrial countries, and that it also was steadier than in the countries.

TABLE 3.—ANNUAL PERCENT RATES OF GROWTH IN MONEY SUPPLY

	4th quarter, 1971 to 4th quarter, 1972	4th quarter 1972 to 2d quarter, 1973
United States	7.4	5.8
United Kingdom	14.1	10.0
Germany	14.3	4.2
France	15.4	8.7
Japan	23.1	28.2

The next table shows, in summary fashion, the rates of change in the money supply of the United States, in its total production, and in the consumer price level during 1972 and 1973. The table is based on the latest data. It may be noted, in passing, that, according to data available as late as January 1973, the rate of growth of M_1 during 1972 was 7.2%, not 7.4%; and that the rate of increase in real GNP was 7.7%, not 7.0%. In other words, on the basis of the data available during 1972, the rate of growth of M_1 was below the rate of growth of the physical volume of over-all production.

TABLE 4.—MONEY SUPPLY, GNP, AND PRICES IN THE UNITED STATES

	4th quarter 1971 to 4th quarter1972	4th quarter 1972 to—	
		2d quarter of 1973	3d quarter of 1973
Money supply (M_1)	7.4	5.8	5.6
Gross national product:			
Current dollars	10.6	12.1	11.7
Constant dollars	7.0	5.4	4.8
Prices:			
Consumer Price Index (CPI)	3.4	7.1	7.8
CPI excluding food	3.0	4.0	4.1

The table indicates that growth in M_1 during 1972 and 1973 approximately matched

the growth of real output, but was far below the expansion in the dollar value of the nation's output. Although monetary policy limited the availability of money relative to the growth of transactions demands, it still encouraged a substantial expansion in economic activity; real output rose by about 7 per cent in 1972. Even so, unemployment remained unsatisfactorily high throughout the greater part of the year. It was not until November that the unemployment rate dropped below 5½ per cent. For the year as a whole, the unemployment rate averaged 5.6 per cent. It may be of interest to recall that unemployment averaged 5.5 per cent in 1954 and 1960, which are commonly regarded as recession years.

Since the expansion of M_1 in 1972 was low relative to the demands for money and credit, it was accompanied by rising short-term interest rates. Long-term interest rates showed little net change last year, as credit demands were satisfied mainly in the short-term markets.

In 1973, the growth of M_1 moderated while the transactions demands for cash and the turnover of money accelerated. GNP in current dollars rose at a 12 per cent annual rate as prices rose more rapidly. In credit markets, short-term interest rates rose sharply further, while long-term interest rates also moved up, though by substantially less than short-term rates.

The extraordinary upsurge of the price level this year reflects a variety of special influences. First, there has been a worldwide economic boom superimposed on the boom in the United States. Second, we have encountered critical shortages of basic materials. The expansion in industrial capacity needed to produce these materials had not been put in place earlier because of the abnormally low level of profits between 1966 and 1971 and also because of numerous impediments to new investment on ecological grounds. Third, farm product prices escalated sharply as a result of crop failures in many countries last year. Fourth, fuel prices spurted upward, reflecting the developing shortages in the energy field. And fifth, the depreciation of the dollar in foreign exchange markets has served to boost prices of imported goods and to add to the demands pressing on our productive resources.

In view of these powerful special factors, and the cyclical expansion of our economy, a sharp advance in our price level would have been practically inevitable in 1973. The upsurge of the price level this year hardly represents either the basic trend of prices or the response of prices to previous monetary or fiscal policies—whatever their shortcomings may have been. In particular, as the above tables show, the explosion of food prices that occurred this year is in large part responsible for the accelerated rise in the over-all consumer price level.

The severe rate of inflation that we have experienced in 1973 cannot responsibly be attributed to monetary management or to public policies more generally. In retrospect, it may well be that monetary policy should have been a little less expansive in 1972. But a markedly more restrictive policy would have led to a still sharper rise in interest rates and risked a premature ending of the business expansion, without limiting to any significant degree this year's upsurge of the price level.

CONCLUDING OBSERVATIONS

The present inflation is the most serious economic problem facing our country, and it poses great difficulties for economic stabilization policies. We must recognize, I believe, that it will take some time for the forces of inflation, which now engulf our economy and others around the world, to burn themselves out. In today's environment, controls on wages and prices cannot be expected to yield the benefits they did in 1971 and 1972, when economic conditions were much different. Primary reliance in dealing with inflation—both in the near future and over the longer term—will have to be placed on fiscal and monetary policies.

The prospects for regaining price stability would be enhanced by improvements in our monetary and fiscal instruments. The conduct of monetary policy could be improved if steps were taken to increase the precision with which the money supply can be controlled by the Federal Reserve. Part of the present control problem stems from statistical inadequacies—chiefly the paucity of data on deposits at nonmember banks. Also, however, control over the money supply and other monetary aggregates is less precise than it can or should be because nonmember banks are not subject to the same reserve requirements as are Federal Reserve members.

I hope that the Congress will support efforts to rectify these deficiencies. For its part, the Federal Reserve Board is even now carrying on discussions with the Federal Deposit Insurance Corporation about the need for better statistics on the nation's money supply. The Board also expects shortly to recommend to the Congress legislation that will put demand deposits at commercial banks on a uniform basis from the standpoint of reserve requirements.

Improvements in our fiscal policies are also needed. It is important for the Congress to put an end to fragmented consideration of expenditures, to place a firm ceiling on total Federal expenditures, and to relate these expenditures to prospective revenues and the nation's economic needs. Fortunately, there is now widespread recognition by members of the Congress of the need to reform budgetary procedures along these broad lines.

It also is high time for fiscal policy to become a more versatile tool of economic stabilization. Particularly appropriate would be fiscal instruments that could be adapted quickly, under special legislative rules, to changing economic conditions—such as a variable tax credit for business investment in fixed capital. Once again I would urge the Congress to give serious consideration to this urgently needed reform.

We must strive also for better understanding of the effects of economic stabilization policies on economic activity and prices. Our knowledge in this area is greater now than it was five or ten years ago, thanks to extensive research undertaken by economists in academic institutions, at the Federal Reserve, and elsewhere. The keen interest of the Joint Economic Committee in improving economic stabilization policies has, I believe, been an influence of great importance in stimulating this widespread research effort.

I look forward to continued cooperation with the Committee in an effort to achieve the kind of economic performance our citizens expect and deserve.

Sincerely yours,

ARTHUR F. BURNS.

THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, the fight for human rights has been an important part of our national history. Americans can be very proud of our heritage of struggle against domestic racial, religious, and economic discrimination. These efforts in the field of human rights, however, must not become a source of smug satisfaction. There is always more to be done, both here and abroad.

A quarter-century ago the United Nations General Assembly endorsed the Genocide Convention, the first human rights document which that body considered. The United States was one of the principal leaders in drafting that document. Indeed, President Truman took the major leadership in pushing for a genocide convention. In the intervening years, every President of the United States, including President Nixon, has supported the Genocide Convention. Seventy-five nations, including all our major allies, have ratified this treaty. It seems an anomaly, therefore, that a nation which was a pioneer in the field of human rights would fail to ratify this basic and fundamental document of liberty.

Mr. President, that treaty is on the calendar. That treaty is not up to the President of the United States now, not up to the House of Representatives, not up to any other body but the Senate of the United States. We can ratify it. It is up to us. The United States must not delay any longer. The time to reassert our leadership in this field is long past due. We should act.

QUORUM CALL

The PRESIDING OFFICER. Is there further morning business?

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

EXTENSION OF PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESSS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the period for the transaction of routine morning business be extended an additional 15 minutes, with statements therein limited to 5 minutes each.

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

ADDITIONAL STATEMENTS

THE FUEL ALLOCATION PROGRAM

Mr. FULBRIGHT. Mr. President, last Thursday, November 1, the administration's fuel allocation program for middle distillate fuels went into effect. I am afraid that unless there is some quick action, this program may be a disaster for Arkansas. There are some severe problems with the program both in its basic concepts and in its administration.

The fuel shortage is a problem that is going to affect everyone. Strong action is needed to increase our supply of energy. On the Federal level more funds must be made available for energy research and development. In addition, I believe that the deregulation of the price of natural gas at the wellhead would be an important step in increasing our supply of fuels.

While we are increasing our supplies of energy, we must also decrease our demand. Unnecessary and wasteful uses of energy must be curbed. It is apparent that, for the immediate future, demand will outstrip our supplies. Therefore all Americans are going to suffer some hardship, but this hardship should be dis-

tributed fairly. No one State or region should be discriminated against.

Unfortunately, under the present program, Arkansas is being discriminated against, and this discrimination is being compounded by what appears to be a potential bureaucratic nightmare.

First, the regulations themselves ignore the curtailment of natural gas that has taken place in Arkansas and 22 other States. This curtailment has forced these States to dramatically increase their use of fuel oils. In Petroleum Administration for Defense District III, consisting of Alabama, Mississippi, Louisiana, Texas, and Arkansas, distillate and residual consumption in the first quarter of 1973 was 18 percent greater than in the first quarter of 1972. Second quarter consumption in 1973 was 26.5 percent greater than in 1972, and the third quarter increase, while not yet tabulated, may approach 100 percent. Therefore any allocation program based on historical fuel oil usage will greatly understate the need for fuel oil in these States. The administration's mandatory middle distillate fuel allocation program does not consider this fact. That program, if administered according to its strict language, will deprive the States which have curtailed their use of natural gas of a substantial amount of needed fuel oil.

On October 31 of this year, Governor Bumpers, of Arkansas; Governor Edwards, of Louisiana; Governor Waller, of Mississippi; representatives of Governor Briscoe, of Texas; and Governor Hall, of Oklahoma, and I met with Governor Love to request an interpretive ruling to ameliorate this situation. Because of this meeting, I believe that Governor Love recognizes the seriousness of this matter. Unfortunately, the response of the Office of Oil and Gas was insufficient. Instead of accepting the proposal presented at the meeting with Governor Love, the Office of Oil and Gas announced that they would send telegrams to oil companies telling them to honor present contracts with utilities for 30 days pending the final decision on the problem. There are two basic weaknesses with this approach. First, it only helps the utilitics. It ignores the position of other industries that need an increased allocation for fuel oil. Second, it only deals with the problem from within the region; the real basis of the problem is that the region as a whole needs a larger allocation.

Furthermore, I am concerned that other problems, even though covered by the regulations, will go unsolved due to bureaucratic delay and redtape. Of particular concern is the diesel fuel situation. Diesel fuel is also allocated on the basis of its usage in the particular month of 1972. Because of the floods of 1972, the usual amount of diesel fuel needed for harvesting was not used. Therefore, any allocation based on 1972 usage will not be sufficient to meet the needs of Arkansas farmers. Section 7(a) of the administration's program appears to recognize that situations like this may occur and contains a means to reallocate the needed fuels. Whether this provision will in fact be used effectively is another question.

There are at this time approximately 400,000 bales of cotton, worth $64 million, still in the fields in Arkansas. This cotton represents 3 percent of the Nation's supply. There are still in the fields of Arkansas 68 million bushels of soybeans, worth $400 million. This represents 4 percent of the Nation's supply. Arkansas and the Nation cannot afford to lose a large portion of these crops for a lack of fuel.

Yesterday, the Attorney General of Arkansas, Mr. Jim Guy Tucker, filed an application with the Office of Oil and Gas requesting a sufficient supply of diesel fuel for agricultural uses in Arkansas. I hope that this application will be acted upon without delay.

There are going to be many situations where flexible application of the allocation rules will be required. Such cases are already coming to light in Arkansas. To cite one example, a truckstop in Fort Smith is not receiving, for a combination of reasons, a sufficient supply of fuel. First, its allocation is based on the amount purchased in November 1972. Second, its supplier has only about 85 percent of the supply it had last year; therefore, with reserves held back for hardship allocations, the stop is actually receiving less than 80 percent of what it received in November 1972. Third, the truckstop's business has increased dramatically since 1972 because other stops in the city have gone out of business. This shortage of supply, I am informed, is having a serious effect on the ability of truckers to transport goods in northwestern Arkansas. Many similar situations involving all types of Arkansans, from the owner of a construction company to a school supervisor, have been brought to my attention.

I believe that the officials at the Office of Oil and Gas are making a sincere effort to deal with the complex problem of fuel allocation. They have been forced to make quick adjustments to new situations and programs and are obviously understaffed. But any delay will in many cases result in severe economic hardship for people in Arkansas. Crops in the field will not wait while applications are slowly processed.

I realize that all States will face allocation problems. The people of Arkansas are willing to do their share to deal with this energy crisis, but they believe the burden should be equally shared among all States and regions, and they do not want to do without vitally needed fuels because of delays in the handling of applications.

Mr. President, I am deeply concerned over the fuel supply situation in Arkansas. I certainly hope that events prove me wrong and that the allocation problems will be worked out; but at this time all indications are otherwise.

Mr. President, I ask unanimous consent that a letter my senior colleague from Arkansas (Mr. MCCLELLAN) and I have today sent to Governor Love be printed in the RECORD at the conclusion of my remarks.

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

U.S. SENATE,
Washington, D.C., November 9, 1973.

Hon. JOHN LOVE,
Office of Energy Policy,
The White House,
Washington, D.C.

DEAR GOVERNOR LOVE: Once again we wish to bring to your attention the critical fuel situation in Arkansas. While we appreciate your interim action of sending telegrams to suppliers telling them to continue present contracts with utilities, we are concerned about two aspects of this approach. First, it ignores the fuel needs of other industries that have been forced by the curtailment of natural gas to turn to fuel oil. Second, it ignores the fact that the real basis of the problem is that the entire region is receiving an inadequate allocation. Any intra-regional approach will not solve the problem. We urge you to re-examine this situation.

Further, we hope that quick action will be taken on the application that was filed yesterday by the Attorney General of Arkansas, Mr. Jim Guy Tucker, concerning the need for fuel to harvest the crops that are currently in the fields. The allocations based on diesel usage in November 1972, will be insufficient because diesel usage in that month was abnormally low due to flooding. Neither Arkansas nor the nation can afford to have these crops left in the fields.

Finally, we urge that steps be taken to improve the administrative process of the handling of applications in special situations. We are afraid that delays in the processing of applications may cause severe hardship to our constituents.

We certainly realize the great difficulties you have faced in setting up and in administering the complex allocation program and wish to thank you for your previous efforts to help Arkansas with its fuel problems, but we feel further action is required. Of course, we will be pleased to aid your office in any way possible to avoid hardships in Arkansas which are caused by the fuel shortage.

Sincerely yours,

JOHN L. MCCLELLAN,
J. W. FULBRIGHT

REPRESENTATIVE JOHN SAYLOR

Mr. HUGH SCOTT. Mr. President, a recent editorial in the Pittsburgh Post-Gazette describes in down-to-earth terms the record of one of the House's most pragmatic and realistic members—John Saylor of Johnstown, Pa. His colleagues in Congress and his constituency to which he was thoroughly dedicated and always faithful, will miss him.

I ask unanimous consent this editorial be printed in the RECORD.

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

REPRESENTATIVE JOHN SAYLOR

Long before conservation gained its current popularity, Rep. John Saylor of Johnstown worked hard for the cause in Congress. The 65-year-old congressman, senior Republican member of Pennsylvania's delegation to Washington, died of a heart attack Sunday in Houston, Tex.

Mr. Saylor, while a stalwart Republican and a fiscal conservative, was his own man. He often differed with the "union line," yet enjoyed labor support at election time. He didn't hesitate to differ with his party, if necessary, on conservation matters or on benefits for his district (Cambria, Somerset, Indiana, Jefferson and Armstrong counties and a portion of Clarion).

A big man with a commanding presence and a strong voice, Mr. Saylor had a knack for endearing constituents to his work on their behalf. A combination tough guy and

earthy congressman, he had an exceptionally good ear for the rustlings of his coal region constituency. Despite a slight Democratic edge in his district, he regularly racked up 2 to 1 majorities.

That often required a delicate balance on his positions (he usually ranked near the center in ratings of both liberal and conservative groups). Yet Mr. Saylor always stated his case in the strongest possible terms. When others hemmed and hawed, he came out point-blank.

He could be the GOP's leading conservationist in the House, and at the same time advocate repeal of gun control laws. One of 15 in the House to vote against the Equal Rights amendment, Mr. Saylor demanded equal tax treatment for the unmarried as well as the married.

No one ever mistook him for one of your effete Easterners. He drove back and forth to Congress with the window rolled down in good weather and bad. His coal constituency won't see his likes again.

SHENANDOAH WILDERNESS BILL

Mr. HARRY F. BYRD, JR. Mr. President, on September 20, 1973, the Senate passed without opposition S. 988, my proposal to designate almost 80,000 acres within the Shenandoah National Park as wilderness. This marked the culmination of an effort which began in the 92d Congress to afford additional protection to the unique natural beauty contained in the mountains which rise far above the winding South Fork of the Shenandoah River.

I have said before that I know of no more beautiful area in the Nation than Shenandoah National Park. I believe this feeling is shared by thousands of my fellow Virginians.

I have recently received the report of visits to the Park for the month of October from Mr. Robert R. Jacobsen, superintendent of the park. The statistics provide a compelling testimonial of both the park's popularity and the need for final congressional action on the Shenandoah Wilderness legislation.

In the month of October 1973, over one-half million people entered the park. That is almost one-quarter the number that visited the park for the entire year in 1972.

Mr. President, I ask unanimous consent that the report of the superintendent be placed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. HARRY F. BYRD, JR. Mr. President, I would like to add that from all reports I have received, Mr. Jacobsen has done a splendid job in his brief tenure as superintendent of Shenandoah National Park.

He is an experienced and dedicated Park Service professional. Although he has his roots in the West, he has displayed a remarkable understanding of the uniqueness of Shenandoah National Park, and a deep concern for its continued excellence. We in Virginia are fortunate to have him with us.

S. 988 is now pending in the House of Representatives, before the National Parks and Recreation Subcommittee of the Committee on Interior and Insular Affairs. A measure similar to my original proposal was introduced earlier this year by the distinguished Representative from Virginia's Seventh Congressional District, the Honorable J. KENNETH ROBINSON. That measure is cosponsored by the entire Virginia delegation. Hearings were held in June of this year.

I invite the attention of our colleagues in the House to the figures submitted by Superintendent Jacobsen. I hope they will move quickly to pass this legislation before another spring comes to the Blue Ridge.

EXHIBIT 1

Visits

District:	*October 1973*	*October 1972*
North	179,000	154,400
Central	230,200	144,100
South	96,000	80,300
Total	505,200	378,800

Calendar year 1973, 2,415,400.

Calendar year 1972, 2,130,000.

Calendar year 1973 compared with calendar year 1972, the increase is 13.4%.

October 1973 compared with October 1972, the increase is 33.3 percent.

This month's visitation was largest for any month on record. The marked increase is attributed to exceptionally fine weather, two 3-day holiday weekends, and schools were closed for one or two days in Virginia and Maryland.

Big Meadows Weather Statistics:

Max. 77°, Min. 29°, Precipitation 6.80".

ROBERT R. JACOBSEN, *Superintendent.*

THE FUTURE OF THE SMALL TOWN

Mr. NELSON. Mr. President, the specter of a megalopolis expanding over the entire length and breadth of the Nation has become an increasingly real possibility, with the fleeing of industry and people from out central cities, and the creation of so-called "bedroom communities," where residents feel that they have escaped the noise and pollution of our urbanized areas.

In the other direction, fears have been expressed about our dying small towns, the disappearing country store taken over by a chain department store, and the loss of identity which comes from such impersonalization of life.

If America is to maintain a quality standard of life, it is important that we recognize that we cannot afford to have this centralization of life in the United States. The necessity for food, recreation, and a clean environment demand that we reverse this trend, and that we acknowledge the value of a system of life which includes both city and farm, small town, and "bedroom communities."

Recently, a conference on "The Future of the Small Town" was held in Oak Ridge, Tenn. At this conference, one conclusion stood out: That we can prevent this dissipation of the Nation's rural areas, if we are willing to acknowledge their value to the United States.

I ask unanimous consent that an article which appeared in the New York Times of Tuesday, November 6, 1973, be printed in the RECORD.

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

"DYING" AMERICAN SMALL TOWNS SHOWING VITALITY AND POPULARITY

The dying American small town, once the backbone of the new nation and more recently the heralded symbol of the death of our national innocence, may not be dying at all.

This is the observation of a group of leading demographic experts who concluded at a recent conference that the small town, while it cannot be said to be thriving, is holding its own in a remarkable number of cases, particularly in the South, and needs only an infusion of thoughtful public policy to make it once again a good place to live for a significant number of city-sick Americans.

The panelists at the three-day conference, "The Future of the Small Town," which ended last week at Oak Ridge, Tenn., represented both private and governmental agencies. Generally they agreed on the following points:

While there is reason for concern about the future of small-town America, its demise is greatly exaggerated—so much so that some government planners now consider programs to aid small towns in rural areas a waste of time. The same negativism permeates small-town thinking so there is little innovation, and businessmen avoid the risks of development.

Towns that have made a decision to survive and grow, and have acted upon it, have had consistent and in some cases remarkable success.

While the suburbs continue to be the place most Americans say they want to live, small towns are next—and are the clear favorite for bringing up children. Only 9 per cent of the people want to live in cities of more than a half-million population, although 20 per cent do live in them.

Although there are many Federal programs that directly or indirectly aim to help small towns in rural areas, there is no clear and consistent national policy, with stated goals, defining where the nation believes small towns should be headed.

LACK OF JOBS

Essentially, the conference panelists concluded that while the growing problems of urban core cities and the drab sameness of the suburbs were driving more and more families to want to live in small towns outside the nation's metropolitan rings, the towns themselves were generally unable to support new residents, either with city services, health care and cultural attractions, or, more fundamentally, with jobs.

"There is a sign outside Galesville, Wis., [population 1,200] which sums up the dilemma," said a conference participant, Calvin L. Beale, leader of the Populations Studies Group in the Department of Agriculture.

It says:

WELCOME TO GALESVILLE—THE GARDEN OF EDEN—INDUSTRY INVITED

Despite the inability of most very small towns to support growth, Mr. Beale said, there is steady pressure for that growth and the cliché of "the dying small town" is exaggerated.

Mr. Beale noted in a study prepared for the conference that population growth in nonmetropolitan towns of the South in the nineteen-sixties was most significant in percentage terms, in the very smallest towns. That growth was almost precisely the opposite of the pattern in the nineteen-fifties.

Of 4,641 Southern towns of under 50,000 population, those with populations of under 500 grew by 15 per cent in the nineteen sixties, compared with under 5 per cent in the nineteen fifties. Similarly, towns with 500 to 1,000 population grew 16 per cent in the nineteen sixties and 14 per cent in the nineteen fifties.

On the other hand, the "big" small towns—populations of 25,000 to 50,000—grew by 12 per cent in the last decade compared with 28 per cent in the nineteen-fifties. Towns of 5,000 to 25,000 grew by roughly 12 per cent in the nineteen sixties and about 30 per cent in the nineteen fifties.

Although this study was confined to the South, Mr. Beale said the pattern applied generally to the nation.

COWS FOR SPECTATORS

In many ways, that national pattern is a hodgepodge of conflicting symbols, the two-aisle country store near a shopping center in Effort, Pa.; a new bank in an Iowa town with a sign in front blazing 24 hours a day, with nobody to look at it but cows in a pasture nearby; the megalopolis sprawling over some little towns, making them just another segment in the line of motels and service stations stretching from Boston to New York to Washington, D.C.

It is a pattern in which some small towns do indeed die through evolutionary extinction while others are engulfed as metropolitan areas reach out to join with each other.

Conference participants concluded, however, that there was a third choice—the survival of the small town, with its own identity intact. A number of examples indicated that such a choice was possible.

NOSTALGIA FOR BAKE SALES

Just how much of the desire is no more than vague nostalgia for one-chair barbershops, church bake sales, Civil War monuments and the city manager driving the country's snowplow in blustery winters was not determined, but there was clear evidence that Americans say they want small towns preserved, and a fairly high number want to live in them.

Richard C. Taeuber, chief of the urban research section of the Oak Ridge National Laboratory and director of a research program for the Department of Housing and Urban Development, noted in a keynote address that there was an apparent disparity between where people want to live and where they do live.

A national survey, he said, indicated that only 9 per cent of the respondents said they wanted to live in a city of more than one-half million population. About 20 per cent actually lived in such cities.

About one-half of the respondents wanted to live outside major cities but within 30 miles of a city of over 50,000. About one-third actually lived in these areas. About 20 per cent wanted to live more than 30 miles from any city of over 50,000 and about a fifth actually lived in such areas—although they were not necessarily the same people.

Although there has been a tendency among businesses and industries to flee core cities along with the residents, basically what keeps people from living where they want to is economic necessity, Mr. Taeuber and others observed. There are simply not enough jobs in small towns and in rural areas.

AVOIDED BY INDUSTRIES

Rural areas traditionally have high unemployment, especially where traditional farm or mining employment has declined. Industries avoid them in many cases because of the lack of adequate water, sewers, police and fire protection. Most such areas lack the leadership and economic power to find ways to provide the services, either by consolidating efforts with other small communities or by taking on the burden themselves.

Thus, the towns die. There is, for example, the case of Story, Ind., population 112, which is literally up for sale. The first bidder to come up with $34,000 for the town's seven buildings, including a feed mill, can own the town.

By contrast, conference participants were presented a study of two tiny Southern Appalachian towns, Tazewell and New Tazewell, in Claiborne County, Tenn. Together the towns created 2,000 new jobs in the decade of the nineteen-sixties although their combined population was only 3,052.

Basically their success resulted from an effort to develop their own industry, a manufacturing plant for recreaton vehicles, financed with local capital.

The conferees concluded that such stories, although dramatic, tended to be submerged by many accounts describing the demise of small towns, particularly those in the Plains States, where there is indeed a substantial problem.

However this ignores such evidence as that gathered in a study that showed that of 4,300 towns with a population of 2,500 to 10,000, 28 per cent lost population in the nineteen-sixties, while 72 per cent grew.

Some of these were suburbs. Others such as Cozad, Neb., which organized its civic leaders and gained an auto equipment plant, grew through their own efforts.

The panelists concluded that an over-all national policy and a coordinating agency for efforts to revitalize small towns were needed.

Estimates of the number of rural and small-town assistance programs ranged from 500 to about 1,000, several participants noted. Moreover, there is no comprehensive advisory agency to tell small town governments how to save their towns.

Federal policy planners have tended to concentrate on areas where growth was most explosive, such as the suburbs, or where the problems dominate, as in the largest cities.

DR. ROBERT F. LOEB, COLUMBIA UNIVERSITY

Mr. JAVITS. Mr. President, Columbia University, the city of New York and the Nation's scientific community were saddened by the loss of Dr. Robert F. Loeb, former Bard professor of medicine and chairman of the Department of Medicine at the College of Physicians and Surgeons. Dr. Loeb retired from Columbia in 1960, and served as professor emeritus until his death on October 21.

Dr. Loeb was a specialist in metabolic diseases and one of the Nation's leading medical teachers and researchers. He was widely known as a clinician and investigator. In 1922, with a group of colleagues at Physicians and Surgeons, he pioneered the use of insulin treatment for diabetes. He also was the first to demonstrate that patients with Addison's disease could be maintained indefinitely by having large quantities of salt in their diet. Until that time, Addison's disease was invariably fatal.

Dr. Loeb served with distinction in a variety of advisory capacities in both public and private life, in addition to the heavy teaching, research, and administrative load he assumed at Columbia. He served three Presidents—Truman, Eisenhower, and Kennedy—as a member of the President's Science Advisory Committee. For 14 years he served as a member of the National Science Board, the governing body of the National Science Foundation.

As a trustee of the Rockefeller Foundation, he was instrumental in developing the Foundation's program in the medical sciences. He was vice chairman of the board of trustees of the Rockefeller University, and overseer of Harvard College, and president of three professional associations, including the Association of American Physicians, the American Society for Clinical Investigation, and the Harvey Society. In addition, he was a member of the National Academy of Sciences, the American Philosophical Society and the Century Association.

Dr. Loeb was born in Chicago in 1895. He studied at the University of Chicago and graduated magna cum laude from Harvard Medical School in 1919. After serving internships at Massachusetts General Hospital and the Johns Hopkins Hospital, he joined the staff of the College of Physicians and Surgeons at Columbia and Presbyterian Hospital. He remained at Columbia for 40 years, serving medicine, his students, and his country. His presence in the medical profession will be greatly missed. Indeed, the world has lost a great doctor and humanitarian.

WE STILL HAVE EACH OTHER

Mr. SPARKMAN. Mr. President, there was a very fine editorial in the Birmingham News recently which I felt puts the present national situation in proper perspective. It makes the point that when we say we face a crisis of leadership we should remember that we have the leadership of 200 million people with strength of character and faith in God. It ends with the reassurance that "we still have each other."

I ask unanimous consent to have this editorial printed in the RECORD as part of my remarks.

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

[From the Birmingham (Ala.) News, Nov. 4, 1973]

IS LEADERSHIP POSSIBLE?

When Pack meets with Pack in the Jungle,
and neither will go from the trail,
Lie down till the leaders have spoken
—It may be fair words shall prevail.

Kipling, penning those lines in his *Law of the Jungle*, wasn't grabbing for the prophet's mantle as much as he was describing the realities of life in the jungle. Kipling probably had no idea how rugged the jungle would become a few dozen years after writing his poetry. But here we are.

Pack has indeed met Pack in the Jungle, and there is no evidence either is going to move off the trail. The executive branch stares long and hard at the legislative, and some think, at the bulk of the nation as well. And that pack stares back. America's growing political polarization has reached the eyeball-to-eyeball stage.

And the stark truth is that there is no leader on either side to tell us to lie down while agreements are negotiated. We can arrive at agreements with the Soviet Union,

with the Arabs, with the North Vietnamese. But we are paralyzed when trying to find consensus at home.

Today's jungle makes Kipling's look like a national park, complete with carefully marked roads and restrooms. Kipling wrote in a time when leaders were really regarded as leaders, when the buck stopped at awesome thrones.

The memory of such days is strong in our minds, and in the midst of Watergate and its attendant sorrows, we are prone to cry: "Give us leadership."

The truth is that we may never again see "leadership" in the sense we dream of it. And surprisingly, we will perhaps be the better for it.

The "leadership" of our fantasy demands hasn't really existed since the mythical days of Franklin Delano Roosevelt, whose leadership powers can never be subjected to objective evaluation, given the fact he was our "leader" during World War Two. Wars distort. Leaders especially.

When the cry of "give us leadership" is raised, what we really mean is: Give us someone who can embody our collective spirit as a society, and set for us an image we can emulate.

Perhaps John Kennedy, in the minds of many, was attempting this. But history would have likely unravelled the scheme just as it has chopped at the images of the "best and brightest" around Kennedy.

Richard Wagner dreams he was the *Geist* (the spirit) of the German people, and his art the redemptive power for mankind, because it was German. The "leadership" seekers among us may be looking for a Wagnerian artisan or to invoke Nietzsche's Superman.

Even if there were a person daring to make the claim that he was the sought-after leader, he could not succeed in this time in the style of the new journalism, especially post-Watergate, we are not likely to see the emergence of that kind of unassailable leader. And down the road some Democrat president will be subject to the same pressures Mr. Nixon is under.

Let a man rise among us, and immediately it will be discovered that one time he took a free plane ride with Howard Hughes' grandmother's nephew, and the leader will topple. And even if such damaging disclosure is not made, the bulk of the American people have had it with political visionaries whose visions begin and end with themselves and who identify their own progress with that of the nation.

Perhaps the tragic flaw that gave us Watergate was the idea that what was good for Richard Nixon's re-election was good for the country.

This is not a negative hypothesis.

If we are freed in this political system from always probing for the grand leader, and placing our faith in men, we can come back to a genuine appreciation for the structure of government which enables imperfect and vulnerable men to carry on its processes.

Whether or not Richard Nixon is strong or weak is not the question here. It is clear, however, that in the minds of many people, he is weak. Yet, despite the ravages of division in Washington, the structure of government held firm during the Middle East crisis of last week, and has not fallen under the winds of political protest. The same was the case in the terrible days of 1963, following the assassination of John F. Kennedy. Despite the fact we had in the early days a caretaker president in Lyndon Johnson, the structure sailed through, the nation was intact and remained dynamic. We made it, as we will this time.

The de-emphasis on the charismatic leader will also restore belief in ourselves, as individuals, and in the spiritual realities transcending human leaders. Once we sat and listened to the fatherly tones of Roosevelt beside the fire. In another era, we warmed under the smile of Ike. We jogged in the zest of Kennedy. What escaped us was that we were becoming puppets, altering our pace to match the drumbeat from the heights of Washington.

And now they say, we face a "crisis of leadership." Mostly poppycock. We will never again have the "leadership" of fantasy. But we will and do have the leadership of 200 million people, with the same edge on God and strength of character as those we elect as the super clerks of the nation's affairs.

So don't weep, wail or gnash your teeth when they tell you we are leaderless. We still have each other.

RELOCATION CEREMONIES—VILLAGE OF NIOBRARA, NEBR.

Mr. HRUSKA. Mr. President, many of my colleagues in this body have heard me discuss at length the problems of a small town in my home State, Niobrara, Nebr. Briefly, the construction of the Gavins Point Dam on the Missouri River caused the unfortunate result of the raising of the ground water level on the site of Niobrara. What happened is a sad story to the 600 residents of this community—constantly flooding basements and the certain knowledge that Niobrara would one day be nothing more than a swamp.

For these reasons, the people of Niobrara had to make some hard decisions. In the spring of 1970, petitions were circulated among the legal voters of the village. They were given a set of three choices: First, relocation of the village; second, abandon Niobrara altogether; or, third, try a system of protection with dikes and pumping systems. An overwhelming 85 percent of the population chose to relocate the village.

My colleague, Senator CURTIS and I introduced a bill that same year to provide Federal assistance for the relocation of Niobrara. Due to the generous assistance of many of my colleagues, we were successful in getting a bill passed as well as getting the necessary appropriations.

Mr. President, I speak today to advise the Senate that work is now in progress on building a new Niobrara. I was fortunate to be present at ground-breaking ceremonies on September 30. Because of the interest and assistance of my fellow Senators, I would like to print in the RECORD several speeches that were given at the ceremony. I ask unanimous consent that they be printed.

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

INVOCATION—"NEW" NIOBRARA GROUNDBREAKING, SEPTEMBER 30, 1973

(By the Reverend Dennis J. Carroll)

Almighty God, we gather today to celebrate the rebirth of our town. We ask for your blessing in our adventure, but we also ask for your help. Help us to be sensitive to the conflicting emotions of our residents as we realize that fear and doubt are very natural companions to joy and expectation.

We know that in the world with every gain there is also a loss and that moving to a new home requires leaving a familiar one. Grant us a faith that will help us move through our pain and confusion to a new hope—seeking to find opportunity from the disruption of the past and present.

We need courage, we need strength, we need love, and we need concern. But mainly we need a renewed sense of patience—patience which is so easily lost in our dealings with each other. Patience, that we may relearn the meaning of faith as we reinvest and rebuild our limited earthly lives in a new town, but in a larger sense only continue the unbounded and eternal life which is the true treasure of your kingdom. Amen.

MAYOR LESTER FITCH—GROUNDBREAKING SPEECH

Thank you Reverend Carroll.

Ladies and Gentlemen! We wish you all a hearty welcome to our groundbreaking ceremonies.

We are happy that all of you could join us on this historic occasion. Sorry that the weather hasn't cooperated with us, so that we could not carry out our program as planned.

This marks the beginning of a new chapter in the history of this Village. Over seventeen years ago we celebrated our One Hundredth anniversary. Niobrara numbers among the oldest communities in Nebraska, the town having been established in 1856. It was a stopping place for steam boats and French fur traders, traveling up and down the Missouri River.

This site will be our third, and hopefully final, location. The great ice jam of 1881 nearly destroyed the original town which was located near the Ferryboat Landing, just east of our present townsite. Our town grew and prospered because of such activities as a government Land Grant office, where patents were issued to early settlers. This was during Abraham Lincoln's administration. Also the building of the Court House was in this territory, which is still standing on the east part of Main Street. Then came the Chicago and Northwestern Railroad. As time passed and the development of the Missouri River took place a change came, until mother nature, assisted by man, created another problem.

The Pick Sloan Plan benefitted millions of people and for this we are grateful. Those great benefits clearly outweigh the hardship and burden imposed on the people in this picturesque part of rural America. For a good number of years, as the waters rose in our basements, we were all very greatly bewildered about our future. The prospects for tomorrow seemed very gloomy, indeed. We understood very little about the vast Federal Government. We prayed we would not drown before help could be found.

Fortunately, our hopes and dreams were answered.

Even though there are just six hundred of us with but a tiny voice, our pleas were answered by our representatives in Washington.

Certainly all of our towns people know and I want the rest of you people who are our guests here today to appreciate that Roman Hruska has spearheaded our cause and has led us through the maze of Legislative complexities and has given freely of his time and energies in this period of our great struggle for existence.

He shared our hope that we would be able to help with the planning of the new town. We wanted the ideas of our own people to be heard and the common desire of our citizens to be expressed in the planning and details of the relocation. We, of course, did not have the resources to undertake any comprehen-

sive planning or make any professional study on our own.

Recognizing this basic desire of our people, Senator Hruska was good enough to sponsor legislation which led to the granting of funds for a joint planning effort between the Village and the Corps of Engineers.

It was in this spirit of cooperation that the planning went forward. Realizing that we had an opportunity not only for our lifetimes, but for future generations, we wanted to invest as much thought and deep consideration, not only to the location, but the layout of the new Village. We hope our Village can become a model for Rural America. We hope our Village will be a place we can all look to with pride. We hope we can reverse the trend of our young people leaving to work in the cities. We hope in spite of all the adversity, that the example we set, will be of benefit to people everywhere.

As you can see, the ground has already been broken by machine. We are here today to dedicate this site and to share our happiness with those who have been so kind and helpful to us in our time of need and to symbolize the future by the traditional ceremonial breaking of ground. We are privileged to have our State and National representatives along with representatives of the Corps of Engineers. Also our Legal Advisors—Bill Campbell, John Musselman, Richard Spellman and Robert Kutak—of the Kutak, Rock, Cohen Associates law firm of Omaha, our Planners—Jim Siebken, Barry Ling and Mr. Michael—with Kirkham & Michael Architects & Engineers of Omaha, our General Manager, Gordon Printz, of our Planning Commission office in Niobrara, and their families with us this afternoon for this ceremony.

In behalf of the Niobrara community, I do want to take this opportunity to express our appreciation to all of you for your interest and help in this project. We know that you have gone beyond your call of duty in trying to keep us all happy. The only words I know to express our feelings are "Thank you very, very much," for your friendship and kindness. We hope that you will consider Niobrara, your home away from home.

Our festivities will not end here at this site of the dedication, but will continue on through the balance of the day and evening and we hope you will be able to join us. Harry Tichy, Chairman of our Village Planning Commission, will have more on the post-dedication activities when he concludes our program.

We do not always understand the ways of our government. Nor do we appreciate the historic wedding between the navigable rivers of this country and the Corps of Engineers. As you know, our area of the Missouri River is under jurisdiction of the Omaha District. From the very beginning of our problem, we have been blessed with understanding leaders in the District office. Colonel Griebling, and Colonel Pendergrass before him, have always had their doors open to hear our problems and to discuss and to coordinate plans. This goes for the staff of the Omaha district office also. We are indebted to people like Elbert Snethen, Joe Graham and numerous others. We realize they are responsible for the water resources program of the Upper Missouri River Basin which covers over Four Hundred Thousand square miles. They are busy people. We are but a dot (or sometimes a mosquito) on their maps, but yet they have given of their time and talents freely.

The Omaha District office is headed up by Col. Alfred L. Griebling, who just a year ago returned to the Omaha District after an absence of twenty years while on assignments throughout the world. Some twenty years ago, then Captain Griebling was assigned as a construction inspector and resident engineer for construction at the Fort Randall Dam.

Colonel Griebling is a 1950 graduate of West Point. He has served as a Professor on the staff of the Military Academy. He has a Masters of Science degree from Iowa State and has served the United States Army throughout the world.

Colonel Griebling, his wife Betty and their children are here with us today. We would like Colonel Griebling to come to the microphone and say a few words.

REMARKS—COL. ALFRED L. GRIEBLING

I am very pleased to visit you again and to be with you for this ground breaking ceremony.

For more than a year I have been aware of the problem of high ground water in your town.

Of course many others, including those on the platform and members of my staff, have been working on the problem much longer.

For you folks who live so close to the problem I'm sure there have been many occasions of doubt and disappointment.

Your problems are not all solved yet.

However, everything I see tells me that we are well on the way to solving the problems.

I would now like to give you a brief status report.

The Corps of Engineers was given the responsibility for implementing Section 213 of the Flood Control Act of 1970, which addressed your problem.

We felt strongly from the very beginning that the basic decisions should be made by you people here in Niobrara.

We structured all our actions with this objective in mind and worked with Mayor Fitch and your Planning Commission.

Therefore, the decision to relocate the Village to this site has been yours.

In order to plan and construct these new facilities, the Corps has contracted with the Village of Niobrara, through the Village Planning Commission, with Mr. Gordon Printz acting as General Manager.

The Village Planning Commission, in turn, sub-contracted for the following servies:

1. Kirkham-Michael and Associates for the engineering design.
2. The firm represented by attorneys Campbell and Musselman for legal servies.
3. Negus-Sweenie for construction of the Overlot Grading.
4. Nebraska Testing Laboratories for laboratory testing support.

As we look ahead, the design is proceeding satisfactorily on the following:

1. The Phase II Grading.
2. Water supply and water storage facilities.
3. Underground water distribution.
4. The sewerage system.
5. And the storm drainage systems in the new townsite.

These will be followed by street paving with curb and gutter—sidewalks—street lighting—and the municipal building facilities.

Contracts for these developments will be let at staggered intervals during the 1974 construction season.

Now, I would like to discuss what you as individuals are most interested in—your real estate.

From a Real Estate standpoint, this project consists of the acquisition of some 470 ownerships.

Our records show that these ownerships are comprised of: 285 homes, 112 parcels of vacant lands, 60 business properties, 8 churches, 3 lodges, 2 warehouses, a mortuary, a rest home, a telephone relay station, a grain elevator, and a mobile home park.

As many of you already know, one tract of land has been acquired.

This is the former Weber property situated on Fourth Avenue between Pine and Cedar Streets.

It is being modified for our Real Estate Field Office.

That office is now open and my employees there are ready to answer any questions you may have.

Negotiations for the other properties will begin next week, and we expect to conclude all purchases by 31 December 1974.

After completion of the purchases, many owners will probably want to remain in their present properties until the new town is ready for occupancy.

In the interim, the Real Estate Office will work with you to accomplish this.

After you have relocated to your new residences or business establishments, this office will assist you in processing claims under Public Law 91-646.

Most, if not all of the residents of Niobrara will be eligible for assistance under the several benefits offered by that law.

Hence, the Real Estate Office on Fourth Avenue will be our Niobrara Office to serve the people of Niobrara until completion of the relocation and all claims under Public Law 91-646 have been satisfied.

We are currently staffing that office with permanent personnel.

In the meantime, Mr. Kermit Ehrenfelt, the Chief of my Real Estate Office at Pierre, South Dakota, has been designated as Acting Chief of the Niobrara Office.

Other employees from Omaha and our other Real Estate Offices are currently staffing the operation.

The telephone number of the Real Estate Office is 857-3525.

I encourage all of you who have questions regarding the acquisition of your property, or benefits to which you may be entitled under Public Law 91-646, to visit this office and discuss your problem.

If this is not possible, contact the office by telephone and my Real Estate people will arrange to call upon you at a mutually convenient time.

Mrs. Griebling and I are happy to be with you today.

We have spent a very pleasant two days in the area and managed to spend a relaxed evening at the state park.

Thank you for inviting us.

DEDICATION SPEECH—J. W. BURBACH, STATE SENATOR

As we all know from the history books, Niobrara means "spreading water." And it was certainly well named, because this dedication we are celebrating today is not the first one in Niobrara's history.

Niobrara is on the site of a Ponca Indian village. Favorable reports of the place were current in Kanesville (which is now Council Bluffs); and in May of 1856 a little group of settlers went to see it, led by B. Y. Shelby, a doctor, and financed by a French company named L'Eau Qui Court.

In the presence of the entire Ponca band, they marked off the site that was to be known as Old Town. That winter Dr. Shelby and 3 men took refuge in Old Cabin, the first garrison and first building of Niobrara. This tiny settlement was made the county seat, which was then called Eau Qui Court, and is now Knox County. The county seat remained here until it was moved to Center in 1901.

Development rapidly followed with the arrival of the riverboat "Omaha" from St. Louis in 1857 and the building of Burns House, plus industry—tomato canning, meat packing, flour milling and brewing.

The original town was beautifully situated on the south bank of the Missouri, about 2 miles below the mouth of the Niobrara River, until the great flood of 1881, when the larger portion of it was removed about 1½ miles to the southwest and located on a plateau elevated above the river bottom.

At the time of the removal, the town contained 3 general stores, 2 drug stores, 2 hardware stores, 1 harness shop, 2 blacksmith shops, 5 hotels, 2 livery stables, 3 doctors, 12 lawyers, 1 schoolhouse, 1 church building, a 2-story brick courthouse, 2 newspapers, and 500 inhabitants.

The water began to rise on the night of March 29, 1881, and rose very suddenly until it reached a depth of 3–7 feet, filling up cellars and covering the first floors of houses. The heaviest loss of stock was recorded by Frank Janousek, who lost 29 head of cattle and 5 horses.

The illustrated history of Nebraska says the moving of the town was commenced in July of 1881 and this is a quote from the history book: "Now the people feel a sense of security they never could have felt on the old town site, being on the plateau about 20 feet above it, and close to the bluffs, so that escape is easy in the event of a future flood reaching them, which event is extremely improbable."

Well, we all know that the "improbable event" became the awful truth as our water table rose righer and higher. After nearly 15 years of negotiations with the Corps of Engineers, and through the efforts of our congressional delegation, the problem was finally recognized as the responsibility of the Corps, and money was appropriated for once again moving the town of Niobrara.

So, now we begin the "third time around" for Niobrara, Nebraska—a town whose citizens have never given up no matter what the odds or the difficulties. You have all our best wishes for your future and most sincere congratulations for your courage—and our firm belief in your successful future.

THE CONSTITUTIONALITY OF S. 2611

Mr. ERVIN. Mr. President, the Senate Judiciary Committee has been conducting hearings on S. 2611, the proposed "Independent Special Prosecutor Act of 1973."

Philip B. Kurland, professor of law at the University of Chicago, and a valued consultant to the Senate Subcommittee on Separation of Powers, of which I am chairman, gave testimony to the committee on the constitutionality of S. 2611. It is his opinion that S. 2611 is fully consistent with the requirements of the Constitution insofar as it authorizes the appointment of the special prosecutor by the chief judge of the U.S. District Court for the District of Columbia and provides for the discharge of the special prosecutor only for specified cause and then only by the chief judge.

Mr. President, I ask unanimous consent that Professor Kurland's prepared statement of November 7, 1973, be printed in the RECORD.

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

STATEMENT OF PHILIP B. KURLAND

My name is Philip B. Kurland. I am a professor of law at the University of Chicago. I have come, at the invitation of this Committee, to address the questions of constitutionality allegedly raised by S. 2611, the proposed "Independent Special Prosecutor Act of 1973."

S. 2611, as I understand it, suggests two issues of constitutionality. The first is whether Congress can constitutionally vest the appointment of a special prosecutor, to deal with matters specified in the Bill, in the Chief Judge of the United States District Court for the District of Columbia. The second is whether the President may be constitutionally forbidden by Congress to remove the special prosecutor from the office created by the Bill and filled by appointment of the Chief Judge. My answer to both questions is in the affirmative. I shall state as succinctly as I can my reasons for these conclusions.

First, however, I should point out that the questions are not raised in the abstract. They occur in the context of events with which we are all familiar. If the phrases "constitutional crisis" and "crisis of confidence" have been unduly abused in recent days, it can hardly be denied that they are appropriate to the events that have given rise to the framing of this legislation. The most relevant facts are that the charge to the proposed Special Prosecutor in S. 2611 is to investigate, to initiate prosecutions, and to prosecute illegal activities that are either closely connected to, or have their origins within, the White House itself. It must be remembered that the Senate, in approving the appointment of Attorney General Richardson, made it an express condition of its confirmation that he would name a special prosecutor for these same purposes, and that such a prosecutor was to be wholly independent both of the President and the Attorney General. The consequent appointment of Archibald Cox as such an independent special prosecutor has since been frustrated by his discharge and by the resignation of Attorney General Richardson and the discharge of Deputy Attorney General Ruckelshaus.

It is hardly disputable, that a very large part of the American public regard the Cox discharge as a breach of faith by the Administration with the Senate and with the American public itself. Events that preceded and those that have followed the termination of Professor Cox's employment—certainly including the announcement that the Dean and Mitchell White House tapes do not exist—have made it impossible to accept the possibility that any special prosecutor appointed by the President or the incumbent Attorney General can have the appearance of independence which is vital to the function that such a prosecutor must perform. However many assurances are provided that such an Administration appointee will be independent, and however much faith one may have in the courage and integrity of the person who is so appointed, these assurances and this faith come too late to be persuasive. That road has already been traversed. We have witnessed an effort by this body to leave the powers of appointment and discharge of such a prosecutor in the hands of the President and his Attorney General. That effort has failed. And it has failed because the interests of the White House are necessarily too closely tied to a restricted rather than a full investigation that would be the charge of a special prosecutor. I respectfully submit that with new charges surfacing almost daily, neither the Congress, nor the President, nor the American people can afford the possibility of another fiasco of the kind that surrounded the discharge of Professor Cox, without regard to whether that discharge was or was not justified. It has been stated that "justice must satisfy the appearance of justice." *Offutt* v. *United States*, 348 U.S. 11, 14 (1954). The appearance of justice requires the separation of the investigator and the investigated.

Let me turn then to the question whether the Constitution authorizes Congress to provide for the appointment of the special prosecutor by the Chief Judge of the District of Columbia. The proposed legislation states three constitutional bases on which this power of appointment is rested. First, the "necessary and proper clause" of Article I, § 8, which confers upon Congress the authority: "To make all Laws which shall be necessary and proper for carrying into execution for foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

Second, the provision of Article II, § 2, which reads: "Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments."

Third, the provision of Article I, § 8, which grants power to Congress "To exercise exclusive Legislation in all Cases whatsoever, over" [the District of Columbia].

I would quickly say, albeit without reliance on any authority, that the last provision should not itself support this legislation. It is true that the Supreme Court has given a broad reading to this provision. See, *e.g.*, *National Mutual Insurance Co.* v. *Tidewater Transfer Co.*, 337 U.S. 582 (1949). But honesty compels recognition that the problems to which this Bill is directed are not problems of the governance of the District of Columbia but problems of the governance of the Nation.

I should think, with equal certainty, but with an equal dearth of authority, that the "necessary and proper clause" could alone sustain the appointment provisions of this Bill. That the investigation is "necessary" and the means provided "proper," as Chief Justice Marshall defined those terms, is abundantly clear simply from the facts with which I introduced this statement. So, too, is the fact that the clause relates to Congressional authority with regard to all national government functions, not merely the legislative functions. But whether or not the "necessary and proper clause" by itself would provide constitutional justification, taken together with the language of Article II, § 2, it certainly affords all the constitutional warrant necessary.

By its terms, Article II, § 2 authorizes Congress to place this power of appointment in the judiciary of the District of Columbia. Constitutional history and adjudication confirm the validity of this process. Indeed, the authority to vest the appointment power in the judiciary has been sustained with reference to appointments having nothing to do with the judicial process. It follows *a fortiori*, I should submit, that the power of appointment of an officer of the court such as a special prosecutor must be sustained.

The principal Supreme Court authority is *Ex parte Siebold*, 100 U.S. 371 (1880), in an opinion written by Mr. Justice Bradley. There legislation had authorized the appointment by the federal courts of supervisors of elections in which national officials would be elected. It was argued that the Congress could not vest this appointment power in the courts because the function of the supervisors was executive in nature. The Supreme Court's response was unequivocal:

"It is no doubt usual and proper to vest the appointment of inferior officers in that department of the government, executive or judicial, or in that particular executive department to which the duties of such officers appertain. But there is no absolute requirement to this effect in the Constitution; and, if there were, it would be difficult in many

cases to determine to which department an office properly belonged. * * *

"[A]s the Constitution stands, the selection of the appointing power, as between the functionaries named, is a matter resting in the discretion of Congress. And, looking at the subject in a practical light, it is perhaps better that it should rest there, than that the country should be harassed by the endless controversies to which a more specific direction on this subject might have given rise. The observation in the case of Hennen, to which reference is made (13 Pet. 258), that the appointing power in the clause referred to "was no doubt intended to be exercised by the department of the government to which the official to be appointed most appropriately belonged," was not intended to define the constitutional power of Congress in this regard, but rather to express the law or rule by which it should be governed. The cases in which the courts have declined to exercise certain duties imposed by Congress, stand upon a different consideration from that which applies in the present case. The law of 1792, which required the circuit courts to examine claims to revolutionary pensions, and the law of 1849, authorizing the district judge of Florida to examine and adjudicate upon claims for injuries suffered by the inhabitants of Florida from the American army in 1812, were rightfully held to impose upon the courts powers not judicial, and were, therefore, void. But the duty to appoint inferior officers, when required thereto by law, is a constitutional duty of the courts; and in the present case there is no such incongruity in the duty required as to excuse the courts from its performance, or to render their acts void." 100 U.S. at 397–398.

The authorities were summed up more recently in an opinion by Judge Fahy, in *Hobson* v. *Hansen*, 265 F. Supp. 902 (D.C. Cir. 1976). There the question was whether the District Court for the District of Columbia could be assigned the task of appointing the members of the District of Columbia school board. Again the answer was in the affirmative. *Id.* at 911–16. Once again the question before us must be considered to have more support from Article II, § 2, than did the power exercised there, because here there can be no question but that the officer whose appointment is provided by this Bill is an "inferior Officer" of the national government and because the functions he is charged to perform are so closely connected with the judicial functions that are entrusted to the federal district courts by Congress pursuant to Article III of the Constitution.

It is suggested that the duties of a prosecutor are by their nature an executive function to be performed under the authority of the Chief Executive. I would submit that this is not true. Quite clearly, at the time of the adoption of the Constitution, prosecutions in England were under the concern and management of private citizens and not the Crown, except in a narrow class of cases where the person of the Crown was thought to be endangered by the kind of crime that was being prosecuted. Congress undertook, shortly after the creation of this nation, to vest the prosecutorial authority in public officials and to vest the power of their appointment in the President with the advice and consent of the Senate. That decision was made pursuant to the authority of Art. II, § 2. It must be free to make a different assignment of the appointing power where circumstances, as in this case, call for it.

Moreover, a look at the government of the various States, equally dedicated to the doctrines of separation of powers under their own constitutions, demonstrates that the vast majority of them have been unwilling to entrust the administration of the criminal laws to officials subordinate to the chief executive. In most jurisdictions, the law enforcement officers are elected officials both at the state level, as with the Attorneys General, and at the local level, as with district attorneys. Indeed, it should be recalled that, at the time of the Wickersham Commission report, the State of Connecticut, and perhaps other states, entrusted the appointments of prosecuting officials to the courts in which they served. And the Wickersham Commission approved this system as one that reduced the adverse effects of political bias.

Nor should it be forgotten that the appointment of counsel for purposes of specific litigation is a function that has long been performed by the judicial branch, both for plaintiffs and defendants. Indeed, it has been considered a constitutional obligation of the courts to appoint counsel for a defendant in a criminal case where the defendant is unable to supply counsel of his own. This authority has been exercised by the federal courts not only with regard to appointments of individual counsel, but also with the appointments of "public defenders" for cases at large. Not only does the Supreme Court appoint counsel in individual cases, it also frequently calls on the Department of Justice to supply counsel by way of amicus curiae briefs and arguments through the Solicitor General's office. Counsel are officers of the court; the grand jury is an arm of the court. Counsel are a necessary ingredient in the performance of the Article III jurisdiction conferred on the federal courts. And it is to the courts that the execution of the laws through the judicial process has been entrusted by the Constitution itself.

It has been argued, however, that there is a problem of conflict of interest, bordering on a problem of due process of law, if the judge who participates in the selection of the prosecuting counsel is also entrusted with the task of presiding over the case in which the prosecutor participates. See, *e.g.*, *In re Murchison*, 349 U.S. 133 (1956). The answer to that is twofold. First, the problem of conflict of interest is exactly the problem that S. 2611 seeks to eliminate. Congress, through this legislation, at worst, would be choosing between a conflict of interest where the putative defendants would in effect be appointing the prosecutor if that duty were imposed on the President and the less dangerous conflict of interest, if it is such, where the judicial officer appoints prosecuting counsel. In the many instances in which courts appoint counsel, both for plaintiffs and defendants, there has been no suggestion that the appointing judge must disqualify himself because of that appointment.

As the three-judge court in *Hobson* v. *Hansen, supra*, said, in rejecting a similar claim: "In neither of the Supreme Court cases, *Hennen* [*Matter of Hennen*, 13 Pet. 230] and *Siebold*, involving the validity of Congressional authority for judges to appoint an official was there any question of inability, on due process grounds, of the appointing judge to pass upon the validity of the action of the appointee after appointment." 265 F. Supp. at 916–17, n. 18.

Moreover, even the scintilla of conflict of interest could be avoided here if the judge appointing the prosecuting official—here the Chief Judge of the United States District Court—did not himself preside over the grand jury or the consequent trials, if any. It is certainly possible that another district judge than the chief judge could preside over the grand jury proceedings and the resulting trials.

My conclusion is that § 3 of S. 2611 fully complies with the requirements of the Constitution in authorizing the appointment of the special prosecutor by the Chief Judge of the United States District Court for the District of Columbia.

The second constitutional issue is whether § 10 of S. 2611, which provides that the special prosecutor shall be dismissed only for cause as defined therein and then only by the Chief Judge, is valid. Again the answer is in the affirmative.

My position here rests on the line of cases that began with *Myers* v. *United States*, 272 U.S. 52 (1926), and culminated in *Wiener* v. *United States*, 357 U.S. 349 (1958), with *Humphrey's Executor* v. *United States*, 295 U.S. 602 (1935), as the connecting link between them. Mr. Justice Frankfurter wrote for a unanimous Court in the *Wiener* case. He summarized the history this way:

"The assumption was short-lived that the *Myers* case recognized the President's inherent constitutional power to remove officials, no matter what the relation of the executive to the discharge of their duties and no matter what restrictions Congress may have imposed regarding the nature of their tenure. The versatility of circumstances often mocks a natural desire for definitiveness. Within less than ten years a unanimous Court, in *Humphrey's Executor* v. *United States*, narrowly confined the scope of the *Myers* decision to include only 'all purely executive officers.' The Court explicitly 'disapproved' the expressions in *Myers* supporting the President's inherent constitutional power to remove members of quasi-judicial bodies. Congress had given members of the Federal Trade Commission a seven-year term and also provided for the removal of a Commissioner by the President for inefficiency, neglect of duty or malfeasance in office. In the present case, Congress provided for a tenure defined by the relatively short period of time during which the War Claims Commission was to operate—that is, it was to wind up not later than three years after the expiration of the time for filing of claims. But nothing was said in the Act about removal.

"This is another instance in which the most appropriate legal significance must be drawn from congressional failure of explicitness. Necessarily this is a problem in probabilities. We start with one certainty. The problem of the President's power to remove members of agencies entrusted with duties of the kind with which the War Claims Commission was charged was within the lively knowledge of Congress. Few contests between Congress and the President have so recurringly had the attention of Congress as that pertaining to the power of removal. Not the least significant aspect of the *Myers* case is that on the Court's special invitation Senator George Wharton Pepper, of Pennsylvania, presented the position of Congress at the bar of this Court.

"Humphrey's case was a *cause celebre*—and not least in halls of Congress. And what is the essence of the decision in Humphrey's case? It drew a sharp line of cleavage between officials who were part of the Executive establishment and were thus removable by virtue of the President's constitutional powers, and those who are members of a body "to exercise its judgment without the leave or hindrance of any other official or any department of the government," as to whom a power of removal exists only if Congress may fairly be said to have conferred it. This sharp differentiation derives from the difference in functions between those who are part of the Executive establishment and those whose tasks require absolute freedom from Executive interference. 'For it is quite evident,' again to quote *Humphrey's Executor*, 'that one who holds his office only during the pleasure of another, cannot be depended upon to maintain an attitude of independence against the latter's will.'" 357 U.S. at 352–53 (citations omitted).

The important propositions that I derive as

the guiding law from *Wiener* are three. First, where, as here, independence from the President is necessary to the proper performance of the special prosecutor's duties, the power of removal does not rest with the President. Second, that the question of the terms and conditions on which an appointee's tenure depends is within the scope of Congress to define. Congress will have defined it in S. 2611 so as to remove any of the doubts that might have been derived from Congressional silence as in the *Humphrey's* and *Wiener* cases. Third, even had Congress remained silent as to who should have the power of discharge, the necessity for independence would prohibit the President from discharging a special prosecutor whose office was created by Congress except on grounds specified in the law. Thus, even were the limitation of discharge to the Chief Judge to be held invalid, the capacity of the President to discharge the special prosecutor would depend upon the existence of those circumstances specified in § 10. Thus, the President, if he had the power of discharge, could exercise that power only where the special prosecutor "has willfully violated the provisions of this Act or committed other extraordinary improprieties, and for no other reason."

I conclude, as I began, with the opinion that S. 2611 is fully consistent with the requirements of the Constitution insofar as it authorizes the appointment of the special prosecutor by the Chief Judge of the United States District Court for the District of Columbia and provides for the discharge of the special prosecutor only for specified cause and then only by the Chief Judge.

NEW YORK CITY'S BIGGEST LANDLORD ANNOUNCES SWEEPING FUEL OIL AND ENERGY CONSERVATION PROGRAM

Mr. JAVITS. Mr. President, I would like to call the attention of the Senate to the new initiative undertaken in New York City by a leader in private business to conserve fuel in this time of shortage.

New York City's biggest landlord, Samuel J. Lefrak, on October 23, 1973, announced a sweeping fuel oil and energy conservation program for the 60,000 apartments his firm controls in New York City. Some 250,000 tenants will be affected.

Mr. Lefrak indicates that his most conservative projections indicate immediate savings of more than 10 million gallons of oil this winter and dollar savings of more than $2 million and that the Nation could offset oil savings of 10 to 15 percent by following similar procedures.

The Lefrak organization intends to give any money saved back to tenants in the form of a cash rebate. They will be compared, by computer, the fuel costs per building of last year based on degree days, with the costs of this year to determine any savings. The fuel oil conservation program is now being carried out by the Lefrak organization's management and maintenance staffs which have been heavily augmented in order to carry out the crash program. These are some of the steps they are taking:

All washing machines—they number in the thousands—in Lefrak buildings are being converted to cold water machines. Cold water cleansers will be used in all machines;

An early warning system covering heating and hot water has been linked to a computer in order to eliminate waste;

All boilers are being overhauled. Most are getting new combustion chambers and controls. All boiler safety valves, tubes, and condensation pumps are being checked for leakage;

New thermostats and controls are being installed in boiler rooms;

All windows and doors in apartments are being weatherstripped and caulked;

All radiators in apartments are being checked and defective air valves are being replaced;

All exposed steam and hot water pipes in buildings are being insulated;

Vestibules are under construction for service entrances and all doors are being made self-closing so that a minimum of cold air can enter buildings;

Garage and bulkhead windows are being checked and defective windows are being replaced; and

Open windows in boiler and laundry rooms are being sealed.

These steps are seen as eliminating waste and stressing the "reuse" of fuel oil. All reclamation heat transfer units are being installed where possible including early smoke alarm system.

Mr. Lefrak is also asking his tenants to take a number of heat savings steps:

Close doors promptly to retain heat;

Keep doors closed in room with open windows;

Check decorative radiator covers to see that they are not trapping heat;

Place a sheet of aluminum foil between radiator and cold wall so that heat will be reflected back into the room;

Check that radiators are painted with enamel paint. Metallic or flat paint cuts radiator efficiency by as much as 25 percent;

Keep dust from accumulating on radiators or baseboards since this cuts heat efficiency;

Remove rugs and furniture from areas where they block radiators and registers;

Avoid unnecessary use of hot water; and

During winter daylight hours leave windows which face sun unshaded in order to get natural heat.

Each building superintendent will be in charge of carrying out the fuel conservation program in his building and incentive bonuses will be paid to the superintendents so that they will profit from increased heating efficiency.

Lefrak apartment house will have a "fuel conservation ombudsman," who will be an interested tenant with the task of educating other tenants on how to save on heat.

Lefrak also intends to save electric power by switching to a single cycle system and by using low voltage fluorescent, sulfur, and mercury lighting instead of conventional incandescent lighting.

During hot weather, Lefrak has indicated he will cut down on air-conditioning by using solar glass, insulated window shades and laminated window heat diffusers.

A recent story in the New York Times pointed out that the United States, whose phenomenal industrial growth and prosperity have been fueled by abundant, cheap energy, is being forced to reconsider its power energy way of life. Underheated homes could be a harbinger of closed schools, curtailed public transport, factory shutdowns, dimmed outdoor lighting, and less pleasure driving. If other landlords and homeowners would follow some of the practices of the Lefrak organization with regard to energy conservation it would materially help our country in its effort to save fuel and blunt the efforts of those who seek to limit the U.S. supply of fuel for strictly political reasons.

SMALL TOWN AMERICA—VITAL AND POPULAR

Mr. CLARK. Mr. President, the small town is not dead or dying, a legacy of America's past. It can be, and in many cases is, a viable and flourishing institution. This is one of the conclusions of a conference held recently in Oak Ridge, Tenn., on "The Future of the Small Towns."

A report presented at this meeting, based on 1970 census data, found that many towns which wanted to grow and flourish could do so successfully without being swallowed up into a metropolitan sea. However, the ability of small towns to continue to grow and survive in the future will depend on the creation and implementation of national goals and policies for both urban and rural America.

Recognition of the need for consciously directed growth is not new. President Nixon addressed it in his 1970 state of the Union message.

> The violent and decayed central cities of our great metropolitan complexes are the most conspicuous failures in American life today. I propose that before these problems become insoluable, the nation develop a national growth policy. In the future, decisions as to where to build highways, locate airports, acquire land or sell land should be made with a clear objective of aiding a balanced growth. In particular, the Federal government must be in a position to assist in the building of new cities and the rebuilding of old ones.

Congress, too, made a commitment to a policy of balanced national growth and development through the Agriculture Act of 1970, the Housing and Urban Development Act of 1970 and most recently the Rural Development Act of 1972. The objective of the Rural Development Act—the restoration of the economic health, vigor, and opportunity for rural America—is an important step toward providing our citizens a meaningful choice in where they want to live.

But much remains to be done before we effectively come to grips with the problems of heedless growth, population imbalance, a polluted environment or limited natural resources. It is imperative that Government and citizenry work together now to decide where we are headed as a nation and what we must do to get there.

The recommendations of the Oak Ridge conference are worthy of note. They were the subject of an article published recently in the New York Times and I would like to commend it to the attention of my colleagues. I ask unanimous consent that it be printed in the RECORD.

There being no objection, the article

was ordered to be printed in the RECORD, as follows:

[From the New York Times, Nov. 6, 1973]

"DYING" AMERICAN SMALL TOWNS SHOWING VITALITY AND POPULARITY

The dying American small town, once the backbone of the new nation and more recently the heralded symbol of the death of our national innocence, may not be dying at all.

This is the observation of a group of leading demographic experts who concluded at a recent conference that the small town, while it cannot be said to be thriving, is holding its own in a remarkable number of cases, particularly in the South, and needs only an infusion of thoughtful public policy to make it once again a good place to live for a significant number of city-sick Americans.

The panelists at the three-day conference, "The Future of the Small Town," which ended last week at Oak Ridge, Tenn., represented both private and governmental agencies. Generally they agreed on the following points:

While there is reason for concern about the future of small-town America, its demise is greatly exaggerated—so much so that some government planners now consider programs to aid small towns in rural areas a waste of time. The same negativism permeates small-town thinking so there is little innovation, and businessmen avoid the risks of development.

Towns that have made a decision to survive and grow, and have acted upon it, have had consistent and in some cases remarkable success.

While the suburbs continue to be the place most Americans say they want to live, small towns are next—and are the clear favorite for bringing up children. Only 9 per cent of the people want to live in cities of more than a half-million population, although 20 per cent do live in them.

Although there are many Federal programs that directly or indirectly aim to help small towns in rural areas, there is no clear and consistent national policy, with stated goals, defining where the nation believes small towns should be headed.

LACK OF JOBS

Essentially, the conference panelists concluded that while the growing problems of urban core cities and the drab sameness of the suburbs were driving more and more families to want to live in small towns outside the nation's metropolitan rings, the towns themselves were generally unable to support new residents, either with city services, health care and cultural attractions, or, more fundamentally, with jobs.

"There is a sign outside Galesville, Wis., [population 1,200] which sums up the dilemma," said a conference participant, Calvin L. Beale, leader of the Populations Studies Group in the Department of Agriculture.

It says:

"Welcome to Galesville, the Garden of Eden, Industry Invited." Despite the inability of most very small towns to support growth, Mr. Beale said, there is steady pressure for that growth and the cliche of "the dying small town" is exaggerated.

Mr. Beale noted in a study prepared for the conference that population growth in nonmetropolitan towns of the South in the nineteen-sixties was most significant in percentage terms, in the very smallest towns. That growth was almost precisely the opposite of the pattern in the nineteen-fifties.

Of 4,641 Southern towns of under 50,000 population, those with populations of under 500 grew by 15 per cent in the nineteen sixties, compared with under 5 per cent in the nineteen fifties. Similarly, towns with 500 to 1,000 population grew 16 per cent in the nineteen sixties and 14 per cent in the nineteen fifties.

On the other hand, the "big" small towns—populations of 25,000 to 50,000—grew by 12 per cent in the last decade compared with 28 per cent in the nineteen-fifties. Towns of 5,000 to 25,000 grew by roughly 12 per cent in the nineteen sixties and about 30 per cent in the nineteen fifties.

Although this study was confined to the South, Mr. Beale said the pattern applied generally to the nation.

COWS FOR SPECULATORS

In many ways, that national pattern is a hodgepodge of conflicting symbols, the two-aisle country store near a shopping center in Effort, Pa.; a new bank in an Iowa town with a sign in front blazing 24 hours a day, with nobody to look at it but cows in a pasture nearby; the megalopolis sprawling over some little towns, making them just another segment in the line of motels and service stations stretching from Boston to New York to Washington, D.C.

It is a pattern in which some small towns do indeed die through evolutionary extinction while others are engulfed as metropolitan areas reach out to join with each other.

Conference participants, concluded however, that there was a third choice—the survival of the small town, with its own identity intact. A number of examples indicated that such a choice was possible.

NOSTALGIA FOR BAKE SALES

Just how much of the desire is no more than vague nostalgia for one-chair barbershops, church bake sales, Civil War monuments and the city manager driving the county's snowplow in blustery winters was not determined, but there was clear evidence that Americans say they want small towns preserved, and a fairly high number want to live in them.

Richard C. Taeuber, chief of the urban research section of the Oak Ridge National Laboratory and director of a research program for the Department of Housing and Urban Development, noted in a keynote address that there was an apparent disparity between where people want to live and where they do live.

A national survey, he said, indicated that only 9 per cent of the respondents said they wanted to live in a city of more than one-half million population. About 20 per cent actually lived in such cities.

About one-half of the respondents wanted to live outside major cities but within 30 miles of a city of over 50,000. About one-third actually lived in these areas. About 20 per cent wanted to live more than 30 miles from any city of over 50,000 and about a fifth actually lived in such areas—although they were not necessarily the same people.

Although there has been a tendency among businesses and industries to flee core cities along with the residents, basically what keeps people from living where they want to is economic necessity, Mr. Taeuber and others observed. There are simply not enough jobs in small towns and in rural areas.

AVOIDED BY INDUSTRIES

Rural areas traditionally have high unemployment, especially where traditional farm or mining employment has declined. Industries avoid them in many cases because of the lack of adequate water, sewers, police and fire protection. Most such areas lack the leadership and economic power to find ways to provide the services, either by consolidating efforts with other small communities or by taking on the burden themselves.

Thus, the towns die. There is for example, the case of Story, Ind., population 112, which is literally up for sale. The first bidder to come up with $34,000 for the town's seven buildings, including a feed mill, can own the town.

By contrast, conference participants were presented a study of two tiny Southern Appalachian towns, Tazewell and New Tazewell, in Claiborne County, Tenn. Together the towns created 2,000 new jobs in the decade of the nineteen-sixty's although their combined population was only 3,052.

Basically their success resulted from an effort to develop their own industry, a manufacturing plant for recreation vehicles, financed with local capital.

The conferees concluded that such stories, although dramatic tended to be submerged by many accounts describing the demise of small towns, particularly those in the Plains States, where there is indeed a substantial problem.

However this ignores such evidence as that gathered in a study that showed that of 4,300 towns with a population of 2,500 to 10,000, 28 per cent lost population in the nineteen-sixties, while 72 per cent grew.

Some of these were suburbs. Others such as Cozad, Neb., which organized its civic leaders and gained an auto equipment plant, grew through their own efforts.

The panelists concluded that an over-all national policy and a coordinating agency for efforts to revitalize small towns were needed.

Estimates of the number of rural and small-town assistance programs ranged from 500 to about 1,000, several participants noted. Moreover, there is no comprehensive advisory agency to tell small town governments how to save their towns.

Federal policy planners have tended to concentrate on areas where growth was most explosive, such as the suburbs, or where the problems dominate, as in the largest cities.

JOHN P. SAYLOR

Mr. HUGH SCOTT. Mr. President, the Washington Post, in a fine editorial November 5, 1973, paid tribute to our late and much esteemed colleague, Representative John P. Saylor of Pennsylvania, and dean of the delegation from Pennsylvania.

I ask unanimous consent that this editorial recognizing Congressman Saylor as we remember him—"an outspoken effective champion for a good cause"—be printed in the RECORD.

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

JOHN P. SAYLOR

Some Congressmen manage to linger in the House for many terms without ever raising their voices or advocating an important cause or leaving any imprint on the record of their times. Rep. John P. Saylor, who died last week, was emphatically not one of these. The Republican from the Pennsylvania hills had strong convictions and a personality to match. Gruff, sometimes caustic, uncommonly persistent, he was the best kind of opinionated man.

Rep. Saylor was a powerful and creative force in the field of conservation which he made his specialty. During his quarter-century in the House, seniority elevated him to the post of ranking Republican on the House Interior Committee, but it was his own energy and ideas which made him a dominant influence in that committee's work. Rep. Saylor was in the midst of nearly every major conservation battle of his day. He fought against the Hells Canyon dam. He opposed the Grand Canyon dams. He battled to create the national wilderness system and the Land and Water Conservation Fund laws which stand as permanent monuments to his vision and doggedness. Perhaps because he came from a region of scarred and battered hills, he had a keen appreciation of the need to keep some

of the nation's finest natural resources unspoiled and available for the public to enjoy and use.

Rep. Saylor took a very particular interest in the conservation problems of the Potomac Basin and the national capital area. He was a vigorous defender of Piscataway Park and the marshes on the Virginia shore below Washington. He scrapped for years to obtain a workable framework for Pennsylvania Avenue redevelopment. In partnership with the Maryland congressional delegation, he was a leader in the 17-year campaign which finally produced the Chesapeake and Ohio Canal National Historical Park. In these and other legislative battles, Rep. Saylor used his stature and voice to full effect. He was an outspoken, effective champion for a good cause.

LEGAL MEMORANDUM IN SUPPORT OF S. 2611

Mr. ERVIN. Mr. President, I have received a memorandum discussing the constitutional power of Congress to enact legislation vesting the power to appoint a special prosecutor in the Federal courts. This memorandum was prepared by Lee C. Bollinger, Jr., an assistant professor of law at the University of Michigan Law School.

Because the Senate is now considering S. 2611, a bill which directs the Chief Judge of the District Court for the District of Columbia to appoint a special prosecutor to continue the work which former Special Prosecutor Archibald Cox began. I ask unanimous consent to have Professor Billinger's memorandum printed in the RECORD.

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

CAN CONGRESS VEST THE APPOINTMENT OF A SPECIAL PROSECUTOR IN A FEDERAL COURT?

In the wake of President Nixon's decision to order the Attorney General to discharge Mr. Cox as the Watergate Special Prosecutor, many individuals and groups have called for legislation creating a new independent prosecutor who would be immune from presidential removal. Early last week, for example, the deans of 17 law schools signed a petition urging Congress to vest the power to appoint a special prosecutor in a federal court. The deans, along with many others of like mind, asserted that Congress was empowered to enact such a law by virtue of Article II, Section 2, of the Constitution. That Section reads in relevant part:

[The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Counsuls, Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: *but the Congress may by law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Court of Law, or in the Heads of Departments.*" (emphasis added)

The purpose of this short memorandum is to discuss whether the language, history and judicial interpretation of Article II, Section 2, support the position that Congress can, if it chooses to do so, vest the power to appoint a special prosecutor in a federal court.

I

Looking first at the language of Article II, Section 2, one is immediately struck by its clarity. Unlike the rather general phrasing found throughout much of the Constitution, this clause speaks with precision, without qualification or caveat. It says in plain terms that the Congress may, "as they think proper," vest the appointment of "inferior Officers" in "the President alone, in the Courts of Law, or in the Heads of Departments." By all appearances the individuals who penned this language intended to leave the delegation of the appointment power of lesser federal officials to the unfettered discretion of the legislative branch. If there be any limitation on this discretion, it must be implied, for it surely is not explicit.

We all recognize, of course, that language is an imperfect medium. What may appear clear on the surface, often becomes murky upon further study. Any inquiry into meaning, therefore, must wherever possible go beyond the literal text to an examination of the circumstances under which the words were written or spoken. In instances like this, that means looking at the available records of the Constitutional debates.

When the relevant debates are examined, one finds nothing to suggest that the framers intended to say anything different than they did. The clause was proposed without discussion by Governor Morris. James Madison raised the only recorded objection. His criticism, however, was not that the clause would vest too much power in Congress, but that it did "not go far enough if it be necessary at all." Documents of the Formation of the Union of the American States, House Doc. No. 398, 69th Cong., 1st Sess., (1927). Madison thought that "Superior officers below Heads of Departments ought in some cases to have the appointment of the lesser offices." Id. Governor Morris responded: "There is no necessity. Blank commissions can be sent." Id. After this brief exchange, the amendment was agreed to on the second vote.

When we next turn to the judicial decisions interpreting the pertinent clause in Article II, Section 2, we again find nothing to make us doubt Congress' authority to empower a federal court to appoint a special prosecutor. On the contrary, the one relevant Supreme Court decision strongly supports such an interpretation of congressional power. See *Ex parte Siebold*, 100 U.S. 371 (1879). At issue in *Siebold* was a congressional statute authorizing the judges of federal Circuit Courts to appoint supervisors of congressional elections and marshals to assist those supervisors. Writing for the Court, Justice Bradley rejected the argument that "no power can be conferred upon the courts of the United States to appoint officers whose duties are not connected with the judicial department of the government." Id. at 397. Citing Article II, Section 2, the Court held that the "selection of the appointment power, as between the functionaries named, is a matter resting in the discretion of Congress." Id. at 397–98. This result seemed to make eminent good sense to the Court:

"And looking at the subject in a practical light, it is perhaps better that it should rest there, than that the country should be harassed by the endless controversies to which a more specific direction on this subject might have given rise."

Id. at 398.

The Court in *Siebold* was also unpersuaded by another line of constitutional argument: that the statute was inconsistent with Article III in that it delegated powers to the courts that were nonjudicial in nature. This is not a case, the Court said, where Congress had sought to impose duties on the judicial branch that were not authorized by the Constitution; on the contrary, here "the duty to appoint inferior officers, when required thereto by law, is a constitutional duty of the courts" by virtue of Article II, Section 2. Id. at 398.

The *Siebold* decision is not the only precedent on Article II, Section 2, though it certainly is the most authoritative. For example, Congress long ago enacted a provision now contained in 28 U.S.C. § 546, which provides:

"The district court for a district in which the office of United States attorney is vacant, may appoint a United States attorney to serve until the vacancy is filled. The order of appointment by the court shall be filed with the clerk of the court."

This statute was upheld as constitutional in *United States v. Solomon*, 216 F. Supp. 835 (S.D.N.Y. 1963). The district court there relied on Article II, Section 2, in rejecting an argument that the provision violated the Doctrine of Separation of Powers.

Similarly, a three judge court relied on Article II, Section 2, in upholding a congressional statute under which judges of the United States District Court for the District of Columbia were authorized to appoint members of the District of Columbia Board of Education. See *Hobson v. Hansen*, 265 F. Supp. 902, 911–16 (D.C. 1967).

II

The foregoing review of the relevent legal authorities would seem to indicate that there is strong support for the proposition that Congress could under Article II, Section 2, place the power of appointment of a special prosecutor in the federal courts. Before accepting that conclusion as sound, however, we must consider the one major argument which can be anticipated in rebuttal: that it would be an impermissable usurpation of executive powers for Congress to delegate the appointment of executive officials to the judicial branch. Surely, it might be argued, the last clause of Article II, Section 2, should not be interpreted to mean that Congress may authorize a federal court to appoint the Under Secretary of State. Such a construction would give rise to a serious breach in the wall of separation of powers. And, if that is so, then a line must be drawn somewhere between "executive inferior officers" and other inferior officers. A special prosecutor, the argument would conclude, falls into the former category; his role would be to see that the laws are enforced, historically an executive function.

While this line of argument cannot be lightly dismissed, it contains several flaws which make it ultimately unpersuasive. First, insofar as the argument suggests that Congress may never vest courts with the power to appoint any official who will perform a nonjudicial, or an "executive," function, it is squarely refuted by the Supreme Court's decision in *Siebold*, as well as by the other lower federal court decisions mentioned previously. Congress itself, moreover, has rejected the suggestion; as we have seen, 28 U.S.C. § 546 provides for the interim appointment of United States attorneys by federal district courts. Second, even if it is conceded that a court could not appoint an inferior officer whose duties would be *exclusively* executive in nature, that concession would not necessarily preclude judicial appointment of a special prosecutor. It has long been recognized that a prosecutor is intimately involved in the judicial, as well as executive, functions of the government. As an officer of the court, subject to the supervisory power of the federal courts, the U.S. attorney performs a dual function within the overall scheme of government. He is, in short, markedly different for these purposes than the Under Secretary of State.

In order to sustain the power of Congress to provide for judicial appointment of a new Watergate special prosecutor, however, one need not go so far as to assert that judicial appointment of all United States attorneys would be proper. For the situation now facing the country is unique and clearly calls for extraordinary solutions. The highest officials in the executive branch are the subjects of criminal investigations. That hard fact means that if the executive branch is to control the investigation of alleged wrongdoing by its own members, the very integrity of the government will be called into ques-

tion. It would seem entirely unreasonable in this instance, therefore, to give a crabbed interpretation of Congress' constitutional powers, especially when the constitutional language is so explicit and the judicial decisions so favorable to a broad reading of congressional authority.

I therefore conclude that it would be constitutionally permissible for Congress to designate a court of law to appoint a special prosecutor, having limited powers of investigation and prosecution and holding office only for a limited period of time.

LEE C. BOLLINGER, Jr.,
Assistant Professor of Law,
University of Michigan Law School.

HEALTH CARE

Mr. DOMENICI. Mr. President, on Saturday, October 20, in Albuquerque, I met with five physicians, three dentists, one osteopath, and two hospital administrators, representing six communities of varying sizes in all parts of New Mexico.

Our objective was to discuss the whole problem of the maldistribution of medical personnel in the country, with particular emphasis on our own State.

The group assembled at my invitation, after a survey I made of the State's doctors, dentists, and optometrists on this subject.

Several extremely interesting conclusions came out of this meeting. I would like to summarize them and share them with my colleagues.

For instance, they observe that statistics which merely list holders of medical degrees are relatively meaningless in this context. What we need to know is whether or not degree-holders are also practitioners. We might well be advised to have information even on their ages, since many older practitioners lighten their practice considerably.

They also point out that at present there is a clearly discernible correlation between members of medical personnel in an area and the per capita income of the area. To be realistic, the decision to locate in an area should probably rather be based, not on gross income per person, but on the ability to pay for medical service—an ability which can come from other sources, such as a variety of forms of medical insurance. Some improvement in health insurance may, in effect, equalize areas of the country in this regard and thus contribute substantially to the solution of this problem.

Even now, the rate at which we are training medical personnel is increasing at about three times the rate at which the population is increasing.

It was the view of those members of the group who are engaged in medical education that most entering students have a strong bent toward public-service medicine, though their inclination may decline as their training progresses. Any increases in that basic attitude, especially if it perdures, should contribute to a solution of the problem of maldistribution.

Everyone agreed that there should be more emphasis on family or community medicine as an area of specialization for medical doctors, but the principle of freedom of choice by the student certainly should continue to prevail.

Dentists find their field does not suffer from the degree of overspecialization some see in medicine. Only 9 percent of dentists are in specialties, as contrasted with 87 percent of physicians. The group felt dentistry is at present in a state of underspecialization.

The consensus of those present was that far and away the major obstacle to service in a rural area or small town was overwork. One example quoted had to do with a physician in one of New Mexico's small towns who "did not sleep a full night in 14 years."

The second major objection to rural practice was that it was too often limited to merely crisis medicine, with little or no preventive measures, and hence could not reach the quality of care present-day practitioners believe they have a right to achieve. Those present agreed an occasional small town may be overattractive to medical people; one town in New Mexico, with an active art colony and nearby ski area, gets as many as five approaches a week from those interested in locating there. Meanwhile another small town has an empty hospital and no medical men in residence.

Those present felt the main element in the solution to the problems of small towns would have to be some "team" approach, in which, say, a group of six physicians—three family practitioners and three specialists, including an internist and a surgeon—set up simultaneous practice. Educators in the group pointed out that if everyone now completing training went to rural areas on this basis, we could reach less than 3,000 communities a year. If neighboring towns could share such a group, perhaps two members could locate in each town. Two would be a minimum "team," to allow for rest and recreation time for its members, while one doctor "covers" for the other.

Some medical men feel service of this kind might be made compulsory, at least by attaching some specific requirements to scholarship funds used to educate doctors. They also observed that physicians do not generally oppose a Health Corps concept, partly at least because they know health needs are not being met and have some guilt feelings about the situation. They said applicants for the Health Corps are plentiful, but they complain that excessive delay in processing their applications leads to discouragement or loss of interest.

The group, which will continue to give me its views on these matters, proposed that legislation directed toward solution of these problems might well be on a demonstration basis, using a few selected States as models from which to gain experience. At least one of these States, they agreed, should be a sparsely settled one like New Mexico.

One major area of demonstration should be in transportation, which should include measures to bring medical care to patients by such means as mobile units—if proper equipping of such vehicles can be decided on—and measures to bring patients to medical care by such means as helicopters and STOL aircraft.

Mr. President, the danger signal in most Federal medical programs in the minds of those present seems to be encroachment—encroachment on freedom of choice and encroachment on the traditional doctor-patient relationship. Even though they agree some such encroachment is inevitable if problems are to be solved, they have a strong will to see that it is at least minimized.

IRAN EXPANDS PUBLIC OWNERSHIP OF INDUSTRY

Mr. PERCY. Mr. President, during my recent visit to Iran in mid-August I was impressed with that country's burgeoning industry and with its attempts to distribute the fruits of this economic growth equitably among its people. In late September I again had the pleasure of discussing the great industrial potential of Iran with his Excellency Ardeshir Zahedi, the Ambassador from Iran. I have recently received from the Ambassador an interesting report on the plan to expand the public ownership of Iranian industries. I think that the program is important for the future economic growth of that country because its objective is to stimulate the growth of a strong middle class. This growth could be instrumental in world peace as Iran is an important force in the peaceful development of the Far East.

In order to decentralize ownership in domestic industries and spread the benefits of Iran's rapid economic and industrial growth across the society as a whole, the Government of Iran has decided to implement certain measures to provide for increased public ownership of Iranian industries. It is hope that this attempt of the industries to "go public" will maximize the degree of participation of the public in the ownership of the country's industries with a special preference given to the workers to buy shares in their own factories. By making the workers feel that they have an active, indeed indispensable part to play in the industrial process, it will help toward maintaining and even increasing the country's already rapid industrial growth. This program is also intended to expand the investment capital market in order to provide the amount of capital needed for more rapid growth of the country's industry. It is estimated that the program for offering shares to the public will increase the capital available to these industries by 50 percent over the next 5 years.

Iran has in the past shown great concern for the fair distribution of industrial profits to its workers. That remarkable country is presently operating under a system of profit sharing that gives its workers up to 20 percent of the shares of the factory profits, the exact percentage I introduced into a new profit-sharing plan at Bell & Howell Co. years ago. The Report on the Method of Implementation of the Expansion of Ownership in Iranian Industries, which was sent to me by his Excellency the Ambassador of Iran, demonstrates not only the concern which the present Government of Iran, under the inspired leadership of his Imperial Majesty, the Shahenshah, Arymehr, has for its economic development, but also its sensitivity to

the needs of its workers. I ask unanimous consent that this report be printed in the RECORD so that my colleagues and other governments might be better informed as to the details of this remarkable development.

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

REPORT ON THE METHOD OF IMPLEMENTATION OF THE EXPANSION OF OWNERSHIP IN IRANIAN INDUSTRIES

1. INTRODUCTION

The Council for Social Affairs held its first session on 26th Ordibehesht 1351 on the command, and in the presence, of His Imperial Majesty Shahanshah Aryamehr in order to concert, and harmonize the country's social programmes.

His Imperial Majesty expressed certain ideas in a speech on that occasion, parts of which are quoted below:

"I would like to give a few words of advice regarding our industrial and agricultural sectors and also issue a general order. The country's industrialization has proceeded at a rapid pace, which can only be maintained if we start on a new road—that is, open the way for public participation in industry.

So far as I recall, one of our biggest investments up to now has been in the creation of a sugar or cement factory. What did these factories cost? Perhaps eighty million toumans, or even taking a higher figure, our investments never exceeded a hundred or a hundred and twenty million toumans. Today we see one or two iron industries near Ahwaz which have required relatively heavy investments. Also, agreement has been reached to expand the motor car industry in Iran which involves a sum of a hundred—two hundred or possibly three hundred million dollars. When investments become so large, they can no longer be kept within the family or a group of friends and the only way to obtain such vast funds is to go public. There are a variety of reasons for this: one being that, generally speaking it is hard to find such large amounts of ready cash for investment. If several people request a loan, they will face lending rates which are still high in our country and will consequently have to sell their products at high prices in order to pay back such loans and also gain a profit. Moreover, something might happen and some of them could be faced with the danger of bankruptcy.

However, when such investments are paid by a large number of people, on the one hand there is a far smaller danger of bankruptcy and also it is far easier to increase the amount of capital if there are ten or fifteen thousand investors, rather than five or ten people. If the aim is to obtain huge profit, this is also not right for a few people to take it all. However, if there are a larger number of shareholders, the principle of public participation in the affairs of industry will spread and work more effectively. Thus, just as over the past few years one of the principles of our revolution has been to give workers up to 20 percent of the shares of factory profits, which in my opinion has been one of the successful principles of our revolution. . . . Now I am recommending our industrialists (in line with my previous recommendations) to place at least about one-third of the shares they own on the market and of course take all the necessary precautions. If they place all the shares on the market at the same time, the price of shares will decline.

They should do this over a period of one, two or three years up to a level at which they still retain ownership of their firm. Why? Because firstly, they have gone through a great deal of trouble and took the initiative and secondly, it permits them to retain a majority of the shares, which therefore facilitates effective management by people who have been trained to do this type of work. Of course, when we say that one-third or 33 percent of factory shares, or a higher proportion up to the point where the majority of shares are still retained by the factory managers, should be distributed among the people in order to ensure as much participation by the public as possible, what we have foremost in our minds is that, in the first place, these shares should be offered to the employees and workers themselves preferably with them buying all the shares.

Facilities should also be made for them to buy shares from dividends paid them (in any case, payment of these dividends after sharing up to 20 percent of the profits among the workers is what we had in mind for them) or advance workers interest-free loans for them to buy shares if they want to. If in the first instance, they decide not to buy them, and they will naturally be offered to the public as a whole, and any person can take part in purchasing these shares, thereby greatly assisting in the country's industrialization. So, I repeat my belief that the proportion of shares offered to the public should be up to a third or 33 percent of the total number of shares and up to the level at which a majority of shares and management authority are left in the hands of the factory owners."

The ideas and proposals embodied in the Shahanshah's speech regarding the sale of factory shares were warmly received by the public and the country's industrialists, many of whom announced their readiness to carry out this programme by meeting at the Iranian Chamber of Commerce, Industry and Mines, or placing announcements in the press or even contacting the Ministry of Economy.

This programme is expected to contribute significantly towards the attainment of two vital objectives regarding the country's development strategy. Firstly, by broadening the investment base among the populace, it will help to spread social justice; and secondly, by making the workers feel that they have an active and, indeed, indispensable part to play in the industrialization process, it will help towards maintaining and even increasing the country's already rapid industrial growth.

2. EXECUTIVE BODIES

Owing to nationwide support which this programme received, a special commission was established consisting of the Ministers of Economy and Labour and Social Affairs, Managing Director of the Central Bank of Iran, Deputy Minister of Court, Deputy Ministers of Economy, President of the Iranian Chamber of Commerce, Industry and Mines and Managing Director of the Industrial Credit Bank of the Plan Organization, to be convened at the Ministry of Economy in order to approve and exercise continuous supervision over the execution of the programme for the sale of factory shares to the people, on the basis of recommendations suggested by industrialists and with due consideration for the individual position of each factory under study. Moreover, a committee composed of the Deputy Minister of Labour and Social Affairs, Deputy Managing Director of the Industrial Mining and Development Bank, Adviser to the Central Bank in the field of capital markets, Deputy Managing Director of the Industrial Credit Bank and Deputy President of the Iranian Chamber of Commerce, Industry and Mines was organized under the supervision of the Deputy Economic Minister of the Ministry of Economy in order to prepare the reports required for the commission's discussions, go carefully through the relevant formalities and procedure of work, cooperate closely with industrialists and suggest any recommendations which needed to be discussed by the commission. Meanwhile, a secretariat consisting of technical and economic experts was organized in the Ministry of Economy in order to manage day-to-day affairs regarding the programme.

At the same time, an organization is being set up to protect the rights of small shareholders, give the necessary guidance and supervise over the correct implementation of this programme. Meanwhile, arrangements have been made for all industrial units whereby those who have bought their shares under this programme can protect their own interests by being well and truly represented in public meetings of factory shareholders by investment institutions or centres.

3. OBJECTIVES

a. The maximum possible degree of participation of the public in the ownership of the country's industries with due regard for right of priority of factory workers and employees.

b. Creation of conditions and incentives necessary for encouraging as wide a degree of public participation in investments as possible.

c. Expansion of the investment market in order to secure the amount of capital needed for a rapid growth of the country's industrial units to international levels.

4. SELECTED UNITS

A total of 5,100 of the country's industrial units in both the public and private sectors have been classified as large units. Their production for the year 1350 amounted to 240 billion rials which is equivalent to 57 percent of total national industrial production.

Of this figure, about 190 billion rials is accounted for by private sector production of which 60 percent comes from the 144 largest factories. During the first stage, 86 of the above 144 factories have prepared programmes for the sale of shares, as announced in the press on 22/3/1351. The estimated share value of said 86 factories is about 54 billion rials (with the exact figure to be determined after a thorough study).

The above factories have been divided into four groups according to their particular circumstances:

The first group consists of eight factories which participated in the stock market, but whose shares were sold in limited numbers. Therefore, after completing certain simple formalities, it was possible to assess their value without much delay.

The second group includes seven factories which are basically public joint stock companies and were therefore in a position to be able to invite their shareholders to a general meeting in order to complete the necessary formalities quickly and, within a short space of time, deliver the required certificates to the stock exchange admissions board, after which the value of their shares would be assessed.

The third group consists of thirty factories which are managed as family concerns and the issuance of whose shares to the public depends on the completion of all the necessary formalities including an audit of their accounts by trusted accountants of the stock exchange.

The fourth group is composed of forty-one factories whose situation is similar to that of the third group and which must complete exactly the same formalities as the above group. The main difference is that for the fourth group, the necessary formalities will take a little longer to be completed owing to the secretariat's and the stock exchange admissions board's limited facilities and number of accounting institutes which are acceptable to the stock exchange.

5. METHOD OF ISSUING SHARES

The programme for issuing shares is to last five years during which the companies will increase their capital by 50 percent after obtaining the necessary authority from their

general meetings, and offer the new shares for sale to the public. The amount of shares offered to the public will differ from company to company and will depend on the expansion programme and financial needs of each company. By increasing company capital, on the one hand companies will have access to new sources of finance for their expansion programmes and possibly for reducing their debts and, on the other hand, at least 33 per cent of the future capital of each company will be placed in the hands of the public over a period of five years. With this aim in mind, the companies will hold extraordinary general meetings and give first preference for the purchase of new shares to workers, employees and the public rather than to their current shareholders. The period allowed for taking advantage of this first preference for company workers and employees will be three months, at the end of which the public at large will get first preference. On the completion of this period, current shareholders will be permitted to purchase any shares still remaining.

6. FACILITIES EXTENDED TO WORKERS AND EMPLOYEES FOR THE PURCHASE OF SHARES

1. Maintenance of right of first preference for a period of three months.

2. Payment of one month's fixed income to workers and employees who wish to buy shares. This payment will be drawn on account from dividends owed to workers for payment of shares which they purchase.

3. Granting of the equivalent of one month's fixed pay as an interest free loan with a five-year maturity period for the purchase of more shares.

4. Granting of a reduction equivalent to 25 percent of the fixed share price. If, after taking into account the above 25 percent reduction, the actual share price is less than the nominal share price, the latter will be used as the purchase price for shares.

5. It should be mentioned that in order to encourage company workers and employees to retain their shares and enjoy both short and long-term benefits, shares which are bought on the basis of the above reduction will be deposited with the company for a period of five years as surety for loans. In cases where the worker's or employee's monthly pay is less than the nominal share price, the difference will be made up through the granting of a loan. In exceptional cases where the worker's and employee's level of income is low arrangements will be made, when shares are purchased, to draw on a relatively smaller proportion of the worker's dividend and grant the purchaser a relatively larger loan.

In any case, the main point which must be kept in mind is that before workers and employees receive their net profit from their shares every year. They will continue to receive the proportion of profits accruing to them according to the law on the participation of workers in factory profits. The above proportion is in addition to the net profit from shares paid every year which is payable according to the number of shares purchased and on the basis of company balance sheets.

7. AUDITING OF ACCOUNTS

An assessment of company shares requires that these companies be thoroughly examined by expert accountant firms. At the same time, during the final stage, these companies must offer their shares on the negotiable bonds market and in order to maintain the correct principles observed by the negotiable bonds market for admitting companies, it was decided only to accept balance-sheets which had been prepared by one of the accountant firms accredited to the stock exchange. Therefore, arrangements were made for companies to contact auditing firms directly and use their services in the drawing up of their own accounts.

8. ASSESSMENT

In assessing the value of company shares, a great deal of attention was paid to numerous points, the most important of which are as follows:

a. Financial position

In this respect, immovable and current company assets, in particular machinery; construction equipment, and goods, raw materials and spare parts inventories at prices entered in account books and also at day-to-day prices, were studied and analyzed. Moreover, attention was also paid to cash reserves and the level of saving required both under law and for precautionary reasons as well as recoverable company claims. In the case of land, it should be added that land prices were without exception calculated on the basis of their initial value entered in company account books, and increases in those prices were not subsequently included in the calculations. Also, special attention was given to both short and long-term company debts owed to banks as well as individuals and the ability of companies to repay their debts in the coming ten years.

b. Payment of profits

In this case, on the one hand, attention was paid to company profit payments over the previous five years and, on the other hand, the company's situation regarding the payment of profits in future on the basis of approved production programmes and within the company's industrial expansion policies. Special attention was paid to the type of product, management, competitive strength and expansion possibilities. Moreover, a thorough analysis was made of company share value on the basis of company profit payments and on the possibilities of maintaining and increasing the future level of profits, bearing in mind other favourable factors which might affect present or future company operations.

9. TAX EXEMPTIONS

The government has increased the tax exemption rate of public joint-stock companies whose shares are quoted on the stock exchange from 15 percent to 20 percent in order to encourage them to carry out the programme of offering at least 33 percent of their shares for sale. The tax exemption rate increases progressively to 25 percent for companies which have offered up to 49 percent of their shares for sale.

10. GOVERNMENT COMPANIES

All government-owned industrial units except the oil, steel and tobacco industries will offer their shares to the public according to a special programme. The shares of such factories will in some cases be offered exclusively to their own workers and employees and, in other cases, the government is prepared to offer up to 99 percent of its shares to the public after giving first preference to the workers and employees of each factory, on condition that the government retains the right to vote with respect to those shares.

REPORT ON THE PROGRAMME FOR EXPANDING OWNERSHIP IN IRANIAN INDUSTRIES

In order to decentralize ownership in domestic industries and spread the benefits of Iran's rapid economic and industrial growth across society as a whole, the Government recently decided to implement certain measures to this end.

With this aim in mind, a special commission consisting of the Ministers of Economy and Labour and Social Affairs, Managing Director of the Central Bank of Iran, Deputy Minister of Court, Deputy Ministers of Economy, President of the Iranian Chamber of Commerce, Industry and Mines and Managing Director of the Industrial Credit Bank of the Plan Organization was established at the Ministry of Economy to study and supervise the implementation of the programme for the sale of factory shares to the public. Moreover, a committee composed of the Deputy Minister of Labour and Social Affairs, Deputy Managing Director of the Industrial Mining and Development Bank, Adviser to the Central Bank in the field of capital markets, Deputy Managing Director of the Industrial Credit Bank and Deputy President of the Iranian Chamber of Commerce, Industry and Mines was organized to suggest any recommendations which needed to be discussed by the commission.

After the necessary studies had been completed, during the first stage 86 out of the 144 largest industrial units prepared programmes for the sale of their shares. The estimated share value of said 86 factories is about 54 billion rials (approximately 800 million dollars).

The above factories have been divided into three groups according to their particular circumstances;

The first group consists of eight factories which participated in the stock market.

The second group includes seven factories, which are public joint-stock companies.

The third group consists of seventy-one factories which were managed as family concerns.

An assessment of the shares of all the above factories is being undertaken by expert accountant firms. Since, during the final stage, these companies must offer their shares on the negotiable bonds market, it was decided only to accept balance-sheets which had been prepared by one of the accountant firms approved by the stock exchange.

In assessing the value of company shares, special attention was paid to their financial position, in particular their machinery and equipment, spare parts and goods inventories calculated on the basis of prices entered in account books and day-to-day prices, cash reserves and the level of saving required both under law and for precautionary reasons, company debts and also company dividends over the past five years, and forecasts of dividend payments according to future production programmes.

The programme for offering shares is to last five years during which the companies will increase their capital by 50 per cent after obtaining the necessary authority at their general meetings, and offer the new shares for sale to the public. The amount of shares offered to the public will depend on the expansion programme and financial needs of each company. By increasing company capital, on the one hand companies will gain access to new sources of finance and, on the other hand, at least 33 percent of the future capital of each company will be placed in the hands of the public over a five-year period.

With this aim in mind, the companies will hold extraordinary general meetings and give the right of first preference enjoyed by their current shareholders to workers, employees and the public. The period allowed for taking advantage of this right of first preference for company workers and employees will be three months, at the end of which the public at large will get first preference. At the end of this period, current shareholders will be permitted to purchase any shares still remaining.

The following facilities will be provided for workers and employees for the purchase of shares;

1. Maintenance of right of first preference for a period of three months.

2. Payment of one month's fixed income to workers and employees who wish to buy shares. This payment will be drawn on account from dividends owed to workers for payment of shares which they purchase, in accordance with the law on workers' participation in factory profits.

3. Granting of the equivalent of one

month's fixed pay by the companies as an interest-free loan with a five-year maturity period.

4. Granting of a reduction equivalent to 25 percent of the fixed price of each share. If, after taking into account the above 25 percent reduction, the actual share price is less than the nominal share price, the latter will be used as the purchasing price for shares.

One point which deserves particular attention is that before the workers and employees of these factories receive their net profit from their shares ever year, they will continue to receive the proportion of profits accruing to them according to the law on workers' participation in factory profits.

The government has increased the tax exemption rate of public joint-stock companies whose shares are quoted on the stock exchange from 15 percent to 20 percent in order to encourage them to carry out the programme of offering at least 33 percent of their shares for sale. For those companies which offer at least 33 percent of their shares for sale on the stock exchange, the government will increase the tax exemption rate from 15 to 20 percent. For those companies which offer up to 49 percent of their shares for sale on the stock exchange, the government will increase the tax exemption rate progressively to 25 percent.

All government-owned industrial units except the oil, steel and tobacco industries will offer their shares to the public according to a special programme. The shares of such factories will in some cases be offered exclusively to their own workers and employees and, in other cases, the government is prepared to offer up to 99 percent of its shares to the public after giving first preference to the workers and employees of each factory, on condition that the government retains the right to vote with respect to those shares.

THE PROBLEM OF ILLITERACY

Mr. MONTOYA. Mr. President, today I bring to your attention an article highlighting one promising remedy for a problem of serious proportions for America: illiteracy.

According to information made public this month by the Office of Education, the United States, despite its sophisticated communications and public education system, has 19 million adult citizens who are totally or for all practical purposes unable to make sense of the common language the rest of us use. This figure does not include the 1 percent who have not the mental capacity to read well.

Inability to read in our society is a social crippler. A reading lack denies a child access to basic opportunities for self-betterment. And it causes unknown, but certain potential for improvement of this country to be wasted.

I therefore found the article I am presenting, La Luz Turns On to Reading," by Lynn Bundesen and Jack Waugh, an encouraging beacon of new light for the reading poor. Bundesen and Waugh, a photo-journalist team from Santa Fe., N. Mex., chronicled the bright success the State-funded right to read program has had at La Luz Elementary School in Albuquerque, N. Mex.

The right to read program was first funded a year and a half ago. It grew out of late Commissioner of Education James Allen's astonishment at finding that in 1969–70, 1 out of every 4 young children had significant reading difficulty. A disproportionate percentage of these, Mr. Allen found, were blacks and Spanish speakers located in the Southwest.

Dr. Ruth Love Hollway, Office of Education, Director of Right To Read, recently told me that the 1974 fiscal year budget for the program is $12 million. This budget is supposed to cover all the expenses of 25 bilingual reading programs and various intensive reading skill systems. The $12 million figure includes money for 31 of the 50 States. Several of the 19 others are trying to get funds now or in the next few years.

Mr. President, I feel the right to read program has great practical merit. The successful return on our dollars spent on reading improvement will invite more investment in our young. More important, the benefits to each of the illiterate and semiliterate little ones involved in the program will be huge. The right to read program realistically deserves our honest commendation and further serious consideration.

Before I ask unanimous consent that the article be printed in the RECORD, I would like to say that without the untiring efforts of all the parents who gave so much at La Luz the program would not have produced the excellent results we have seen. Sincere commendation should go as well to the tutors and student teachers from the Department of Special Education, and the education department of the University of New Mexico. Dorothy Romero and Molly Constancia, two mothers who outlined and carried out an off-shoot kindergarten program for 4-year-olds deserve recognition. And finally, special praise must go to Henrietta Sanchez. Mrs. Sanchez, an assistant elementary school principal, organized, encouraged, and coaxed all to promote this exciting effort. Mrs. Sanchez was the rallying point for the sharp success of right to read at La Luz School. 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:

LA LUZ TURNS ON TO READING

(By Lynn Bundesen and Jack Waugh)

Al Cordova didn't like what was going on. The new Right to Read program the school was bringing in from the Office of Education bothered him. It was a real wrencher, demanding considerable self-evaluation on the part of the teachers, more than any of them were accustomed to and more than some of them were willing to endure. It scared them.

Cordova had been against the program, as had many other teachers. But they had been outvoted. Several said they were going to leave rather than tangle with it. Even Cordova was wavering.

He had taught at Albuquerque's La Luz Elementary School for 20 years and had a lot of love invested in the place. There was much more involved than simply picking up and going someplace else to teach. Too, it wasn't that the children at La Luz didn't need some reading help. Actually, they needed a lot. Thirty percent of them couldn't read at all. So Cordova decided to stay and tough it out.

Today, a little over a year later, Cordova has turned into one of the program's most eloquent champions and one of its most avid practitioners. And he would like you to know that the La Luz program now rates as one of the best of 120 such programs in the country.

Right to Read at La Luz did not attain that status easily or accidentally. Planning and study and evaluation have occupied its staff ever since October of 1971, when Wayne Wymer of the New Mexico State Department of Education plugged the concept to Robert H. Montoya, the Albuquerque school superintendent, and persuaded him to introduce it into his system.

To work on initial planning, Montoya enlisted an assistant principal of one of his elementary schools, Henrietta Sanchez. Together they went to Washington to learn all they could about the Right to Read approach, and they returned knowing precisely what needed to be done and how to go about getting it started.

Because it had rather severe reading problems, La Luz Elementary was targeted as the pilot school. This meant that the entire school curriculum would be restructured around the Right to Read program and process. In the summer of 1972 Mrs. Sanchez moved in as principal, replacing the former principal who had retired, and began immediately to implement plans for the coming fall.

As a first step Mrs. Sanchez spent considerable time talking with teachers, explaining the program, and exchanging ideas. For those who felt they could not be comfortable working in the new setup and for teachers in other schools who said they would like to give it a try, she helped to arrange transfers.

The teaching staff recruited, Mrs. Sanchez moved toward the parents. She asked the staff at La Luz to identify which parents were active in school affairs. She wound up with a list of only 17, all of whom were promptly enlisted as members of a planning team for the new program. Many of these parents were active in school affairs. She wound up with a list of only 17, all of whom were promptly enlisted as members of a planning team for the new program. Many of these parents subsequently were signed on as paraprofessional classroom aides.

"I quickly found that parental involvement at the school was almost nil," Mrs. Sanchez says. "It certainly was not what it should be. The parents just didn't come to school, and they didn't get involved." What she had in mind was mixing them directly into the teaching process, a sharp departure from anything they had ever known before and from anything the scheool or, in fact, the entire district had ever done before.

While lining up teachers and parents, Mrs. Sanchez was also eyeing critically the status of reading at the school. "We had to take a good look to determine where we were with reading and where we had to go," she says. "We had to see the whole, true picture—no gloss or embellishments, just the plain facts—before we could hope to improve conditions."

Toward this end, Mrs. Sanchez launched a broad-gauged testing of the children of La Luz. The facts she uncovered presented a glum and depressing picture. Most of the children were reading below their grade levels. Many of their scores were discouragingly low. Their attitude were poor; absenteeism ran as high as 40 percent. The problem did not stop with the children. The teachers also needed help in specific techniques; they were frustrated, feeling they were working hard and getting nowhere.

The areas of most obvious weakness spanned the entire reading-skill gamut: auditory and visual discrimination, comprehension, oral language, and sound blending. She asked the staff to turn to any test that held some promise of turning up a clue about which way to move. (For example, the Stanford Diagnostic Reading Test was ad-

ministered to every student in the school, and the Wepman test plumbed the quality of students' auditory discrimination.) The staff even asked all the students to complete the statement: "I am a reader because _____." Gloria Whitehead, a former student of Al Cordova's and now a teacher at La Luz herself, says, "There simply wasn't one reason the children perceived themselves to be good or bad readers. There were almost as many answers as there were children."

Another feature of the Right to Read staff's plan called for taking the parents into their confidence and leveling with them. Mrs. Sanchez says, "From the beginning we let parents know where their children stood in reading skill. If they were poor readers we were honest and told them so. We wanted them to know precisely the situation that confronted us. How could they possibly help in the workshop if they didn't have the true picture?"

As the 1972 school year moved closer, Mrs. Sanchez began to mobilize still another corps of reading aides to supplement the work of the parent-paraprofessionals. She lined up 31 tutors from the Special Education Department and 16 student teachers from the Education Department of the University of New Mexico, six teaching assistants from Freedom High School, three interested girls from a nearby detention home, and two girls from the neighborhood youth center. Then, with the school's Right to Read grant, Mrs. Sanchez began buying the most advanced teaching aids and materials she could find. By the time school opened in September she stood poised to blitz the La Luz classrooms with a mammoth reading crusade. At times as many as 104 people—teachers, tutors, parents, and university students—were to be involved in teaching reading at the school.

All 621 students at La Luz participated in Right to Read. Every first- and second-grader was given two hours of reading instruction every morning; all students in grades three to six received 1½ hours of instruction. In addition to this time, which was held inviolable, the students also got regular doses of spelling and writing. Right to Read became in short, the pivot of the entire La Luz curriculum.

Nor were the parents and student aides who were brought on the line merely errand runners for the teachers. Working on a one-on-one basis they quickly proved to be highly effective instructors for the slow reading children, particularly those in the lower grades.

Delores Montiel, a paraprofessional for the fourth-grade classes and a mother of six children, began instructing a boy who couldn't write his own name when she started with him. Now after a year, he reads and writes at grade level. Another little boy was so grateful for the progress he had made that when he won a ribbon at the end-of-school race relays, he gave it to Mrs. Montiel to remember him by.

In each classroom during the morning reading classes, which ran to 31 children in the higher grades and 25 in the lower grades, there was a teacher, a parent, a university student, and a student teacher. As the paraprofessionals moved in, the regular teachers were freed to concentrate on particularly stubborn cases.

A critical spinoff to the mainline program going on every morning at the school was a program for four-year-olds which was being carried out in livingrooms around the neighborhood by two mothers, Dorothy Romero and Molly Constancia. Because New Mexico does not support kindergarten as part of its elementary school program, many youngsters arrive at age six and at their first-grade classrooms with no prereading training. To offset this lack, a program for four- and five-year-olds were tacked on to La Luz's Right to Read.

Says Mrs. Contancia, "At first many people were unsure about us coming into their homes to work with their children. But we kept talking about the idea and made contact with many of the people through the church, and eventually we got ten families willing to participate in the program. That was the breakthrough we needed."

The two women began going from family to family, giving the children a 45-minute period of instruction, an imaginatively mounted array of 11 basic prereading strategies from letter recognition to color discrimination. They used games, sounds, poems, puzzles, stories, rhymes, and building blocks—all calculated to create an interest in reading before the youngsters ever set foot in La Luz.

The program also proved well calculated to create an interest among parents. The word spread and before long the two women were compelled to draw up a waiting list. During the course of the first year of the program, they served 47 homes. As the children taught by Mrs. Romero and Mrs. Constancia move into La Luz, their level of development will be carefully checked and evaluated.

One year of La Luz Right to Read having been completed, it is fair to ask what if anything the program has accomplished.

In its early months there was hardly any traceable improvement at all. Louisa Martinez, a first-year teacher at La Luz, says, "I didn't notice any particular results before Christmas, four months after the beginning of the program. Looking back, I can see that we made the mistake of expecting something to happen overnight. But after the first of the year I really began to notice a change in the children's interests, habits, and abilities."

And test results bear out her observations. For instance, children in grades two through six show an average gain in word meaning of .6 grade, and their performance in paragraph meaning jumped .8 grade. Many children achieved a two- or three-grade jump, and a few exceeded even that. One sixth-grader, for example, went from reading at the norm sixth-grade level to a 10.9-grade equivalent.

The first-graders at La Luz progressed fastest of all, while the third-graders showed the least improvement, a phenomenon that still puzzles the teachers. "We haven't figured that out," Mrs. Sanchez admits. "But we are looking into reasons why and hope to have some explanation next year."

Another baffiement: Boys improved more than girls.

"It was the first time I ever saw that happen," confesses Mrs. Sanchez. "Usually the boys lag behind." But Mrs. Sanchez thinks she can explain this one. "There are two factors that bear on this result," she says. "First, the boys had further to go in their reading. Most of them were poorer readers than the girls to start with, so the teachers became boy-oriented. Second, when we were assessing where we were, we noticed that most of the reading materials in the school were girl-oriented. So we started ordering reading matter that boys would read—books about science, cars, and sports."

Many of the teachers at La Luz credit the choice and volume of materials, together with all the outside paraprofessional help, with the success so far of Right to Read. "It's all the material, all the variety, that really makes the difference," says one teacher. "Before the Right to Read program, every teacher had his or her own program. Now it's a lot more interchangeable, and we can switch children to different classes according to their ability. And we have hundreds more books and consequently a lot more flexibility in reading keyed to the interests of each individual."

So fully did the materials blitz match the teaching blitz, in fact, that hardly a space remains in the library for another piece of equipment or another book to read. In one fourth-grade class last year not one child was reading the same book another child was reading.

Early in the program the school tapped into the Reading is FUN-damental (RIF) Program of book buying. The local Civitan Club donated $90 and the school bought 272 paperback books which were sold to the students for ten cents each. And if a student couldn't afford a book at that price, he was given one free. It was the first book many of the children had ever owned.

Probably the most satisfying results are the plummeting of the high absenteeism and the soaring of student morale. Everyone in the program says, "A change in attitude is what we wanted, and a change in attitude is what we got."

Word of the success of the La Luz program has spread. Staffers report that "a lot of people have visited us and we have made a lot of presentations." The school district office is planning to spread facets of the program out into other schools of the system.

Meanwhile La Luz Elementary is so thoroughly committed to the program that even when its OE money runs out, Mrs. Sanchez expects the parents to pick up the tab to continue Right to Read.

None of this is to say that the program has not had its problems or its weaknesses. Mrs. Sanchez says the students are still shaky in vocabulary. Thus while the program is continuing to emphasize such areas as comprehension, sound blending and word discrimination, the big push is on vocabulary building "It's the biggest need now," notes Mrs. Sanchez.

And the paraprofessional program despite its success, also has had its problems. Beverly Garcia, one of the paraprofessionals, says: "We really need technical assistants who can stay with us and who aren't so stretched out in their duties. It's hard on us when technical assistants come for a day or two and then leave or when they are confronted by so many demands that some have to be ignored. Probably the answer is for all us paraprofessionals to learn not to rely so heavily on assistants but to stand on our own two feet with these kids. We must gain confidence and not be afraid of ourselves.

Afraid or not, the paraprofessionals at La Luz, all of them—parents, students, teacher aides—are thoroughly won over to the program and committed to it. As for Al Cordova, he is still there and more enthusiastic than ever.

JOBS FOR VETERANS

Mr. WILLIAM L. SCOTT. Mr. President, at the request of the distinguished Senator from South Carolina (Mr. THURMOND), I ask unanimous consent that there be printed in the RECORD a statement by him together with an article from Air Force magazine for November 1973.

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

STATEMENT BY SENATOR THURMOND

The end of American involvement in the Vietnam War produced many beneficial side effects as far as this country is concerned. One problem which resulted from this historic event, however, was finding jobs for the thousands of veterans of the Vietnam-era. It would have been a tragedy if our veterans had returned, only to find themselves without any means to make a living.

I am pleased to stand here today to state that the Nixon Administration has done an outstanding job in locating employment for the nation's deserving veterans. The Jobs For

Veterans program, under the able direction of James F. Oates, Jr., has met this challenge with considerable effectiveness.

An excellent article recently written by Major Robert W. Hunter, United States Air Force, details the many successes of Jobs For Veterans. Since this is such an important area, I would like to share this article with my colleagues.

Accordingly Mr. President, I add to my remarks an article entitled "Jobs For Vets: A National Effort," which appeared in Air Force Magazine, November, 1973.

[From the Air Force Magazine, November 1973]

JOBS FOR VETS: A NATIONAL EFFORT

(By Maj. Robert W. Hunter)

No nation can make a claim to greatness if it does not help its young service veterans in their transition to civilian life. That's the judgment of James F. Oates, Jr., appointed by President Nixon in October 1970 to head up the newly formed National Committee, Jobs for Veterans (JFV).

Before JFV was etsablished, a lot of jobless veterans had reason to believe that the United States hadn't measuerd up to Jim Oates's criterion of national greatness. By the end of 1970, seasonally adjusted unemployment rates for vets were at a 9.2 percent high, while the unemployment rate for the general population was three percent lower. Some 318,000 veterans were out of work.

Most of the unemployed former servicemen were young and had served only a single tour of military duty. Nearly eighty-five percent were enlisted people; almost half were under twenty-five years of age. About thirty percent were married, and many had children. Nearly twenty percent had less than a high school education, ten percent belonged to disadvantaged minority groups, and some 300,000 were disabled.

Then the JFV set up shop with the task of improving training and employment opportunities for former servicemen—especially Vientam veterans in the twenty to twenty-nine age group. Except for one peak period in September 1971, there has been a downward trend in veterans' unemployment. By June 30, 1973, the seasonally adjusted rate for vets was neck and neck with nonveterans at 5.6 percent.

The work of JFV and many other cooperating organizations isn't finished by any means. The last Vietnam-era draftee won't be separated from the service until December 1974. It probably won't be finished even then. Mr. Oates points out that the success of DoD's all-volunteer force is dependent in a major way on giving young volunteers a chance to learn a transferable civilian-related skill, and assistance in job counseling and placement when they leave the service. So this is a continuing problem—a vital concern to everyone in uniform, and a significant issue in the arena of defense policy.

AIR FORCE Magazine has explored, with several leaders who are working for the veteran in government, labor, industry, and business, the issues and ideas central to the problem of the veteran's return to civilian life. We'll report first on the philosophy underlying existing and proposed programs and then take a look at some ideas that already have been put to work with conspicuous success.

A good place to start is with the Administration's top man in the field—Jim Oates, whose official title is Nathional Chairman, Jobs for Veterans.

PHILOSOPHY: PRACTICAL IDEALISM

Mr. Oates, retired Chairman of the Board and Chief Executive Officer of the Equitable Life Assurance Society of the United States, holds both DoD's and the VA's Distinguished Public Service Award. His commitment is to the task of assuring full employment for vets, and he believes that in the job market, veterans deserve the "edge." He recently told a DoD audience that the "only long-term solution is adoption of a policy whereby no man will be discharged until he is trained in a civilian skill." That policy raises many controversial questions for him and for his principal assistants—Air Force Lt. Col. H. S. Faircloth, Executive Director, Jobs for Veterans; and former Rep. Bill Ayres (R-Ohio), who is Mr. Oates's special assistant. Significantly, since JFV's birth, 2,700,000 veterans have found work, and the pool of those unemployed is smaller by 75,000 than it was a year ago.

Another of the people working on behalf of the veteran—James Cavanaugh, Staff Assistant to the President—had this to say in an exclusive interview with this magazine.

"You have to begin by taking a look at what the Department of Defense's primary responsibility is in the whole scheme of national affairs, and it begins with providing a strong national defense. One prime requirement of that defense is to assure an adequate supply of people coming into the military departments. The last thing we need is to have people who have left the military standing on street corners unemployed, while their peers, people they went to high school or college with, are out there employed.

"The second reason we are in this business is that the nation does owe people who have served their country gratitude, and that's a term that has been used ever since President Hoover first established the Veterans Administration by executive order. That is why we have the Veterans Pension System, that is why we have the Veterans Education Program, and the home mortgage for veterans."

Is a favorable reaction by the business community toward the veteran something new? Dr. Cavanaugh doesn't think so. "There has always been a consciousness, if you will, within industry to lean toward the veteran when filling a position. I think this is true because of their wanting to help a person who has helped the country. I think, quite candidly, they have also seen that the veteran might do a little better job as a new employee. The Jobs for Veterans Committee has made business and industry aware of the fact that anything they could do to help a veteran find a job would be in the best interest of the country."

CONVERTIBLE ASSETS

Dr. M. Richard Rose, Deputy Assistant Secretary of Defense for Education, is another official committed to exploring new paths to benefit the veteran. Speaking unofficially, he cited three reasons for concern. The first he shares with Mr. Oates and Dr. Cavanaugh—it is a national obligation and a moral responsibility.

Secondly, he believes DoD must find secondary and tertiary roles for its training costs of $6.7 billion per year, or about $25 million per day. He is looking for the spin-off values of military skills. He would like to see men who have been trained by the military as mechanics, plumbers, sheet-metal workers, or carpenters, for example, licensed like their civilian counterparts, but by the industry's own licensing institutions—not by DoD.

Dr. Rose cited the Community College of the Air Force as being "a light-year" ahead of its time in moving toward this goal of capturing service training and translating it into a credential meaningful to an employer. And he has strong feelings about what motivates men and women to serve in the all-volunteer force. "Bonuses and pay won't do the job alone. No nation ever defended itself with a mercenary army," he said. "Men and women must see themselves as part of an education/career process." In short, the youth of this country must look upon the military as part of the process by which they can ready themselves for a total career pattern.

He believes that this must be a joint endeavor of the VA, Labor, DoD, and the US Office of Education. These agencies must pool their training concepts. In its final analysis, he says, it might even mean that Defense would have to guarantee cross-training to an employable skill for an infantryman, for example, as part of his enlistment contract.

The third reason why Dr. Rose believes DoD should concern itself with these matters relates to what he sees as the base of our military strength—our ability to mobilize. If a reconceptualization took place, if DoD's training costs were viewed in civilian roles as well as military, if the youth of this country saw military service as part of a process, not as service in which men were separated from society, then he thinks the Reserve Forces could recruit directly from the active force. This country's mobilization base would be strengthened accordingly.

LABOR AND INDUSTRY LEND A HAND

The National Alliance of Businessmen (NAB) is another organization helping with veterans employment. NAB, through its JOBS (Job Opportunities in the Business Sector) program, has already placed nearly 250,000 veterans in jobs, many of them in the vocational skills area. It has a goal this year of 100,000 more.

Tom Brown, of the National Association of Home Builders, and Warren Troutman, of the US Office of Education, reflect a growing concern over the traditional employment market preoccupation with diplomas and degrees. Mr. Brown: "We've got to get away from the white-collar syndrome; stop talking about vocational education and start talking about *career education*. Our vets have to learn what the real world of work is all about. We have to offer pride in achievement and make the best use of their talents. No one should have to *apologize* for wanting to be an auto mechanic." Mr. Troutman: "We must find ways for industry and education to work together to get at what industry needs from our educational systems. We are acutely aware of a work concept returning to the American science. A four-year college is not the answer for all."

Mr. Brown considers it his job to get out and make eyeball-to-eyeball contact with the vet, to sit down and help him get a feel for what our economy is all about. His 70,000-member association looks to DoD as the largest and best training ground for his building industry.

The Veterans Construction Job Clearinghouse, a cooperative effort between the National Association of Home Builders, Associated General Contractors of America, and the US Departments of Labor and Defense, with which Mr. Brown is deeply involved, is one avenue for the veteran to check out his interests and qualifications in the construction industry.

Things seem to be moving in that direction. According to the VA, the number of veterans in training programs—vocational rehabilitation, on-the-job training and in school—stood in recent months at more than one and a half million. That's up twelve percent from a year ago.

Secretary of Labor Peter J. Brennan is another who gets out and meets the veteran. His philosophy? "We shouldn't let out servicemen feel they are being sold out by labor and business. Let us tell them, 'Come on back, we are going to work with you to make this country better.' Let's not apologize for America. Let us all together move it on to bigger and better things for all of our people."

These are but a handful of the people working for the veteran. This is but a sample of their feelings, their ideas, their direction.

If their semantics differ, their concern is basic nonetheless.

PUTTING IDEAS TO WORK

But if the people are there, so too must be the mechanisms for help. They are.

Jobs for Veterans has set up 478 local task forces and consulted on almost 400 job fairs. NAB has more than 160 metro offices to furnish full employment services to veterans. DoD has its Project Transition, training men for particular jobs while still in service. Two hundred and five bases across the country have the cooperation of business, trade associations, and labor organizations to train servicemen for civilian jobs.

There are programs involving reemployment rights, small business loans, apprenticeship training, public service careers, rehabilitation loans, scholarships, vocational education, tutorial service at government expense, and college work/study programs in which eighty percent of the salary is paid by federal grants.

There is the "Upward-Bound Program" by which a high school nongraduate spends some time in a collegiate atmosphere. There are the Servicemen's Opportunity colleges—some 200 two-year colleges—that seek to give the veteran an "edge" by easing traditional barriers of admissions requirements, residency, and credit transfer. And there are 2,000 or so other two-year colleges receiving federal assistance in tailoring programs for veterans.

There are 2,200 state employment service local offices tied into computerized job banks; VA representatives assigned to 300 military separation points and 184 military hospitals as well as seventy-one U.S. Veterans Assistance Centers (USVACs). There is the AFL–CIO Human Resources Development Institute (HRDI) with fifty local and area offices. There is the Office of Minority Business Enterprise to foster and promote minority business, and the Manpower Development and Training Act (MDTA) to help the unemployed or underemployed. Opportunities Industrialization Centers (COCAs) in sixteen cities provide motivational and basic work orientation as well as occupational training.

Perhaps one of the more effective mechanisms, and certainly one of the most visible, is the Job Fair. The Job Fair has also been known by other names—Job Opportunity Fair, Job Information Fair, Veterans Assistance Day, or Opportunity Day. Some have received a bad press, but only when improperly planned and advertised and when, because of poor prefair information, some veterans simply expected to walk in and get a job.

The purpose of these events is to allow personal contact between employers and veterans while giving access to job-related programs and services—counseling, for one. Job Fairs often include vocational counselors, on-the-job training information, and vocational and technical schools. So even if a veteran doesn't get a specific job offer, he does get to talk with employers and see, perhaps for the first time, just where he stands in the job marketplace.

The local Jobs for Veterans task force, with assistance from the State Veterans Employment Representative and the State Employment Service, has been the focus for the leadership in initiating job fairs. NAB, the VA, American Legion, and Chambers of Commerce also have been driving forces.

Results have been good. AIR FORCE Magazine recently attended the largest fair ever held. A lot of planning went into this one, held at the brand new multimillion dollar Los Angeles Marriott Hotel. Résumé extracts were given participating employers and educators. Where current, recurring, or projected vacancies existed, employers contacted the veterans ahead of time and invited them to come in and talk.

HOW JOB FAIRS WORK

From an assembly area where introductory briefings were held every thirty minutes to guide the veteran through the fair and help optimize his experiences, the job seeker went into a large hall where employers had "call boards" with notices for the visitors. There was also a government assistance area where counselors were available to discuss reemployment rights, training opportunities, Civil Service registration procedures, and the like. Finally, each employer had a hotel suite where the veteran could get down to the nitty-gritty—eyeball to eyeball.

Many of the veterans had never talked with an employer, and didn't really know how to market themselves. Even if a job didn't result immediately, a valuable learning experience was going on.

Jobs *were* available. Rockwell International, for example, was looking for journeyman machinists, apprentice carpenters, and electricians. Most companies listed on their call boards both jobs and the names of people whose résumé extracts had interested them.

Xerox was looking for computer maintenance and test people, as well as systems analysts and technical representatives, but most required *some* level of electronics training. As one businessman told us, "A real problem for the veteran is being realistic about his desires and qualifications. He may want to be a computer maintenance man, but has no background. So, if he doesn't get a job in computers, he may think it's been a 'rip-off.' Yet, realistically, an infantry soldier and a liberal-arts college graduate are in the same boat: they have to face up to the trade-off between their desires and qualifications."

This, again, is where counseling can help, and Jobs for Veterans is vitally interested in giving veterans exposure to employers *before* they are discharged so they *can* be realistic. When they hit the civilian streets, they can confidently walk up to an employment interview knowing "where they're coming from."

Overseas Job Information Fairs, in cooperation with DoD, have been most helpful in this regard. Last year, twenty national firms and associations were represented in each of two European and one Asian fair. More than 18,000 servicemen met with industry representatives. This year, another European and an Asian fair were to be held as of this writing.

Perhaps the best testimony of how successful a fair can be was a story reported recently in the Pittsburgh *Post-Gazette*.

That paper reported that a fair in Oakland, Pa., brought in 2,000 vets. The VA, it was reported, said that for every two vets showing up, one got a job commitment. They were still tabulating.

Veterans were impressed. One, it was reported, said, "Where else could I have gotten to talk to US Steel, Alcoa, Westinghouse, and all the other big ones in one afternoon? I never even got past the personnel receptionist in those companies before. But at the fair, they gave me personal interviews."

Business was impressed, too. The paper reported that Westinghouse Electric Corp., committed to filling sixty jobs, had expanded that to 135 at the fair's end.

IMPROVING THE PROCESS

Obviously, not all is coming up roses. Criticisms and issues remain to be dealt with.

Jobs for Veterans told AIR FORCE Magazine that criticisms have been leveled at both DoD's Transition Program and the Department of Labor's Employment Service placement. Critics say that too few servicemen who trained under the Transition Program have been placed in jobs consistent with their transition training.

JFV's view is that a program that will guarantee greater training payoffs must ensure that the soon-to-be discharged serviceman is counseled about the job needs of the area where he plans to live. Then he must be given training compatible with his desires and aptitudes as well as the job needs of the area. Finally, in order to make a good man/job match, the Employment Service Office in the area must be advised when the service member starts his transition training so they can identify a requirement for his skill and have a job for him when he arrives. That, of course, would be the ideal.

A dynamic innovator is the young Commissioner of Veterans Affairs for the city of New York, Carl McCarden. Mr. McCarden is a hard-driving, apolitical, Army major who was tapped for his present position while on the faculty at West Point. His concern is for the urban unemployed—the vet from the inner city.

In an exclusive interview for Air Force Magazine, he defined his position: "That dude out there coming into the service believes the ads he sees. They say education and training. In the eyes of an inner-city youth, the military provides legitimization. A lot of guys strut down inner-city streets with respect—'Hey man, that cat's back from Nam.' But that legitimizing function doesn't work as access. It doesn't get him off those streets."

Commissioner McCarden believes that the solution doesn't lie in picking up a man in his last six months of active duty through Transition training. He also feels that a veteran can't live in an urban area like New York City on work and schooling benefits. "What can a man take home, net—$90 a week? The welfare system with food stamps gives more."

The need he sees is for a sort of second-generation CCC (Civilian Conservation Corps). He believes that no agency has training facilities like Defense, but that the problems of training and jobs can't be looked at institutionally. He wants a cross-agency infusion of money and planning.

"Suppose by some form of cooperative federal executive agreement we could make a lateral transfer of funds—get welfare funds and supplement with VA benefits, for example. Lump those together, and we've got a livable wage while the veteran is being trained for a job." He would like to see that idea coupled with some federal and state tax incentives for an employer to keep a veteran on board after on-the-job training—something not all do now.

McCarden believes, "We need a regional assessment of job vacancies by industry that includes the rate of job attrition as well as the incidence of new jobs over a five-year period. If we can program out manpower needs in DOD and other federal agencies, why not in the private sector?" As proof that his idea is at least feasible, he pointed to a test model. In Columbia, S.C., an attempt to match industry needs with a comprehensive program of technical instruction is under way. He also talked about Jacobs Creek, Tenn., where about 300 youths—largely black—are being trained by craftsmen in the building trades and then placed in union jobs.

In the final analysis, today's veteran has more going for him than ever before. He has people who care—influential, top-level people. He has mechanisms for getting into training and a job, a whole host of them. And he has the assurance—although he may not always be aware of it—that the criticisms and the issues that are unresolved or in contention are being worked on.

The veteran can still get ripped off, and he can still be unemployed, but the chances are getting slimmer and slimmer.

THE SMALL BUSINESS TAX SIMPLIFICATION AND REFORM ACT OF 1973

Mr. NELSON. Mr. President, on March 6, 1973, I joined the distinguished chair-

man of the Select Committee on Small Business, Senator BIBLE, and 26 other Senators in introducing the Small Business Tax Simplification and Reform Act of 1973. This bill focuses attention on the detrimental effect of the present tax system on small businesses. As the president of the Gettys Manufacturing Co. of Racine, Wis., wrote:

> Nothing approaches tax reform in priority for small businesses. With present tax laws, small business is doomed to stagnation or takeover by conglomerates. This is not healthy for the U.S. economy.[1]

Other businessmen from my State are equally concerned. In 1971, the Independent Business Association of Wisconsin was founded to explore what could be done to bring tax relief and reform to hard-pressed small enterprises throughout Wisconsin and the Nation.

In discussing small business it is important to remember that small business is really the biggest business in the United States. There are about 12 million enterprises in the United States and about 97½ percent of this number are "small business." [2]

Small business includes almost 3 million family farms and 1 million independent professionals. According to Internal Revenue Service figures there are about 9.2 million sole proprietorships over 993,000 partnerships, and 1.7 million corporations, including 217,000 subchapter S corporations. Every year, some 250,000 such new businesses are launched and about half survive beyond 2 years.[3]

Together, this varied "small business community" accounts for about 44 percent of the employment in our economy and 37 percent of the entire gross national product.[4]

In Wisconsin, Dun & Bradstreet has identified about 60,000 businesses. As to the 53.5 thousand for which we have figures, 94.2 percent have a sales value of less than $1 million and 97.9 percent employ less than 100 persons, a standard well below the Small Business Administration definition.

Small businesses are an invaluable source of competition and innovation in our economy.

For example, a Department of Commerce survey found that between 1946 and 1967 more than two-thirds of the major innovations were developed by firms with less than 500 employees.[5]

Examples of small business innovations include the Xerox process by Chester Carlson and the Polaroid instant camera by Edwin Land.

Despite the major contribution made to America by small businesses, present governmental regulatory and taxing policies retard their growth and jeopardize their very existence. Governmental regulations result in an almost insurmountable burden for the small business. For example, hearings by Senator MCINTYRE, of New Hampshire, established that a family restaurant must spend over $800 its first year just to fill out forms regardless whether it makes a profit. In addition, tax preferences in the existing tax law are of much greater advantage to large corporate giants. For example, Representative VANIK, of Ohio, testified that the 100 largest corporations reduced their effective tax rate in 1971 to 24.4 percent.[6]

One authority on the consequences of the tax system on small businesses concluded:

> There is little doubt that our tax structure, entirely apart from its specific effects on business mergers, tends to impede the expansion of growing enterprises as compared with that of large, established companies. In this way it enables the well-entrenched established companies better to withstand the challenges of their growing competitors, and thereby helps to maintain and increase existing levels of industrial concentration.[7]

Furthermore, in the last quarter of a century facilitated by changes enacted in the major revision of the tax code in 1954, merger has added a new and ominous threat to the existence of small businesses. Under the provisions of this code, we have witnessed the most sweeping and far-reaching merger movement in the Nation's history. In 1969, a special Cabinet committee concluded that—

> Mergers more than any other single economic factor explained the existing structure of many American industries. Most . . . big businesses hold their relative size to merger accelerated growth . . .[8]

Mr. President, to give some idea of the volume and acceleration of the merger movement in the United States, I ask unanimous consent to print in the RECORD, two charts from two different sources using slightly different methods of calculation showing figures for mergers in the last 20 years.

	Manufacturing and mining	All* industries
Mergers in United States:[9]		
1950 to 1954	1,424	
1955 to 1959	3,365	
1960 to 1964	4,366	
1965 to 1969	8,213	
Mergers in United States:[10]		
1960	844	
1963	861	1,361
1964	854	1,950
1965	1,008	2,125
1966	995	2,377
1967	1,496	2,975
1968	2,407	4,462
1969	2,307	6,132
1970	1,351	5,173
1971	1,011	4,645
1972		4,804

*Manufacturing, mining, service (including utilities and transportation) wholesale, retail, banking and finance.

This wave of mergers has had a devastating effect on competition and opportunities for independent business in America. A prime example is in the number of companies with assets of between $10 million and $25 million. These are substantial firms in the growth band of the economy. In 1967, the sole year for which information is available, 52 percent of these companies disappeared through merger.[11] One rung up the size ladder are the companies with more than $25 million in assets.

If the number of these companies had grown at the historical rate between 1941 and 1959, there would have been approximately 1,087 more such companies by the beginning of 1968. However, the potential increase was cut down by mergers to only 437. Thus, mergers knocked out 650 companies who were potential competitors during this period, a knockout rate of 59.8 percent.[12]

The Tax system laid the basis for these developments. As a result, the number of independent businesses in the economy was significantly reduced. We thus find that 200 largest manufacturing corporations in the period 1947–67 increased their share of manufacturing assets from 47 percent to over 60 percent, and their shares of sales and profits rose proportionately.[13]

By 1970, the top 102 corporations, the billion-dollar-asset corporations, controlled nearly half of all U.S. manufacturing assets, 48 percent, and more than half of manufacturing profits, 53 percent.[14] This increasing ascendancy of a relatively small number of giant corporations is raising large questions about what is really going on in the American economy, which we have been trying to explore in a series of hearings before my Monopoly Subcommittee.[15]

But these figures illustrate how the present antismall business tax system has lessened chances for the creation and growth of independent enterprises. In my opinion, this has become a major cause of the higher prices which consumer must pay for their daily needs.

Our business tax system is destroying initiative and enterprise in this Nation. It inhibits the initiative and innovation that can create new employment. It is destroying the opportunity of workers to affiliate with local and independent firms, and narrows job openings, often to giant firms which have little time or regard for the problems of the individual worker or his family.

Helping small business also broadens the choices and benefits open to labor. Small business multiplies the opportunities for investors and increases the number of locally oriented leaders who are able and interested in solving community problems.

The larger implications of "economic choices" obviously involve everyone's personal freedom. As one scholar observed:

> Free enterprise has not only its historical implication of freedom of excessive control from the state, it also implies restrictive controls imposed by private domination of markets.[16]

It is clearly time for Congress to undertake a major study of the tax code and its effect on the small business. The bill, S. 1098, which I have sponsored with Senator BIBLE, contains over 40 suggestions for improving the tax law for small businessmen.

We have developed the Small Business Tax Reform Act over the past 6 years on the basis of study and consultation with nearly three dozen national and statewide small business, legal, accounting, and trade organizations.

It would lay a basis for simplifying the code and its application to new and small firms. It is designed to improve the outlook for businesses at each point in their life cycle.

We do not, by any means, claim that it is a perfect bill, or that it will solve all of these small businessmen's tax problems. However, we regard our bill as a vehicle for the systematic consideration of small business tax needs which have been neglected and pushed into the background over the last 20 years.

Footnotes at end of article.

If the problems which I have described are not dealt with now, there may not be many small and independent businesses left to save. If we wait, it will be much more difficult to affect the trouble spots in our economy caused by neglect of small business and free enterprise.

Mr. President, I also ask unanimous consent that an overall and section-by-section analysis of the small business tax simplification and reform bill be printed in the RECORD in order to make it more widely available to those concerned.

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

SUMMARY OF RECOMMENDATIONS AND ANALYSIS OF S. 1098—THE SMALL BUSINESS TAX SIMPLIFICATION AND REFORM ACT OF 1973

In brief the bill provides for:

First. Permanent Government and small business advisory machinery for simplifying tax laws and tax forms;

Second. Lower tax rates for smaller business, and particularly new business;

Third. Promoting the growth of new and small firms by liberalizing first-year depreciation, and increasing permissible accumulation of earnings;

Fourth. Easing the raising of capital by providing more equitable treatment for possible losses through loans or stock purchases, and allowing tax benefits for the floating of securities issues;

Fifth. Making subchapter S closely held corporations more flexible and less dangerous to use; and

Sixth. Encouraging the continued independence of family firms by making it easier to pay estate taxes based on business interests over a 10-year period.

The bill contains five changes from the 92d Congress version (S. 1615) as follows:

First. Section 104 of the 1973 bill—relating to studies of small business tax matters—has been modified to reflect the reenactment of the investment tax credit. It specifies that the study of capital allowances previously called for should take account of the investment credit as it relates to special small business needs.

Second. Section 108 is new; it proposes that persons invited to consult with the Internal Revenue Service regarding the simplification and improvement of the Internal Revenue Code or its administration, including tax forms, be provided with reimbursement for travel and per diem expenses; and that the Treasury and the IRS should give consideration to the views of representatives of small business in this process.

Third. Section 301 relating to new businesses has been modified to reduce the amount of income a new business may earn free of Federal tax from $1 million per year to $25,000 per year for each of the first 3 years. A new, growing business might also defer its tax on the next $75,000 of income for 10 years, providing earnings are reinvested in the business and subject to recapture in the ensuing 10-year period. This section has also been further tightened to preclude from eligibility any company receiving a direct, participation or guaranteed business loan under section 7(a) of the Small Business Act.

Fourth. Section 403 of S. 1615 has been dropped because of the 1971 enactment of the investment credit which was proposed as to small business by that section of the bill. As mentioned above, section 104 is intended to focus attention upon the practical effects of this provision, as enacted, upon capital formation by new, small and independent business. The remaining subsections of title IV of the bill have been renumbered accordingly.

Fifth. Section 402 has been modified to delete the portion elevating depreciation guidelines to statutory status, since this was accompanied by the Revenue Act of 1971.

FOOTNOTES

[1] "Voice of Small Business" newsletter of the National Small Business Association, March, 1973, p. 1: 3.

[2] SBA definitions may be summarized, in a general way, as follows: retail trade—under $1 million in annual sales; wholesale trade—under $5 million in annual sales; construction—average receipts of $7½ million over the past three years; manufacturing—between 500 and 1,500 employees, depending on the branch of industry.

[3] "The Future of Small Business," Hollander and others (Robert R. Nathan Associates, Inc.) 1967, p. 102.

[4] Small Business Administration Estimates.

[5] "Technological Innovation: Its Environment and Management," Panel on Invention and Innovation, Robert A. Charpie, Chairman; U.S. Department of Commerce, Jan., 1967.

[6] Testimony of Hon. Charles A. Vanik of Ohio in hearings on "Tax Subsidies and Tax Reform," Joint Economic Committee, July 19, 1972, p. 9.

[7] "Recent Trends in Industrial Concentration and Taxation" by J. Keith Butters in the Symposium "Taxation and Business Concentration," The Tax Institute, 1952, p. 6.

[8] *Studies by the Staff of the Cabinet Committee on Price Stability*. January, 1969, U.S. Government Printing Office.

[9] Statistical Abstract of the U.S., p. 484, Table 778.

[10] Mergers and Acquisitions—Manufacturing and Mining Concerns acquired 1920 to 1971; W. T. Grimm Co., 135 Lasalle Street, Chicago, Ill.

[11] "Studies . . . on Price Stability," loc. cit., p. 75.

[12] Loc. cit., p. 79–80.

[13] "Free Enterprise Revisited—A look at Economic Concentration" by Stahl and Harshbarger. *Monthly Review*, Federal Reserve.

[14] "The Spreading Imprint of the Conglomerate," by Dr. Willard Mueller, *AFL–CIO Federationist*, August, 1970.

[15] See "Role of Giant Corporations," hearings before the Subcommittee on Monopoly, Senate Small Business Committee, July 9–11, 1969; Nov. 9 and 12, 1971.

[16] "Big Enterprise in a Competitive System," by ADR Kaplan, Brookings Institution, 1964, p. 43.

SECTION-BY-SECTION ANALYSIS OF THE SMALL BUSINESS TAX SIMPLIFICATION AND REFORM BILL

OVERALL ANALYSIS

The Small Business Tax Simplification and Reform Act of 1973 is the successor bill to S. 4039, introduced in the 91st Congress on June 30, 1970, and S. 1615 (H.R. 7692), submitted to the 92nd Congress on April 22, 1971.

It is designed to present a comprehensive set of proposals for tax relief, affecting each stage of the life cycle of new, small, and growing and matured businesses.

REVENUE BALANCE

Extensive efforts have been made to present this legislation as balanced in the revenue sense, with slight, immediate, and long-term increases of tax revenues through minimally higher normal tax rates on giant corporations, and the cultivation of vigorous new small enterprises which will enlarge the tax base in the future.

Even for the largest corporations, the statutory rates under this proposal would remain below the surtaxed corporate rates of the 1960's while the effective rates for these corporations would continue to remain far below the effective rates paid by smaller and medium-sized companies.

The revenue gains made possible by the rescaling of normal rates would make it possible to shift a small fraction of the corporate tax (about 1 percent) on the basis of the ability to pay. Corporations with earnings in excess of $1 million per year would be yielding commensurate benefits to new enterprise, small existing family and independent business, and firms willing to modernize to meet the terms of national and international competition.

Because of the enactment of the investment tax credit in 1971, which was previously a part of this bill, it is believed that the 1973 bill will result in a revenue gain of about $300 million.

TAX SIMPLIFICATION AND REFORM

To focus continuing professional attention on tax simplification, the bill also proposes institutional arrangements by way of 1) a standing intergovernmental committee on tax simplification, 2) a Business Advisory Council on which the small business community would be assured a significant voice, and 3) creation of an Office of Small Business Tax Analyst within the Treasury Department.

Several major studies of small business tax issues are requested so as to lay a basis for orderly simplification of the total internal revenue system as it applies to smaller firms.

ORGANIZATION OF THE BILL

This bill consists of 39 substantive sections grouped into 8 chapters, as follows:

TITLE I—TAX SIMPLIFICATION RELATING TO SMALL BUSINESS

Sec. 101. Intragovernmental committee on tax simplification for small business.

Sec. 102. Treasury Department small business tax analyst.

Sec. 103. New Internal Revenue Code chapter on small business.

Sec. 104. Revision of depreciation policy.

Sec. 105. Equalization of treatment of fringe benefits as between incorporated and unincorporated small businesses.

Sec. 106. Special study of differential effect of tax law changes on business of varying sizes.

Sec. 107. Frequency of collection of certain employment and excise taxes.

Sec. 108. Consultation with Treasury Department by small business representatives; reimbursement of expenses.

TITLE II—ADJUSTMENT OF CORPORATE NORMAL TAX

Sec. 201. Corporate normal tax rates.

TITLE III—SPECIAL PROVISIONS TO ENCOURAGE ESTABLISHMENT OF NEW SMALL BUSINESS ENTERPRISES

Sec. 301. Exemption of $25,000 of net operating income of new small business corporations for first 3 years.

Sec. 302. Deduction of organizational expenses of partnership.

Sec. 303. Bad debt deduction for guarantors of obligations of, and lenders to, small business corporations.

Sec. 304. Losses on small business stock.

Sec. 305. Patronage benefits for qualified new community development cooperatives.

TITLE IV—PROVISIONS TO ASSIST SMALL BUSINESS GROWTH

Sec. 401. Increase in additional first-year depreciation allowance.

Sec. 402. Elimination of reserve ratio test for small business.

Sec. 403. 10-year carryover of small business net operating losses.

Sec. 404. Accumulated earnings tax.

Sec. 405. Amortization of expenditures incident to issuance of stock.

Sec. 406. Period for amortization of research and experimental expenditures.

Sec. 407. Multiple surtax exemptions for certain small business corporations under single family control.

TITLE V—PROVISIONS RELATING TO PARTNERSHIPS

Sec 501. Guaranteed payments from partnership to partner.
Sec. 502. Closing of taxable year of partnership on death of partner.
Sec. 503. Termination of partnership.
Sec. 504. Limitation on partner's distributive share of losses.

TITLE VI—PROVISIONS RELATING TO "SUBCHAPTERS" CORPORATIONS

Sec. 601. Increasing number of permissible shareholders.
Sec. 602. Broadening classes of permissible shareholders.
Sec. 603. Termination of election by majority.
Sec. 604. Termination of election—passive investment income.
Sec. 605. Termination of election—inadvertence.
Sec. 606. Carryover of disallowed deductions for corporation's net operating loss.

TITLE VII—BUSINESS DEVELOPMENT CORPORATIONS

Sec. 701. Reserves for losses on loans of business development corporations.
Sec. 702. Nonrecurring income of nonprofit local business development corporations.

TITLE VIII—PRESERVATION OF SMALL BUSINESS INDEPENDENCE

Sec. 801. Refunds of overpayments of estimated income tax before end of taxable year.
Sec. 802. Debt-financed corporate acquisitions.
Sec. 803. Valuation of unlisted securities for estate tax purposes.
Sec. 804. Extensions of time for paying estate tax.
Sec. 805. Amalgamation of interest in closely held businesses for estate tax purposes.
Sec. 806. Study and recommendations by Treasury Department with respect to preservation of independent small business.

SECTION-BY-SECTION ANALYSIS

TITLE I—TAX SIMPLIFICATION

Sec. 101. Intragovernmental Committee on Tax Simplification for Small Business: The first substantive section creates a permanent standing committee of the Federal Government for the purpose of devoting continued attention to the simplification of the internal revenue system—including the Code, the regulations, instructions, procedures, and other publications relating to business taxation.

The membership of the Committee would include: representatives of the Secretary of the Treasury (for policy matters): Internal Revenue Service (for technical matters); Bureau of the Budget (for coordinating the paperwork aspects of IRS forms, in view of the Federal Reports Act) and the Small Business Administration to express the interests of the small business community.

The Committee would provide a forum for regular and periodic contact between the various Federal agencies concerned and the businessmen affected with sufficient formality to engage the attention of the press, the public, and the Congress. The proposed Advisory Council is intended to provide for an effective voice for small business by containing a delegation large enough to reflect the diversity of interests of small enterprise.

Sec. 102. Office of Small Business Tax Analysis at the Treasury Department: S. 4029 proposed a position of Small Business Tax Analyst, which would be one official in the Teasury Department responsible for looking at tax problems primarily from the view of small business and the free enterprise system rather than the Government's interest in raising revenue. The 1971 and 1973 bills would enhance this concept by constituting this function as an "Office of Small Business Tax Analysis" of which the Small Business Tax Analyst would be a part.

Such an office could provide a focus for assisting in the studies and reports proposed in this Act. Beyond this, a small business tax analyst could supply a continuity of effort required to assess the difficult and multifaceted problems raised by the impact of Federal, State, and local taxation on small business competition, and the free enterprise system.

Sec. 103. Internal Revenue Code Chapter on New and Small Business: The present Internal Revenue Code of 1954, organized mainly by subject matter, does contain Subchapter S on one type of small business corporation. This section would have the Treasury consider a special title or chapter of the Code which consolidated and referenced those tax provisions relating particularly to new and small enterprise. This should be helpful to both non-tax-specialist attorneys and others counseling small firms, as well as to small businessmen, and prospective entrepreneurs. The present section strengthens the emphasis on references to material contained elsewhere in the Code.

Sec. 104. Revision of Depreciation Policy: Recent developments, such as abolition and restoration of the investment credit call for a re-evaluation of the nation's depreciation policy from the viewpoint of the 90 + % of firms which are small businesses. In addition to the specific proposals embodied in section 401 and 402 of the predecessor bills (S. 4039 and S. 1615), those bills called upon the Treasury Department for a comprehensive study of depreciation policies with particular attention to: the impact of recent legislation, including the Tax Reform Act of 1969 and such provisions of this legislation which may be enacted; the rapid advances in technology to which small business must adapt; and the practices of other industrialized nations. The Nixon Administration's task force study entitled "Business Taxation" of Sept., 1970, did not fulfill this need, since it did not contain any reference to the particular problems of small firms. The same small business problems remain, as well as others raised in the 1970 study, such as the possibility of eliminating salvage value from the computation for small firms.

Section 104 of the 1973 bill has been modified to reflect the re-enactment of the investment tax credit. It specifies that the study of capital allowances previously called for should take account of the investment credit as it relates to special small business needs.

Sec. 105. Equalization of Benefits Among Incorporated and Unincorporated Businesses: The Tax Reform Act of 1969 restricted retirement and pension benefits for small firms based upon comparability with unincorporated business. This section calls upon the Treasury to study the entire range of pension, retirement, health, medical, and insurance benefits in the larger context of what both corporations (including large corporate enterprise) and other forms of business are providing for their employees and executives. Such conclusions continue to be needed in light of the legislative and administrative initiatives of the Nixon Administration in 1972.

Sec. 106. Study of differential effect of tax law changes on businesses of varying sizes and ages: To fill a gap in present research capabilities, this section would direct the Treasury Department, through the Office of the Small Business Tax Analyst, to document the impact which changes in the tax system between 1954 and 1972 have had on small compared with large businesses, and new compared to existing firms.

Sec. 107. Frequency of collection of federal taxes from businesses: This would replace four different collection schedules of federal business taxes with a single schedule of once per month if total deposits do not exceed $7,000 during that month.

Sec. 108 is new in 1973: proposes that persons invited to consult with the Internal Revenue Service regarding the simplification and improvement of the Internal Revenue Code or its administration, including tax forms, be provided with reimbursement for travel and per diem expenses. It would also provide that the Treasury and the IRS should give consideration to the views of representatives of small business in this process, which is not done at present.

TITLE II—ADJUSTMENT OF CORPORATE NORMAL TAX

Sec. 201. Corporate Normal Tax Rate: The Tax Reduction Act of 1964 lowered tax rates for unincorporated business by approximately 20 percent; but for corporations where the bulk of the business is done, the reduction was only 10 percent. Although there was material relief for small business by reversal of the application of corporate normal and surtax rates, the same 2-step graduated structure was retained.

Recent studies make clear that large corporations pay taxes at a lower effective rate than do small and medium-sized companies. This title would effect a modest progressive reform in the entire corporate tax structure by providing for reductions in normal corporate tax rates for corporations earning less than $500,000 a year. From income of $500,000 to $1 million, the base rate of 22 percent would remain the same, but the effective rate of taxation would drop due to the reduced percentages in the lower brackets. As corporate earnings rose above $1 million per year the normal tax would incline slightly upward to a maximum of 24 percent for corporations earning over $1 billion annually.

In all, an 8-step graduated scale would bring corporate taxation more nearly into accordance with the principle of the ability to pay which has long been in effect for individual income taxes. The suggested rate schedule is as follows:

(b) NORMAL TAX.—The normal tax is the amount determined in accordance with the following table:

If the taxable income is:	The normal tax is:
Not over $50,000	20% of the taxable income.
Over $50,000 but not over $250,000	$10,000, plus 21% of excess over $50,000.
Over $250,000 but not over $500,000	$52,000, plus 21½% of excess over $250,000.
Over $500,000 but not over $1,000,000	$150,750, plus 22% of excess over $500,000.
Over $1,000,000 but not over $10,000,000	$215,750, plus 23% of excess over $1,000,000.
Over $10,000,000 but not over $100,000,000	$2,285,750, plus 23½% of excess over $10,000,000.
Over $100,000,000 but not over $1,000,000,000.	$23,435,750, plus 23¾% of excess over $100,000,000.
Over $1,000,000,000	$237,185,750, plus 24% of excess over $1,000,000,000.

TITLE III—SPECIAL PROVISIONS TO ENCOURAGE ESTABLISHMENT OF NEW SMALL BUSINESS ENTERPRISES

Sec. 301. Exemption of $25,000 Operating Income for Three-Year Period: In 1970, this section of S. 4039 introduced the concept that new enterprise should be encouraged by allowing freedom from Federal income taxation for a period of three years. The proposal was put forward as a partial equalizer for small firms which must compete with companies which have not only been estab-

lished for many years, but which may have built up substantial financial resources during the period when there was little or no corporate taxation in this country. The benefits of this section would be restricted to persons entering a business for the first time, and who would be spending full time in the capacity of an owner-manager of an active trade or commercial business. Further limitations were: 1) to benefit only the operating income of the enterprise, excluding gains from security and real estate transactions, which would be subject to taxation in the regular manner; 2) a ban on "successor" businesses of any kind; and 3) a disqualification based on prior ownership of more than 5 percent of any business.

The 1973 section reduces the amount of income a new business may earn free of Federal tax from $1 million per year to $25,000 per year for each of the first three years. A new, growing business might also defer its tax on the next $75,000 of income for 10 years; providing earnings are reinvested in the business and subject to recapture in the ensuing 10 year period. This section has also been further tightened to preclude from eligibility any company receiving a direct, participation or guaranteed business loan under section 7(a) of the Small Business Act.

Sec. 302. Amortization of Organization Expenses of Partnership: This would extend to partnerships the option now enjoyed by corporations; to amortize their organization expenses over 60 months, if they so desire.

Sec. 303. Bad Debt Deduction for Lenders to or Guarantors of Corporate Obligations: This provision would equate the tax treatment of lenders to or guarantors of business obligations, whether the businesses are incorporated or not, by extending the ordinary loss rule presently applicable to unincorporated business lending.

Sec. 304. Losses on Small Business Stock: To update incentives to invest, directly in small business which are presently contained in the Code, this section would increase from $25,000 to $50,000 the amount of allowable losses resulting from the purchase of section 1244 stock.

A second provision of this section would expand the definition of a "small business corporation" authorized to issue such stock from $1 million to $1,500,000 in "equity capital" as defined by the section.

This subsection would have the effect of allowing previously ineligible corporations with equity capital of between $1 million and $1,500,000 to issue 1244 stock in the amount of $750,000 (compared with $500,000 under the present section) and to permit previously eligible small business corporations to issue stock up to the $750,000 amount, if they are otherwise in compliance with the applicable rules.

Further provisions of section 305 would enlarge from 2 years to 5 the time within which a section 1244 plan must be executed and would preclude stock options to employees from disqualifying such a stock issue.

Another subsection would promote awareness of sec. 1244 benefits by newer firms by encouraging an entry on the tax return to bring the matter to the level of attention. Filing a copy of the plan with the return as optionally provided would have additional benefits of stabilizing its timing and content.

Sec. 305. Patronage Benefits for Certain New Cooperative Enterprise.—To encourage the formation of cooperatives which have so well enriched rural American life, this section would permit such a new cooperative to retain 100 percent of declared patronage refunds (rather than the current 90 percent) for the first 5 years of its existence on the condition that substantially all of the membership and patrons are persons of low income and reside within a limited geographic area.

TITLE IV—PROVISIONS TO ASSIST SMALL BUSINESS GROWTH

The seven sections of Title IV are designed to provide encouragement for modernization, efficiency, and cost reduction. It has been estimated that from ⅔ to ⅘ of all capital used in business is internally generated. There is wide agreement that small businesses must rely most heavily on retained earnings since it becomes progressively easier to employ sophisticated methods to attract external capital as a business increases in size and experience.

It is contemplated that these sections will be reviewed as more becomes known about the relative impact of the ADR and investment credit provisions enacted in 1971.

Sec. 401. Additional First-Year Depreciation Allowances.—This section would increase additional first-year depreciation from $10,000 to $20,000 in accordance with increases in the cost of living and doing business since the section was previously revised in 1958.

Sec. 402. Elimination of Reserve Ratio Test for Small Business: For the same purposes, this section of the predecessor bills proposed that the liberalized depreciation guidelines contained in Revenue Procedure 62–21 more fully available to small businesses by elevating the status of that publication to a regulation pursuant to statute. This part of the section would not be affected when the January 11 proposal becomes effective, although the language initially fixing the length of guideline lives as those contained in the Revenue Procedure would be affected. The elimination of the reserve ratio test for firms designated as "small business" by the Small Business Administration would survive since the January 11, 1971, ADR proposal which carried an effective date of January 1, 1972, and this section would extinguish liability previous to that date.

Section 402 has been modified to delete the portion elevating depreciation guidelines to statutory status, since this was accomplished by the Revenue Act of 1971.

Section 403 [old]: Partial Restoration of Investment Credit: Every advanced industrialized nation has both a modernized depreciation system and investment incentive device. All of the 91 percent of small corporations accounted for less than ¼ of the investment tax credit, but its use by small business contributed greatly to the forward progress of the American economy through innovative investment.

The 1970 and 1971 bills proposed partial reinstatement of the 7 percent investment credit in a manner which would be highly tailored to reduce its cost and concentrate its benefits in areas which can do the maximum good for the economy. Corporate manufacturing would be allowed $50,000 worth of qualified investment. However, permissible investment for other corporations and individuals would be scaled down to $10,000 and $5,000 respectively. In each case there would be an appropriate income ceiling of $500,000, $100,000, and $50,0000, above which such high-income taxpayers would receive no benefits from the section.

In the 1973 bill, Section 403 has been dropped because of the enactment of the investment credit, which was accomplished in 1971. As mentioned above, section 104 is intended to focus attention upon the practical effects of this provision, as enacted, upon capital formation by new, small and independent business.

The remaining subsections of Title IV of the bill have been renumbered accordingly.

Sec. 403. 10-year Carryover of Small Business Net Operating Losses: The section would extend the period and flexibility in use of loss carryover provisions for small business by allowing existing corporations to carry losses forward up to 10 years at their option. These 1971 and 1973 formulations are derived from the Administration's 1970 proposal, but with a more established definition of small businesses which are eligible.

Sec. 404. Accumulated Earnings: In accordance with the emphasis of this bill in growing businesses, this section would raise the permissible amount to $150,000 immediately, and adds a proposal that the Commissioner of Internal Revenue be given discretion to formulate standards by which expanding firms might qualify for a credit of up to $250,000.

The subsection of the predecessor bill on burden of proof has been retained so far as the application of Subchapter G, Part I procedure to proceedings in any court, not just the Tax Court. The portion of subsection 4405(b) of the predecessor bill relating to ultimate burden of proof has been omitted.

Sec. 405. Amortization of Certain Securities Expenditures: One of the most critical hurdles for a growing small business is selling its securities to the public. This section would allow the expenses of certain types of small business stock flotations, such as those under Regulation A and section 1244 of the Code, which are not otherwise deductible, to be amortized over a period of 60 months. A further helping provision in this vein would accord the same treatment for the expenses of an initial registration of a company's securities on a regional stock exchange. The 1973 bill specifies that this benefit would be available only to small businesses.

Sec. 406. Amortization of Research and Development Activities: This provision would allow research and development expenses to be amortized beginning at the time they are made, rather than waiting until the taxpayer "first realizes benefits" from these expenditures.

Sec. 407. Multiple Surtax Exemptions Under Single Family Control: In order to encourage opportunites for family ownership of business and eliminate discrimination presently in the law, this section would permit a limited number of surtax exemptions (up to 5) in the event members of a family are placed in proprietary positions where they have ownership of at least 50 percent of the stock, or other interest, and full time management of a separately incorporated unit of a family business.

TITLE V—PROVISIONS RELATING TO PARTNERSHIPS

Sec. 501. Guaranteed Payment to Partner: This section is designed to avoid double taxation of guaranteed payments from a partnership to a deceased partner. At present a partnership interest is includable in gross estate in full, and payments from the same assets may now be taxed as distributive income of a person now considered a partner under section 707(c).

Sec. 502. Closing of Taxable Year at Death of Partner: Additional flexibility in the affairs of the deceased partner would follow from this section, which would allow the closing of the partnership year for such a decedent at any of the following times: (1) normal close of the partnership year if there has been no prior sale, exchange, or liquidation of the partnership interest; (2) the date of any of the above-described transactions; or (3) the day after the partner's death.

Sec. 503. Termination of Partnership: This section would modify present section 708(b)(1)(B) which provides that a partnership will be considered terminated if there is a sale or exchange of 50 percent of the total partnership interest within a 12-month period. An exception would be provided for transactions among the partners themselves provided they have been members of the firm for at least 1 year.

Sec. 504. Limitation of Distributive Share of Losses: This section would amend section 752 to permit a partner to deduct currently his share of partnership losses in excess of the adjusted basis of his partnership interests, in the event that the partner is unconditionally obligated for his share of such partnership losses.

TITLE VI—PROVISIONS RELATING TO SUBCHAPTER S CORPORATIONS

Sec. 601. Increase in Number of Permissible Shareholders: This section would allow enlargement of the Subchapter S "tax-option" small business corporations in the following 3 ways: (1) initial shareholders could number 15, rather than the present 10; (2) shareholders in excess of this ceiling who take their stock by reasons of heirship would not disqualify election; and (3) after 5 years, the number of permissible shareholders would increase to 25, broadening possibilities for motivating employees by way of stock options and for infusion of fresh capital for the expansion. The heirship exemption is limited to the first generation heirs of original shareholders.

Sec. 602. Broadening Classes of Permissible Shareholders: The classes of shareholders would also be expanded by this section to include: (a) trusts where stock passes pursuant to a will, and where the trust is used merely to convey the stock to a long-term eligible holder within 60 days; (b) trusts where the entire income is taxable to the grantor; and (c) small business investment companies, subject to the elimination of the dividends-paid credit on such income.

Sec. 603. Termination by Majority of Shareholders: Under the present law, a new shareholder can void the Subchapter S election for himself, the corporation, and all other shareholders. Under the rule proposed by this section, a new shareholder would stand on the same footing as all other shareholders, and any 51 percent of the stock ownership could revoke the election.

Sec. 604. Termination of Election—Passive Income: This section provides additionally for nondisqualification of a Subchapter S corporation by reason of exceeding the limit of 20 percent passive income in a single year. The election privilege could still be lost pursuant to this proposal if the limit is exceeded in any 2 of 4 consecutive years.

Sec. 605. Termination of Election—Inadvertence: This section would relieve considerable pressure on small business corporations in the event there has been a termination of status because of events beyond its control. If the corporation is able to establish that the termination was, in fact, inadvertent and can gain full compliance within 90 days of notification, its Subchapter S status would be preserved for future years.

Sec. 606. Carryover of Losses: This section would equate carryover treatment of Subchapter S loans in excess of basis under section 1374(c) with those of partnerships under section 704(d). Thus, if the basis was rebuilt in a future year, the excess loss would become available as a current deduction.

TITLE VII—BUSINESS DEVELOPMENT CORPORATIONS

Sec. 701. Bad debt Reserves of Business Development Corporation: To encourage State and local development companies to extend long-term financing to non-bankable new enterprises, such companies would be permitted a bad-debt reserve deduction up to 10 percent of outstanding loans.

Sec. 802. Debt-Financial Corporate Acquiness Development Corporation: Since these institutions are in a unique position to foster community development by taking long-term risks with private capital non-recurring income of certain types would be insulated from tax upon the condition that the proceeds from such unusual transactions are re-invested within the area of service and no part of these proceeds inures to the benefit of any individual or private institution.

The section has the additional requirement that the companies to be benefited must not compensate any person performing services for it. The original section has also been liberalized to allow a period of three, rather than two, years for reinvestment in accordance with the long lead time in transactions of this kind.

TITLE VIII—PRESERVATION OF SMALL BUSINESS INDEPENDENCE

Sec. 801. Quarterly Adjustment of Estimated Tax: In the event corporations suffer financial reverses in 1 or 2 quarters, they cannot now recover amounts paid to the Federal Government in estimated taxes. This section would allow recovery of such amounts to the extent the newly estimated tax for the year is less than the amount already paid in. These readjustments could occur at each quarter.

Sec. 802. Debt-Financial Corporate Acquisitions: The objective of this section is to afford a practical means of discouraging mergers by disallowing interest deductions beyond $500,000 on any loan for acquisition purposes. It would be clear that financing through banks and other financial institutions, whether by a line of credit or otherwise, would be covered by this section, as well as debenture financing.

Sec. 803. Valuation of Stock of Closely-Held Corporations: A problem of disposition of any interest in a close-held business has been valuation. The present law provides for comparison only with companies listed on a stock exchange which are often more established than those which are not. This proposal would permit valuation comparisons with any similar company whether or not it is listed on an exchange.

Sec. 804. Extensions of Time for Paying Estate Tax: A new section 804 aims at administration of the estate tax which is more congenial to allowing closely-held businesses to remain in family hands following death of a major stockholder. To this end, it changes the standard of "undue hardship" (required to qualify for 10-year estate tax installments) to "hardship," which should be easier to meet.

Sec. 805. Amalgamation of Interests in Closely-Held Businesses: At present, under section 6161(d) it is required that a decedent own at least 50 percent of a business in order that its value be eligible for aggregation to meet the tests allowing installment payment of estate tax attributable to such business interests. This provision would make it easier for businessmen to qualify for aggregation by permitting addition of interests exceeding 33½ percent of a business toward the totals.

Sec. 806. Recommendations as to Preservation of Independent Small Business: The final provision would have the Treasury conduct a comprehensive examination of the converging pressures of income taxes, capital gains tax, reorganization rules, and estate and gift taxes which are causing so many small businesses to sell or merge out of existence rather than continue in independent form. The section calls for a report and recommendations which would improve the tax climate at this stage of the business life cycle for preservation of independent enterprises.

Technical changes: The title of the bill has been changed to reflect the current year, and other numbering, date, and technical changes have been made where needed.

Mr. BURDICK. Mr. President, I am pleased to again join with the distinguished chairman of the Senate Small Business Committee, Senator BIBLE, as a principal sponsor of the Small Business Tax Simplification and Reform bill of 1973.

When this bill was first introduced back in 1970, it was my pleasure to be the original cosponsor at that time. By the end of the 92d Congress, 23 Senators and other 78 Members of the House of Representatives had added their names to the list of cosponsors, and others had indicated their support of the measure by letter.

My observations are that the tax situation or family and farm businesses is worse in 1973 than it was in 1970. There were large tax breaks for big businesses in the Revenue Act of 1971. Costs of doing business have increased steeply in the past 3 years. In addition, the Federal Government itself is stepping up pressures on small business in areas such as new sanitation requirements, occupational safety and health standards, and the paperwork of related reporting.

The hearings in the House Committee on Ways and Means under the chairmanship of Representative WILBUR MILLS have given us hope that something might be done in this field at long last.

Small business needs tax simplification. It needs tax reform. It needs enactment of legislation along the lines of this bill, which has been developed by Senator BIBLE over the past 6 years. I will do all I can to encourage consideration and enactment of this kind of meaningful tax relief for small business in the 93d Congress.

IMPLEMENTATION OF THE WIC PROGRAM BY USDA

Mr. PERCY. Mr. President, last June Senator MARLOW COOK and I chaired a series of hearings before the Select Committee on Nutrition and Human Needs on the subject of maternal, fetal, and infant nutrition.

The evidence presented to the select committee underscored the crucial importance of adequate nutrition during pregnancy, both for the health of the mother and the life chances of her offspring. The committee also heard about the mounting of evidence concerning the effects of malnutrition or undernutrition during infancy on the mental and physical development of the child.

Finally, we learned of nutrition intervention programs in Memphis, Tenn., and elsewhere which had been successful in improving the nutritional status of preschoolers. These efforts relied on the USDA's supplemental feeding program for the foodstuffs distributed to the participants.

All our witnesses in one way or another suggested that the new special supplemental food program for women, infants, and children—WIC—held great promise for improving the nutrition and health of the target population.

This program provides cash grants to make supplemental foods available to pregnant and lactating women, infants, and children of up to 4 years of age. The mothers will receive food directly or vouchers which will enable them to buy fruit juices and fortified formulas and cereals for infants and extra milk products, fortified cereals, fruit and vegetable juices, and eggs for themselves and their children.

The USDA has announced the selection of 20 project sites, but many applications still await final disposition. Moreover, although the program was

originally authorized for fiscal years 1973 and 1974—and we are already well into fiscal 1974—and although the USDA is under court order speedily to implement the program, not one single project is yet in operation.

This is a disturbing situation. I am sure no one is deliberately withholding duly authorized nutrition services from the target population. But I question the apparent lack of vigor in moving the WIC program forward. I know a number of my colleagues share this concern.

I urge the USDA to do whatever is necessary to move this program ahead as quickly and as effectively as possible.

EVERYTHING HAS A PRICE WEEK

Mr. STEVENSON. Mr. President, the week of November 11 in Illinois will be Everything Has a Price Week. Working with State and local officials, the Illinois Retail Merchants Association is using this week as an opportunity to call attention to America's fastest growing crime problem—shoplifting. The cost to Illinois alone has been estimated to be $800 million annually. Annual losses for the Nation are estimated to be $4.8 billion.

Over the past 10 years, shoplifting has increased at the alarming rate of 150 percent. It is hard to draw a single profile for a shoplifter. They come from all segments of our society, from both sexes and from every economic or social group. Fifty percent of the thefts, however, are committed by teenagers. Ninety-nine percent of the persons apprehended are found to have had enough money in their pockets to pay for the merchandise stolen.

The purpose of Everything Has a Price Week is to call attention to these facts and to highlight the personal price individuals pay when convicted of shoplifting, the cost borne by society and by our economy.

Mr. President, I want to commend the State and local officials and the Illinois Retail Merchants Association for this effort and add my voice strongly in support of Everything Has a Price Week.

ENERGY: WE ARE THE ENEMY

Mr. PERCY. Mr. President, the American people may not yet be fully aware of the magnitude of the problem of winter fuel shortages.

In September, we were warned that even in the best of conditions, our Nation's heating fuel supply would likely fall short of demand by a small amount. We were warned that shortfalls in supply would probably be worst in the coldest areas of the country.

That was before the outbreak of hostilities in the Middle East. Now, as a result of that war, the Arab countries have announced a near-total embargo on oil exports to the United States. Crude oil and refined petroleum products originating in the Arab countries accounted for approximately 12 percent of U.S. oil consumption, and about 6 percent of our total national energy needs, immediately prior to the Middle East war.

It is now clear that we in the United States face a serious shortage of energy for heating this winter. It is unlikely that sufficient supplies of oil and other fuels will be produced domestically or imported from non-Arab countries to make up the shortfall over the next few months.

There is only one solution for this immediate problem—energy conservation begins at home.

I hope that everyone who owns a home, rents an apartment, drives a car, runs a business, or works in an office or factory—in short, everyone who consumes energy—will begin immediately to conserve energy for the good of the Nation, as the President has requested.

This is a crusade in which every citizen can participate. Happily, while we are serving the national interest by saving energy, we can also save money for ourselves, and improve the quality of our environment as well.

Even before the President's urgent nationwide appeal, members of my staff and I had launched a full-scale energy conservation program to help demonstrate the benefits of, and the need for, "curbing the consumption compulsion." We are turning down our heat in the home and office, turning off our lights, using car pools and mass transit, and practicing a host of other techniques for saving energy. I hope every citizen will join us.

As we look around our Nation's Capital for new ways to conserve energy, one obvious source of high consumption is the ceremonial lighting on public buildings. These tremendous powerful lights have enhanced the beauty of the cityscape at night, and attracted more nighttime visitors to our national monuments and public buildings.

As beautiful as they are, the lights are excessive energy consumers in the face of a heating fuel shortage. More importantly, they are a highly visible symbol of a nation that consumes one-third of all the world's energy production every year.

If the lights are turned off during the crisis period, except where needed for safety, they will serve as an equally vivid symbol of a people determined not to be blackmailed from abroad, and united in the task of solving a serious national problem together.

As a result of the President's address this week, this lighting has been reduced. The administration is to be commended for this action. I hope that lighting can be further reduced, except where needed for safety, until the energy crisis is over.

EARLY ACTION NEEDED ON S. 2397

Mr. WILLIAMS. Mr. President, for most older Americans inflation is the No. 1 enemy.

Today rising prices continue to rob the limited pocketbooks of the elderly. As the cost-of-living soars upward, their purchasing power goes down—usually quite sharply.

The most striking example, of course, is the price of food, which has jumped by an astounding 20 percent during the past year alone. If the present pace continues for 1973, a new record will be established.

Rising food costs have affected all Americans, but the most devastating effect has been for the elderly. One major reason is because food constitutes about 27 percent of the aged's income, in contrast to 16 percent for all Americans.

The net impact is that far too many older Americans have been compelled to cut back on their food consumption, even though this may jeopardize their health. Others have found it necessary to rummage through garbage cans for food. And many have simply done without.

Older Americans do not need a Ph. D. in economics to tell them that the administration's economic policies have been a colossal failure. What they need now more than anything else is an earlier and larger social security increase to provide some means of protection from rising prices.

For these reasons, I have joined with the distinguished chairman of the Senate Committee on Aging (Mr. CHURCH) in sponsoring a 7 percent social security raise. This measure, S. 2397, would be a substitute for the 5.9-percent increase which would become operative in June 1974 under Public Law 93–66.

And, I am especially pleased that the Senate Finance Committee recently adopted the thrust of this measure as an amendment to H.R. 3153, the technical amendments to the supplementary security income program. Moreover, this new proposal would become effective upon enactment.

At the outset, I want to reaffirm my strong conviction to do everything possible to obtain early enactment of this urgently needed measure.

A recent article—entitled "Elderly Agonize Over the Prices"—in the Sunday Record describes in very human terms the impact of skyrocketing food costs in New Jersey for the elderly.

In addition, the nationally known columnist, Ted Schuchat, discusses the impact of inflation for older Americans.

Both of these articles, it seems to me, are very informative and merit the close attention of my colleagues in the Senate. Moreover, they provide further compelling reasons for early and favorable action on the 7-percent social security increase.

Mr. President, I ask unanimous consent that the articles—entitled "Elderly Agonize Over the Prices" and "Elderly's Cost of Living Around U.S. Noted"—be printed in the RECORD.

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

ELDERLY AGONIZE OVER THE PRICES

(By Constance Rosenblum)

A few weeks ago, Kay Taynal got fed up trying to stretch her $163-a-month Social Security check over food prices that seemed to escalate daily.

So she and a friend headed to a place in Clifton that sells horsemeat, and she stocked up with 14 pounds—ribs at 75 cents a pound, shin meat at 69 cents, and hamburger at 59 cents.

"I figured I'd try it," the Garfield woman said matter-of-factly. "Being that every-

thing's so expensive. And, you know, it wasn't bad. The hamburger, for example, I use for stuffed cabbage."

When the stock in her freezer runs out, she may buy more.

Not many of Bergen County's elderly are resorting to horsemeat. But those on small fixed incomes, particularly those whose only support is a Social Security check, are in despair over food prices. Far from being an adventure or simply a chore, grocery shopping is a painful obstacle course.

One elderly woman said, "I hate to go to the supermarket. Everyone looks so miserable."

Increased Social Security benefits passed last week by Congress aren't likely to make much difference. Under the measure, the average payment for a retired person would rise only $108 a year; a couple's check would contain only $192 more a year. In addition, the increases will not take effect until July 1974.

More important, however, is the discrepancy between the rise in Social Security and climbing food prices. The projected 5.6 per cent Social Security hike is less than half the food price increase over the past year.

According to the U.S. Bureau of Labor Statistics, food prices in the New York-New Jersey metropolitan area climbed 11.5 per cent over the 12-month period ending in May. The jump was the biggest in 22 years. Key items that rose were meat, poultry, and beef—up 20.2 percent, and fruits and vegetables—up 16.7 per cent.

On top of this, the Agriculture Department has forecast a 12 per cent hike in food prices for 1973, in spite of a 60-day price freeze and the promise of new controls by President Nixon.

With prices like these, a couple like Evelyn and George Mottram of River Edge don't get much for the $25 or $30 they spend for groceries each month.

The Mottrams get $270 monthly in Social Security. Out of this must come $91 in rent for their four-room cold-water apartment on Grand Avenue, $77 for loans and items bought on credit, $18 for gas and electricity, at least $10 for telephone service, and $6 for prescription drugs. There is also transportation and occasional doctor's visits for Mrs. Mottram, 68, who has a heart condition.

The small sum the Mottrams spend on food each month (last month's total of $33 was a record) doesn't go far, even with Mrs. Mottram's prudent shopping.

She couldn't tell you the last time she bought steak—or veal, lamb, or pork chops.

"I love pork chops," confessed her 66-year-old husband, smacking his lips. "But, my God, the prices!"

Breakfast is usually coffee and toast. Lunch is a salad, with lettuce, cottage cheese, vegetables, or tuna fish. Dinner may be a frozen TV dinner, chicken, spaghetti, or meatballs made with the cheapest ground chuck, with potatoes, beans, or other vegetables.

Like most people buying food on meager incomes, the Mottrams religiously watch for specials and sales. At the Two Guys on Hackensack Avenue where they do their monthly marketing, they also look for dented cans, day-old bread, and house labels.

Even so, shopping is a tricky business. When food prices began to soar, the Mottrams simply got less for their $30 a month.

"We just have less food," Mrs. Mottram said. "We have smaller servings."

She speaks with helpless resignation about the rising prices. Her husband thinks costs might drop a bit if enough people plant their own vegetable gardens.

Fortunately, the Mottrams have no serious medical problems that require a special diet, although Mrs. Mottram can't afford the small doses of Scotch whiskey her doctor recommends.

But for elderly people who need special and sometimes costly food, it's a major struggle to match small Social Security checks with substantial grocery bills.

A 71-year-old Fort Lee man suffering from Parkinson's disease and clogged arteries needs a salt-free diet that puts a sharp dent in the $275 he and his wife receive monthly in Social Security benefits.

"Salt-free bread is twice the price of regular, day-old bread," complained his wife, who asked to remain anonymous. "Salt-free butter is more too."

She clips coupons and searches for slightly battered fruit, which usually goes for a few cents off.

Women like her watch the daily highs and lows in the supermarket the way a careful investor watches the stockmarket.

"I saw six pounds of apples for $1.50, so I picked them right up," she reported. "But lettuce is 69 cents a head. So we don't eat lettuce." She never buys roast beef, strawberries, or ice cream. Milk is skim and powdered at 12 cents a quart.

Mrs. Amelia Krause of 72 Atlantic St., Hackensack, has a similar situation. A diabetic, she tries to buy the fish and sugarfree fruits her doctor suggests, but her $146 monthly rent takes a large chunk out of her $223 Social Security check. "How's a person going to live?" she demands.

Eighty-one-year-old Bertha Hilperts of Cliffside Park is grateful to a German background that taught her to cook well, but ingenuity doesn't lower prices.

"I used to buy good steak and lamb chops," she said. "Now it's just shanks of lamb. Even chicken is out of hand. Even string beans." She substitutes gelatin for fruit, eats bread without butter, and cooks every day.

Many don't, however, lacking either ability or incentive. For this group, apathy and rising food prices may combine to produce severe malnutrition. The 100,000 Bergen County residents on Social Security get an average of $175 a month in payments, a sum that's hard to stretch when items like rent are also spiraling.

"They suffer in silence," said Mildren Krasnow, who directs the county's Office on Aging. "A number weren't eating well before food prices started going up. Now there must be a major number who aren't."

Many fail to maintain the special diets their doctors urge, said Mrs. Krasnow, noting that Bergen County residents are within the section of the country where prices are highest. If malnutrition persists, she noted, sufferers tend to show such symptoms of senility as forgetfulness and listlessness.

Among the only specialized attacks on the problem are the few small programs designed to provide nourishing but inexpensive meals for the county's elderly.

One such program will start tomorrow at Englewood's Community House. Up to 100 hot lunches will be prepared daily at Englewood Hospital and transported to the Community House by the Red Cross. Residents of Englewood and 17 Northern Valley towns will be eligible for the program, which is heavily subsidized through a federal grant.

Tomorrow's menu includes roast beef, mashed potatoes, carrots, dessert, milk, and coffee. Lunches will be served every weekday and cost 60 cents apiece.

"You couldn't duplicate these lunches for that price," said Barbara Eisen, coordinator of senior citizen activities at Community House.

The lunch program, part of Community House's new senior citizen multi-service center, was planned two years ago, before the crunch in food prices.

"Even then there was a need," said Ms. Eisen. "But now it's tremendous. This is a very opportune time for such a project."

At the YM-YWCA in Ridgewood, a similar but smaller hot lunch program is underway, although the menu has been modified to provide cold dishes in the warmer months. Meals here are served once a week and cost 90 cents each—still a bargain, according to Helen Clark, assistant director of the YWCA.

Though the program was not started to meet needs generated by rising food prices, Mrs. Clark noted that supplementing the food budgets of the elderly is one of the program's goals.

ELDERLY'S COST OF LIVING AROUND UNITED STATES NOTED

(By Theodor Schuchat)

Uncle Sam has gotten around to estimating how much it cost three mythical retired couples to live in various parts of the country about a year ago.

The average annual budget for a retired couple living in a city ranged from $3,319 at a low level to $4,776 at an intermediate level to $7,443 at a higher level, according to the United States Labor Department.

These figures are for the late summer of 1971. They were obtained by updating Labor Department estimates for the spring of 1970. They are national averages.

Retirement living costs vary widely throughout the country, the Labor Department says. The lowest costs are found in small cities and the South and the highest in large metropolitan areas. Anchorage, Alaska, is highest, and Durham, N.C., is lowest.

CINCINNATI

Close to Durham at the bottom of the retirement living cost list are the Cincinnati, Ohio, area and Bakersfield, Calif.

For statistical purposes, the Labor Department's average retired couple is a husband, age 65 or more, and his wife. Both are self-supporting, in reasonably good health, and able to take care of themselves. They live independently in their own home.

Rural retirement living costs are not estimated. No budgets are estimated for single retirees, but the Labor Department figures it costs them 55 per cent of what it costs a retired couple to live.

That came to $1,747, $2,466, and $3,626, depending on their level of living—lower, intermediate or higher late last year. The higher retirement budget includes life insurance. The intermediate and higher retirement budgets include a car and payment of some income tax.

CONTRIBUTIONS

All three budgets include some gifts and church and other contributions. Housing accounts for about 40 per cent of all three budgets, even after allowing for a mortgage free home.

Food takes 30 per cent of the lower retirement budget but only 24 per cent of the higher one. Medical care costs 13 per cent of the lower budget and only 7 per cent of the higher budget. Transportation, however, rises from 7 per cent of the lower retirement budget to 12 per cent of the higher budget.

"These allocations do not represent how families of the budget type actually spend their money," explained the Labor Department. "Rather, they reflect assumptions made about the manner of living at each of the three levels."

Sen. Frank Church, D-Idaho, observes that even these relatively modest budgets are well beyond the means of millions of older Americans. He is chairman of the Senate Special Committee on Aging.

BELOW POVERTY

"More than 4.7 million fall below the poverty line," he points out. "If the hidden poor are counted, their numbers swell to 6.3 million." The Idaho Democrat says these updated budgets provide powerful and compelling evidence for major improvements in Social Security.

The Labor Department, however, says that its budgets are not intended to represent a

minimum or subsistence level of living. It assumes that the family has, for each budget level, average inventories of clothing, house furnishings, major durables, and other equipment.

And the government statisticians assume that no illness or injury hits the retired couple's pocketbook more than an average below during the year.

The lower budget calls for $424 for medical care while the higher budget is only $5 higher for this item.

"New information on actual spending patterns will not be available until the 1972–73 Survey of Consumer Expenditures, now in process, is completed," explained the Labor Department.

ALARMED

Church has been alarmed because there was some likelihood that the Bureau of Labor Statistics may discontinue publication of budgets for retired couples.

After promising to issue the 1971 estimates, Labor Secretary James D. Hodgson wrote Church that a final decision has not been made on whether the bureau should continue to develop family budgets by the methods previously used.

He said a memorandum requesting opinions on this subject was sent to a group of college professors after the question was discussed with business and labor groups.

"My own view is that the budget serves a very useful purpose, and that they are very much needed as a guide to actual living costs of the elderly," Church said.

You can get a free copy of "Three Budgets for a Retired Couple" by writing the Office of Information, U.S. Department of Labor, Washington, D.C. 20210. Ask for USDL–72–296.

ARENA STAGE

Mr. PERCY. Mr. President, the Arena Stage Company of Washington, D.C., recently returned from a triumphant tour in the Soviet Union. During the 3 weeks that this very special theater group was performing in Russia, momentous events were occurring both here at home and in the Middle East, perhaps preventing the public from being aware of the wonderful events that were occurring simultaneously in Russia.

Sponsored by the U.S. State Department's Office of Cultural Presentations, the Arena Stage Company's performances in Moscow and Leningrad were the first presentations under the United States-U.S.S.R. Exchange Agreement. While disastrous and tragic events were taking place in other areas, a warm and wonderful exchange of culture and human understanding was under way in these two Russian cities. I feel that my colleagues, and all other Americans as well, should be aware, during this time of widespread dissatisfaction and disillusionment, of the small glowing light of success and happiness the Arena Stage Company has created. I ask unanimous consent that two recent news articles on the company's tour and recent return be printed in the RECORD.

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

ARENA COMPANY BACK FROM SOVIET SUCCESS

(By Louise Legue)

Unshaven, exhausted, but exhilarated, the Arena Stage Company arrived in Washington late last night after a 31-hour trip from Leningrad.

"I'm kissing the earth," said associate director Alan Schneider from New York's Kennedy Airport between planes. "It was absolutely the most fantastic experience of my life. The response was so terrific—it was like standing under Niagara Falls and letting the water rush all over you."

Seventy members of the company had spent three weeks in Russia under a cultural exchange program sponsored by the State Department, performing "Our Town" and "Inherit the Wind" in Moscow and Leningrad.

It was the first American dramatic repertory company to be so honored.

After their last performance in the Pushkin Theater in Leningrad the company took a four-hour train ride back to Moscow, boarded a Russian Aeroflot plane to Kennedy, and arrived right after the Leningrad Symphony Orchestra. They had no trouble with Customs and all immediately changed to a plane bound for Dulles Airport.

"We got 15-minute standing ovations in each town, and even in the streets, the Russians wouldn't leave us alone," Schneider said. "They followed us everywhere, talking to us, showering us with gifts, and trying to hang on to us any way they could."

Schneider denied reports that the Muscovites had found "Our Town" dull and had failed to understand it. "They were written by a reporter who doesn't know theater. There was some trouble with the sound system at first. The Russians were expecting our American theater to be all mechanization and sex, but we brought real human values instead. I've been in the theater a great many years, but I've never ever had a response like that."

(A report from a wire service said that the Arena performances seemed dull because all the parts were read in simultaneous translation in a single, flat female voice. But the State Department earlier had advised the cast that Russian interpreters always purposely read the lines without dramatization to avoid conflicting with the acting on stage. Russian audiences are used to it and their response is generally unaffected.)

Actor Howard Witt called the trip "day to day, moment to moment, the most fantastic experience ever. Even with the State Department briefings, we were constantly astounded. Nothing small ever happened.

"The only time we had to sightsee after the show, and every morning between one and three, the 70 of us walked freely around, talking to Russians and having a wonderful time."

Actor Robert Prosky, who played the lead in both shows, said he is now better known and loved in Moscow than he is in New York. "Even the old man who held the curtain for me to make my entrance—and he didn't have to do that—gave me books and records to take home. They threw flowers on the stage every night."

Prosky said that no official functions had been planned for the troup by the Russians until after the general populace had accepted the actors. "Suddenly, there were television interviews and receptions with the mayor. I even made a few extra rubles doing a television show, but I spent them all in Russia.

Prosky, too, mentioned the early morning walks in Red Square. "St. Basil's Cathedral, all lit up, was absolutely the most beautiful, incredible, theatrical thing I've ever seen.

"Moscow is really the perfect place for a group of actors, because the city has a long tradition of respect for the arist. We had a reception with some Soviet actors and one of them said to me: 'When an actor comes to Moscow, wherever he is from, he is home.'

"And he was right. It's a wonderful place to be, but it's even better to be home."

BACK FROM RUSSIA, WITH LOVE

(By Nancy L. Ross)

To hear producing director Zelda Fichandler tell it, Arena Stage's recent trip to the Soviet Union proved to be a "daily bombardment of love."

The visit was also something of a two-way street, with at least one member of the company bringing back unpublished literary work by a young Russion writer.

The first American repertory theater to tour that country, Arena Stage performed "Our Town" and "Inherit the Wind" under a cultural exchange program to packed audiences in Moscow and Leningrad. The players returned from their three-week visit Oct. 17 and last night gave a public accounting of it from their own stage.

One after the other, actor and lighting technician, director and wardrobe mistress told tales of extraordinary cooperation and kindness shown them by the Soviet people with whom they worked. There was Nicolai their driver who spent nine rubles, or 10 per cent of his monthly salary, to buy tickets to their productions. And Natasha, the chemistry teacher, who came to see them off at the airport.

There were the nameless matrons backstage who lovingly washed and starched an actress' wedding gown. And the little old lady in charge of the cloakroom who insisted upon staying until 4 a.m. when the stagehands finished moving the last piece of scenery.

Robert Prosky, who had leading parts in both plays, called the experience "overwhelming." He regretted not having time to sightsee. Indeed, his three weeks in the U.S.S.R. were spent, he said, "performing, rehearsing, sleeping, eating and crying. I don't usually cry easily," the actor added, "but I did there." And he cried recounting the experience. So did several others.

A striking contrast to the hour-long panegyric was provided by actress Diane Weist, who also had leading roles. Speaking about her love of freedom and her desire to do "my small bit to help actors who are suppressed," Miss Wiest told of her contacts with Jews and dissidents in the Soviet Union.

"You can never forget those eyes," she reminisced. "I am not as happy now as before my trip but I am certainly richer for seeing those eyes." She gave people she met gifts, mostly Hebrew literature provided by Jewish organizations in Washington, and received homemade gifts in exchange.

Miss Wiest also brought out of Russia six unpubilshed short stories by Samakh Shin. Newsweek contributing editor Leon Volkov, who was at last night's affair, said later he has offered the stories to Atlantic Monthly magazine. Volkov said that Shin is a pseudonym for a 24-year-old Russian printer who approached Miss Wiest during the tour and asked her to take the manuscripts to America.

The next American theater company, as yet unnamed, will visit the Soviet Union in 1975 under the auspices of the State Department's cultural exchange program. A Russian theater is expected to perform here in the 1975–76 season. In addition, both Mrs. Fichandler and Mark Lewis of the State Department urged more private non-governmental exchanges on a person-to-person basis.

The city of Washington will give Arena Stage an official welcome home Nov. 17 at a benefit peformance of "Inherit the Wind." A champagne-vodka reception, accompanied by balalaika music, will follow the performance on the troupe's home stage. Proceeds from the evening will go to Arena Stage.

THE NEW SUGAR PROGRAM

Mr. ROBERT C. BYRD. Mr. President, at the request of the distinguished Sena-

tor from Hawaii, I ask unanimous consent to have a statement by him printed in the RECORD.

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

STATEMENT BY SENATOR INOUYE ON THE NEW SUGAR PROGRAM

On Thursday last, November 1, 1973, the administration unveiled a new sugar program for 1975 and years thereafter that would apparently:

(1) Eliminate the foreign country by country quota supply formula. It should be noted that approximately 40% of our needed supplies for east coast consumption north of Hatteras is presently supplied by 31 foreign countries.

(2) Eliminate payments to domestic growers.

(3) Tie the American sugar program to a "Target Price" and to the fictitious so-called "World Sugar Market." The so-called "World Sugar Market" represents about 8–10% of free market sugar and yet the new program would tie both the price and supply to that so-called "Free Market Sugar."

Obviously the largest consumer group in the United States, the industrial users, were not consulted prior to the announcement of the new program.

The new program is unworkable because:

(1) It is tied to the so-called—ill-termed—world price and supply, a supply that could properly be termed "derelict sugar"—sugar without a home.

(2) It failes to assure the largest consumer group, the industrial users—users of approximately 75% of all the sugar consumed in the United States—of sugar supplies as and when the industrial users want and need them, and I assure you that security of supply is the key to the industrial users insofar as sugar is concerned in the manufacturing of their products

(3) It would junk the most successful of the agricultural programs—the only agricultural program that has produced a profit to the United States government from its inception.

I most respectfully wish to advise the Department of Agriculture and the executive branch in particular that their new sugar program is doomed to failure, primarily because:

(1) It will not guarantee the largest consuming group, the industrial users, the sugar as and when they want and need their sugar.

(2) It will not guarantee the American consumer a cheaper price for their sugar.

(3) It would be a refiner's nightmare.

(4) It will eradicate the country by country quota system, a system that the foreign countries have come to rely on—31 of them—and depend on as an outlet to get U.S. dollars in order to purchase U.S. goods, the very essence for the existence and participation in the act by the foreign participants.

(5) The Philippine Trade Treaty is due to expire July 1, 1974. How can the Philippines hope to compete in the United States marketplace on sugar if a first come, first served program is introduced as a substitute for a program that has been in existence for three decades plus six years?

The Philippines is now the third largest supplier of sugar to the American consuming public. It takes six weeks for Philippines sugar to reach the eastern seaboard market. The Philippines, as foreign suppliers under the proposed program, would be doomed as participants.

I admonish the administration here and now that the unveiled new sugar program. The so-called "Peter Flanigan" plan is doomed to failure in the Congress of the United States because it is unworkable; it is a sugar broker's dream; and it is a plan that will ultimately mean a phasing out in my judgement of the U.S. sugar domestic producing industry, particularly the beet producers in the years ahead.

The United States needs a viable sugar program. It has one. If Congress tampers with it and accepts the "Peter Flanigan" plan, it will rue the day it adopted it.

I speak not as a representative of the Hawaiian sugar industry. I have not consulted them, nor have they consulted me since the announcement of the new plan, but if the plan as outlined in the Wall Street Journal of Monday, November 5th, is the plan, it is doomed to failure because I am confident that the Congress will reject it.

SOLAR HOME HEATING AND COOLING DEMONSTRATION ACT OF 1973

Mr. ABOUREZK. Mr. President, on Friday, November 2, Senator CRANSTON introduced the Solar Home Heating and Cooling Demonstration Act of 1973. In view of the energy problems we face today, legislation of this type is more than appropriate, and will hopefully be enacted soon. Senator CRANSTON's bill would authorize the Department of Housing and Urban Development to spend $50 million between now and the end of fiscal year 1980 to demonstrate the feasibility of using solar energy to heat and air-condition residential buildings.

The bill provides that the construction of demonstration facilities would occur in private residences in both rural and urban areas. This provision is an especially important one. More than 60 percent of America's substandard housing is in rural areas. Furthermore, it has already been clearly demonstrated that existing solar technology can be harnessed most efficiently in single unit residences. It would be foolish not to avail ourselves of solar energy in developing decent housing in rural areas.

I have been interested for quite a while in the potential of solar energy as a readily available alternative source of energy. It has always amazed me that while we have for some time been suffering with an energy squeeze which results from petroleum product shortages, agencies of the Federal Government have done little or nothing to try to find relief by developing and harnessing alternative energy sources.

Hopefully, Senator CRANSTON's bill will provide substantial stimulus for one of the most lethargic of those agencies, the Department of Housing and Urban Development. In his remarks Friday, Senator CRANSTON noted that—

> It has been estimated that up to 40 percent of the energy consumed annually in the United States is used for heating, air-conditioning, ventilation, lighting, and power systems in buildings.

In light of this, it is truly remarkable that in fiscal year 1973 HUD assigned "no specific amount of funding" to solar energy research and development, and requested no funding for those purposes in fiscal year 1974. While the administration has yet to announce its plans, it would seem unlikely that funding of HUD solar research and development activities will be requested for fiscal year 1975. If this is the case, Senator CRANSTON's legislation is all the more necessary.

Last May 31, I wrote to Secretary Lynn asking for information about the solar energy research and development activities of HUD. In August, I received a reply from Assistant Secretary Moskow which has led me to the conclusion that HUD has done extremely little, to date, to encourage Americans to take advantage of solar energy and thereby to relieve themselves of part of the burden of the "energy crisis." I ask unanimous consent that my letter to Secretary Lynn and Assistant Secretary Moskow's reply be printed in the RECORD.

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

U.S. SENATE,
Washington, D.C., May 31, 1973.

Hon. JAMES T. LYNN,
Secretary, Department of HUD,
Washington, D.C.

DEAR MR. LYNN: I am interested in the status of solar energy research and development activities with which your agency is involved. Would you be so kind as to provide me with the following information:

A. How much has been appropriated for solar energy research and development under the auspices of HUD for FY 73?

B. How much has been requested for this purpose for FY 74?

C. What approaches to solar energy research and development have been adopted by HUD?

D. Which approaches have been rejected? Please comment on the reasons for the rejection of these approaches.

E. What comments do you have concerning the feasibility, at present and in the near future, of large scale commercial application of solar heating and air conditioning units in buildings?

F. What research and development activities concerning solar heating and air conditioning of buildings will HUD conduct in FY 74?

Thank you for your assistance in this matter.

With best personal regards, I remain

Sincerely,

JAMES ABOUREZK, *U.S. Senator.*

DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT,
Washington, D.C., August 10, 1978.

Hon. JAMES ABOUREZK,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ABOUREZK: Secretary Lynn has asked me to reply to your letter of May 31, 1973, concerning the status of solar energy research and development activities with which HUD is involved.

The information you requested is presented in response to your specific questions.

A. No specific amount of funding was assigned to solar energy research and development in FY '73. However, a contract of $40,000 was placed at California State Polytechnic Institute to evaluate the natural air conditioning for a single family residence by solar energy techniques throughout a total season and report on its function, design and effectiveness.

B. No specific amount of funding has been requested in FY '74, however, we intend to work closely with the National Science Foundation with the eventual aim of funding the demonstration portions of their solar energy research in housing.

C. HUD has not adopted any one particular system for solar energy, but is viewing many concepts to determine the most effective systems for residential construction. The general approach is to review the theory involved and follow it by a demonstration project to determine the validity of the theory and the practical economics of the system.

D. No approaches have been rejected at

this time. We wish to find out as much as we can about the systems which can be made available for use in housing as soon as possible.

E. As a result of the ever increasing energy crisis and the diminishing supplies of current fuels, locally or imported, solar energy requirements should increase to the point where large scale commercial application of solar heating and air conditioning units in residential construction will be required to meet the housing needs. Solar energy units may be used in conjunction with conventional systems, thus reducing the requirements of the conventional systems to a minimum.

F. The Department hopes over the next two years to construct several houses using various heating and cooling techniques in order to test and demonstrate the capabilities of the systems.

In addition, we are conducting an extensive evaluation of total energy in a demonstration project in Jersey City, New Jersey.

In conjunction with this evaluation, physical arrangements provide the capability to test experimental systems and components under actual operating conditions. Specific piping and structural provision will allow testing solar energy collections when sufficient technological progress has been reached.

I hope the above information is helpful to you.

Sincerely,

MICHAEL H. MOSKOW,
Assistant Secretary.

NEW CHALLENGES FOR THE SECURITIES INDUSTRY

Mr. WILLIAMS. Mr. President, on October 2, 1973, I introduced S. 2519, the National Securities Market System Act of 1973. As the fourth bill to arise out of the subcommittee's securities industry study, its introduction signals the imminent satisfaction of the Senate directive to the Subcommittee on Securities in 1971 to conduct a "complete examination, investigation, and study of all matters pertaining to the securities industry and securities markets of the United States with such recommendations for legislation as it deems advisable."

I believe that the series of legislation arising from this study will represent the most important revision of our basic securities laws since the 1930's. The securities legislation of the 93d Congress will shape the structural and regulatory features of the securities industry for decades to come.

The success of our legislative endeavors, however, necessarily depends upon the vigor and imagination with which the Securities and Exchange Commission administers and implements the objectives we prescribe. In this regard, I am extremely encouraged by recent SEC actions manifesting a clear determination to play a strong leadership role in the development and regulation of the emerging national market system.

Indicative of the new sense of administrative purpose is the Commission's decision to end the 200-year-old controversy over fixed commission rates. This action deserves the applause not only of the investing public, but the securities industry itself. In place of antiquated and uneconomical price-fixing, the securities industry will finally have the opportunity to serve investors under a rational and efficient system of competitively determined commission rates.

Undoubtedly much of the praise for the Commission's action on commission rates should be directed to the new Commissioners, particularly Chairman Ray Garrett, Jr. Recently, Chairman Garrett spoke in New York on the new attitude that will be required of the industry in an area of active competition. He painted in bold colors the inevitability of change and counseled a constructive, businesslike response. I believe Mr. Garrett best conveyed the spirit in which the goals of the Congress and the Commission may be achieved when he said:

The important thing to bear in mind is that it is a time of exciting change and challenge for the securities industry in the United States. I would urge you to look upon the future in that spirit and to accept the fact that the SEC is not out to destroy the securities industry—I urge all of you to shake off any feelings of oppression or doom and get caught up in the excitement of what we are on the threshold of achieving.

Chairman Garrett also made clear that the SEC intends to keep open meaningful channels of communication and to stimulate a steady flow of industry ideas on the proper resolution of fundamental problems:

In our mind, we are not proposing to do to the exchange community anything that would not be done to it one way or the other, probably in a less desirable fashion. But whether you believe that or not, our purpose was to stop arguing about what seems to be inevitable in the present structure of the industry and to start the countdown, hopefully stimulating constructive thinking rather than romantic fantasy.

I hope that Chairman Garrett's address will lead to constructive cooperation and coordinated planning in the securities industry. With the leadership of the present Commission, I believe we are at the threshold of an era of true reform and progress for our Nation's securities markets and thus of increased service and protection for the investors who use these markets.

Mr. President, because of the significance of Chairman Garrett's remarks, I ask unanimous consent to print them in full in the RECORD.

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

NEW CHALLENGES FOR THE SECURITIES INDUSTRY

(By Ray Garrett, Jr., Chairman, Securities and Exchange Commission)

Mr. Chairman, Ladies and Gentlemen. One of the hazards of my present job, I have discovered, is the temptation to accept speaking engagements both too soon and too close together. When I used to watch my predecessors from my comfortable quarters in Chicago, I made a resolve with respect to each one of them that if I ever became Chairman of the SEC, I would not be running around talking so much—especially before I had anything to say. Resistance to pleasant temptation, however, is not one of my stronger traits, and I find that I am as guilty as the rest of them.

It isn't just the temptation to talk too much that is dangerous. It is also the temptation to make news either through some profound policy statement or something exciting. Both of these are rather easy to do if you do not care too much about the results. With a little effort I think I can be profound once a week but to do so without being repetitive, would result in enormous confusion. It is even easier to be newsworthy by being exciting, such as through saying something very careless or stupid. So although headlines are fun, I try to avoid either too much profundity or too much carelessness.

The things I have to say tonight may not strike you as newsworthy on either ground, but I do think there are some interesting things for us to be talking about.

I am told, and I can observe, that this group is somewhat younger than other collections of industry leadership, and it seems like an appropriate time to talk about the future. One of your number recently observed to me that in the securities industry short-range planning is worrying about this afternoon and long-range planning is when you worry about tomorrow or the next day. However true this might once have been, it seems clear to me that it is not true at all today. I see much evidence of long-range, constructive thought and planning, and that is what I would like to talk about.

Last September 11th, at the same time that we revealed our non-objection to the New York Stock Exchange's proposed increase in fixed minimum commission rates, we stated that we proposed to take whatever administrative action should be necessary to cause the fixed minimum commission rate system to be eliminated by April 30, 1975, with an interim step to be effected after March 31, 1974. I strongly suspect that most of the instant rejoicing at that time was directed toward the unconditional increase permitted for six months with somewhat lesser attention paid to what we proposed should follow. In the spirit of that time, and to some extent even of the present, it was wholly natural that members of the securities industry should rejoice at the prospect of immediate increased revenues while postponing worry about the drastic changes that will come later. It has also led to speculation that we didn't really mean it, or if we did, could probably be talked into changing our minds before anything too terrible happened.

In our mind, we are not proposing to do to the exchange community anything that would not be done to it one way or the other by somebody or other, probably in a less desirable fashion. But whether you believe that or not, our purpose was to stop arguing about what seems to be inevitable in the present structure of the industry and to start the countdown, hopefully stimulating constructive thinking rather than romantic fantasy. There is good evidence that such thinking has already begun, but only begun because I think that a realistic vision of an unfixed world comes rather slowly to most of you that have spent so many years in another system.

For example, we get questions as to whether, when commissions have come unfixed, a given firm will be permitted to post different rates in different parts of the country. That sort of question indicates the fundamental misconception. Our proposal is to take the Commission and the Exchanges out of the rate fixing business. When we are both out of the rate fixing business, individual firms will be able to post any rates that they can sustain under the antitrust laws. I suggest that many of you had better start spending more time with the antitrust partners in the firms that give you legal counsel. You will be faced with the same sort of problems that confront other companies that market a product on a wide scale in close competition. It will be necessary to avoid both the reality and the appearance of so-called predatory pricing, and you will have to discover through experience with the free effect of competitive forces whether your industry can live with price competition, that is to

say, whether one large firm can long sustain a price schedule that is substantially different from that of its most immediate competitor. You will have to learn whether different types of clientele and different combinations of services will sustain different price levels. You will also have to decide to what extent your own commission rates are to be negotiable. It has been a confusing misuse of terms to refer to unfixed commissions as negotiated commissions. This term made sense when fixed commissions were removed only for orders above $500,000 and then above $300,000, but it is wrong to use the term negotiated to refer to all commissions in an unfixed universe.

I cannot imagine, for example, that any firm with many branch offices would permit registered representatives or even branch managers to negotiate commissions on a 100 share trade if only because of the madness that this would create for the poor computers. On the other hand, I suppose that somewhere in the total pricing structure there will be a negotiable area, with authority to negotiate delegated to a certain person or certain persons. Whether the negotiable area will be designated entirely in terms of dollar magnitude of the order or on the nature of the customer and the services used by that customer—and whether the latter basis for designation will stand up under the antitrust laws—is something that you will have to discover.

That is the kind of discussion and thinking that is going to be fruitful for you in planning for the unfixed world of 1975. But there is more than just that to prepare oneself for that dread date. Some commentators have stated that the removal of fixed commissions on April 30, 1975 will mean the death of the securities industry as we know it. Such a statement obscures the fact that the industry as we have known it is dying anyway in the sense that radical changes are taking place and cannot be stopped. They can only be brought about in a constructive way. In this sense, we have not said that on a specific date eighteen months from now there should be a securities industry exactly as we have it now except operating without the fixed commission rate umbrella. The Commission's decision to end fixed rates is based on a number of facts, not the least of which is the realization that the markets of the future, no matter what we do in the rate area, will surely be radically different by 1975. Tonight I would like to explore with you some of the ways in which we see the market becoming different. And I should add that it is becoming different not just because of governmental action, whether administrative or legislative or judicial, but because of changes in the technology available for the conduct of business, changes in both the domestic and world markets related to securities and money, and increasingly imaginative thinking on the part of many members of the industry itself.

The direction of the cumulative changes is usually referred to as a central market system. It is easy today to get agreement among industry leaders that we are headed toward such a thing. There is difficulty, however, in getting agreement as to what its components will be, how we should get there, and particularly, which component should come first on the priority scale.

Let me suggest what I believe is generally agreed to be the components of the central market system and then spend a few minutes talking about some of the obvious areas of disagreement.

I think it is generally agreed that a sound central market system will involve multiple market-makers in different market centers of the country, all in electronic communications so that there will be a composite tape reporting on a real-time basis and in proper sequence all transactions in securities covered by the system, and a quotation system which will provide all members of the system with current information at any given moment as to the state of the bid and ask in several markets. It will be supported by a nationwide depository system with regional clearing and regional depositories in major financial cities. It will also provide all members of the system with access to efficient back office facilities, either on a single nationwide basis or by means of cooperative or contract back office services. The availability of such facilities should reduce, if not eliminate, the cost efficiency differential among all broker-dealer firms, large and small. This is a desirable feature if smaller firms are to remain competitive in a universe of unfixed commission rates. Such a central market system will take maximum advantage of available modern technology to provide liquidity and continuity and depth on a broader scale than we have ever known before. In the course of time it should be compatible with an international system that will link together all of the securities markets of the free world.

Now where are the disagreements in achieving this shining goal? Let us start first with the disagreements about some characteristics of the system. In its White Paper of last March on the Central Market System, the Commission viewed the central market system as including all of the registered national securities exchanges plus so-called third market firms. The third market firms would be members of the system, and pay certain user charges for that status, but would not be required to become members of any securities exchange. We thus envisioned competition through the central market system between the specialists on the several primary and regional securities exchanges and the third market-makers. This has led to serious disagreement with the New York Stock Exchange.

One reason is that we have not agreed that third market market-makers in the central market system should be denied the ability to deal directly with institutional purchasers. You will recall that for some years now the specialists on the New York Stock Exchange have been forbidden—by Rule 113—to take orders directly from institutional customers. They can only take such orders from other member firms. The New York Stock Exchange wants equal treatment for specialists and third market market-makers if they are to share in the central market system. They argue that unless this occurs the central market system might soon degenerate into a dealer market, over-the-counter style, rather than the auction market as we have known it on the exchange. They further argue that if Rule 113 were eliminated some major firms have stated that membership on the NYSE would no longer be interesting to them and they would go "upstairs" to become third market makers themselves. Thus their suggested solution is to apply Rule 113 to all market makers competing in the system.

The Commission, on the other hand, has expressed the view that the need for such rules is much less apparent in a system of competing market makers without a dominant specialist, and it has suggested the possibility that the rules be repealed when the regulatory need that prompted their adoption ceases to exist. We have also pointed out our difficulty in agreeing to a determination that requires an institutional customer to utilize the services of a broker whether or not in his judgment he needs such services. In fact, we wonder whether such rules would have any effect under a system of competitive rates, which would permit easy circumvention of the prohibition by permitting an investor to negotiate directly with a market maker and then paying a nominal commission to a broker for nominally participating in the trade. Regardless of what you think of these arguments, I think you can agree with me that the debate has not ended.

The ongoing debate has also involved questions of priority. For example, the view has frequently been expressed that prior to implementation of the composite tape it would be desirable, if not essential, that a set of equal or at least comparable rules be applied to all markets that will be reporting on the tape. We have not been insensitive to these views and in fact have stated that it may well be possible for a good many of these regulations to be fashioned before the tape commences operation, although we have not agreed that these regulations are an essential prerequisite to such operation. The New York Stock Excchange has taken a constructive step by preparing a document which sets forth the major areas in which it believes greater uniformity among market centers must be imposed. This paper is a useful check list and can help expedite our work in coordinating the formualtion of appropriate rules for all market centers in the system. In this area, too, we look forward to continuing give and take.

Meanwhile, there are exciting developments in the area of processing securities both in clearance and in depository arrangements. It is not too much to hope that within perhaps a year there will actually be in existence such a national clearing system based upon the National Clearing Corporation of the NASD and the Stock Clearing Corporations of the several exchanges, including the arrangements recently announced by the Securities Industry Automation Corporation.

There are of course even more imaginative persons some of whom have published their ideas and who should be well known to you, who think that even this concept of a central market system is too shortsighted. They imagine, in addition to centralization and unification of the mechanical facilities for trading and clearing in securities, a reduction in the number of governmental and self-regulatory bodies having responsibility for supervision of the securities industry. It has been suggested by responsible people, for example, that a new entity of a quasi-official sort should be created, to take over the functions of SIPC, NASD, the various securities exchanges and all of the stock clearing and depository arrangements plus the market regulation activities of the SEC, all in a single package—resembling various aspects of the Federal Reserve Board, the FDIC, our present SIPC and COMSAT as well as the NASD.

Some of these ideas are designed, or would at least result, in the restructuring of the securities industry in a fashion that might provide a sound basis for a so-called public utility approach to the securities industry and its rate structure. I do not know whether many of you would really prefer to be engaged in a true public utility-type industry if given a choice. It would require among other things that the components of the industry be sufficiently concentrated in brokerage activity as to facilities and expenses and revenues so that a reasonable approach can be made to estimates of revenues necessary to cover costs plus reasonable return on capital. This is certainly not true of the industry today. Such a system could never resemble our electric or gas utility rate making, where a different rate is established for each company in the industry. It would probably more closely resemble telephone, airline or railroad ratemaking, and I don't know whether contemplating this fills you with real enthusiasm for the idea or not.

A recent proposal, wherein a Federal Reserve-type supervisory authority could be set up to govern the execution function alone, leaving the rest of the services provided by brokers to be compensated on an annual flat fee basis, also has stimulated interest. Although this has the advantage of removing the conflicts, actual and psychological, of the system of compensation by transaction, it

still leaves the problem of allocation of costs and reasonable return.

This flow of ideas is healthy and necessary if the industry is to thrive and prosper. We are not willing to reject any of these suggestions without carefully considering whether they offer the prospect of a meaningful and appropriate structural overhaul of the securities business. Almost without exception, I have been confronted with the question whether our receptivity to these theories means the Commission is less than completely committed to our conclusion that fixed rates must fade away on April 30, 1975. My answer is no. Our conclusions concerning an appropriate framework for the elimination of fixed commission rates, however, were developed in the context of the structure of our securities markets prevailing today. Factors such as individual member firm profitability, or lack thereof, will not prove a persuasive argument for those seeking to have us abandon or delay the clearly-defined course toward competitively-determined commission rates we have charted. On the other hand, it is not inconceivable that if a major alteration in the industry's structure, if palatable to all concerned, including the Congress, can be found—as opposed to mere changes in member firm profitability—our conclusion on fixed rates might warrant another look. Of course, such a restructuring would necessarily involve architectural revamping far more drastic than our present working blueprint for a central market system.

The important thing to bear in mind is that it is a time of exciting change and challenge for the securities industry in the United States. I would urge you to look upon the future in that spirit and to accept the fact that the SEC is not out to destroy the securities industry. It has in the past and may well in the future thought it necessary to cajole, needle, and even push and shove various components of the industry toward a realization of what the future must bring. This is not done because we have thought or do think or will think that the securities industry of the United States is a collection of evil people to be harrassed and punished. While enforcement and punishment is an unavoidable part of our duty, our total objective, and yours, is the public interest and the interest of investors of the United States. The maintenance of our capital system, the preservation and encouragement of growth through the access of new and smaller companies to reasonable equity markets are all essential to that public interest and the interest of investors. It pleases me greatly to become familiar with the ever growing hard thinking and work in planning that your industry is providing for itself and for the public interest in these times. I urge all of you to shake off any feeling of oppression or doom and get caught up in the excitement of what we are on the threshold of achieving.

TRIBUTE TO EDWARD H. LEVI

Mr. PERCY. Mr. President, the seventies have seen difficult times for higher education, as institutions across the country face rising costs, dwindling enrollments, mounting deficits and increasing ambivalence and uncertainty about future direction and purpose. In its final report the Carnegie Commission on Higher Education warns that:

A new generation of leadership is required if higher education is to design its future and not merely live within the framework that others will have built for it.

A man who personifies such leadership is Edward H. Levi, the president of the University of Chicago. Under Dr. Levi's resourceful leadership the University of Chicago has exemplified continued vitality, a clarity of purpose, independence, effective governance and a dedication to academic excellence.

My colleagues may be interested in the remarkable story of Edward H. Levi at the University of Chicago. I ask unanimous consent that an excellent Chicago Sun-Times article on Mr. Levi be printed in the RECORD.

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

[From Chicago Sun-Times, Oct. 21, 1973]

THE CASE FOR ACADEMIC ARROGANCE

(By Roger Simon)

Through the V formed by the black wingtip shoes propped up against the desk in front of him, the president of the University of Chicago was barely visible. Edward H. Levi slouched deep in his chair, spoke quietly:

"A great university is not like a talking dog. With a talking dog, everyone is so amazed it exists they don't care what it says. The significance of the University of Chicago is not just that it exists in these times, but that it is saying something worthwhile."

Levi is the eighth chief executive of what he calls one of the last great universities in existence. He is a man at the top of his profession, a man described variously as "cold . . . calculating . . . difficult . . . intimidating . . . relentless . . . frightening . . . devastating . . . impersonal . . . and downright nasty."

Those words come from his friends, who credit others with making the appraisals—"Now some people think that Levi is . . ." or "Some dissidents believe that Ed can be . . ." or "The students feel that Levi is . . ."

But Levi is known as a warm and affectionate colleague, a man of deep humor and compassion despite an arrogance and pride—words, not surprisingly, he used to describe his university.

"We are self-destructive and critical, but there is also our arrogance and pride. We are unique, the most unique university in the U.S.

"I find it incredible . . . that high-school students on the North Shore think that the University of Chicago is really the Circle campus . . . but I don't think that we should be surprised about ignorance," Levi told the school newspaper. "I feel we should be grateful for the little amount of wisdom there is around the country."

Of course there is a difference between the University of Chicago and such schools as the Circle Campus of the University of Illinois. And the thought that everyone doesn't know that is sometimes more than the folks on the Midway can bear.

The difference between Chicago and other schools is expressed in three main areas: the university's relationship to the outside world, the relationship of research and teaching, and the university's mood, a special milieu that is firmly believed to be one of the university's greatest strengths.

"Well, it's not that it's a monastery here," said university provost John T. Wilson. "Many of our departments have to deal with real problems, but not in the modern sense of relevancy. We don't sell our services to the world. A university should not be the place to solve the world's problems."

That would be heresy to most universities. The University of Illinois, for example, is enormously proud of its cooperative extension program that provides advice and service to every county in the state, agricultural advice in rural areas and such things as nutritional programs in the urban areas.

That is just one program of "relevancy." Universities across the country are intensely involved in programs addressing directly the problems of poverty, crime and pollution—to name a few.

While the University of Chicago believes those are good things to wipe out, it is not the university's prime concern. "Our concern," said Wilson, "is maintaining an intellectual base in the country."

There is some internal conflict, now under study, at the university, because the campus does contain professional schools designed to produce people for specific jobs. But even these schools take on the particular University of Chicago flavor.

"Our professional schools are faculty-research oriented," said Walter J. Blum, a law professor. "That doesn't mean we don't teach kids how to be lawyers, but that has never been our emphasis."

The professional schools exist chiefly to explore and research the deeper questions of their crafts, and the university prides itself that it is a "teacher of teachers," that a large number of its students become college professors and continue their research and exploration.

"Other schools have ideas that are so different than ours," says Levi. "They believe research shouldn't be pure research, but applied research—controlled. People believe if you pour enough money into something you'll get a desired result—the Sputnik theory. People have ceased to believe in the importance of discussion and have decided that knowledge and inquiry are harmful."

The second difference involves the relationship of this research to teaching. At many schools, the research and teaching are separated and compartmentalized. Levi is striving to break down those walls at his university.

The university was founded on the principle that while it was primarily a research institution, there is no conflict between research and teaching, and out of that belief the campus was founded as a university rather than just a college. It is one of Levi's beliefs that the teaching process is an aid and an actual facet of research.

"Whitehead once said, 'knowledge is like fish; it must be kept fresh,'" Levi said. "Students have to realize that what is being discussed in the classroom is in the process of being thought through. That is not inconsistent, but it is rather the essence of undergraduate teaching."

"When you say this is a research university—which it is, which it started out as—that is not something separate from learning. The discovery of subatomic particles is not something to keep away from undergraduates.

"Students are not only taught by faculty. The undergraduates don't realize that in the classroom they are sitting with graduates, also. They don't find that unusual, but at other institutions things would be rigidly defined. The so-called elementary course, in which Herr Professor lays down preliminaries, is something I don't have much admiration for."

Essential to this, of course, is to have senior faculty members, those actually doing the research, also teach. This is a task many universities allow faculty veterans to duck, but not at Chicago. One of Levi's main accomplishments, his colleagues say, has been increasing pressure on senior faculty members to teach.

"This is what was happening in the '20s and '30s," said Leon Jacobsen, dean of the division of biological sciences. "This is why I call what Levi is doing a renaissance. It is a movement back to the '30s and before."

And this renaissance describes the third difference, the mood of the university. "Most of Mr. Levi's predecessors have had comparable views, but the milieu, the climate, have the atmosphere has changed from Hutchins on up," says Blum, the law professor. "It's primarily there that Levi's changes have been found."

And along with the renaissance—the restatement of the old goals—there has come with Levi the logical turning inward which must accompany it. The university is there neither to save the world or the neighborhood, but to save itself, and in so doing "maintain the intellectual base of the country."

"One of Levi's important strengths is to view the university as an institution, as a whole, all striving toward a goal," Blum said. "If the faculty does not have an institutional commitment, little dynasties grow up and it's very hard to unseat them without an explosion."

Levi has been at work breaking down the little dynasties of the university, and according to two administrators, has set to work in reducing the autonomy of department chairmen.

He is striving for a coherence, for only with that can the university decide how it can save the past while entering the future. All aspects of the university—all changes—are examined in relationship to the university as an institution, and it is then decided whether those changes fit the institutional goal.

"Levi creates a presence" says Robert B. Uretz, deputy dean of the division of biological sciences. "He articulates our goals, the goals of a great private university. He determines our mood and direction."

And the direction, the path, is not an easy one. There is a story that Levi tells which his colleagues are fond of quoting:

Emperor Constantine wanted to rebuild the decaying structures of Constantinople and ordered that architecture be taught in the schools in order to produce men to save the city. But the city, which had been designed by the old architects, continued to crumble and by the time the new architects were ready, no one cared anymore and there was nothing left to save.

The lesson is clear. In satisfying the short-term needs of society you often end up by curing nothing, because needs and moods change. What Constantinople needed was men of vision, men—the moral implies—of the kind that the University of Chicago is producing.

The words of Levi are the words of the university; his ambitions are its ambitions, his failings—its failings. He is now and past. Through him the old tradition established by William Rainey Harper is alive and well in 1973 and the word "renaissance" is used without embarrassment to describe what he has done. "I believe," says Roger H. Hildebrand, former dean of the university college, "that Levi is the most brilliant president since Harper—and I guess that's not a very gracious thing to say since we have living presidents."

Ungracious, perhaps, but a much repeated comparison. Later that day, Levi would be compared favorably with Enrico Fermi.

Levi has never been far away from university influences. He was born June 26, 1911, in the university community, then a neighborhood of large houses and quiet streets, a neighborhood of prosperous German Jews where one could live in comfort and nourishing intellectual climate.

From age 5, when he entered kindergarten at the university laboratory school, to 1932, when he received his bachelor of philosophy degree, Levi was never separated from the University of Chicago system. He left the fold only once, when he went to Yale University for a higher degree in law, receiving that in 1938.

He was already an assistant law professor at Chicago when he went to Yale (clearly an interruption, not a striking off to greener pastures) and in 1950, at the age of 39, he became dean of the law school. That was the year that Robert M. Hutchins left the university after 21 stormy years as its president and chancellor.

Hutchins had taken over the leadership of the university in 1929 and at the age of 27, the youngest chief executive ever to be named to run a major university. Under him the university had undergone a brilliant invigoration during which money was spent freely in an atmosphere of intense academic freedom and outspokenness.

He was succeeded by Lawrence A. Kimpton, and the university entered a period of retrenchment. A decision was made to remain in Hyde Park, an area that had been steadily disintegrating since the early 1940s. Landlords cut up large apartments to make more money during the housing-short war years. If the university was aware of what was happeneng, it did nothing.

By 1950, whites began to leave Hyde Park in large numbers. Over the next six years, 20,000 whites left the area and 23,000 nonwhites moved in. The racial population changes from 6.3 per cent black to 36.7 per cent.

"It was the problem of the City of Chicago," said Levi, with a wry smile. "I guess some people thought it was time to move to the suburbs."

And then came the threat of a death blow—the faculty began to leave. "I was trying to convince a medieval historian to come to the university from Oxford, and he was shocked," Levi said. "He said that asking him to come to the Midwest was bad enough, but Hyde Park was too much."

The university didn't leave for the suburbs. It stayed and started a program of investment and renovation of the community (headed by Levi's brother Julian), a program that is still embroiled in controversy today.

Along with neighborhood deterioration came an erosion of funds. "The university was considered very radical at that time and we had a hard time getting money," Levi remembers. The pressure for new sources of money resulted in an ever-increasing dependence on government funds, and an uneasy awareness that such a course threatened independent academic research and the very foundations of the university as set forth by William Rainey Harper.

"I would like to think that our approach on staying (in Hyde Park) was like our approach on the sit-in," Levi said of the two-week student protest in 1969. "There are values to be maintained. We are not bought and sold and transformed by that kind of pressure. Maybe it's a losing game. I don't know."

Levi and the university are committed to the theory that reason is the indispensable tool for mankind's survival and well-being, and that the university exists to increase the intellectual understanding and powers of mankind. And that is all that it exists for. It is not here to develop manpower resources—to create your nuclear scientists, or architects. It is not here to increase the earning power of its students, or develop inventions for industry, and it is not here to be a redevelopment agency for the South Side of Chicago.

And while the students and faculty might individually have social and political commitments, the purpose of the university is intellectual, not moral.

And if you don't like it, so goes the university's and Levi's position, there are other universities people can turn to, but there is no other really great university.

That is Levi's renaissance program: the reviving of the basic program of the university, the restatement of basic goals, the refitting of a theory advanced in the 1890s to the world of the 1970s.

"I never lose sight of the fact that someone in my division is doing plant physiology," says Uretz. "And my responsibilities are just as important as curing cancer. If I lost sight of that I'd be in trouble with the president of the university."

It seemed so right to hear these things under the oaken beams in the dining room of the Quadrangle Club where, between spoonfuls of rice tomato soup, are heard the click of billiards being played by the professors in the next room.

It seems right until you try, later, to explain the University of Chicago, and someone asks you, "Do you mean this guy is saying some goddam marigold is as important as curing cancer?"

Levi is the chief defender of the faith and the leader who has held out over the years against public sentiment and government dollars—what he calls "short-term action problems." He has held out, fearing that the university would backslide and become like the other universities and, in so doing, join what he calls, "that great celebration of mediocrity."

Things can be done at the University of Chicago that at other institutions would be considered frivolous and unimportant. The university lists with no small pride the nearing of completion of the Assyrian dictionary, begun in 1921, which will comprise 21 volumes. And if you ask Levi which is more important, the first sustained atomic chain reaction by University of Chicago scientists, or the Assyrian dictionary, prepare yourself for a shock.

Levi's great strength has been to preserve the past with the skills of today, one of which is his considerable managerial ability. In these times of rampant cost increases, he held the 1970–71 budget to a 3.6 per cent rise over the previous year and the 1971–72 budget to an even smaller 1.5 per cent increase. That compares with the 1960–1971 period that saw a 165 per cent budget growth.

Equally significant is the decline in federal funds received by the university, from 29.1 per cent of the total budget in 1969–70 to 25.3 per cent in 1971–72. The difference is made up by money from other nongovernmental sources. Levi who raised $160 million from 1965 to 1968 is about to kick off a 10-year $250-million fund drive.

Levi does not "glad-hand" the money givers, does not promise to name buildings after them or necessarily even do what they want with the money. "We make the assumption that people with money actually do want to do good things with it and not really build monuments to themselves," Levi said. "The university is the trustee of an important human endeavor, and that is important not only to us but to others as well.

"We don't give honorary degrees to make money and we don't raise money by inviting people to football games."

And the university never sells out its principles to gather money, says Levi. In fact, it frequently turns down money. He sadly described a program designed by the university, the Woodlawn Organization and the Board of Education to open schools in the Hyde Park area after hours to teach students, using community people as instructors.

Foundation money was lined up, but the foundation said it would give the funds only if the program was reshaped to teach values of the free enterprise system.

"I told them I was terribly sorry, but that I wouldn't touch it with a 10-foot pole," Levi said. "The program would have been a fraud and everyone in the community would have known that."

Foundations and the government are making a terrible mistake in granting their funds, says Levi. "The trouble is they say, 'Here is the result we want. Hire the faculty and get us the result.' That is a complete misreading of intellectual work; that is not how discoveries are made.

"They say work on pollution, but what the hell does that mean? What kind of pollution? We have to ask the right questions before we can find the right answers. You don't sit Dr. Land down in a room and tell him to invent the Polaroid camera."

The Regenstein Library, built in 1970 at a

cost of nearly $20.5 million, is not looked upon as a monument to the university's ability to gather money to build great buildings, but as the key to scholarship. Levi describes Regenstein as one of the university's great accomplishments because it provides the facilities for basic research, which is absolutely necessary to keep and attract top faculty.

The university's commitment to research and reason is not only seen by some faculty members as being challenged from without but, in past years, from within.

And those who really knew the university were not surprised at the university's reaction to the sit-in of 1969. For 16 days Levi did nothing visible when students occupied the administration building. He just moved his office elsewhere.

But he gathered the faculty and deans and kept them in almost constant meetings and communication. Again, without taking presidential action, believing that the university's great strength lay in its faculty, he persuaded them to take the responsibility.

Eventually 43 protestors were expelled and 81 suspended after the demonstration petered out.

It should not have been a surprise. A demonstration of this type was not just a blow against the university but, Levi believes, against the powers of reason, to which the university was dedicated. It was a gut punch.

"I've never really talked about it before," Levi said in his office. "But I think it was a shock to many that we took it seriously. Some universities believe in rational discussion. Most don't. They believe in manipulation, power structures and leverage."

For Levi, neither the sit-in nor the demonstrators' demands amounted to a rational approach, yet the sit-in did leave lasting impressions, not the least of which was a continuing strain between Levi and the students.

"Some myths die hard," said former dean Hildebrand. "Some imagine that the expulsion of the students was Levi's big triumph and that it made him, but as usual he forced the deans and the faculty to take the responsibilities."

"Students are a little afraid of Levi," said Hildebrand. "They ask a question and he comes back with a terribly penetrating counter-question. The Maroon (the student newspaper) will say he is remote, inaccessible and cold, but that is understandable. To develop a close relationship with him, you must lucidly stand up for what you believe in."

There is the further feeling, among students primarily, that Levi, either by scheduling or personality, is inaccessible. "He's a very private person," said Uretz, the deputy dean. "You don't visualize him as one of the boys."

"Students think highly of him, but he's so smart that you've got to be articulate to deal with him," Jacobsen said. "I suppose the dissidents on the faculty believe he is too impersonal."

"Thank God we don't have a football team," said one student. "I can't imagine Levi on the 50-yard line, waving a pennant."

Students believe it is important that Levi be accessible because he is the man with the power—that either he should come down out of his office or they should have ready access to it. And Levi cares what they think.

Levi sat in his office, a large but not lavish place, torturing a rubber band between his hands and gazing out the window on the gloomy, gray Quadrangle. "I do not believe the students thing I'm accessible." He paused. "They're right, I suppose. They're right.

"It makes me think sometimes." Another pause and the room fell silent. He turned from the windows. "When they can see Saul Bellow or me, why do they want to see me?" he asked quietly.

He turned and, his moment of self-doubt over the day, Edward Levi went back to work.

THE CITY AS A MORTGAGE BROKER—HOBOKEN, N.J., ADOPTS AN INNOVATIVE HOME IMPROVEMENT PROGRAM

Mr. WILLIAMS. Mr. President, during the past year, much has been said by this administration concerning the failure of our Nation's federally assisted housing programs. The President, as we all know, has brought these programs to a halt by impounding funds and has thus created a chaotic and, in my opinion, intolerable situation. Funding for low- and moderate-income housing has been arbitrarily cut off throughout our Nation, adversely affecting those people who need adequate and decent housing the most.

During the 10 months of crisis which has followed the President's actions, far too little has been said about how our Nation's cities have successfully used Federal housing funds to create innovative programs—programs that have provided housing of which we can all be proud. Therefore, I recommend to all of my colleagues the excellent article in the September 1973, issue of Nation's Cities entitled "The City as a Mortgage Broker—Hoboken, N.J., Adopts an Innovative Home Improvement Program," by Mr. Ivan Silverman.

In his article, Mr. Silverman clearly and succinctly points out how Hoboken, N.J., through its Model Cities program has reversed the trend of abandoned buildings and blight which now affect all too many of our cities' urban cores. This was accomplished by the city becoming its own mortgage broker and focusing on existing housing rehabilitation. In this manner rents were made cheaper and neighborhoods more attractive. As Mr. Silverman in his article states:

After handling basics like plumbing, wiring, and heating, Hoboken homeowners have used HIP funds to remove plaster from walls and expose the brick beneath; to open up closed fireplaces; and to plant trees. One Hoboken resident used part of the low-cost money to erect a turn-of-the-century gas light outside her elegant turn-of-the-century home.

To make sure that tenants, as well as landlords, receive the benefits of HIP resources, the program requires owners to offer apartment dwellers a two-year lease; to accept a limited return on their property; and to sign a non-eviction agreement.

In conjunction with low-cost home repair money, HIP agreements have helped stabilize the rental market in Hoboken.

Mr. President, the experience of the city of Hoboken, without a shadow of a doubt, show that under imaginative and innovative leadership our Nation's federally assisted housing programs have and will work. I wholeheartedly recommend Mr. Silverman's article to all Members of this body.

Mr. President, I now ask unanimous consent that the article entitled, "The City As A Mortgage Broker—Hoboken, N.J., Adopts An Innovative Home Improvement Program" be printed in the RECORD.

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

THE CITY AS A MORTGAGE BROKER—HOBOKEN, N.J., ADOPTS AN INNOVATIVE HOME IMPROVEMENT PROGRAM

(By Ivan Silverman)

Like many older urban areas, Hoboken, N.J., faced a housing problem of crisis proportions in the mid-Sixties. The city's antiquated building stock was in decline. Property taxes were on the rise. Abandonment was beginning to take its toll.

Recently things have changed for the better in Hoboken, a mile-square municipality on the western banks of the Hudson River opposite New York City. Within the past two years the community of 45,000 has begun to reverse the erosion of its living resources.

In no small measure, Hoboken's turnabout is traceable to its Municipal Home Improvement Project—a home-grown, anti-abandonment unit that has turned the city into a mortgage broker of last resort.

The new program, known locally as HIP, was established in 1971 by Hoboken's Model Cities agency, following an in-depth examination of the city's housing situation.

The core of Hoboken's housing problem, the agency's analysis revealed, lay in the virtual absence of bank financing essential for major housing renovation and repairs. A National Urban League study of housing abandonment in seven cities, conduced in 1970, arrived at similar conclusions about Hoboken's housing picture.

After interviewing local bankers and real estate brokers, Urban League analysts reported that "no conventional mortgage funds are available anywhere in Hoboken for the improvement of existing buildings." Building owners, in other words, had to deplete their savings accounts, or borrow from in-laws, if they wanted to improve their dwellings.

A second crucial point united the investigators. Hoboken has an extremely large number of resident landlords in buildings with one to four units. This on-site owner group could provide the backbone needed in a battle to save housing in Hoboken, Model Cities planners and Urban League analysts agreed.

In 1960, nearly two-thirds of Hoboken's residential structures had owners on the premises—just about the highest landlord live-in rate in the nation. By 1970 the rate had slipped to 60 per cent as many owners abandoned their homes. But it was still exceptionally high.

"The owner-occupancy rate began to curve down in the middle Sixties," Michael Ehrmann, HIP coordinator, says. "We wanted to curve it back up."

As the high, live-in landlord rate suggests, Hoboken has its share of stable neighborhoods—blocks where women polish brass door knobs on Saturday mornings while men sweep the pavement before their homes.

From the outset, HIP's objectives were clear. It had to fill Hoboken's financing vacuum by providing funds for major home renovation. And it had to aid the city's resident landlord population in the fight against abandonment.

From the start, HIP received crucial assistance from Hoboken's civic leaders and governing body. Mayor Steve Cappiello and his predecessor, Louis DePascale, provided backing needed to gain HIP broad support in the community.

To achieve these goals, Martin McCarthy, a New York-based lawyer and housing consultant to Model Cities, devised a deceptively simple plan. McCarthy suggested the use of a two-tier public sector-private sector financing system. Under this approach, building owners receive a "free" interest-reducing grant of money in combination with a conventional bank loan or mortgage.

To illustrate: On a $6,000 home repair job, the homeowner receives a $1,000 non-repay-

able grant. When combined with a $5,000 bank loan, due in seven years at a 7 per cent interest rate, the effective borrowing cost is approximately 3 per cent.

To implement the McCarthy plan, Ehrmann and McCarthy examined several approaches. They considered raising money by selling bonds. They weighed the possibility of working with New Jersey's Mortgage Finance Agency (a unit that sells tax-exempt bonds and then loans the proceeds at low-cost rates to banks, which in turn offer low-cost mortgages). They also looked at the possibility of establishing a loan guarantee fund, as one way of encouraging banks to lend Hoboken homeowners money.

These ideas are still under review. They may be useful later, McCarthy believes. To start, however, HIP settled upon a streamlined plan. For private sector funds the project turned to bank monies available through existing federally insured programs, among them Title I of the 1934 Housing Act and FHA-backed mortgages. For public sector grant funds, the project used money from Model Cities' $2-million annual supplemental budget.

HIP is essentially home-grown. Nonetheless, it does resemble in some important ways Section 312, the Federally Assisted Code Enforcement program (FACE). Like FACE, which is being phased out by the government, HIP focuses upon housing rehabilitation, rather than new construction. Both programs make 3 per cent loans available for major home renovation—although FACE doesn't use the grant/loan system. Both programs are linked by the notion that low-cost money should be available to correct code violations. Beyond this point, however, the paths diverge.

HIP was specially constructed to meet Hoboken's specific problems and to build upon, and preserve, the city's specific strengths. Thus the project limited the use of its grant funds to owner-occupants of Hoboken dwellings. This is not an extreme limitation since 2,400 of Hoboken's 4,100 residences have landlords on the site. (Larger buildings, without on-site owners, are being renovated through other programs, including HUD's Project Rehab.)

In addition, HIP decided against becoming simply another code enforcement project. Once a list of repair guidelines has been met, HIP monies can be used for any reasonable purpose. Code infractions, in other words, aren't a pre-requisite for HIP loans.

"We wanted to promote project amenities to make Hoboken's neighborhoods more attractive. We also wanted to avoid discriminating against owners who had been meeting code requirements," Martin McCarthy says.

After handling basics like plumbing, wiring, and heating, Hoboken homeowners have used HIP funds to remove plaster from walls and expose the brick beneath; to open up closed fireplaces; and to plant trees. One Hoboken resident used part of the low cost money to erect a turn-of-the-century gas light outside her elegant turn-of-the-century home.

To make sure that tenants, as well as landlords, receive the benefits of HIP resources, the program requires owners to offer apartment dwellers a two-year lease; to accept a limited return on their property; and to sign a non-eviction agreement.

In conjunction with low-cost home repair money, HIP agreements have helped stabilize the rental market in Hoboken.

"With access to 3 per cent funds, homeowners aren't forced to jack up rents in order to meet remodeling costs," Martin McCarthy points out.

To get its program off the ground, HIP had to go outside Hoboken to develop new financial sources for local residents. Banks in Jersey City, a mortgage banking firm in Plainfield, and other capital sources were tapped. Recently, however, Hoboken banks have become active in making loans through the HIP program.

"After watching out-of-town banks doing business in Hoboken, the local bankers began getting back into the market," Michael Ehrmann says with a trace of irony.

To lower borrowing costs on the newly available capital, Model Cities initially used HUD supplemental funds as interest-reducing grants. In April 1973, after completing nearly 50 successful home repair jobs, HIP received a special $200,000 grant from New Jersey's Department of Community Affairs to expand its grant-loan program. The new funds represented a breakthrough for HIP—and something of a breakthrough for the department.

"In the past, we've concentrated upon funding large-scale Rehab projects, rather than working through individual homeowners," says Cynthia Jolson, program manager of the department's division of housing and urban renewal. "The Hoboken grant is a trial balloon. If it works there, we may well go statewide with the concept."

The Community Affairs grant, combined with about $1.25 million in "private" funds which it will generate, will provide low-cost loans for about 200 Hoboken homeowners this year. With these funds, and with this program, the city of Hoboken has, in effect, become a mortgage broker.

Although long-term results are not yet available, the program has already made its presence felt locally. At least in Hoboken, home repair fever seems to be contagious.

In the future, in light of the increased flexibility expected to be given to cities through bloc grant funding, HIP may be of more than local interest. Cities wishing to support housing development and to preserve their older neighborhoods, might consider developing their own home-grown, public sector/private sector programs.

Officials from several New Jersey municipalities—including Newark, Asbury Park, and Elizabeth—have visited Hoboken recently to examine the HIP blueprint. And, lawmakers interested in housing and urban affairs have been in touch with Michael Ehrmann and Martin McCarthy. The legislators say that HIP's approach to home repair just might be the prototype for housing laws of the Seventies.

INTERPRETER'S KIT MAY SAVE THE UNITED STATES THOUSANDS OF DOLLARS

Mr. TUNNEY. Mr. President, I ask unanimous consent to have an article printed in the RECORD concerning legislation which I have introduced (S. 1724) to provide for simultaneous translation of proceedings in certain district courts of the United States.

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

[From the San Antonio Light, Oct. 21, 1973]

IDEA FOR INTERPRETER'S KIT MAY SAVE THOUSANDS

(By Ed Castillo)

A San Antonio man has developed an interpreter's kit to be used in court-room procedure that could save the government thousands of dollars.

Louis F. Marquez, official court interpreter for the Federal Western District of Texas, Monday will demonstrate for the first time in U.S. District Court here a kit to help persons lacking in the English language which was developed "through sheer necessity."

RETIRED SERGEANT

Marquez, a retired senior master sergeant has been official court interpreter for two years in U.S. District Court and U.S. Magistrate's Court. He has, however, been a professional interpreter-translator for 19 years.

At the request of Chief U.S. District Judge Adrian Spears, Marquez began to jot down ideas for an apparatus which would allow him to interpret for defendants in a court room without disturbing other court officials or jury members.

Marquez discussed the matter with U.S. District Clerk Dan Benedict, who made several sketches which eventually were turned over to technicians at Southwest Sound Electronics. A compact electronic component which includes microphone jacks and four individual ear-phones was developed. The entire system fits neatly in an official Government issue brief case

Marquez first demonstrated the interpreter kit before the Senate Judiciary Sub-Committee which has been holding hearings in connection with the Bilingual Courts Act which will soon come up for consideration by the U.S. Congress.

BOOTHS STUDIED

Marquez explains the committee members had at first considered translator booths which would be installed in court rooms throughout the land at a cost of $30,000 each adding up to a total of about $500,000. The kit developed by Marquez costs $192.85.

The kit is simple to operate and to install. All that is needed is an electrical outlet. The interpreter then slips on a head-set with a small microphone. Earphones for as many as four persons can be used. The interpreter, in a low voice, translates as proceedings go ahead without interruption.

In his two appearances before the committee in Washington, Marquez has submitted the various techniques he uses in federal court here including regular or simultaneous interpretation.

Says Marquez, "For years, courts throughout the land have relied on part-time interpreters, or maybe an elevator operator or passer-by who is picked up and used in a pinch. This does not get the job done and does not offer a defendant a fair and thorough hearing or trial."

Marquez feels a court interpreter in such areas as New York, California and the Southwestern United States, is just as important in a court room as any of the other officials present during hearings or trials for defendants that do not speak or understand the English language.

Says Marquez, "The courts, at all levels, need professional interpreters that are fully qualified. It is important to have competent translators who are proficient in whatever language is required. In Texas, of course, it would be English and Spanish with the interpreter being able to interpret simultaneously."

NORMAL FEARS

In testifying before the Senate Sub-Committee which is headed by Senator John V. Tunney of California [sic, Senator Quentin N. Burdick is chairman of the Subcommittee] and is presently working on the Bilingual Courts Act, Marquez said the apprehensions and frustrations brought about by the language barrier are "awful feelings to bear during the normal course of normal living."

He declared, "But when a non-English speaking person is faced with the possibility of losing his freedom or his property, and is not able to effectively defend himself for not knowing the English language, his anguish becomes such that he could even lose his sanity to say the least."

Marquez feel the enactment of the Bi.ingual Courts Act, which would make court interpreters mandatory where required, will "favorably affect thousands of people in this country by allowing them to fully participate in our federal judicial system, and to enjoy the same constitutional rights that other Americans have been enjoying for years."

WAR POWER RESOLUTION VETO OVERRIDE

Mr. WILLIAMS. Mr. President, for the past 3 years, I have been a sponsor of legislation which would clarify the war powers of Congress and the President, so I am most gratified that the Senate and the House have overriden the veto of the President on the War Powers bill.

My deepest regret is that I was unable to be present to cast my vote on that override, although my position in favor of such action is recorded and my vote was not needed for the final action.

However, earlier that day I had gone out of town to accept an engagement to discuss Labor and Public Welfare Committee legislation after being assured that no votes were expected that day. When informed of the vote, I rushed back but, because of an hour delay in my flight, I arrived back in Washington shortly after the vote was completed.

I would like to take this occasion to applaud the Senate and House in passing the bill over the President's veto.

Contrary to the contention of the President, this legislation in no way prevents him from acting decisively in times of international crisis. It would leave intact our national ability to defend ourselves, our allies and our overseas embassies, bases and citizens in the event of sudden attack.

What it would prevent is a repetition of the disaster in Southeast Asia which saw an undeclared war drag on for years and years with a loss of more than 55,000 American lives and a massive toll in public confidence within our Nation.

Mr. President, I fully share the feelings of my colleagues that this bill simply states legislatively the intent of the framers of the Constitution.

By preserving to the President the power to respond to emergencies, it does not infringe on his constitutional designation as Commander in Chief, and by requiring congressional authority to commit U.S. forces within 60 days after the onset of attack or emergency, it preserves the constitutional power and obligation of the Congress to make a final determination of a declaration of war.

I regard this as one of the most important pieces of legislation approved by this Congress. It is a serious, well-reasoned legislative mandate which could avoid a repetition of tragedy in the future.

FOOD ACTION CAMPAIGN

Mr. ABOUREZK. Mr. President, American consumers have been shellshocked by this year's skyrocketing food prices. Yet, family farmers out in my part of the country still are having a tough go of it. It is a curious agricultural policy that can produce that paradox.

What is going on here? To help us understand it better, two organizations—Agribusiness Accountability Project and New Populist Action—have created a food action campaign to talk to people about a little-known segment of the food economy: the middleman. Traveling throughout the country during the past 3 months, speaking before groups in dozens of cities, the food action campaign has done a commendable job of enlightening people on the nature of today's food economy. Their message is a sound one, an important one, and I only wish more people could hear it.

Two-thirds of the consumers food dollar goes to corporate middlemen—processors, marketers, and retailers. Increasingly, that middle sector is monopolistic, and the power to squeeze both farmer and consumer. The food action campaign has revealed these interesting facts:

There are 32,500 food manufacturing firms, but 100 of those make 71 percent of the profits;

On the average, four firms in any food line will control 55 percent of the relevant market;

Already, six firms handle 90 percent of the world's grain shipment, four firms control 75 percent of the bread market, three firms dominate 85 percent of the breakfast cereal industry and one firm sells 90 percent of all soup.

That power is growing stronger. It affects every one of us. Family farmers are being squeezed out of business at the rate of 1,000 a week, despite their unmatched efficiency and productivity, with thousands more being "vertically integrated" into the corporate structure of processing and marketing firms. The Federal Trade Commission, in an unreleased 1972 staff study, found that the lack of competition in just 13 food lines had cost consumers an additional $2 billion.

Agriculture Secretary Butz tells us that the day of cheap food is over, that we will just have to get used to paying a premium for eating. But who are we paying? It's not going to be farmers. Already, the farm price of food is falling rapidly, but recent Government statistics show that the food processors and the chain grocers are not passing that drop in price along to consumers. The gap between the farmer and the consumer is growing wider.

The food action campaign is shedding light on this issue of critical national importance. It is a major public service that they are performing, and the Agribusiness Accountability Project and New Populist Action deserve the thanks of consumers and farmers alike for bringing this issue to public attention.

Having reached people with their message, the question now is whether government will respond. It is time for action in Washington, beginning right here in Congress. From passage of class action legislation for consumers, to enactment of the Family Farm Antitrust Act, to congressional review and oversight of this country's antitrust legislation, there are tools available for us to use. Thanks to the public education effort of the food action campaign, we will find it increasingly hard to avoid the issue. It is time that common people in America—consumers, farmers, workers, taxpayers, senior citizens, and others—played the major role in shaping national food policy. It is too important to leave to Earl Butz and food corporations.

Mr. President, the Agribusiness Accountability Project and New Populist Action have assembled a wealth of material on this issue, and they have prepared reports that are invaluable to all of us who are concerned about changing the direction of national food policy. So that others might benefit from the work of the food action campaign, I ask unanimous consent that their reports on consumers, on family farmers, on multinational food corporations, and on Crystal City, Tex., be printed in the RECORD, along with a statement on the food action campaign and a paper on what can be done about corporate concentration in the food economy.

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

WHAT IS THE FOOD ACTION CAMPAIGN

The Food Action Campaign is a first step toward dealing with monopoly power in the food industry.

Food middlemen are taking the big bite out of the consumer's food dollar, and they are taking charge of the entire food economy. Food power is much more concentrated than most of us realize, and that concentration is affecting every one of us:

Consumers in 1972 were overcharged more than $2 billion because of monopoly power in just 13 food lines.

A few food middlemen are able to hold back supplies to create artificial shortages, inflate prices and drive out competition.

As food power has become more concentrated in corporate middlemen, nutritional quality and taste have declined.

Despite their efficiency, competitive and productivity, 1000 family farmers are squeezed out of business each week, severely lessening competition in food production.

Consumers can't afford to eat and family farmers can't afford to grow, but corporate middlemen are enjoying steadily rising profits. There are 32,000 food manufacturers, but just 100 of them take 71 percent of the profits. Their take is increasing.

Consumers, family farmers, working people, independent businessmen, older Americans and taxpayers are some of the citizen groups with a direct stake in the structure of the food economy. They ought to know where concentration is leading them, and they ought to be asked the question: "Is that where you want to go?" The FOOD ACTION CAMPAIGN exists to ask that question.

Organized by the Agribusiness Accountability Project, New Populist Action and Center on Corporate Responsibility, the campaign has compiled reports on the public impacts of monopoly power in the food economy. Using that material, six public advocates have joined the campaign to address various aspects of this power: former U.S. Senator Fred Harris, Pennsylvania Secretary of Agriculture Jim McHale, San Francisco Consumer Action director Kay Pachtner, La Raza Unida party president Jose Angel Gutirrez, Harlem Consumer Education Council director Florence Rice, and Agribusiness Accountability Project director Jim Hightower.

These advocates are going to the public to deliver its findings on monopoly food power—they are addressing organizational meetings, issuing reports, holding press briefings, conducting workshops, meeting people at special events and working directly with citizen groups.

To deliver its findings in specific terms, the Food Action Campaign will focus attention on one, brand-name corporation—Del Monte, the world's largest canner of fruits and vegetables. Del Monte is not being singled out for attack, but merely as an illustration of what is true throughout the food industry.

It is not too late to restore competition to the food industry. Plenty of tools exist in

Washington to deal with this power. What is needed is a will to deal with it. That must come from the expressions of people who are both informed about monopoly food power and fed up with it.

Not only is the Food Action Campaign travelling the country to inform people about this power, but it also is asking them to express themselves. "Send Washington a Message" is the theme of the Campaign, and the public is invited to do just that. The message is simple and straightforward: take action against corporate concentration.

CONSUMERS IN A CONCENTRATED FOOD ECONOMY

Gwaltney Smithfield hams and susages are packed and advertised to evoke a feeling of the old farm place and the unrushed process of a southside Virginia smokehouse. The reality is not nearly as down home as the image—Gwaltney is owned and managed by the world's largest conglomerate, ITT.

Country goodness, made the old fashioned way, is the advertising pitch of Pepperidge Farm bakery products. The company is a wholly-owned subsidiary of the food conglomerate, Campbell Soup.

Is regional beer, brewed in the local tradition, a source of enjoyment for you? Maybe a Burgermeister, a Waldech, a Hamms or a Buckhorn? They now all belong to Heublein Inc., a Connecticut conglomerate.

Remember the Good Humor ice cream truck in your neighborhood? Now it is owned by T. J. Lipton, Inc., the makers of Lipton soup and tea. In turn, T. J. Lipton is owned by Unilever, a British-Dutch conglomerate. Two hundred years after the Boston tea party, the British again control our tea.

Increasingly, American food products are delivered to consumers by a narrowing number of powerful food firms, many of them giant conglomerates and multinational corporations. Situated between farmers and consumers, these firms are in a position to set food prices, to determine food quality and even to control food supplies. Supermarket shelves and bins are laden with hundreds of food items, but the production, processing and marketing of those products can be traced back to a few corporations operating in a highly-concentrated food industry.

The 1967 Census of Manufacturing counted 32,500 food manufacturing firms. Even though the number of firms is declining at the rate of 13 percent a year, it would seem by sheer numbers to be a competitive industry. A 1966 study by the Federal Trade Commission (FTC), however, revealed that a mere 100 of those firms had 71 percent of the industry's profits. In fact, the top 50 firms had 61 percent of the profits.

That is where food power is located, and it is with this concentration of power that consumers must deal. Fostered by government policy, that concentration is continuing. A steadily narrowing number of corporations control the flow of food from farmer to consumer—in a word, it is oligopoly.

Tenneco—which not only makes farm machinery, chemicals, fuel and food containers, but also grows, packages, markets and retails food—has an appropriate slogan to sum up its pervasiveness: "Seedling to Supermarket" they boast. Del Monte Corporation assures consumers that it can take care of all food needs "from womb to tomb."

More than 40 food manufacturers even have taken the additional step of opening up their own restaurant chains. Pillsbury, General Mills, Campbell Soup, Ralston Purina, Quaker Oats, United Brands, Green Giant and Borden are just a few of the food middlemen with arms that reach all the way to your table.

THE HIGH PRICE OF CONCENTRATION

It is not efficiency that has led these giants to control the food economy. Certainly they are not as efficient in the production stage as are family farmers. USDA reports that all economies of scale can be achieved on today's mechanized, one and two man family farm, and that optimal acreage for practically every crop is relatively small. For example, USDA reported that optimum size for a California vegetable farm was 440 acres. Yet, the average size of corporate farms that now dominate California vegetable production is 3,206 acres—eight times greater than the efficient scale. It is the consumer who pays for this excess size.

The large corporation cannot out-farm the farmer, but it can out-muscle him. Raw economic power and favorable government treatment allow such new "farmers" as ITT, Greyhound Corporation, Dow Chemical, Southern Pacific Railway, John Hancock Life Insurance and Getty Oil to dominate family farmers. "The capacity of the giant corporation to grow and grow," wrote two agricultural economists recently, "despite the lack of any real competitive edge over individual farmers in a traditional accounting sense, is the crucial difference between the corporate and the individual competitor."

Boeing aircraft might be an inept vegetable farmer, but its ability to merge, to vertically integrate, to advertise, to differentiate its product, to obtain huge sums of investment capital and to attract government subsidy is enough to overwhelm real vegetable farmers, no matter how efficient and productive they are. Consumers are the ultimate losers. By eliminating efficient family farmers, or by contractually integrating the family farmer's operation, competition in the production sector of the food economy is seriously lessened, and the power of the middleman is significantly strengthened.

Perhaps most important to consumers, in a concentrated food economy, dominated by very large processors and marketers, prices do not go down, they go up. "As concentration increases," says a study of the FTC, "the opportunities for waste and the motivation toward deception both increase." Competition is replaced by advertising gimmicks, and the price a consumer pays bears less and less relationship to the price that the farmer was paid. The added costs of concentration—such as burgeoning administrative staffs, increased advertising budgets, extensive corporate bureaucracy and inflated management salaries—most certainly are rung up on the consumer's tab at the checkout counter.

PROFITS IN THE MIDDLE

Food firms claim that they are hurting these days, hardly making any money. Supermarkets, for example, point to a modest 1 percent profit or less on an item of produce. But they neglect to report that the steady turnover of that product yields a cumulative percentage and a harvest of millions of dollars. A farmer makes a profit when he delivers a crop once or maybe twice a year; the supermarket makes a profit every time it turns over its stock, which happens some 15–20 times a year. That's 1 percent profit times 15 or more turn overs.

The Federal Trade Commission has found that in a competitive industry there is a return on shareholder's investment ranging from 5 percent up to a high of 9 percent. Any profits beyond that standard are assumed by the FTC to be the result of excessive concentration—that is, oligopoly. As shown in Appendix A, food middlemen generally are exceeding FTC's standard for a competitive industry. Supermarket chains, for example, were well beyond the 9 percent top level in 1972: Safeway returned 15 percent on shareholder's equity, Winn-Dixie returned 19.7 percent, Lucky Stores returned 19.7 and Giant Food returned 16.9 percent.

Processors and marketers also enjoyed 1972 profit returns in excess of FTC's 9 percent monopoly standard, including:

Fiscal 1972 percent return on shareholders' investment

General Mills	12.4
Hygrade	17.1
Missouri Beef Packers	13.7
Nabisco	16.0
Norton Simon	12.3
Pepsico	16.3
Procter & Gamble	17.6
Quaker Oats	13.4
R. J. Reynolds	17.2

In general, agricultural, agribusiness middlemen are doing very well today. As shown in Appendix A, their profits in 1972 were considerably higher than in 1971. And, as shown in the same Appendix, 1973 is proving an even better year for the profits of food middlemen. For example, latest 1973 quarterly reports show that Campbell Soup is up 39.8 percent over last year's profits. Esmark is up 23 percent, General Mills is up 20 percent, Green Giant is up 14 percent and Ralston Purina is up 28.7 percent.

Two things are suggested by these statistics: (1) profits are high for food middlemen, and (2) a significant portion of those high profits are the result of excessive concentration among corporate processors, marketers and retailers. It is the American consumer who is footing the bill for these corporate profits. In a 1972 study, the Federal Trade Commission found that consumers were being overcharged more than $2 billion because of monopolies within just 13 food lines.

CONTROL OF FOOD SUPPLIES

It is not just the price, but the very supply of food that is coming within the control of corporate middlemen. Through vertical integration of food production, and through integration of storage and transportation facilities, these corporations are gaining the power to limit the amount of food that gets to market at any one time. With this ability to manipulate supplies, food middlemen have the power to boost prices.

The consumer recently has had a taste of such power. Because of spring rains in the Midwest, this year's soybean crop was in doubt, thus putting a premium on soybeans that were held from last year's crop. Cattle ranchers and others needed these old-crop soybeans to feed their cattle, hogs and poultry. It turned out that 95 percent of the soybeans were being held by only three grain-exporting corporations — Continental, Cargill and Cook. Rather than selling to American ranchers and farmers, those corporations hoarded their old-crop beans and allowed domestic and foreign demand to inflate the price of them. Continental reportedly shipped some of its old-crop soybeans to Europe for use there by its integrated poultry subsidiary. The ultimate result of this manipulation will be to saddle American consumers with higher beef, pork and poultry prices.

THE POWER OF ADVERTISING

The American food supply is being industrialized. The same factory techniques and the same advertising gimmicks that Detroit brought to automobiles now are being applied to food.

With market power in the hands of fewer and fewer food corporations, pricing is becoming more and more artificial. A products advertising potential increasingly has a greater impact on prices than do factors of supply, efficiency or quality. Economists Leonard Kyle, W. B. Sundquist and Harold

Guither stated the situation frankly in a 1972 article:

"The old simple concept of food as a staple, basic commodity and of a sovereign consumer with a clearly defined demand for food is being cast aside. Industry seeks to create consumer demand for differentiated products—and then to tailor the marketing and production processes accordingly. This is a process that has been used effectively in the production and marketing of automobiles, television sets, and numerous other consumer items." (emphasis supplied)

Already, food corporations have become the biggest spenders for television advertising. Total advertising expenditures in the food industry are over 4 billion dollars per year. Not only are consumers sold by advertising, but they pay to be sold—that $4 billion is passed directly to the consumers, added into their food bill.

The food industry model might well be ready-to-eat breakfast cereals. In that food line, four corporations (Kellogg, General Mills, General Foods and Quaker Oats) control 91 percent of the consumer market. The cereals are essentially the same, with only such artificial differentiations as color or shape. There is no competition on price or quality of the products, nor on the efficiency of the manufacturers. The only "competition" that exists is on merchandizing techniques, animated television commercials, radio jingles, package designs, contests and other promotional gimmicks.

The power of advertising leads to greater concentration in the food industry by limiting a potential competitor's access to the consumer. No matter how tasty, how nutritional or how efficiently-produced an independent cereal product might be, it has to compete with the multi-million dollar advertising budgets of the big four cereal companies. And because those firms spend so much on national television advertising, their ads run in prime-time slots, and they get advertising discounts ranging from 30–70 percent. Because these giants offer price discounts to supermarkets, they also are favored with special displays and choice shelf space. This scale of advertising is anti-competitive, and the consumer pays the price for that lack of competition.

In the absence of serious price competition, profit can be pursued with only minimal attention to taste, texture, and nutritional quality. Not only is the consumer paying more as a result of economic concentration, but he is also getting less. The nutritional value of the American food supply is worse now than it was twenty years ago, and the taste of many food products—from chickens to tomatoes—has declined almost beyond recognition.

Increasingly, food products require more chemists than farmers. Even the U.S. Department of Agriculture cafeteria has quit offering milk for coffee drinkers—now it is a sterilized, non-dairy "whitener" that is poured into the cup.

Given a laboratory and an advertising budget, food manufacturers are willing to remake the American diet. Given a concentrated food economy, they will be in a position to do just that. An Oklahoma-based conglomerate, the Williams Companies makes a shrimp-looking, shrimp-tasting product that contains no shrimp. According to its 1973 report to stockholders, the corporation is interested in manufacturing other such products and has a number of projects underway in its Tulsa laboratory:

"Our basic criteria applied to the selection of projects is profitability. New products must either have a mass market appeal, a wide profit margin or both. They must also be free of competition."

DEL MONTE: A CASE OF QUESTIONABLE QUALITY

In canning and freezing, the concentration of power is even greater than in other segments of the food industry. Only nine firms account for 55% of the profits. In 1972, Del Monte Corporation's sales totalled $947 million, making it the largest fruit and vegetable canner in the world—larger, in fact, than its two closest competitors combined (Stokely-Van Camp and Libby, McNeill & Libby). In domestic canned food sales alone, Del Monte came away with 16 percent of all sales of canned fruits and vegetables in the United States.

Del Monte Corporation, with an advertising budget in excess of $15 million a year, has succeeded in selling the line that its canned goods are of superior quality. But any shipment of Del Monte peaches, for example, contains the same USDA grades as those shipped under many labels that sell much cheaper. A 1969 study by the Department of Agriculture found that in half the items sampled Del Monte canned products contained less fruit and more liquid than any of the competitive brands checked. Despite these facts, and because of its advertising campaign, Del Monte can sell its goods for more than other brands on the shelf.

In fact, 12% of Del Monte's 175 products are not marketed under the Del Monte label, but instead are marketed under a variety of regional and private labels, often the house brands of supermarket chains. There is little difference in the contents or the quality of these products—Del Monte packs the same product and simply puts another label on it. Yet, the can bearing the red Del Monte shield is sold to consumers for an average of 14 percent more than private label brands.

While corporate expenses, such as advertising, are added into the consumer's food bill, corporate savings are not. Del Monte recently has abandoned its white asparagus operations in California, Oregon and Washington and moved them to Mexico, where cheap labor has reduced the corporation's production costs by 45.1 percent. But the price of Del Monte's asparagus has not gone down. None of the corporate savings lightened the consumer's load.

The story is the same in Del Monte's canned pineapple products. Labor costs involved in harvesting, canning and packing pineapple account for almost half of the total production costs. Del Monte produces and packs pineapple both in Hawaii and the Philippines for sale in U.S. supermarkets. In the Philippines, wages average less than seven percent of the average in Hawaii. Field workers in the Philippines average 15c an hour, whereas they average $2.64 an hour in Hawaii; Philippine cannery workers average 20¢ while Hawaiian cannery workers average $2.69. If other costs of production remain the same, it costs Del Monte 46.5 percent less to can pineapple in the Philippines than it does in Hawaii. Del Monte makes a big savings; consumers do not. Regardless of where it is produced—Hawaii or the Philippines—the consumer pays the same.

Buying canned goods from the world's largest canner of fruits and vegetables should not necessarily give consumers greater assurance of sanitary packing conditions. The U.S. Department of Agriculture conducts a voluntary, in-plant inspection program which enables companies to list the official USDA grades on their label. In addition the inspection program provides an extra safeguard against unsanitary processing plants, thereby helping to insure that the food products are safe for public consumption. Although 112 food processors participate in this program, Del Monte does not.

Del Monte advertises that there is "quality" in its cans. Sometimes, there is more. The Food and Drug Administration (FDA) has consumer complaints on file for 1970–1971, reporting these findings in Del Monte cans: rusty hair pins, dead bird, corn cob, whole dead mouse and wooden sticks. In the past five years alone, the FDA twice has had to exercise its ultimate action against Del Monte—seizure of shipments found packed "under unsanitary conditions."

In addition, FDA has found violations in Del Monte plants that have not led to seizures. For example, Del Monte's processing facility in Burley, Idaho was being used in 1968 while it was still under construction and not tightly protected from flies, windblown contaminants and insects. That same facility was canning corn with water from an untreated, unchlorinated well. These violations did not lead to seizures.

In times of high food prices, industry and government spokesmen are given to telling consumers that they just have to learn to buy more intelligently. To make intelligent food choices, however, requires information. Neither industry nor government has been aggressive about providing more consumer information. For example, despite Del Monte's catchy slogan—"The more you know about peaches the better for Del Monte"—there is really not very much a consumer can learn about the peaches, even from close reading of the label:

Del Monte does not disclose the USDA grade of its canned fruit and vegetable products. The company's label alleges that there are "quality" products inside. But Del Monte does not give the consumer any objective, standard criteria on which to judge that quality. In fact, the National Canners Association, the industry trade group in which Del Monte is a powerful force, has consistently opposed grade labelling.

Del Monte does not declare the drained weight of its canned fruit and vegetables. There is, therefore, no way for consumers to determine how much of a 14½ ounce can of asparagus actually is asparagus, not water. A 1969 study by USDA found that in 6 of 11 items, Del Monte products had the lowest drained weight of any of the competitive brands compared. Again, Del Monte's industry spokesman, the National Canners Association, opposes drained weight labeling.

Del Monte does not declare the percentage of its food product ingredients on the label. There is no way, for example, the consumer can know how much meat is in a Del Monte meat pie. Once more, the National Canners Association has lobbied against increasing the scope of ingredient labelling.

Del Monte does not utilize a system of open dating on its products to inform consumers of the product's expected shelf life.

CONCLUSION

Concentration already has occurred in many industries—automobiles, steel, fuel and others. Now that concentration is occurring in food, with such food lines as cereals, lettuce and soup already highly concentrated. Is that what Americans want? If our electric shavers are breaking down, if our family cars are being recalled, if our gasoline prices are being manipulated, if our headache remedies are deceptively advertised—should we now apply concentrated corporate power to our dinner?

Whether Americans want that concentration or not, it is happening fast. And its impacts already are being felt. We have the most productive agriculture in the world, but we are faced with the real possibility of food shortages. Our food costs more and is of lower quality than ever before. And we have the paradox of consumers who cannot afford to eat and farmers who cannot afford to grow. In the middle of it, enjoying record profits even in a time of economic controls, is corporate America.

APPENDIX A

PROFITS OF SOME FOOD MIDDLEMEN, 1972-73

Firm	Fiscal year 1972 Profits	Percent change in profits over 1971	Percent of return on shareholder's investment	1973 profits: Percent change of latest available quarter over comparable 1972 quarter
American Brands	$123,300,000	+3.3	13.0	8.0
Beatrice Foods	90,931,000	+16.0	15.0	23.6
Campbell Soup	59,633,000	−11.3	11.0	7.1
Carnation	55,854,000	+11.2	14.4	[1] 12.0
CPC International	86,622,000	+68.0	17.0	−51.1
Coca Cola	190,157,000	+13.3	22.8	[2]
Del Monte	23,275,000	+9.6	9.7	46.3
Esmark	37,003,000	+8.5	8.1	42.0
General Foods	66,185,000	−44.3	8.4	6.5
General Mills	45,397,000	+3.5	12.4	[3] 20.0
Giant Foods	8,416,000	+35.9	16.9	−11.2
Green Giant	6,792,000	+30.9	8.8	32.7
H. J. Heinz	42,287,000	+12.3	10.6	13.8
Hygrade	4,963,000	+34.0	17.1	[5]
Iowa Beef Processors	7,367,000	+95.2	15.1	14.9
Jewel Cos	29,866,000	+12.1	12.5	12.3
Kellogg	60,513,000	+9.9	20.8	5.3
Kraftco	$88,335,000	−3.3	11.5	80.6
Libby, McNeill & Libby	532,000	[2]	[3]	365.2
Lucky Stores	30,500,000	−.9	19.7	18.0
Missouri Beef Packers	2,359,000	+20.0	13.7	27.0
Nabisco	54,365,000	+9.0	16.0	−23.9
Norton Simon	50,487,000	+20.7	12.3	−20.2
Oscar Mayer	15,975,000	+5.5	11.5	19.0
Pepsico, Inc	71,718,000	+14.5	16.3	11.3
Procter & Gamble	276,310,000	+16.3	17.6	−6.1
Quaker Oats	34,244,000	+41.6	13.4	[4] 21.0
Ralston Purina	58,246,000	+14.4	12.0	[4] 28.7
R. J. Reynolds	237,471,000	+5.1	17.2	24.9
Safeway Stores, Inc	91,056,000	+13.6	15.0	−19.4
Standard Brands	44,011,000	+10.9	13.5	12.4
Stokely Van Camp	7,162,000	+8.4	6.6	8.7
Winn Dixie Stores	39,164,000	+16.4	19.7	12.2

NA—Not available.

[1] 6 months.
[2] Fiscal year 1973.
[3] Cut losses in 1972 to $532,000 (from $7,706,000 in 1971).
[4] 9 months.
[5] Not available.

FAMILY FARMERS AND CONCENTRATION IN THE FOOD INDUSTRY

The family farm is a highly competitive, enormously productive and efficient business unit which is the source of the abundant supply of good food American's count on. These farms are among the last strongholds of small scale capitalism; they are alive and performing well—if not flourishing—throughout the countryside.

Since 1952, efficiency (output per man hour) on farms has increased 330%, compared with an increase of 160% in manufacturing. That is an unmatched record for efficiency, and it has been achieved on average size family farms. Despite this efficiency, 3 million farms have been eliminated since 1943. How is this possible?

Squeezed between input suppliers that charge too much, and output corporations that pay too little, even the most efficient family farmers have a hard row to hoe. Concentrated corporate power, not competitive family farms, increasingly determines the quantity, price and even the quality of today's food supply.

Corporate America surrounds the family farmer. On one side are the agricultural input suppliers selling capital, land, seed, fertilizer, machinery, feed, pesticides, drugs and fuel. Since 1952 farmers have been overwhelmed with production cost increases of 122% while the price they receive for their products has increased only 6%.

On the other side of the farmer are the output industries that process, market and retail food products. The farmer must sell his vegetables, his hogs, his feed grains, his fruits and other commodities to these corporate middlemen. Situated between the farmer and consumer, the middlemen take ⅔ of every dollar consumers spend on food. Power among these output corporations is highly concentrated, allowing a few firms to control the farmer's access to market and to dictate what farmers will produce and what they will be paid.

According to the 1967 Census of Manufacturing, there are 32,500 food manufacturing companies. That makes it appear that food processing and merchandising is not a concentrated industry. But the large number of companies is deceiving, for a 1966 Federal Trade Commission study showed that the 50 largest companies made 61% of all the profits. The other 32,450 companies divided the left-overs.

This concentrated power comes down hard on family farmers. Nearly 3 million farmers, widely scattered throughout the country, must try to get a fair price in a marketplace that is tightly controlled by these corporate buyers. They have not been doing very well—since 1952, the cost of food in retail stores has increased by 43%, but farmers have received only a 6% increase. The middlemen have sopped up the difference.

The most insidious form of corporate domination of farmers is contractual integration. A farmer signs an advance contract to sell a certain amount of a certain commodity to a corporate buyer. Under this arrangement, the corporation is assured a regular supply of raw food, and the farmer is assured access to a market. It is tempting to farmers. In practice, however, it is destructive to farmers.

While eliminating some of the uncertainty of farming, the farmer's weaker bargaining position results in a form of contractual integration which reduces the farmer's control of his own operation. The contracts tend to be so one-sided that farmers become virtually hired hands of the corporation. The contracting corporation generally decides how a crop will be produced, what amount each farmer will produce and what price each farmer will receive.

Another common feature of the contracts is one that allows the corporation to refuse to buy a farmer's crop after it is harvested. The farmer's guarantee of a market turns out to be no guarantee at all. If farmers attempt to haggle too much over price, these powerful corporations can and do go elsewhere for their crops. Farmers have fewer options. There are usually only a handful of buyers in any one farming region, and farmers generally do not have the resources to transport their produce long distances in search of a better deal.

Processing corporations are among the major integrators of America's family farmers. For example, USDA reports that 78% of processing vegetables are produced under contractual integration, with another 10% produced directly by the corporations. Again, this is concentrated corporate power coming down on farmers—there were more than 1,200 processors of fruits and vegetables in 1967, but the top nine of those firms took nearly 55% of the profits.

The terms of these contracts differ from crop to crop and from company to company, but the trend definitely is toward more corporate control of day-to-day farming decisions.

Food processors routinely develop new seed strains for use by their hired farmrs, they research and develop new machinery for crop production and harvesting and they stipulate the timing, amount and kinds of chemicals applied to crops that end up in their cans.

The world's largest canner of fruits and vegetables is Del Monte Corporation, accounting for at least 16 percent of canned food sales in the U.S. Del Monte also is a multinational corporation, with steadily growing sales in foreign countries. Larger than its next two competitors combined (Stokeley-Van Camp and Libby, McNeill and Libby), Del Monte is the industry leader.

Del Monte's enormous power is felt by farmers throughout the fruit and vegetable regions of America. Especially affected are the 10,000 farmers in 15 states who are directly under contract to produce for Del Monte. Del Monte's contracts are very specific, including detailed clauses on "care of the crop." The farmers' decision-making power is restricted, and sometimes the corporation's production controls reach absurd levels. An example is that Del Monte will not accept fruits and vegetables with too *low* a level of insecticide residues, even if the farmer can demonstrate that his crop was kept free of pests by non-chemical means.

The major flaw in the concept of contractual integration is that farmers and most farmer associations lack power to bargain effectively in contract negotiations. As a result, the contracts heavily favor the processors. There is legislation in Congress to assure more bargaining strength for farmers. Del Monte, through its trade association that lobbies in Washington, consistently has opposed such measures.

This processing giant exemplifies the kind of corporate power that is crushing America's family farmers. A look at Del Monte's policies in just one commodity—asparagus—illustrates what this power can do.

ASPARAGUS—DEL MONTE STYLE

According to the 1969 Census of Agriculture, 3,210 commercial farmers grow asparagus. Those growers operate in a buyers market—Del Monte is the largest of the top three canners that account for 45% of the total canned asparagus produced. Del Monte is the pace setter in this industry and can set the terms, essentially non-negotiable, for its asparagus purchases.

On a regional basis, the concentration is even greater. Asparagus canneries are located in six states: California, Delaware, Illinois, Michigan, New Jersey and Washington. In each of these, one or two canners dominate the asparagus market, buying most of the crop produced near their plant. Technically, a farmer can deal with a canner in another state, but in reality they cannot afford to transport their perishable asparagus the long distances to another market. The farmer is stuck with whoever is close.

A sample of Del Monte's power over asparagus farmers is its contractual prerogative to determine whether any given delivery is of "good quality and condition for canning." There is no third-party evaluation. Any part of the delivery that does not meet Del Monte's approval is exempted from the price agreed to in the contract. In 1972, 8% of the asparagus crop was rejected in this manner. The cannery price for "acceptable" asparagus that year was 23¢ a pound. The asparagus that was culled out by Del Monte's inspectors was bought by them for .0005¢ a pound. The decision whether the asparagus is worth 23¢ or .0005¢ is up to Del Monte. The farmer has no option—under the terms of the asparagus contract, if Del Monte wants the "culls" the farmer cannot take them elsewhere.

Although the corporation pays a pittance to farmers for their "inferior" asparagus, it uses these culls profitably. The farmer may give the stuff away to Del Monte, but Del Monte certainly does not give it away to consumers. It is often these rejects that Del Monte packages and sells as asparagus soup, asparagus cuts and asparagus tips.

ASPARAGUS—MEXICAN STYLE

Contracts may give Del Monte a sense of security, but farmers should not rest easy. With its global perspective, Del Monte is prepared to pull up its American stakes anytime the grass looks greener elsewhere, leaving farmers and their communities in economic chaos.

Asparagus growers in this country, long under contract to Del Monte, are chagrined that the processors are making a major move to Mexico. In 1969, less than 2% of the asparagus marketed in the United States was imported. Two years later, the figure was 8% and rising.

Del Monte has been the prime instigator, financial backer and major purchaser of the Mexican asparagus crop. Del Monte and one other firm cans over 90% of the Mexican crop. American farmers used to produce white asparagus for Del Monte's cans—now, Del Monte gets all of its white asparagus from its Mexican operations.

Green asparagus is probably next, because farming and processing in Mexico is financially lucrative for Del Monte. It is possible there to rent farmers very cheaply, to pay farm workers 23¢ an hour and to pay cannery workers 27¢ an hour. The Mexican government helps out by giving Del Monte a 10% tax credit on canned goods exported from Mexico. These considerable savings allow Del Monte to purchase, process and export asparagus for 40% less in Mexico than it does in the United States. But Del Monte does not pass its savings along to the consumer. Canned asparagus imported from Mexico sells for the same price as U.S. grown and packed asparagus.

The 3210 farmers and 34,500 farm workers engaged in the production of asparagus in this country have reason for concern. If Del Monte continues to abandon the domestic asparagus industry, thousands of farmers, farm workers and cannery workers will lose their livelihood. San Joaquin County, California, is the leading asparagus-producing county in the nation. A study was made there on the impact of losing their asparagus industry. It estimated that the unemployment rolls would increase by 17% and taxes would increase $1.7 million in that county alone. There are 22 other counties in the nation whose economies would be drastically affected by a collapse of the domestic asparagus industry.

America needs family farmers. It needs their skills, their creativity and their industriousness. It also needs their independence. To remain productive and efficient, family farmers must be free of corporate exploitation. They must retain their entrepreneurship. Del Monte, along with other processors and corporate integrators of farmers, works against this need. It is their profit interest to lock the production sector in to the corporate complex. Given a concentrated food economy, and given the multi-national economic power of a Del Monte, the corporate integrators are in a position to work their will.

THE MULTINATIONALIZATION OF THE AMERICAN FOOD SUPPLY

"By 1985," states Harold Perlmutter of the Wharton School of Finance, "some 300 supergiants will dominate business, producing more than half the world's industrial output." By the year 2000, according to some business analysts, only 80 corporations will account for 90 percent of world production and services. But we don't have to wait until the year 2000, or even 1985, to understand the crushing impact of this new breed of economic superpowers—the multinationals.

Nominally based in one country, but with far-flung empires stretching across the globe, multinational companies cannot be identified with any particular nation. "The political boundares of nation-states," according to William L. Spencer, President of the multinational First National City Corporation, "are too narrow and constricted to define the scope and sweep of modern business." Standing above and beyond the nation-states, these highly mobile supernational corporations are creating a new world order to be run out of corporate boardrooms rather than national capitals. But while governments are supposed to be concerned with the economic and social well-being of their citizens, multinational corporations owe their allegiance only to a narrowly defined vision of corporate interest. When a conflict arises between that corporate interest and the larger interests of a nation and its citizens, the interests of the corporation come first.

It is not just oil or sewing machines that have fallen subject to the global interests of the multinationals. It also is our food supply.

Wonder Bread, Gwaltney bacon and Morton pot pies are subsidiaries now of the far-flung multinational ITT. Unilever, a British-Dutch conglomerate, not only owns America's Lipton Tea, but also the Good Humor ice cream company. Nestle, known here for its chocolate candy bars, is a Swiss-based food combine that now owns Stouffer frozen dinners and 56 percent of Libby, McNeill and Libby.

Even the raw food supplies of this country increasingly are in the hands of multinational companies. These giants sell American foodstuffs to a global market, not just to American markets. The highly-concentrated grain industry, dominated by six multinationals has recently given consumers a taste of their power. It was reported in June that just three of these international traders—Cargill, Continental and Cook—were holding up to 95 percent of the soybeans remaining from last year's American crop. Those old-crop soybeans were badly needed at the time by American cattle ranchers and feedlots.

But these world powers did not sell. They held out their soybeans while foreign demand steadily inflated the price. Continental reportedly shipped some of the soybeans it held to Europe for use there by its poultry feeding subsidiary. As a result of this world-wide manipulation, American farmers could not get feed at a reasonable price, and American consumers will not be able to get beef at a reasonable price.

Del Monte Corporation, the world's largest canner of fruits and vegetables, typifies the increasing global vision of food industry multinationals. Del Monte is larger than its next two competitors combined (Stokely-Van Camp and Libby, McNeill and Libby) and accounts for at least 16 percent of all canned fruit and vegetable sales in the United States, its sales in foreign countries are growing steadily. Already 24 percent of Del Monte's canned goods and 35 percent of its fresh produce are sold outside of this country. In 1971, a Del Monte official predicted that within five years the company's overseas business will account for 55 percent of a projected $1 billion in annual sales.

Today Del Monte has invested some $60 million in farming, processing and marketing facilities in over 20 foreign countries, and it is organized to sell its products in more than 100 countries. Del Monte may be headquartered in San Francisco, but its other corporate addresses include Canada, Kenya, Venezuela, Taiwan, Brazil, South Africa, Italy, Guatemala, Japan and the United Kingdom.

DEL MONTE'S PINEAPPLE CONNECTION: SO LONG HAWAII, ALOHA PHILIPPINES

Del Monte recently announced the intended closing of its Molokai, Hawaii pineapple operations, while at the same planning to expand its Philippine and Kenyan pineapple production. A look at what this means to Hawaiian citizens shows how we have allowed a private, multinational corporation to wreak economic and social chaos in an entire Community, perhaps an entire state.

Pineapple production has been a mainstay of Hawaii's economy since the turn of the century and is now the state's second largest agricultural industry (sugar cane ranks first). Hawaii's pineapple sales totaled $127 million in 1972. The industry employs 6,200 year-round workers and 12,000 seasonal workers, who together earn $52 million in annual wages and spend an additional $32 million with local businesses, providing jobs and generating income for thousands of other Hawaiians.

In 1950 Hawaii produced 72% of the world's pineapple. It now produces less than one-third. Hawaii's actual pineapple production remained fairly stable until this year—only its share of the world market decreased in the face of a rapid expansion of foreign pineapple production. Del Monte has been the primary force behind that expansion. In 1926 Del Monte began operating a pineapple plantation and cannery in the Philippines. Since then, Del Monte has continued to export U.S. technology and know-how which has helped push the Philippines into its current position as a major supplier of the world's pineapple markets. The Philippine Packing Corporation, a Del Monte subsidiary, is the largest food company on the islands.

Now that the Philippines and other parts of the world can take over, Del Monte and other major pineapple processors are abandoning Hawaii as the source of their raw material. Dole Company, a subsidiary of Castle and Cook, has joined Del Monte in announcing its plans to close out operations on the island of Molokai. Dole will also reduce its acreage on the island of Oahu, and Stokely-Van Camp will close out its pineapple growing operations this year on the island of Kauai. The phasing out of Molokai and Kauai, and the reduction of acreage on Oahu will drop the state-wide acreage in pineapples about one-third—from 62,300 acres in 1972 to 40,000 acres in 1975. It also means that by 1974 there will be only three pineapple companies operating in Hawaii, compared to the nine operating in 1950.

The main reason that Del Monte and other corporations are abandoning their Hawaii pineapple production is the cheap cost of labor elsewhere. While Hawaiian plantation workers earn $2.64 an hour, Del Monte pays its Philippine plantation workers 15¢ an hour. Hawaiian cannery workers get paid $2.69 an hour, compared to the 20¢ an hour Del Monte pays Philippine workers for the same job. Even if all other costs of production remain the same in the Philippines, Del Monte saves 47% of canning pineapple there rather than in the United States. Del Monte makes a big savings. The American consumer does not. Regardless of where it is produced,

consumers pay the same price for a Del Monte can of pineapple.

The impact on Hawaii of the loss of much of its pineapple industry will be catastrophic. The Hawaiian government, not blind to the consequences of such a disaster for the state and its people, bent over backwards to keep Del Monte and the other pineapple companies happy in Hawaii. What was good for Del Monte, figured the Government, was good for Hawaii:

Del Monte, through the industry's trade group, the Pineapple Growers Association (PGA), asked for no state action on raising the minimum wage in Hawaii. Result: The minimum wage bill was defeated in the state legislature.

PGA asked for the transfer of pest control research from the privately financed Pineapple Research Institute to the tax-supported University of Hawaii College of Agriculture. Result: Legislative approval of the transfer.

PGA asked for administrative and legislative action to make ocean transportation less costly. Result: A legislative resolution requesting the Federal Maritime Commission and a private navigation firm to exempt pineapple products from a general increase in U.S. Pacific/Hawaiian trade rates.

PGA asked for "realistic" environmental quality standards. Result: The Hawaii State Department of Agriculture has embarked on a $30,000 study to prove to the Environmental Protection Agency that crop-residue burning is not a significant contributor to the islands' air pollution problem.

PGA asked for a number of state tax exemptions—the chief one being a 50% reduction on real property taxes not just for a five year period. Result. The Hawaii legislature passed legislation which could be used by Del Monte and other companies to achieve a 50% reduction on real property taxes not just for five years, but permanently.

Despite Hawaii's generous efforts to keep them there, Del Monte and the other pineapple companies are continuing to close down their island operations. From the Hawaiian experience, state and federal government can learn one lesson in dealing with the multinational corporations: They really can't be appeased. Even if every single demand they make is met, the multinational corporation still will opt for another country if they think the pickings are better.

When the multinational abandons a community, it never bears the cost. Del Monte, for example, will simply deduct the costs relating to the closing of its Molokai plantation operations from its federal taxes as a business expense. Del Monte's Hawaiian workers and the communities dependent on their wages are not so fortunate. Estimates are that on the island of Molokai alone the unemployment rate could rise to 60%, which would have a tremendous "ripple" effect on thousands of Hawaiians: the loss of local purchasing power, which would lead to even greater unemployment; the shrunken tax base of the community; the expanded welfare rolls; the depressing effect on wages of a pool of unemployed labor; the disruption of the social stability of the community.

These communities made a real investment in Del Monte without which the company would never have been able to come to Hawaii profitably in the first place. Roads, sewers, power, water, schools for the children of Del Monte management, an agricultural college that provides training and research—all these things and more were provided with local tax dollars for the benefit of Del Monte. Yet when Del Monte skips town, it leaves the local community holding an empty investment.

THE DEL MONTE MEXICAN SHUFFLE

American farmers used to produce white asparagus for Del Monte's cans, but now the company gets all of its white asparagus from south of the border. Del Monte has been making a major move into Mexican asparagus production since 1969. At that time less than 2 percent of the asparagus marketed in the United States was imported. By 1972, only three years later, imports already made up 8 percent of total U.S. asparagus consumption.

Del Monte is largely responsible for this increase. Del Monte and one other firm alone can over 90 percent of the Mexican asparagus crop. Today it is white asparagus which is labeled "Packed in Mexico." Green asparagus, which comes basically from the same plant, probably is next, because farming and processing in Mexico are financially enticing to Del Monte. When such a multinational decides that the 23¢-per-pound paid to American farmers for asparagus in 1972 is too high, it simply moves across the border to Mexico. Farmers rent cheaply there—Del Monte can buy their asparagus for about 10¢ a pound.

The corporation also saves on labor by skipping the country. Farm workers in California can earn $3.75 an hour for harvesting asparagus, while Del Monte can pay their Mexican counterparts only 23c an hour. Del Monte pays its Mexican cannery workers 27c an hour, compared to the $3.37 an hour average paid cannery workers in California. The Mexican government even helps out by giving Del Monte a 10 percent tax credit on canned goods exported from Mexico. These considerable savings allow Del Monte to purchase, process and export asparagus for 40 percent less in Mexico than it costs in the United States.

Del Monte's high-salaried executives and the corporation's big shareholders might be ecstatic over their Mexican savings. But did anyone consult the 3,210 farmers and 34,500 farm workers engaged in the production of asparagus in this country about the company's move to Mexico? If Del Monte continues to abandon the American asparagus industry, thousands more farmers, farm workers and cannery workers will lose their livelihood. San Joaquin County, California, is the leading asparagus-producing county in the United States. A study made there on the impact of losing their asparagus industry estimated that the unemployment rolls would increase by 17 percent and taxes would increase $1.7 million in that county alone. There are 22 other counties in the nation whose economies would be drastically affected by a collapse of the domestic asparagus industry.

Concerned about the likelihood of this possibility, the asparagus growers of California, Washington and Oregon recently requested that the U.S. Tariff Commission investigate the nature and extent of the threat to the domestic asparagus industry by the increase in foreign imports. Del Monte, as a domestic producer and canner of asparagus, responded to the Commission's inquiry by stating that the Corporation "has not experienced unrealistic competition from foreign imports of canned asparagus . . . and that the current rate of duty appears to be sufficient to preclude serious foreign competition in the product." Nowhere in the Corporation's written reply did it reveal that Del Monte itself is the major importer of canned asparagus into this country, and that any increased tariff assessment would come out of Del Monte's coffers.

American-based multinational companies that flee this country and then dump their products back into the U.S. like to have us believe that the consumer benefits from lower prices of imports. But the fact is that canned asparagus imported from Mexico now sells for the same price as U.S. grown and packed asparagus. Del Monte, not the consumer, reaps the excess profits from its Mexican shuffle. Moreover, the multinational status of Del Monte puts it in a better position to corner the American asparagus market and ultimately to set any price it wants for asparagus. American-based multinationals have often moved into a foreign country to monopolize a product there (which U.S. anti-trust laws are supposed to prevent them from doing in this country) in order to dump that product back on our market and knock out American competition.

Pricing is not the only concern which American consumers should have about Del Monte's Mexican operations. Growers and processors in Mexico are not subject to the same health and sanitation standards and inspections as are those in the United States. Although there is a spot-check inspection at the border on all goods coming into the United States, this procedure in no way guarantees compliance with standards which are enforced in this country.

The U.S. Government, through its tax policies, actually subsidizes the foreign movement of American-based multinational corporations, such as Del Monte. One such subsidy is the foreign tax credit that allows American-based multinationals to subtract taxes paid to foreign governments dollar-for-dollar from their U.S. tax liability, which means in effect that American taxpayers are footing the bill for the foreign taxes of multinational corporations.

American consumers have long been accustomed to an abundant supply of high quality food at reasonable prices. The family farm, with its unmatched record for efficiency, has been the reliable source of that plentiful food supply. Today, though, the family farm is struggling to survive in an agricultural economy increasingly dominated by corporate suppliers, food manufacturing firms, retailers, and conglomerate competitors.

Multinational corporations present a special threat, the nature of which has yet to be fully recognized. If the family farm is squeezed out in a multinational game of musical chairs, all Americans will pay the ultimate price: a highly-concentrated, highly-industrialized agriculture dominated by corporations with no particular loyalty to American consumers. It means that the American public will have lost control of its food supplies, food prices and food quality.

CRYSTAL CITY, TEX.—A DEL MONTE COMPANY TOWN

The main road entering Crystal City, Texas is highlighted by a bold sign that proclaims, "Crystal City—Spinach Capital of the World." This promising introduction, however, is sharply countered by the desolate interior of the town, whose streets are unpaved, dusty, and lined with unprosperous dwellings. The highway sign does not exaggerate; rather it brings into relief the discrepancy between the real contribution the town makes to the food industry and the paucity of returns gained by its labor.

Crystal City is the county seat of Zavala County, a region which annually generates $14 million worth of farm products. The town's inhabitants grow, harvest and pack the spinach which accounts for a substantial portion of a giant corporation's sales, amounting, in 1973 to $946 million. But, in classic company town style, the City is in the grip of an industry which grows rich off its resources and manpower and which chooses not to contribute to the town's welfare, either through taxes or adequate wages.

The "Spinach Capital of the World" depends for its survival upon Del Monte, world's largest canner of fruits and vegetables. Since coming to Crystal City in 1946 the company has expanded its Zavala County operations until today it owns 22.5 acres of industrial site, including a processing plant, a can manufacturing plant, a warehouse, a sewage treatment plant and 3,600 acres of irrigated farmland in the county. Del Monte is by far the major business in the area—it is the biggest employer in Crystal City and it is the primary marketing outlet for farmers in the surrounding countryside.

At city hall, one is a little startled to find a statue of Popeye standing defiantly at the entrance and serving as a reminder to the locals of their dependence upon the company product. Del Monte donated this pugnacious symbol, the only visible evidence that the city has benefitted from its role in production of the corporation's wealth.

Despite the duration and importance of Del Monte's presence and its continued use of city-financed services, Del Monte is not and will not consent to be a corporate citizen of the municipality. The two shiny, modern plants which are located precisely on the northwest border of town—and which stand in marked contrast to the impoverished area they visually and materially dominate—can thus hold themselves unaccountable for the effect they have on the Crystal City community.

Crystal City officials want to annex the Del Monte plants property. Del Monte would then be required to contribute to the city coffers, increasing the city's property tax revenues ($157,705.12 in 1972) by 8% or $11,987.61.

Del Monte, nearly a billion-dollar-a-year corporation, is vigorously resisting the annexation. It claims that, as major employer in the area, it contributes sufficiently to community welfare. Del Monte employs over a fourth of the Zavala County work force, offering 70 full-time jobs in its farming and processing operations and seasonal, part-time employment for an additional 800 workers. Unfortunately, employment with Del Monte "supports" the people of the community at barely a sustaining level. Del Monte pays from $2.12 an hour to $3.09 an hour for processing work, and $3.56 an hour for work in the can manufacturing plant. If these wages were for full-time employment, workers would have incomes ranging from $4000 to $6800 a year. However, most Del Monte employees are not full-time workers. The economic status of Del Monte's town is reflected in the Census statistics for 1970: 49% of all workers in Zavala County earned less than $4000 a year, and 43% of all families had incomes below the official poverty level.

Moreover, Crystal City officials suspect that a large proportion of the company's employees are not Zavala County residents, but Mexican nationals who have travelled up from the Mexican border in a seasonal search for work. When asked by city representatives to supply a list of the names and home addresses of employees, Del Monte refused to divulge such information.

There are other ways in which employment with Del Monte is a mixed blessing. The company has exerted control over the political involvement of its employees by keeping them from the polls and by discriminating against those engaged in activities which Del Monte considers politically unfriendly. During the 1963 municipal election, Del Monte fired six of its workers who were wearing campaign buttons supporting candidates of La Raza Unida, the Mexican-American political party in Texas. In view of the fact that 81% of the county's residents are Mexican-Americans, Del Monte's retributive action has threatening implications for most of its work force.

In both the 1963 and 1973 municipal elections the corporation kept its processing workers overtime so that they were unable to go to the polls to vote. In 1963 a call from James Hoffa, then president of the International Brotherhood of Teamsters, to Del Monte's San Francisco headquarters was necessary to release the workers in time for them to reach the polls. But in 1973, the Crystal City Del Monte plant manager failed to return several calls from the City Manager; the workers stayed on the canning lines from 7 a.m. to 7 p.m.—throughout the hours the polls were open.

Most of all, Crystal City is concerned about the conditions for work within the Del Monte plant. Inadequate weather proofing makes the processing plant hot in the summer and cold in the winter; noise levels are feared harmful; toilet facilities are inadequate; workers are harassed if they sit down while working (although there are stools adjacent to the canning lines; finally, Del Monte refuses to consider the judgment of an independent doctor when assessing a worker's physical complaints and eligibility for company health benefits.

On September 24, 1970, the Teamsters contract representing the processing workers in the Del Monte plant was up for renewal. There was some movement among the workers to reject the contract. Del Monte managers called the workers into one of the company's warehouses; doors and plant gates were then locked. In this curious setting, the workers were told to vote "yes" or "no" on the Teamster contract. More curious yet, the "no" ballots were to be put into a separate box.

Only six workers consented to vote under those conditions. After much heated arguing, the rest of the workers demanded to be let out. They were, but the vote was taken anyway—Del Monte and the Teamsters declared the contract renewed on the basis of six votes.

In response to these highhanded tactics and to the conditions under which they labor, Del Monte employees have formed their own union: Obreros Unidos Independientes (United Independent Workers). Del Monte has refused to recognize the workers' union, even though there are now only four dues-paying Teamster members out of an original 257.

Headquartered in San Francisco, Del Monte officials have proven less than friendly "neighbors" in Crystal City. Not only does it set up its plant outside of the town, thus avoiding taxes, but it also does not make substantial plant purchases from local businesses and it makes no effort to move local residents into management positions. There is no Chicano employed above the line level in Del Monte's Crystal City plant, even though there are local Chicanos clearly capable of management positions.

It is a matter of corporate attitude. One Del Monte official referred to Crystal City as his company's Siberia. Crystal City is important to Del Monte only for its exploitive potential—monopoly of the region's raw spinach market, highly favorable tax structure, cheap water, cheap labor. It is like the coal companies in Appalachia and the timber companies in the South—take the wealth of the region and give the locals a statue of Popeye. When Crystal City residents began to voice complaints, the corporation moved in with a bevy of corporate lawyers. Del Monte is too big and too far removed to be bothered with the human and community needs of an outpost like Crystal City.

Del Monte consistently has reacted to city government and union pressure by threatening to pull their operation out of Crystal City and relocate in more compliant territory. If in fact Del Monte does abandon Crystal City, as it has a couple of its other company towns, Crystal City residents may have no other alternative than to join the other 30 million Americans who have had to flee from the nation's rural areas in the last thirty years.

As rural America increasingly has become the dominion of corporate agribusiness, its small towns have dwindled from the bustling market centers and thriving communities they once were. The wealth generated by their surrounding fields, farms and stockyards no longer is recycled through the local Main Street, but instead is siphoned off to Wall Street or Fremont Street by those corporations which now control the supply and distribution of the nation's food.

Crystal City—the county seat of Zavala County, southwest Texas—is one town engaged in a struggle with such corporate power. By fighting, the town's people risk being abandoned by their major source of employment. But their alternative is to remain a company town, accepting the debilitating realities of such an existence.

Del Monte is bigger than the town. Whether or not Crystal City succeeds in its demand for a better deal, Del Monte will continue to prosper.

CORPORATE CONCENTRATION IN THE FOOD ECONOMY—WHAT CAN BE DONE?

Food power is much more concentrated than most of us realize, and that concentration is affecting every one of us. On the average, four firms in each food line control more than half the relevant market. There are 32,000 food manufacturing firms, but only 100 of those make 71 percent of the profits.

Because of this lack of competition, consumers are being overcharged billions of dollars annually, food supplies are being manipulated, food quality is on the decline, more than a thousand family farmers a week are squeezed out of business and food middlemen are enjoying soaring profits.

Do we want concentrated, corporate control of our food economy? That is the basic question being posed publicly of the Food Action Campaign. Monopoly power already runs most of our other industries. If our automobiles are being recalled, if our headache remedies are deceptively advertised, if our gasoline supplies are manipulated, if our charge cards are a bureaucratic jumble—why let monopoly power mess with our dinner?

It is a relevant question, for there still is time to take action against concentration in the food industry. In many food lines, corporate control is not complete, but it is growing steadily stronger. If people learn what is happening in the food economy and choose to oppose it, they can make a difference. We can have a better food policy if we demand it.

Mr. ABOUREZK. There are plenty of tools in Washington to deal with concentrating corporate power. What is needed is a will to deal with it. Public officials must be made to know that people want action against the trend toward food monopoly. If there is a will, there certainly are ways. Here, for example, are 25 ways that action could be taken:

Vigorously enforce existing anti-trust laws to break up monopolistitc power extant in today's food economy.

Increase the budget, staff and authority of the Federal Trade Commission.

Take a hard line on all corporate mergers in the food industry, giving particular consideration to mergers that increase vertical integration.

Take anti-trust action to break up monopolistic concentration in the agricultural input industries.

Immediately initiate a hard-nosed, FTC investigation of the degree and nature of corporate concentration within the food industry, including special consideration of the non-competitive impacts of advertising, vertical integration and conglomeration.

Take action, based on that investigation, to restore competition to the food industry.

Allow class action suits as relief for consumer damages in the food industry.

Publicly negotiate all consent decrees arising from FTC action, and require ample opportunity for public comment.

Enact requirements for nutritional labelling, grade labelling, drain weight labelling and open dating on canned food products.

Fire such illegitimate consumer officials as Virginia Knauer and Nancy Steorts and create a fully-independent consumer agency with adequate authority to protect consumer interests in government programs.

Appointment of legitimate, consumer representatives to all boards and advisory committees related to the food industry and to agricultural programs.

Immediately fire Agriculture Secretary Earl Butz, and replace him with someone less representative of corporate agribusiness and more concerned with the welfare of family farmers and consumers.

Adopt a strong national policy committed to support of the family farm.

Limit acreage set-aside payments only to family farmers, excluding any corporation with more than $3,000,000 in non-farm assets.

Enact bargaining provisions to assure family farmers a fair negotiating position with food middlemen and to help restore independence and competitiveness to the food production sector.

Prohibit farming by large-scale, non-farm corporations and conglomerates.

Assure public maintenance and management of reserves of basic food grains to be stored during over-production and released during shortages.

Restructure land grant college research and extension programs so that the direct focus of those tax expenditures will be on family farmers and consumers, with special attention to the competitive needs of low-income farmers.

Disallow any expenditure of federal money on a food corporation that discriminates on the basis of race or sex in its employment practices.

Limit federal government food purchases (4 billion annually) to those firms that are competitive, giving priority to independent food manufacturers.

Remove tax loopholes that encourage multinational food corporations to abandon American communities and that allow them to avoid paying their fair share of taxes.

Prohibit corporate and urban investors from using farming losses as a tax write-off against their non-farm incomes.

Allow no more than half of food advertising expenses to be deducted from corporate income tax as legitimate business expense.

Enact rigorous new disclosure requirements to assure adequate public information on corporations involved in the food economy.

Conduct a public examination of the capital structure of the food economy, with particular attention to the ownership of retail food chains and of beef feedlots.

LEAGUE OF WOMEN VOTERS OF ILLINOIS PRIVACY SURVEY

Mr. ERVIN. Mr. President, I have for many years been concerned about the dangers Government computers and recordkeeping systems pose to individual privacy. Many of my colleagues here in the Senate share this concern, and have joined in calling for increased protection of individual privacy from the actual and potential abuses of recordkeeping systems.

To my mind, the defense of privacy must ultimately rest in the awareness of individual citizens about the dangers posed to their freedoms by increasingly sophisticated recordkeeping systems. I was, therefore, extremely pleased to learn about the excellent survey of recordkeeping in Illinois recently conducted by the League of Women Voters in Illinois.

I would like to take this opportunity to commend the Illinois League of Women Voters, and their civil rights and liberties committee in particular, on their thoughtful and thorough work. It seems to me that this is exactly the type of grassroots, local effort which is essential to the safeguarding of personal privacy.

I hope that civic organizations elsewhere in the Nation will follow the good example set by the League of Women Voters in Illinois, and set to work finding out about and seeking to eliminate the dangers to individual privacy posed by all types of recordkeeping systems.

For the information of my colleagues here in the Senate, as well as groups and individuals who may wish to conduct similar surveys in their own States and localities, I request unanimous consent that the "Policy Statement on Privacy and Recordkeeping" of the League of Women Voters of Illinois, together with excerpts from the materials developed by the Illinois league in the course of their survey on recordkeeping, be printed in the RECORD.

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

LEAGUE OF WOMEN VOTERS OF ILLINOIS—CIVIL RIGHTS AND LIBERTIES CONSENSUS POLICY STATEMENT ON PRIVACY AND RECORDKEEPING, MARCH 1973

The League of Women Voters of Illinois has expressed a strong concern for the right of privacy of the individual in the collection, storage and use of personal information about himself by governmental and private organizations.

The League acknowledges that while the keeping of records is necessary for both public and private organizations, it is essential that the records be accurate, current, purged at regular intervals, and that only pertinent and objective information be recorded and used. It is also essential that the individual be aware of the existence of records about himself, the information contained therein and his rights relative to them. The League believes that confidentiality of all records, not legally required to be public, is paramount, and that persons handling them must work under professional standards.

The League believes that the individual's civil rights and liberties include the right to know that such records exist, to examine and amend them, and to be informed of their use. Further, before any information is released to a third party, his authorization should be obtained. Only through subpoena power and specific court order should federal, state and local government agencies have access to records of banks, credit bureaus, schools and other public and private organizations.

Although controls at the federal level would be the most effective, there should be control sources at state and local governmental levels as well. In addition to legislative controls, the League believes that public opinion and professional ethics are important controls, although not sufficient in themselves. Policy guidelines at the state and local levels should be used in areas such as schools, welfare agencies, libraries, banks, law enforcement agencies. All of these control sources should delineate quality, quantity, accuracy, currency, objectivity and relevance of record collections. They should also establish procedures for individual access, correction and purging. They should provide penalties for the mishandling of records.

Similar controls should apply also to information in data pools, when records can be individually identified. There is the need to fix responsibility for the accuracy and use of pool data either with the contributing agency, the pool or both.

When considering the privacy of public officials and candidates for public office, the League approves disclosure of financial information relevant to possible conflicts of interest in accord with the Illinois Governmental Ethics Act of 1972.

LEAGUE OF WOMEN VOTERS OF ILLINOIS—PLANNING THE LEAGUE YEAR 1972–73, JUNE 1972

To: Civil Rights and Liberties Chairmen.

From: Doris Bernstein, State Civil Rights and Liberties Chairman.

Our study this year will be in the area of privacy, and that area of privacy particularly related to the collection, storage, retrieval and use of personal information about people. We will be working in some uncharted areas and possibly uncovering some fascinating facts—and I hope you will agree with the state committee that we have an exciting and instructive year ahead.

Our authors tell us that much loss of PRIVACY these days is unavoidable because today's complex society requires extensive record keeping on every individual. They further tell us that guidelines and legislation in the areas of public/private privilege of information are greatly lacking, particularly in the areas of the "new technology," i.e., electronic computers and data banks.

The first step in our study is a tried and true League technique—we have to gather information (data collections?). You will be asked to do a series of questionnaire interviews in your communities with those persons and public and private organizations which collect and keep and use or sell personal information on people. These would include banks, schools, credit bureaus, law enforcement agencies, etc. You will then be asked to evaluate these questionnaires and return all the information to us so that we can fashion a statewide survey. This has never been done in this area; so there's no way to foresee all the interesting information this material might turn up.

Such a job has several purposes that we can see right now. One, of course, is the use of such information to illuminate conditions on which we may wish to take action. But, in addition, just taking the survey carefully should sensitize you, your League, your community and the interviewees to the endemic nature of personal records and some of the privacy problems connected with them.

Your state committee has worked out a questionnaire and will be trying it on appropriate state agencies such as the Attorney General's office, Superintendent of Public Instruction, Department of Public Aid, the Retail Credit Corporation, the Credit Information Corporation, and possibly some banks and insurance companies. We are in the process of doing this now so we can give you the results at an early date.

* * * * *

You will note that our study this year will not involve the questions of privacy invasion connected with the collection of personal information, i.e. surveillance, wiretapping, searches and seizures, etc. This is not to say that these are not issues of equal importance in the privacy field. Certainly all of our authors address themselves to this issue.

But because this whole area is both broad and deep, the committee decided to study only the collections and their uses at this time, partly because of work load, and partly because there are more legal safeguards about collection than about dissemination. We may certainly want to look into collection methods and privacy as a further study.

We do ask, in our questionnaire, in what manner agencies and organizations get their information simply to document the different methods now in use. But this will not be part of our study and consensus this year.

EVALUATION FORM—JULY 1972

This form is to be used in conjunction with the Survey on Record Keeping. Use a separate evaluation form for each interview.

League.

Organization interviewed.

1. Do you think the organization is collecting more information than it needs? That is, is it collecting non-essential or too detailed information?

2. Has it been community experience that the stated policies of privacy protection of records as stated by the agency or person to you are in fact adhered to?

3. Do you feel the organization has indicated concern for the security of its records and the privacy of the individuals whose records it maintains?

4. Has the interview left you with any concern about areas of possible invasions of privacy in this instance?

SURVEY ON RECORD KEEPING

Interview questions

I. Describe generally the kinds of records you keep on individuals.

A. What categories of persons are covered? (check)

Students.
Employees.
Job Applicants.
Customers.

A particular segment of public with which agency is concerned (as with police or welfare).

Other (list).

B. How are individuals identified in your records? (check)

Name.
Social Security number.
Special coding.
Other.

C. What kind of information is kept (on the individual)?

Student profile (grades, discipline, I.Q. personal evaluations, etc.).
Race.
Religion.
Political affiliation.
Medical data.
Organization memberships.
Arrests.
Convictions.
Personal finance (income, loans, home ownership, etc.).
Test results (aptitude, personality, I.Q., polygraph, etc.).
Occupation.
Social security number.
Morals (drinking problems, sex habits, etc.).

D. Do you have information on the individual's record which you classify confidential? If yes, for what reasons?

E. Record Maintenance.

1. Could you describe in what form your records are kept? (Electronic storage and retrieval, machine coded, manual, etc.).

2. What are your standard procedures for

a. verification of original input?

b. regular review for:

Updating of records?
Correcting of records?
Purging of records?

3. Even though purged locally, are your records or any part of them retained elsewhere for use? If so, where?

For how long?
Why?

F. Approximately how many names do you carry in your records?

II. What are your sources of information?

A. Applications for credit and employment?

B. Accumulated as part of your operation? (school performance, employee personal files, customer relations, etc.).

C. Public records? (vital statistics, school records, court files, welfare rolls, etc.).

D. Restricted or otherwise private records? (credit bureaus, schools, investigative organizations, law-enforcement records and tax records [IRS, FBI], etc.).

E. Other? (list)

F. To what extent is this information acquired through data banks or other electronic or systematic equipment?

G. Are sources of information identified on individual records or in any other manner?

III. Use of information.

A. Is this information used by your organization for:

1. Statistical purposes (analyzing past performance, projecting future requirements, etc.)?

2. Specific individual purposes (aid in determining action with respect to individual such as in a job, in school, for credit, or for governmental action [court action, removal of a license, etc.], etc.)?

3. Commercial purposes (to sell or rent information such as done by credit bureaus and mail houses) If yes, to whom?

4. Other (list)

B. Is the information available to persons or organizations OUTSIDE of your organization?

1. To private persons or organizations? (credit bureaus, customers, employers, insurance companies, anyone from the general public)

2. To governmental agencies on local, state or federal levels? (law enforcement agencies, welfare agencies, IRS or other tax bodies, other government investigative agencies)

3. What is the procedure for outside organizations/persons to obtain information from your records? (Written requests, code numbers, personal or phone contacts?

4. Is this information provided on a regular basis?

5. Under what circumstances would you refuse to furnish information to any persons or organizations?

C. If your records are computerized, is there a provision for exchange or hookup within the organization or with other organizations or a central clearing house? How? With whom?

IV. Controls.

A. What, if any, are the controls on use of your information within the organization?

1. Is access to information restricted to a specific person? To whom is it accessible?

2. Is there any difference in access depending on the kind of information stored; that is, is confidential information less accessible?

3. If access is limited, are there specific safeguards to guarantee that your controls as to use or access are followed?

4. Is a log kept on—

a. who uses the record at any particular time?

b. kind of information extracted from the record at any particular time?

5. If your records are made available outside of your organization, is there a procedure for notifying recipients of the information of any substantive revisions in the records?

B. What, if any, are the controls on use of your information by the individual whose record you maintain?

1. Is he notified or otherwise made aware of the existence of his record with you?

2. Is he informed of the use made of his record both within and without your organization?

3. Is he notified when outside organizations or persons request information about him from your records.

4. Is his consent asked or required for any use of his record?

5. Are there procedures for the individual to inspect? correct or amend? purge his record? What are they?

6. May he inspect any log kept on his records? (See IV–A–4 above)

C. What, if any, are the controls on use of your information by regulation or law?

1. Are there any regulations or laws that guide or restrict you relating to the collection, maintenance and use of information on individuals?

2. Do you follow any enunciated codes of conduct, internal policy procedures, industry standards or professional ethics relating to the collection, maintenance and use of such information?

V. General questions.

Do you think there is a need for legislation, regulation or policy positions—

1. to help you protect the privacy of your records? If so, what kind?

2. to standardize procedures for collection, storage and use of personal records? If so, what kind?

3. to limit your potential liability to an individual affected by the use of this information? If so, what kind?

B. Electronic equipment.

1. If you do not use electronic equipment for data collection, storage and retrieval, do you foresee using it in the near future?

2. If you are presently using such equipment, could you explain how its use has been beneficial?

If it has not been beneficial?

3. Do you think the use of such electronic equipment gives greater or lesser protection to the security of your records than the conventional method of handling data? Why?

Attach an evaluation form to this survey and mail to the State Office by October 1, 1972.

OFFICE OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION, STATE OF ILLINOIS—NOVEMBER 1972

Kinds of records

Section I The OSPI keeps records of everyone having a teaching certificate. The record includes college record, credits, certification, service records (years of service, location, subjects taught, salary) and records of the Teacher Retirement Board (length of service, payments). The office also maintains OPSI employee records.

Files are identified by name, social security number, certificate number; service records are filed by district. Files contain information on TB tests. Arrests and convictiions are recorded; questions of moral qualifications are judged by the county superintendent. Certification is subject to revocation for morals or felony convictions after certification board hearings. Files also record teacher income, test results.

Information on age, address, and salary is considered confidential. Only information given out is regarding certification or noncertification. Files are stored on tape and manually. Files are verified to the point of checking college transcripts. Service records are purged annually, but are retained in the archives of the state for an unknown period. Records are updated annually via information from the individual teacher. Records are purged at death.

Active files on 500,000 certified teachers are kept. The person interviewed did not know the number of service records kept on file.

Source of records

Section II The only source of information on the individual is the individual application.

Use of records

Section III Information in files is used for statistical purposes, for research, in salary negotiations, and as a record of certified teachers. There is no commercial use. Only a school superintendent or school board may have access to the file, and then only information relative to qualification. However, information is available to federal and state agencies with reference to address, certification, salary. Outsiders may have information only for qualified research.

Controls

Section IV Within OPSI there are no restrictions on access to information, and minimal safeguards. Information on felons and/or certification being appealed are kept separately with minimal security. There is no log on use of files—An individual is not notified if inquiries are made regarding his

record, except where qualifications are challenged. An individual may inspect, correct and purge a record by submitting evidence for change.

It is purely a matter of internal policy as to what controls are placed on the use of records.

General

Section V The person interviewed does not feel any need for legislation, regulation or policy positions to guide practices regarding collection, storage, use or protection of privacy of records.

Electronic equipment has added to efficiency in issuing certification and retrieving information. It provides greater protection to individual data (manual data is easier to secure), but less protection to total data since it is more easily compiled.

ILLINOIS DEPARTMENT OF PUBLIC AID

Kinds of records

Section I. Agency keeps records on approximately 988,000 assistance recipients. Records are of two types: case records in narrative form are kept in manual files in local offices; computer-stored information is kept in the state office building. Records include information on age, sex, race, religion, household numbers, need for assistance agency-supplied items, residence in Illinois, income, education, aptitude test scores, occupation, social factors, marital status.

Records are identified by name, special coding and, recently, social security number. All records are classified confidential, but by law and on written request, the list of name, address and amount of public assistance is open to anyone, with the reservation that users are subject to prosecution if information is used for political or business purposes. Records are also subject to subpena by the courts.

Files are reviewed and updated every four months (family records) or every 12 months (individual). Information is not often purged because of shortage of manpower. Canceled cases are removed from the files, but are kept in storage awaiting federal audit; then they are destroyed.

Sources of records

Section II. Information for the files is obtained from applicants for aid, public records and other verified sources. School records are used in education referrals. Little comes from data banks. Sources of verified information are recorded.

Use of records

Section III. Records are used for the specific job of public aid, statistical and administrative purposes; there is no commercial use. Public aid register lists are published monthly. Records are sent to HEW and USDA. The records are subject to subpena. There are reciprocal arrangements with other states for the purpose of locating "responsible" relatives.

Controls

Section IV. Records are available to all employees at the welfare department and there are no restrictions on information. Exception: records on employees who receive assistance through the local office; these records are kept in county administrator's office.

The director did not believe any additional special safeguards were needed, based on past experience.

A sign-out sheet records who is using a file. A recipient is aware of his file, but it is not available to him, but he may appeal for a hearing anytime a decision is made that effects him. He may inspect the factual record, not narrative entries. Only oral consent is needed if use of his file is required.

General

Section V. The law provides against such use by outsiders. The same law would apply to staff. Director believes there is no need for such restrictions on staff because policy protects case information.

Without electronic equipment, it would be impossible to operate the files. The chief believes electronic equipment gives greater protection to records since fire and security protection are built in.

BANK

Kinds of records

Various types of banking accounts: savings, checking, trusts, mortgage, international banking, loans. Information on file varies with type of account; e.g.—with individual installment loans, bank keeps total financial picture—why loan wanted, identification, employment, previous credit record, references, income (by bracket); commercial accounts, current finanial statement and list of corporate officers, etc.

Employees records include in profit: medical check by bank doctors, including specifics on drugs, organization membership, arrests, schools and grades, personal finance (e.g. mortgage), aptitude tests and, if considered necessary for promotions, psychological tests. Identification is by social security number, drivers license (considered more important), signature card with birthdate (since signature varies with age). Employees are fingerprinted and photographed and record goes to F.B.I.

All records are held confidential.

Applications for bank accounts and employment are in manual files; financial data in computer. Verification of information is based on degree of service sought. Files are purged based in own printed schedule recommended by legal and audit departments. Employee records are retained for five years after leave. There is a retention center for inactive files and a complete duplicate file in Harvard, Illinois, retained in event of disaster.

Files include approximately 5,000,000 accounts and 6,000 employees' files.

Sources of information

Applications are the prime sources. Cook County, Evanston, and Chicago credit bureaus are used for verification; telephone and rent or mortgage payment patterns and personal references are used as backup verification where needed.

Uses

Strictly for banking purposes. Only very occasionally for internal statistical use. No selling of information. No hook-up with other organizations. (Bank does not give loan lists to credit bureaus.) Gives out only reference information in client's interest. (e.g. establishing credit for opening charge account.)

No other information is given except by court order. Requests must be in writing.

Controls

Files are locked, have an alarm system and armed guard. Access to computer files is directly limited to computer staff. With proper identification and justification, any employee can gain information. Computer department head is in charge; his authorization is needed to use files. Employee records have a specific person in charge; only specific information is given. If a file is subpoenaed, the customer is notified in writing before file is turned over to court and is told of his right to seek restraint on subpoena.

A customer has access to financial information in file, but not application.

Controls exercised are house rules, not legal ones. Controls are based on professional ethics seeking to protect privacy, on guidelines of banking institute, on recommendations of auditors and legal department.

General

The person interviewed would like to have laws backing up and supporting the protection of privacy of files. The first bank to require a court order for revelation of information from records has gone to court to try to protect subjective material in files from subpoena.

Computers have added speed and efficiency. The bank believes computer files are more secure than manual, since only a specialist can read the information.

The bank has objected to "reporting" aspect of Bank Secrecy Act and has long practiced record retention as prescribed in the Act.

RETAIL CREDIT COMPANY

Retail Credit Company supplies information to businesses concerning individuals applying for insurance, credit and employment. The company has more than 300 branch offices with files on 45,000,000 people. About 7% of their business is in employment reports; the remainder is in life, auto, personal, property insurance and in credit reporting.

Information kept in the company's reporting files include identification, employment, reputation, morals, drinking habits, finances and character. All reports are marked confidential.

The information gathered by Retail Credit Company is largely subjective and does not lend itself to electronic data processing. The reporting files are stored manually in file cabinets. The files for each branch office are kept separately at that location and not at a central location.

Adverse information must be substantiated from two unrelated sources. Subjective adverse information such as character must be verified again before reuse after 90 days. Most records are destroyed after 13 months. Most of the remainder are discarded within three years. The company complies with the Fair Credit Reporting time limits on reporting adverse information.

The company employs its own field investigators, checks bankruptcies and court reports and clips newspaper articles. Sources of information are identified on files.

Retail Credit Company sells information only to its regular accounts. These are business firms with a continuing need for this information. They cooperate with law information agencies including the FBI to the extent allowed by the FCRA.

Reports are issued only in written form and rarely over the telephone. The record of reports issued is kept in the individual file. All employees have access to the files and are made aware of the responsibility in the area of privacy and also of legal penalties for the use of misinformation.

Retail Credit Company conforms to the FCRA provisions for notification, disclosure and correction of files.

The company official interviewed pointed out that the cost factor insures no unnecessary information is collected by Retail Credit Company. Businesses are paying only for what they need to know. Prompt, accurate information is essential to the business economy. Too many requirements for notification and express consent would slow down the ability of the business to act and this would not be in the consumer's best interest, the company feels. In addition, surveys commissioned by Retail Credit Company show that the public is not overly concerned about the possible invasion of privacy in this area.

INSTITUTE FOR EDUCATIONAL RESEARCH

(A PRIVATELY OPERATED CENTER FOR EDUCATIONAL RESEARCH)

As an adjunct to educational research activities, this center provides a computerized record-keeping service to member school districts. Students are identified by code number on the computerized record, which also handles and stores financial data, budgets, program budgets and scheduling. The records on each student may include grades, IQ scores, personal evaluation as recorded on a standard form, and "family census" information, as the district chooses. Race and religion might be included if required for government programs.

All information is confidential; the center stores and processes it; but would need permission to use it for research projects, and then would use only student number, not names. Each member district is responsible for verification of the initial input, as well as review, updating of information and corrections. All student records are purged within a year, although the districts may keep the printouts indefinitely.

The center now keeps records on approximately 35,000 students for six districts. The capacity of the machine is 200,000 or 300,000. The information stored can be retrieved only by the district from which it came. If member districts wish to exchange information, they can do it only by obtaining a printout and exchanging manually. Anyone outside the district would have to obtain a court order to receive the information.

Specific safeguards of privacy include code numbers for individual files and code numbers for each terminal in a member district. Some employees have access to codes, but they are informed of the necessity for privacy. Under the present system it is not possible to exchange or receive information from another computer.

The member district does not notify individuals of these records; a Board of Education represents the individuals in giving consent when it approves participation in the program and also may approve other use of the records if it wishes. Inspection of the records by parents or students is not necessary because everything in them (with the possible exception of IQ records) was originally either provided by them or the contents known to them in some form, the director says. Any legal restrictions in this area would apply to the member districts.

The director believes that there should be a statutory limitation on the right to subpoena information concerning students. He says that the record-keeping operations fall within the Russell Sage Foundation Guidelines and have made possible a great deal of analysis, particularly in the area of finance, which would not otherwise be economically feasible for them.

The director believes that electronic storage and retrieval give greater security protection than information stored in file drawers because accessibility is easier to control with the use of codes; the routinized procedure and logs give additional protection; the cost of snooping would be much higher. His opinion is that high costs would deter school districts from keeping more information than necessary, from keeping it longer than one year, and from including information received from outside sources.

FEBRUARY 19, 1973.

To: Civil Rights and Liberties Chairmen.
From: Doris Bernstein, State Chairman.
Re: Illinois Department of Finance, Management Information Division.

This week three members of the state CR & L committee in company with the state League legislative chairman met with the deputy director of the Department of Finance of Illinois. Mr. John Gentile is in charge of the Management Information Division which *keeps on its computers the records for 30 state agencies!* In addition, he is the project director for *Project SAFE*, an IBM funded study project conducted at the State of Illinois Data Center. Project SAFE is to be a comprehensive study of how to deal with the privacy, security and integrity of data collections.

THE MANAGEMENT INFORMATION DIVISION

This division of the Department of Finance maintains, as noted above, the complete records of thirty state agencies. Not included, at this point, are records from the state and local law enforcement agencies and the records from the Secretary of State's office. These are on separate computers.

The source of all of the information maintained in these computers is the original agency itself; no information is fed to the computer by any other source. The information in the computer is the property of the agency which contributed it, and the agency head is responsible for its accuracy and its use.

At the present time there is little exchange of information within the computer which is used largely on a shared time basis by the agencies. Any "linkage" would have to be agreed upon by the heads of whichever agencies desired it. We were told that such "linkage" would be advantageous, making it possible to cross-check and correlate the files. There is now exchange of information outside the computers, and the director feels that privacy could be better ensured if any such exchanges took place within the computer.

PROJECT SAFE

A study is currently underway, funded by IBM which has supplied the more than $50,000,000 worth of computers used in the state government. This study, duplicated in several other sections of the country, is directed by Mr. Gentile and his assistant, Mr. Robert Caravella. They designate their study "a pragmatic interdisciplinary approach to ensure privacy of information in a computer environment." The basic assumption of the study is that "privacy of information" can best be assured by minimizing the exposure to the following six problem areas: apathy, negligence, extortion, lack of data integrity, theft, and lack of ethics or ideological values. The study covers many technical aspects of security as well as practical and philosophical concepts for maximum preservation of individual privacy, and how to effect both privacy and security.

The study began with a computer search of the Illinois code extracting legislation which contained specific key words relating to privacy (confidential, secret, disclosure, etc.). This indicated that all existing legislation concerning protection of privacy is written into specific programs. The Director foresees and may propose *omnibus* legislation which would impose controls on government data collections, and hopefully private collections.

Drafting of such legislation has not yet begun, although it may come this year. It would contain provisions covering notification, correction, access, purging, logs, relevance, security, and use (or non-use) of social security numbers. Barring successful legislation, the Director could propose an executive order covering the above which would only cover government records.

Needless to say we found ourselves on the same wavelength with the Director and the project and, pending our consensus, indicated our direct interest and possible support. We were greatly heartened by the real concern expressed by this state division, and IBM for funding the project.

In the security planning stages now, software is being designed which will control access (possibly by a frequently changed code word) to reveal immediately any unauthorized attempt to extract information from the machine. Logs are now being kept but are so voluminous as to be unusable; but plans are being made to make exceptional use readily apparent on the log.

Project Safe has also employed a Chicago lawyer whose specific job is to plan a series of guidelines, workshops, public relations seminars, classes, etc., to inform and teach all persons in state government working with record collections on computers about privacy and security. She also looks forward to League participation. She asked us to consider these two questions:

(1) If we could get to all the levels of state employees who are responsible for record keeping to set the guidelines for their use, what would we want them to do and know?

(2) What do we think the people of Illinois need to know about the records being kept on them in the state?

How it took us a half a year to find the largest and most comprehensive data collection organization in the state is beyond comprehension! But we have it now, and we've made good contact. They're involved in a study that's right down our alley. It's quite exciting.

AUGUST 1973.

To: Civil Rights and Liberties Chairmen.
From: Mary Ann Randby, State Civil Rights and Liberties Chairman.

Senator Ervin hos certainly been doing his part to keep Civil Liberties before the public. And now, no doubt you've heard of the report of the advisory committee to HEW, which provides excellent support for many of our consensus positions regarding privacy and record keeping.

A copy of the *Summary and Recommendations of the HEW committee* is enclosed, as entered in the Congressional Record by Senator Ervin. It should make exciting reading for those of you who struggled to prepare your Leagues for consensus last year. In this mailing you will also find the *Final Analyses of your interviews with record keeping organizations* in Illinois (over 300 interviews).

This HEW Committee Report, our statewide interviews, and your own League's experience conducting local interviews should give you strong backing for our position on Privacy and Record Keeping. Familiarize yourself with the HEW summary and recommendations as well as the final analyses, and review the record of your local interviews. (If your League was not able to do local interviews with record keeping organizations last year, just work from the final analyses.)

* * * * *

The HEW advisory committee recommends the enactment of a federal "Code of Fair Information Practice" for all automated personal data systems. The Code rests on *five* basic *principles* that would be given legal effect as "safeguard requirements" for automated personal data systems:

(Note the parallels to our Position on Privacy and Record Keeping, March 1973).

1. There must be no personal data record-keeping systems whose very existence is secret.

LWV position: "It is essential that the individual be aware of the existence of records about himself."

2. There must be a way for an individual to find out what information about him is in a record and how it is used.

LWV position: "The League believes that the individual's civil rights and liberties include the right to know that such records exist, to examine and amend them, and to be informed of their use."

3. There must be a way for an individual to prevent information about him that was obtained for one purpose from being used or made available for other purposes without his consent.

LWV position: ". . . before any information is released to a third party, his authorization should be obtained."

4. There must be a way for an individual to correct or amend a record of identifiable information about him.

LWV position: "(Controls) should establish procedures for individual access, correction and purging."

5. Any organization creating, maintaining, using, or disseminating records of identifiable personal data must assure the reliability of the data for their intended use and must take precautions to prevent misuse of the data.

LWV position: ". . . control sources should delineate quality, quantity, accuracy, cur-

rency, objectivity and relevance of record collections . . . They should provide penalties for the mishandling of records . . . Similar controls should apply also to information in data pools, when records can be individually identified. There is the need to fix responsibility for the accuracy and use of pool data either with the contributing agency, the pool or both."

This report should make us proud of the conclusions we reached and even more confident in working for their actualization.

* * * * *

Among the HEW committee's recommendations, pending the enactment of a federal code of fair information practices, was that state and local governments, the institutions within reach of their authority, and all private organizations adopt the safeguard requirements by whatever means are appropriate. It is this *need for state legislation* which you should discuss with your state legislators. As Alan Westin told us last year, state laws are necessary until such time as federal legislation can be passed, and can in fact be a powerful impetus to federal legislation.

This is a fairly new area for legislation, and legislators listen for public interest in an issue. It's up to you to bring this to their attention, and to let them know that the League of Women Voters of Illinois is vitally interested. You might quote the HEW Report that "it is becoming much easier for record-keeping systems to affect people than for people to affect record-keeping systems . . . and individual's control over the use that is made of personal data he gives to an organization, or that an organization obtains about him, is lessening."

We do not have specific legislation we are supporting at this time; no comprehensive legislation has yet been introduced. At this time we are simply asking you to discuss the subject and our position with your legislators, and to find out how aware they are of the problem and how supportive they might be of state legislation to protect privacy in governmental or private data collections, and in the Illinois School Code.

* * * * *

Our "bible" on school records, the Russell Sage Guidelines, is not now available from the Russell Sage Foundation. Since so many of you were interested in affecting school records policies, we are printing the Russell Sage Guidelines for your use. You will receive three copies in the September Presidents' mailing, and additional copies can be purchased. If you are planning to work for the adoption of a local school board policy on records, you might begin by supplying every school board member and school administrators with a copy of the Russell Sage Guidelines, a copy of our final analysis of school interviews, and an explanation of our position and concerns. (Russell Sage Guidelines are recognized as the ideal in the profession, and they offer solutions to many of the administrative problems involved in the implementation of a privacy policy.)

While we're talking about schools, are you familiar with the resolution adopted by the Illinois Congress of Parents and Teachers, Spring, 1972? This could lead to some allies for action in your community.

Whereas, the Illinois PTA has always agreed that no child should be labelled during his school years and after

Whereas, the Russell Sage Foundation predicts that computerization of school records will become nearly universal during the 70's

Whereas, school files may not always be fact but subject to the interpretation of the student by school personnel and

Whereas, there are dangers inherent in a system of record keeping which denies the right of challenge

Now, be it resolved that the ICTPT support the right of the student and his parent to have access to any files maintained by the school relative to the student and the right to challenge them where necessary.

* * * * *

Many of you raised questions about the Illinois Juvenile Officers Information File at Rolling Meadows, as a result of your interviews with police departments. (See the report on State Committee interview with File Director, November 1972.) The Juvenile Officers Information File is now being transferred to the jurisdiction of the Department of Law Enforcement. In a letter to the Chairman of the Illinois House Appropriations Committee dated May 31, 1973, Mr. Harvey N. Johnson, Director of the Department of Law Enforcement, made the following statements.

"I would like to clarify two procedures which this Department intends to implement when we acquire the responsibility of maintaining a Juvenile Officers Information File.

"First, all names of juveniles who have reached age 17 will be cut off the cards annually, or when a specific card is observed during a routine transaction. I have asked the Superintendent of the Bureau of Identification to receive specific permission from the State Records Commission to do this.

"Second, the parent of any juvenile whose name is entered in the file will be notified of that fact."

We will keep you up-to-date on any information we receive about this File.

FINAL ANALYSIS OF RECORDKEEPING INTERVIEWS, CIVIL RIGHTS AND LIBERTIES COMMITTEE, AUGUST 1973

BANKS—46 SURVEYS

Typical information kept

Name, address, occupation. Personal finance records: amount of information depends on whether the customer is applying for a loan or merely opening an account. Social Security number: bankers say this is a federal requirement. Account number or special coding to identify the customer.

A few banks (nine) require medical data; some have records of arrests, as well as information about morals, as a result of reports they obtain from credit bureaus.

Outside of the applicant himself, a bank's most common source of verification when processing a loan account is the credit bureau. Most of the reporting banks consider the information they keep on their customers confidential.

Access to material

Credit bureaus have the greatest access to a bank's information; almost all reporting banks said they freely pass information to credit bureaus.

Aside from credit bureaus, information is divulged to different degrees; the only consistency is that "some legitimate reason" is required. Most banks will not divulge information to individuals, only to organizations. Most require a written request for information, while ⅓ will give information over the telephone to an identified source. The overwhelming majority of responding banks do not inform the customer of all requests for information from the outside, especially credit bureau reports. A substantial number of banks stated they get blanket permission from the customer to give out information at the time of application.

Most banks will give information to the IRS or other government agencies only with a court order. Most will inform the customer if the IRS makes a request.

Professional ethics and legal guidelines

The diversity of answers regarding controls was astounding. Two stated there were no laws or regulations regulating banks' handling of individual records. The rest agreed there were regulations: some just mentioned "laws" in general, while others were more specific. The most commonly mentioned (11 banks) was the Fair Credit Reporting Act, while 7 banks mentioned the Truth in Lending Act. Others mentioned the Bank Secrecy Act, FDIC regulations, and Treasury Bureau Law #901500.

Professional codes of conduct were also varied: American Banks Association standards, Bank Administrator's Institute standards, professional ethics, Robert Morse Association Code of Ethics.

These interviews produced no common understanding of how these laws and professional ethics specifically related to the privacy of individual records.

CREDIT BUREAUS—21 SURVEYS

Typical information recorded

Identifying information: name, address (present and previous), social security number, wife's name.

Occupation, employer, salary (present and previous).

Personal financial information: bank loans, department store charge account records, paying habits.

Public record: arrests and convictions, bankruptcies, judgments, litigations.

Investigative reporting for personnel and insurance purposes might also include morals, organization memberships, student records.

Five bureaus do not keep records of either arrests or convictions, and five more keep only convictions. Nearly all report only arrests whose dispositions are known, even though the law and industry guidelines ask merely that they make "reasonable" efforts to determine disposition.

Some larger bureaus regularly update their file with reports of department store charge account transactions. In general, smaller bureaus are regularly notified of past due accounts by their members, or check status with stores when an inquiry is received.

Procedures for handling and use

Information is sold to "members" who have signed contracts and declared their purpose in receiving credit information. Legitimate purposes, defined in general by the Fair Credit Reporting Act, include credit, insurance, employment and business dealings. An individual can receive a report from some agencies, even for a one-time inquiry, if he signs a contract card of intent.

The Fair Credit Reporting Act forbids the use of credit bureau files for government investigative purposes unless a court order is obtained. Unless they have a legitimate use for a report, such as licensing, hiring or granting credit, government agencies should only be given identifying information about a subject, limited to name, address, former address, employer, former employer. However, only six of the bureaus state that this is their policy with regard to government investigations, and several state they cooperate with any law enforcement or government inquiries.

The Fair Credit Reporting Act outlines an individual's control over his records: he must be told its contents upon request, can ask for corrections or include a statement in a dispute. All bureaus interviewed stated they comply with these provisions.

The Fair Credit Reporting Act specifies length of time derogatory items may be reported, generally seven years (bankruptcies for fourteen years). All seem to comply with this.

Professional ethics and legal guidelines

The Fair Credit Reporting Act of 1971 regulates the activities of credit bureaus. No interviewers questioned compliance with its provisions regarding the individual's access to his record, or regarding time limits on reporting detrimental information. Some interviewers felt bureaus were less careful about being sure that reports are for legitimate purposes as defined by the Fair Credit Reporting Act.

The Association of Credit Bureaus publishes guidelines for its members, who repre-

sent a large portion of the industry. These guidelines typify the goal of credit reporting as "an opinion-free, objective record of a person's usual manner of payment of each credit account." They encourage full compliance with FCRA provisions, regular purging of files, and open communication between the consumer and the credit bureau. Bureaus responsive to current trends seem to follow these guidelines.

Many smaller bureaus still continue such practices as retaining subjective information, "buddy system" of sharing information, purging on a sporadic basis, if at all, and a suspicious, secretive attitude toward consumer questions.

Bureaus which do investigative reporting for employment and insurance purposes often make reports which are far from "opinion-free, objective" accounts, and the sources of such subjective information do not have to be identified under current FCRA provisions.

LIBRARIES—29 SURVEYS

Typical information recorded

Application information: name, address, phone, age (juvenile), occupation or business address. Only three record social security number, and one records the sex of the card holder.

Records of over-due books, fines, and habitual non-returners. Circulation records.

Procedures for handling and use

No libraries keep a record of all the books a patron borrows. Circulation records only show who has borrowed a particular book. If the library uses a *transaction slip* system, this record is accessible only until the book is returned. If the library uses *book card* system, a history of who has borrowed the book is compiled until the book card is filled and a new card is made. Seven libraries report a transaction slip system.

All librarians agreed that circulation records should be confidential, citing their professional ethics. No libraries sell information to outside organizations, and most give information to government agencies only by court order.

The concern most mentioned by librarians (five of those interviewed) was that the use of computers might result in keeping records longer and in sharing access with other agencies. (N. B. This is not a necessary by-product of computerization, but depends on the computer program. If confidentiality is the intent of the program, information could be deleted as soon as a transaction is completed, and access can be limited in many ways. The willingness is all.)

Professional ethics and legal guidelines

There are no laws regarding the confidentiality of library records.

Only three of the libraries surveyed had their own formal policy statement on confidentiality of records. Most librarians stated they follow the American Library Association policy on the confidentiality of library records.

All the librarians interviewed stress that their professional ethics require that they keep circulation records confidential. The American Library Association has issued strong statements on this position, as well as other aspects of intellectual freedom, and these specific positions were clearly evidenced in these interviews.

Statement of American Library Association Council

The American Library Association Council strongly recommends that the responsible officers of *each library* in the United States:

1. Formally adopt a policy which specifically recognizes its circulation records and other records identifying the names of library users with specific materials to be confidential in nature.

2. Advise all librarians and library employees that such records shall not be made available to any agency of state, federal, or local government except pursuant to such process, order, or subpoena as may be authorized under the authority of, and pursuant to, federal, state or local law relating to civil, criminal or administrative discovery procedures or legislative investigatory power.

3. Resist the issuance or enforcement of any such process, order or subpoena until such time as a proper showing of good cause has been made in a court of competent jurisdiction.[1]

POLICE DEPARTMENTS AND RELATED LAW ENFORCEMENT AGENCIES—62 SURVEYS

Information recorded

Police departments record a variety of information in such files as: Case file: kept by file number, includes investigating officer's complete report. Incident files: by type of incident or offense. Arrest record card: by individual, can become quite inclusive.

Worth particular note are the master index files maintained in eleven departments interviewed. These master index files include the names of all persons in contact with the department, whether for filing a complaint, witnessing an accident, or being charged with a felony. Many interviewers questioned this co-mingling of complainants and criminals.

Also pertinent is the fact that nearly all agencies record the social security number of persons arrested, and 28 agencies report that they use social security number for identification.

Most police records are kept indefinitely, never purged.

Many agencies have access to the state Law Enforcement Agency Data System (LEADS) and the National Crime Information Center (NCIC) through leased teletype terminals in their own departments or neighboring departments. This system can provide, within seconds, information on stolen articles, missing and wanted persons, registered firearms, drivers licenses, and automobile licenses. In the future, the LEADS system will provide criminal history information.

Some agencies submit and receive information on juveniles from the Illinois Juvenile Officers Information File at Rolling Meadows.

PROCEDURES FOR HANDLING AND USE

Some agencies have a record clerk who controls internal access to records. In other instances, the senior officer on duty is in charge of records. Sometimes all police personnel have access on a "need to know" basis. Usually juvenile officers control access to juvenile records. Records are generally available to all other agencies within the criminal justice system.

There is little agreement on how available law enforcement records should be outside the criminal justice system, with the exception of juvenile records which are confidential by law. Some agencies furnish information to credit bureaus, insurance companies, banks, employers, IRS, military intelligence. Other agencies frown upon or forbid furnishing information without a signed authorization or a subpoena. Statements about the confidentiality of records ranged from "police records are kept closed to the public" to "all are public records."

Only a few laws were mentioned by respondents as covering the keeping or sharing of records in law enforcement, such as the Juvenile Court Act, the Public Information Act, and the Freedom of Information Act. However, no common understanding of the specific effect these laws have on the confidentiality of records became evident through these interviews. Fourteen agencies felt the need for legislation to help protect the privacy of their records. Many interviewers doubted that records were as confidential as some agencies maintained.

SCHOOLS—71 SURVEYS

Information recorded

Most districts keep *two* levels of information.

Permanent record card: grades, courses taken, dates of attendance. This information is kept indefinitely and is generally available to teachers and staff. Student workers often have access to these. This information may be provided to colleges, employers, credit bureaus, insurance companies, usually with the written consent of parent or student.

This card may also include IQ scores, standardized test scores, unsigned teacher ratings, notation of special information available elsewhere on the student (such as psychological consultation).

Confidential file or files: personal information on student, teacher or counselor evaluations, personality or psychological test scores and other psychological information; test scores; disciplinary information. Confidential records are usually stored separately in locked files in either principal's, dean's, or guidance counselor's office. These are accessible only to professional staff directly involved with students. Very few districts give teachers direct access to psychological reports. Most districts now allow parents to see these (and IQ scores) with interpretation.

Most districts report that information designated "confidential" is supplied only with written permission of the student or parent, or in response to subpoena.

Confidential records in most districts are destroyed within five years after graduation, often sooner.

A law which required that disciplinary suspensions be itemized by name for the information of school board members was passed two years ago, and repealed a year later. Some school districts still continue this practice.

(Health records are confidential, stored separately in the nurse's office in most districts.)

Despite the standards of confidentiality expressed, no logs are kept on persons using the files or what information they extract, even where access is supposedly highly restricted.

Existing Policies

Only 11 districts reported that a school board policy determines the handling of student records. In none of these 11 districts did the interviewers report a serious concern over the standards of confidentiality, and none of their interview reports include the inexplicit or qualified answers to questions concerning access ("probably not", "mostly refuse", "maybe to police," "reluctant to give out test scores", "administrative decision") which appear throughout many interviews.

Several of these policies reflect the influence of the Russell Sage Foundation Guidelines. These guidelines recommend three levels of confidentiality rather than two, specific conditions of access and challenge, logs, and purging. They also offer solutions to many of the administrative problems involved in the implementation of a privacy policy.

In the balance of districts many administrators said that "professional ethics" and the "Illinois School Code" guided them in record handling. In actuality, there is no legislation in Illinois concerning handling of student records, nor did any administrator report any required education courses or in-service training bearing on the subject.

Concerns

Concern was most often expressed by League interviewers that standards of pri-

[1] Means that upon receipt of such process, order, or subpoena, the library's officers will consult with their legal counsel to determine if such process, order, or subpoena is in proper form and if there is a showing of good cause for its issuance; if the process, order or subpoena is not in proper form or if good cause has not been shown, they will insist that such defects be cured.

vacy in their district were dependent upon the awareness and interest of one administrator, rather than strong district policy. In many cases there were indications that the standards of confidentiality expressed were not adhered to by other members of the faculty and staff. Several Leagues felt that individual teachers were not impressed with the need to keep the information to which they had access confidential. A case in point is that, although no administrator reported giving information on students to local police, several police departments listed schools as sources of information.

Colleges: Special notes

The eight college administrators interviewed shared a strong concern for the confidentiality of student records, a generally more sophisticated understanding of the problem of privacy and record keeping than their secondary school counterparts. Six of the eight schools had a written policy on record handling, and the two which did not seemed equally concerned.

All the colleges interviewed required either a subpoena or written student permission for release of any information. In response to increased requests for information on students, one school is cutting down on the information it keeps, and another has recently ceased giving any information to police and will no longer provide student lists to campus organizations. The discretion of individual faculty members was mentioned as a problem by one school.

Shared information includes ACT, CEEB and Illinois Scholarship records, records for transfers from one school to another, and financial information. Sharing of financial aid records is common, and is necessary to avoid double funding on federal and state programs.

Although privacy standards were high in all these schools, security measures were not described by any, and logs of use appear to be kept only irregularly.

SEPTEMBER 1973 MEMORANDUM

LAW ENFORCEMENT AGENCIES DATA SYSTEM (LEADS)

In July, members of the League of Women Voters of Illinois Civil Liberties Committee interviewed Mr. John Dreiske, General Services Administrator of the Department of Law Enforcement of the State of Illinois, on the collection, storage and use of records in the LEADS system. LEADS is a computerized system designed to provide law enforcement agencies within the state with immediate access to records through the use of 297 terminals throughout the state which are connected with the LEADS central computer.

TYPES OF RECORDS

At the time of the interview, LEADS contained 176,998 records. Of these, over 138,000 were vehicle and license plate records, 9,589 were gun records, 13,686 of the entries were stolen articles, and 12,591 were wanted and missing persons entries. Entries in these categories, as well as add-ons to existing "wanted" entries, may be made by subscribers to the LEADS system. (Other categories are alias names and stolen securities.) Investigative records are never gathered by LEADS or shared with the system by local police jurisdiction.

LEADS is now in the process of adding criminal histories records, liquor license registration records, and will eventually acquire the juvenile records file now kept at Rolling Meadows. Criminal history records will all include disposition (conviction and sentence) because they are obtained through the correction system. "Arrest only" records will not be released.

SOURCES

Unlike the Illinois Department of Finance Management Information Department, which process information separately for each members storing agency, LEADS acquires the information and becomes the proprietor of it, permitting subscribers to share all information under conditions which it specifies. When juvenile records are acquired, they also will become the property of LEADS, but will be shared only with juvenile officers in the subscribing jurisdictions. LEADS includes the Firearm Owners registrants in Illinois and has access to information in the National Crime Information Center (NCIC), State Police files, access to records of five neighboring states and of the Secretary of the State of Illinois.

PURGING

The files on wanted and missing persons, guns and stolen securities are only purged when the case is closed. The file on stolen vehicles is purged four years following year of entry. All other entries in the file are purged one year following the year of entry. Criminal histories will be kept for ten years following the last arrest. The Bureau of Identification, a division within the Department of Law Enforcement is the only agency that can add-on or change a criminal history record.

ACCESS

Direct access to information in the LEADS system is available to subscribers in the state who have signed a contract with the Department of Law Enforcement which specifies the conditions of use. Subscribers may include police forces, courts, prosecutive agencies, correction departments, parole commission, fingerprint agencies at all levels *within* the state. Those with direct access may provide information only to others who meet these standards. Information concerning federal crimes is made available to the NCIC, but may not be made available either by LEADS or by any subscriber to other federal jurisdictions (such as MPs) or to anyone outside the criminal justice system. An individual offender has no right of access or challenge concerning information on himself under the present regulations.

Information cannot be given for licensing or employment (except employment with criminal justice system). Data can be provided for research only with approval of Illinois Department of Law Enforcement (NCIC in appropriate cases). Illinois has declined to participate in national research programs where the standards for data security were not as high as those of LEADS.

ENFORCEMENT

Any agency which violates these regulations is cut off immediately from the LEADS service. Logs of use are kept and audited regularly. Although there have been few abuses, the service has indeed been revoked when violations were detected. (Frequently, contacts are made with police chiefs, sheriffs, and communication dispatchers who access the LEADS system to insure that the terms of the contract are understood.)

LEGISLATION AND REGULATION

The contract between LEADS and its users is modeled after the contract between the NCIC and its users. It shows serious concern for matters of both privacy (policy toward information on individuals) and security (procedures used to implement policy). It is *not* law and does *not* control the use by local jurisdictions of their own information. The regulations it contains were planned to anticipate the requirements of future legislation.

The National Association of State Information Systems (NASIS), which also displays a strong concern for individual privacy, has developed a Model State Act for Criminal Offender Records. NASIS urges adoption of state legislation throughout the country with this comment:

"It seems clear that interstate systems for the exchange of criminal offender records will shortly be organized, and standards to protect privacy and security may be most effectively and easily formulated early in the development of such systems."

This model would provide control by law of records of all police jurisdictions as well as state criminal offender records. It provides the rights of access and challenge by the offender and purging of criminal histories; it does not provide as strong restrictions on access outside the criminal justice system as the present LEADS users contract.

At the time of our meeting, Mr. Dreiske stated that though he was not opposed to future legislation, he would not support it at the present time. Subsequent to the meeting, he informed us that federal legislation enacted in June relative to the appropriation for the Law Enforcement Assistance Administration would seem to make such legislation mandatory now. The intent of that legislation was to make the states conform to policies defined by the Committee on security and privacy of project SEARCH in Technical Report No. 2. That report states, ". . . each participating state should immediately adopt a uniform act for the protection and control of (criminal justice) information system data." Finally, he expressed the hope that such legislation will provide maximum protection and regulation in terms of the rights of individuals and minimum definition of the specific structure of the system. He stressed that the information system itself must be flexible to meet changing information needs of the different agencies within the criminal justice system.

Mr. PERCY. Mr. President, I am delighted to join with the distinguished chairman of the Constitutional Rights Subcommittee (Mr. ERVIN) in congratulating the Illinois League of Women Voters for its comprehensive survey of recordkeeping in Illinois.

The time-consuming efforts of the members of the Civil Rights and Liberties Committee of the Illinois League have produced an extremely thorough and informative report.

The survey demonstrated that despite the existence of legal requirements for the collection and dissemination of personal information, additional controls are needed.

I was pleased to join as a sponsor of two such measures when they were introduced by the senior Senator from North Carolina earlier this year. One, the Federal employee privacy bill, has passed the Senate four separate times, only to later die in the House of Representatives. The need for the Freedom from Surveillance Act of 1973, which prohibits the Armed Forces from collecting information or conducting surveillance on private citizens, was acutely demonstrated during hearings held by the Constitutional Rights Subcommittee in 1971.

Obviously, public opinion must be brought to bear if this and other needed legislation is to be adopted.

The Illinois league's report can serve to make both the public and data collecting agencies more aware of the constitutional protection of individual privacy and of the obligations of public and private data collecting agencies to respect this right.

I was pleased to note that some of the agencies surveyed expressed a conscious effort to follow not only the spirit but the letter of applicable law in this area and am certain the league's efforts have

already had an effect on the practices of others.

Again, I commend the Illinois league and urge groups in other States to launch similar efforts to bring abuses of personal privacy to public attention for correction.

Mr. STEVENSON. Mr. President, today Senator ERVIN is inserting into the RECORD the "Policy Statement on Privacy and Record Keeping" of the League of Women Voters of Illinois, along with excerpts from the material the Illinois league developed in the course of making its survey.

I join Senator ERVIN in commending the Illinois League of Women Voters, and particularly the Civil Rights and Liberties Committee of the league, for its excellent work. It is extremely important for all citizens to be aware of the dangers to their freedoms from modern sophisticated data and record keeping systems, and I commend the Illinois league for promoting this public awareness.

I also commend Senator ERVIN for his untiring work in this area. Most citizens throughout the Nation have come to know Senator ERVIN through his work on the Watergate Committee, but we here in the Senate and civil libertarians throughout the land have long known of Senator ERVIN's deep interest in such issues as the right of privacy, executive privilege and the right to a speedy trial. He is chairman of the Constitutional Rights Subcommittee of the Senate Judiciary Committee, and as well as anyone, Senator ERVIN perceives the threats to our privacy and defends the safeguards of the Constitution. In citing the work of the Illinois League, Senator ERVIN—to use an old phrase—"knows whereof he speaks."

I am sure that Senator ERVIN and the members of the Illinois league know that I share their deep concern.

ORDER FOR ADJOURNMENT TO 10 A.M. TUESDAY, NOVEMBER 13, 1973

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 10 a.m. on Tuesday next.

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

ORDER FOR RECOGNITION OF SENATORS GRIFFIN AND ROBERT C. BYRD AND FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS ON TUESDAY NEXT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate meets on Tuesday next, after the two leaders or their designees have been recognized under the standing order, the distinguished assistant Republican leader (Mr. GRIFFIN) be recognized for not to exceed 15 minutes, and that I then be recognized for not to exceed 15 minutes, after which 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.

AUTHORITY FOR THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS TO HAVE UNTIL MIDNIGHT ON MONDAY TO FILE CERTAIN COMMITTEE REPORTS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Interior and Insular Affairs have until the hour of midnight Monday to file certain committee reports.

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

WHIP NOTICE

Mr. ROBERT C. BYRD. Mr. President, in order that Senators may be informed of the program for Tuesday and the rest of next week, I ask unanimous consent that my today's Whip Notice be inserted in the RECORD.

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

FRIDAY, NOVEMBER 9, 1973.

WHIP NOTICE

DEAR COLLEAGUE:

MONDAY, NOVEMBER 12

No session.

TUESDAY, NOVEMBER 13

Senate convenes at 10:00 a.m.
Senator Griffin, 15 minutes.
Senator Byrd (W. Va.), 15 minutes.
Morning business not to exceed 15 minutes.

Senate will proceed to consideration of Conference Report on Alaska Pipeline—provided the Conference Report has come over from the other Body. *A yea-and-nay vote will probably occur on that Conference Report.*

Among other matters which can come up at any time on Tuesday and later in the week are the following (but not necessarily in the order listed):

Conference Report on Oil and Petroleum Allocations (House acts first).
Conference Report on HEW Appropriations Bill (House acts first).
Conference Report on State, Justice Appropriations Bill (House acts first).
Northeast Rail legislation.
Energy legislation being reported, in the interim, from the Senate Interior Committee.
D.C. Home Rule Conference Report (House acts first).
Military Construction Authorization Conference Report (House acts first).
HMO Conference Report (House acts first).
Ford Nomination (possible).
Saxbe Pay Bill (possible).

NOTE.—Several yea-and-nay votes are likely to occur next week, beginning on Tuesday.

ROBERT C. BYRD.

ADJOURNMENT UNTIL TUESDAY, NOVEMBER 13, AT 10 A.M.

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until the hour of 10 a.m. on Tuesday next.

The motion was agreed to; and at 1:55 p.m. the Senate adjourned until Tuesday, November 13, 1973, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate, November 9, 1973:

WORLD HEALTH ORGANIZATION

Dr. S. Paul Ehrlich, Jr., of Virginia, to be the Representative of the United States of America on the Executive Board of the World Health Organization.

U.S. DISTRICT COURTS

William C. Conner, of New York, to be U.S. district judge for the southern district of New York, vice Edmund L. Palmieri, retired.

MARINE CORPS

Lt. Gen. Leo J. Dulacki, U.S. Marine Corps, for appointment to the grade of lieutenant general on the retired list in accordance with the provisions of title 10, U.S. Code, section 5233.

In accordance with the provisions of title 10, U.S. Code, section 5232, Maj. Gen. Samuel Jaskilka, U.S. Marine Corps, having been designated for commands and other duties determined by the President to be within the contemplation of said section, for appointment to the grade of lieutenant general while so serving.

IN THE COAST GUARD

The following-named officers of the Coast Guard for promotion to the grade of commander:

John M. Cece	Terry L. Lucas
Charles S. Mincks	Ian S. Cruickshank
Edmond G. Case	Harry E. Obedin
Peter F. Sterbling, Jr.	Neal F. Herbert
Ransom K. Boyce	Kenneth M. Rappolt
Roland E. Huggins	Gerald F. Corcoran
Dean A. Frankenhauser	Robert A. Creighton
	Robert A. Schwartz
Thomas E. Langmann	William T. Troutman
Stephen D. Csintyan	Richard E. Haas
Paul Resnick	Robert A. Ginn
Charles E. Siegman	Ralph E. Giffin
William E. Newland	Joseph S. Blackett, Jr.
Berl R. Williams	John R. Sproat
Leon Clarizio	James G. Williams
Donald S. Krug	Alfred D. Utara
David M. McCann	Eugene J. Hickey, Jr.
Gary D. Palmer	Richard W. Zins
Edward F. Boulanger	John E. McCarty
Steve W. Geletka	Martin J. Moynihan
Billie A. Campbell	Charles L. Keller
Richard J. Clements	James D. Partin
John A. Blanchard	Jerome M. Myers
George G. Turner	Hugh D. Williams
Eugene E. Moran	James W. Haugen
Irving G. Sauer	Manuel Josephs, Jr.
Jan R. Dazey	Michael B. Dunn
Karl F. Wassenberg	William H. Hall, Jr.
Domenic A. Calicchio	Robert G. Williams
Theodore E. Deming	James F. Butler
Robert W. Davis	John F. Otranto, Jr.
Lloyd R. Lomer	Donald A. Feldman
Paul D. Russell	Robert E. Kramek
Leroy G. Krumm	

IN THE AIR FORCE

The following officer to be placed on the retired list in the grade indicated under the provisions of Section 8962, Title 10, of the United States Code:

To be lieutenant general

Lt. Gen. Thomas K. McGehee, [redacted] FR (major general, Regular Air Force), U.S. Air Force.

IN THE AIR FORCE

The following Air National Guard of the United States officers for promotion in the Reserve of the Air Force under the provisions of section 593(a), title 10 of the United States Code, as amended:

LINE OF THE AIR FORCE

To be lieutenant colonel

Maj. James E. Aiken, [redacted] FG.
Maj. Edward A. Belyea, [redacted] FG.

Maj. Charles V. Blair, xxx-xx-xxxx FG.
Maj. Emiel T. Bouckaert, xxx-xx-xxxx FG.
Maj. Charles R. Bradley, xxx-xx-xxxx FG.
Maj. Wayne R. Brendel, xxx-xx-xxxx FG.
Maj. Richard A. Brockway, xxx-xx-xxxx FG.
Maj. Alfred P. Bunting, xxx-xx-xxxx FG.
Maj. John E. Carleton, xxx-xx-xxxx FG.
Maj. John A. Carter, xxx-xx-xxxx FG.
Maj. James W. Chapman, xxx-xx-xxxx FG.
Maj. Kenneth J. Costa, xxx-xx-xxxx FG.
Maj. David E. Culver, xxx-xx-xxxx FG.
Maj. James H. Estep, xxx-xx-xxxx FG.
Maj. James R. Felix, xxx-xx-xxxx FG.
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Maj. Elliott W. Lambert, xxx-xx-xxxx FG.
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Maj. Gilbert Popez, xxx-xx-xxxx FG.
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Maj. Donald L. Masuret, xxx-xx-xxxx FG.
Maj. Elden I. Maxwell, xxx-xx-xxxx FG.
Maj. Juan J. Mayol, xxx-xx-xxxx FG.
Maj. William B. McDonald, xxx-xx-xxxx FG.
Maj. David A. McLaughlin, xxx-xx-xxxx FG.
Maj. Robert L. Monson, xxx-xx-xxxx FG.
Maj. Dale E. Moses, xxx-xx-xxxx FG.
Maj. Joseph Naddeo, xxx-xx-xxxx FG.
Maj. Billy J. Nichols, xxx-xx-xxxx FG.
Maj. Robert W. Odle, xxx-xx-xxxx FG.
Maj. George C. Radzak, xxx-xx-xxxx FG.
Maj. Dale H. Reinecker, xxx-xx-xxxx FG.
Maj. Dan A. Robar, xxx-xx-xxxx FG.
Maj. Kennith L. Robinson, xxx-xx-xxxx FG.
Maj. Clarence H. Ryherd, xxx-xx-xxxx FG.
Maj. Harold S. Schindler, xxx-xx-xxxx FG.
Maj. William C. Seeds, xxx-xx-xxxx FG.
Maj. Richard H. Sotherland, xxx-xx-xxxx xxx-... FG.
Maj. Elvin E. Stambaugh, xxx-xx-xxxx FG.
Maj. John P. Syribeys, xxx-xx-xxxx FG.
Maj. Donald R. Tonole, xxx-xx-xxxx FG.
Maj. Thomas J. Turnbull xxx-xx-xxxx G.
Maj. Samuel A. Wilson, xxx-xx-xxxx FG.
Maj. Roger T. Winn, xxx-xx-xxxx FG.
Maj. Kenneth L. Wolfe, xxx-xx-xxxx FG.
Maj. Stanley A. Worsham, xxx-xx-xxxx FG.
Maj. Ward H. Zelhart, xxx-xx-xxxx FG.

MEDICAL SERVICE CORPS

Maj. Allan D. Davidson, xxx-xx-xxxx FG.
Maj. Duane F. Mabeus, xxx-xx-xxxx FG.

EXTENSIONS OF REMARKS

S. 1868: AN INDUSTRY VIEW

HON. HUGH SCOTT

OF PENNSYLVANIA

IN THE SENATE OF THE UNITED STATES

Friday, November 9, 1973

Mr. HUGH SCOTT. Mr. President, on September 6, Mr. Martin N. Ornitz, president of the Stainless Steel Division of the Crucible Materials Group for Colt Industries, Inc., filed a statement with the Senate Foreign Relations Committee for the record of the committee's hearing on S. 1868, legislation to reinstate U.S. participation in the United Nations sanctions against the importation of metallurgical chromium ore and other materials from Rhodesia.

Mr. Ornitz was one of a number of persons who had expressed a willingness to appear before the committee in person, but was requested not to do so because of time. Instead, he was asked by the committee to submit a statement on the understanding that it would be included in the printed volume of the committee's hearing. Later, a decision was made to include in the printed volume only the statements of those persons who actually appeared before the committee.

Therefore, I would like to bring the statement by Mr. Ornitz to the immediate cause of time. Instead, he was asked by attention of the Senate, and I ask unanimous consent that it be printed in the RECORD.

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

STATEMENT OF MARTIN N. ORNITZ

Mr. Chairman and members of the Subcommittee. I am president of the Stainless Steel Division of the Crucible Materials Group of Colt Industries Inc. The specialty steel industries—stainless, alloy and tool steels—are the major consumers of chromium in the United States and overseas.

I thank you for the opportunity to submit this statement to your Committee. I want to take advantage of the opportunity by bringing two points to your attention.

One is the economic consequence for the American citizen of shutting off the United States from access to any source of metallurgical chrome, at a time when worldwide demand for chrome is rising and America must compete for it with a host of other countries.

The second point is that the Committee's consideration of chrome opens the way for you to help find a solution for the problem of the raw materials shortage that besets the United States. Instead of adding to the shortage, as the pending bill would, I urge that you begin the positive search for means to assure the continuing availability of raw materials, particularly chrome. I do not intend to address political aspects of the legislation, about which the Committee is in a position to know more than I, but it is obvious that the narrow and negative approach of the pending legislation will not long—if ever—help the people of Africa in whose interest the legislation was drafted. For Africa is not going to benefit from a "have-not" United States. Africa deserves better than that. The United States deserves better than that.

Regarding the economics, the legislation before you creates a serious immediate problem for the American public. If the legislation is enacted in present form, it will reduce the amount of chromium ore, i.e., chromite, and ferrochrome—a steel making alloy made from metallurgical chromite—available to the United States. All usable chromite is mined overseas. This reduction of chrome will threaten the stainless steel industry with reduction in output. As a matter of law as well as a matter of consumer preference, stainless is used in many applications that are critical to our way of life and the public health. The dairy industry, for example, uses much stainless steel in the interest of public health, from the milking of the cow, to vats used in cheese-making, to tank trucks that haul milk to the dairy and the dairy equipment itself. Stainless is employed in the making of tractors and a variety of other agricultural machines. Our country needs and the world needs the American farm. Perhaps the relationship between the farm and chrome was overlooked in the advocacy of this legislation.

Furthermore, stainless is one of the specialty metals essential to national defense. It is important in the reduction of air pollution. There are many other uses, which I list later in this statement, including the manufacture of automobiles, airplanes, and railway equipment. I know that the legislation is not aimed by intent at dairymen, at the environmentalists or at national defense or American transportation. But they are the "innocent bystander" targets of the legislation. It takes chrome to make stainless. There is no escape from that reality.

In summary, the situation is:

The production and consumption of stainless steel and other chrome-bearing specialty steel has increased substantially since 1970 in the United States. Each individual type of market for stainless in the U.S. (except aircraft) has increased since 1970. It has gone from a total domestic consumption of 802,000 metric tons in 1970 to 941,000 metric tons in 1972. The consumption for 1973 first six months is 29 percent greater than in first six months of 1972.

The worldwide demand for the same steels and their production also has increased substantially since 1972. The market for stainless produced in all countries increased by 15 percent from 1971 to 1972, and is further increasing in 1973.

The result is rising demand and worldwide competition for available chromite and ferrochrome from sources outside the United States. Hope for a domestic ore is dashed by the fact that ore identified in Montana is not economically practical in filling ferrochromium requirements. Ferrochrome production in the United States is down due to the problem of chromite availability, cost of compliance with environmental laws, and change in requirements for the type of ferrochrome used resulting from changes in melting techniques.

The change in type of ferrochrome needed results from increasing usage of the new AOD process to make stainless steel. This process greatly increases usage of charge chrome and reduces use of the more expensive low carbon ferrochrome. Crucible believes that the AOD process is a key element in keeping us competitive against foreign made stainless steel. In addition to lowering costs, the process also provides higher quality stainless. Crucible has put in operation a 100-ton AOD unit, which is the largest operating vessel in the world. My company bought practically all of its ferrochrome in the United States until it became almost impossible to do so. The United States is competing with many countries for the available ferrochrome—Japan, Great Britain, France, Sweden, Austria, Belgium, West Germany, Italy, Soviet Union, People's Republic of China, Spain, Brazil, Canada, Australia, Mexico, and Norway. Cost as well as availability is a fundamental consideration. If it happens that the only way the United States can obtain chrome is to pay a premium price, the national struggle against inflation is set back.

The specialty steel industry in the United States must have assurance of adequate supplies of ferrochrome. Given the worldwide demand situation, no country can afford the elimination of Rhodesia as a source of chromite for making ferrochrome unless Rhodesia is replaced by assured access to a substitute source. Geologists have not found new supplies in the earth that are being worked. Chromite is mined in several countries, but that fact can be misleading.

For example, it has been pointed out that the Philippines are a source of chromite. That means nothing to the stainless industry in the United States. The Philippine metallurgical chromite desirable for steel-production goes to Japan. The Philippine exports to the United States consist of ore for the refractories industry and is not suit-