Food, Drug, and Cosmetic Act with respect to dietary supplements, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. PATTEN:

H.R. 11491. A bill to amend the Urban Mass Transportation Act of 1964 to permit financial assistance to be furnished under that act for the acquisition of certain equipment which may be used incidentally for charter or sightseeing purposes, and for other purposes; to the Committee on Banking and Currency.

H.R. 11492. A bill to amend the Public Health Service Act to provide for programs for the diagnosis and treatment of hemophilia; to the Committee on Interstate and Foreign Commerce.

By Mr. KOCH (for himself and Mr. BRASCO):

H.J. Res. 825. Joint resolution prohibiting urban mass transportation systems from raising their fares above present levels during a 2-year period, and providing for the payment of operating subsidies to urban mass transportation systems which incur deficits as a result of such prohibition; to the Committee on Banking and Currency.

By Mr. POWELL of Ohio:

H.J. Res. 826. Joint resolution authorizing the President to proclaim the period from February 17 to February 23 as Sertoma Freedom Week, and to call upon the people of the United States and interested groups and organizations to observe such period with appropriate ceremonies and activities; to the Committee on the Judiciary.

By Mr. WHITEHURST (for himself and Mr. DENNIS):

H.J. Res. 827. Joint resolution proposing an amendment to the Constitution of the United States; to the Committee on the Judiciary.

By Mr. FUQUA:

H. Con. Res. 379. Concurrent resolution calling for the President to curtail exports of goods, materials, and technology to nations that restrict the flow of oil to the United States; to the Committee on Banking and Currency.

By Mr. HUDNUT (for himself and Mr. ECKHARDT):

H. Con. Res. 380. Concurrent resolution expressing the sense of Congress concerning the use of chauffeur driven limousines by the Federal Government; to the Committee on Government Operations.

By Mr. THOMPSON of New Jersey:

H. Res. 702. Resolution to provide funds for the Committee on the Judiciary; to the Committee on House Administration.

By Mr. STARK:

H. Res. 703. Resolution impeaching Richard M. Nixon, President of the United States for high crimes and misdemeanors; to the Committee on the Judiciary.

SENATE—*Wednesday, November 14, 1973*

The Senate met at 10 a.m. and was called to order by the President pro tempore (Mr. EASTLAND).

PRAYER

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

Eternal Father, amid the confusion of our times, we pause to open our hearts and minds to Thy presence. Give us the wisdom to discern the spirits—whether they be of God or of the enemy of man's soul. Above all other voices may we hear Thy clear voice saying "This is the way, walk in it." Support the President and the Congress in all righteous endeavors. From troubled times make triumphant souls and in difficult days wilt Thou produce dividends of character and grace. Guide those whose labor makes for peace and justice in the world. May Thy will be done and Thy kingdom be nearer its fulfillment because we serve Thee here.

In His name who is King of Kings and Lord of Lords. Amen.

REPORT OF A COMMITTEE SUBMITTED DURING ADJOURNMENT

Under authority of the order of the Senate of November 13, 1973, Mr. MCGEE, from the Committee on Post Office and Civil Service, reported favorably, without amendment, on November 13, 1973, the bill (S. 2673) 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, and submitted a report (No. 93-499) thereon, which was printed.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Tuesday, November 13, 1973, be dispensed with.

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

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the House had passed without amendment the Senate bill (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 message also announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1570) to authorize the President of the United States to allocate crude oil and refined petroleum products to deal with existing or imminent shortages and dislocations in the national distribution system which jeopardize the public health, safety, or welfare; to provide for the delegation of authority to the Secretary of the Interior; and for other purposes.

The message further announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 8916) making appropriations for the Departments of State, Justice, and Commerce, the judiciary, and related agencies for the fiscal year ending June 30, 1974, and for other purposes; that the House had receded from its disagreement to the amendments of the Senate numbered 24, 26, 27, 39, and 50 to the bill and concurred therein; and that the House had receded from its disagreement to the amendments of the Senate numbered 30, 37, and 46, and concurred therein severally with an amendment in which it requests the concurrence of the Senate.

The message also announced that the House had disagreed to the amendment of the Senate to the bill (H.R. 5874) to establish a Federal Financing Bank, to provide for coordinated and more efficient financing of Federal and federally assisted borrowings from the public, and for other purposes, agreed to the conference requested by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. ULLMAN, Mr. BURKE of Massachusetts, Mrs. GRIFFITHS, Mr. SCHNEEBELI, and Mr. COLLIER were appointed managers of the conference on the part of the House.

The message further announced that the House had agreed to the concurrent resolution (H. Con. Res. 378) providing for an adjournment of the House from November 15 to November 26, 1973, in which it requests the concurrence of the Senate.

The message also informed the Senate that pursuant to the provisions of section 9(b), Public Law 89-209, as amended by section 2(a)(8), Public Law 93-133, the Speaker appointed Mrs. GRASSO a member of the Federal Council on the Arts and Humanities.

ENROLLED BILLS SIGNED

The message also announced that the Speaker had affixed his signature to the following enrolled bills:

S. 1081. An act to amend section 28 of the Mineral Leasing Act of 1920, and to authorize a trans-Alaska oil pipeline, and for other purposes; and

S. 2645. An act 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 enrolled bills were subsequently signed by the President pro tempore.

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

PROVIDING FOR THE CONVEYANCE OF CERTAIN LANDS TO THE STATE OF LOUISIANA

Mr. MANSFIELD. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 9295.

The PRESIDENT pro tempore laid before the Senate H.R. 9295 which was read by title as follows:

H.R. 9295, an act to provide for the conveyance of certain lands of the United States to the State of Louisiana for the use of Louisiana State University.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the bill be considered as having been read twice by its title and that the Senate proceed to its immediate consideration. It is identical to S. 2477 which the Senate passed on yesterday.

The PRESIDENT pro tempore. Is there objection to the request of the Senator from Montana?

There being no objection, the bill, H.R. 9295, was considered, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the passage yesterday of S. 2477 be reconsidered and that the bill be indefinitely postponed.

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

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, if the distinguished Republican leader would not mind, I should like to yield to him at this time if he has any remarks to make.

THE WHITE HOUSE TAPE OF MARCH 21

Mr. HUGH SCOTT. Mr. President, I just want to say briefly, for clarification of the record, there has been so much talk about the tapes that one of the facts that should be more widely known, I think, is that it is a reasonable conclusion the tape of March 21 will show Mr. Dean made some reference—and I do not know his exact words because I have not heard the tape—Mr. Dean made some reference to the President along the lines of "This is the first time I have told you about these things," and that after a summation of some very deplorable behavior, the President expressed shock and dismay.

If that is borne out in the hearing before Judge Sirica—and I hope later publication—it will also make false the statement by Mr. Dean that he had spoken to the President earlier on this matter, in the previous September and on March 13.

I make this statement simply because I believe it is impossible or very hard to have much notice given to it. It is probably the crucial point in all the discussions of Watergate. That is my judgment, my best information, about what will appear. I make the statement again for that reason.

I hope the proceedings on the relevancy of the tapes and of the material which can be submitted to the grand jury will be acted upon promptly by the Federal district court. I have great respect for the judge of that court. I believe he would be eager to expedite these proceedings. I know it is in the interest of the country that they be expedited so that the truth can be made available not only to the grand jury, but also to the American people as soon as possible—and the sooner the better.

COMPENSATION AND OTHER EMOLUMENTS ATTACHED TO THE OFFICE OF ATTORNEY GENERAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 474, S. 2673.

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

The assistant legislative clerk read as follows:

A bill (S. 2673) 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.

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

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

Mr. MANSFIELD. Mr. President, I take it that the assistant majority leader is going to exercise the use of the 15 minutes which the Senate granted to him yesterday. If that is not sufficient time, I should like permission to transfer my 15 minutes to the distinguished Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished majority leader. I ask unanimous consent that I now be recognized under the order, without prejudice to the distinguished Senator from Michigan (Mr. GRIFFIN), who also has an order.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that S. 2673 be referred to the Committee on the Judiciary with instructions that the bill be reported back to the Senate not later than the hour of midnight on Tuesday next, and without amendments.

Mr. HUGH SCOTT. I have no objection.

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

Mr. ROBERT C. BYRD. I thank the distinguished Republican leader.

ANALYSIS OF THE EFFICACY OF REMEDIAL LEGISLATION TO REMOVE AN OFFICE HOLDING DISQUALFICATION IMPOSED BY ARTICLE I, SECTION 6, CLAUSE 2 OF THE CONSTITUTION

Mr. ROBERT C. BYRD. Mr. President, the nomination of Senator WILLIAM SAXBE to the Office of Attorney General has raised a question whether he is eligible for appointment under article I, section 6, clause 2 of the Constitution. That provision states:

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; . . .

The background of the situation is as follows: Under Public Law 90–206, 2 U.S.C. 351, et seq., approved December 16, 1967, Congress established the Commission on Executive, Legislative, and Judicial Salaries. The Commission is required to make recommendations to the President, at 4-year intervals, on the rates of pay for Senators, Representatives, Federal judges, Cabinet officers and other executive, legislative, and judicial officials. The law requires that the President, in the budget next submitted by him after receipt of a report of the Commission, set forth his recommendations with respect to the exact rates of pay he deems advisable for those offices and posions covered by the law. The President's recommendations become effective 30 days following transmittal of the budget, unless in the meantime other rates have been enacted by law or at least one House of Congress has enacted legislation which specifically disapproves of all or a part of the recommendations.

Pursuant to section 225(h) of the act, 2 U.S. Code section 359(h), President Nixon transmitted to the Congress on January 15, 1969, recommendations which, inter alia, proposed raising the salary of the Attorney General from $35,000 to $60,000 per year. On February 4, 1969, the Senate debated Senate Resolution 82, which would disapprove the Presidential recommendation. The resolution was defeated, with Senator SAXBE, whose term began on January 4, 1969, voting with the majority; CONGRESSIONAL RECORD, volume 115, part 2, page 2716. The pay raises became effective shortly thereafter.

It seems clear to me from the above that, under the present circumstances, any Senator who was elected or reelected in 1968 is ineligible for appointment as Attorney General until the end of his term on January 3, 1975, since it is an office the compensation of which has been increased during that 6-year term in office. However, on November 5, 1973, the House and Senate received from the Acting Attorney General a draft of proposed legislation which would roll back the compensation and other emoluments of the Attorney General to what they were on January 1, 1969, prior to the raise.[1] Daily CONGRESSIONAL RECORD, November 5, 1973, page 35884.

The question squarely put then is whether the constitutional disqualification, once applicable, may be rendered inoperative or satisfied thereafter by remedial legislation. Analysis of the origins of the constitutional provision, and subsequent precedents, leads to considerable doubt that, once the constitutional condition exists, that is, an increase in the compensation of an office, Members of Congress may be appointed to the office for the remainder of their term and that the prohibition may be lifted for the benefit of a potential appointee by a subsequent legislative act nullifying the disqualifying condition.

CONSTITUTIONAL DEBATES OF 1787

A review of the Philadelphia debates concerning the emoluments clause reveals almost universal agreement as to the general purpose underlying it, to wit, that some protection was necessary

[1] The proposed legislation would provide: "That the compensation and other emoluments attached to the Office of Attorney Genenral shall be those which were in effect on January 1, 1969, notwithstanding the provisions of the Salary Recommendations for 1969 Increases transmitted to the Congress on Jan. 15, 1969.

against possible corruption of members of the legislature resulting from the lure of civil office. The framers saw two potential sources of evil: first, that legislators might view their election to the Congress as a stepping stone to some lucrative public office and utilize their positions in the legislature as a means of creating or increasing the compensation of such sought-after offices; and, second, that an unscrupulous executive might use the enticement of public office to influence members of the legislature. Although there was general agreement on the underlying potential evil, there was a divergence of opinion as to how best to express the disqualification necessary to effect the prohibition. Significant here is that the few statements against imposing any disqualification apparently were not based on the belief that the apprehended evil was unwarranted or irrational. Rather it was founded on the view that the legislature would attract the best men in the Nation and it would be unwise to make ineligible for public office the most able men in the Republic. The prohibition, therefore, actually represents a compromise in an area in which there was agreement both as to the evil to be contained and on disqualification as the method of containment, but disagreement as to the duration of the disqualification. The evolution of the clause during the course of the convention illustrates these points.[2]

First mention of the prohibition appears in Randolph's resolutions—Virginia plan—of May 29, Nos. 4 and 5 of which would have rendered members of both houses "to be ineligible to any office established by a particular State, or under the authority of the United States, except those peculiarly belonging to the functions of—each branch—during the term of service, and for the space of—unspecified years—after its expiration." Farrand, volume 1, pages 20–21. On June 12 the period of ineligibility was fixed at 1 year after expiration of members' term of office. Farrand, volume 1, pages 217; 228–229. Thereafter, several attempts to remove the disqualification clause in its entirety, or to modify it, were defeated. Farrand, volume 1, pages 375–377, 379–382, 386–390, 391–394. The leading advocate for modification was Madison. On June 22 and 23 he proposed that disqualification attach only where an office was created or the compensation of an old office was increased. Essentially, proponents of total disqualification resisted modification out of fear that a lesser restriction would be too easy to evade. On July 26 the following language was referred to the Committee on Detail:

That the Members of the [first and] second branch of the Legislature of the United States ought to be ineligible to, and incapable of holding, any office under the authority of the United States (except those peculiarly belonging to the functions of the [first and] second branch) during the term for which they are elected, and for one year thereafter. (Farrand, vol. 2, pp. 129–130).

On August 6 the Committee on Detail reported out the provision, then embodied in article I, section 9, as follows:

The members of each House shall be ineligible to, and incapable of holding, any office under the authority of the United States during the time for which they shall respectively be elected; and the Members of the Senate shall be ineligible to, and incapable of holding, any such office for one year afterwards. (Farrand, vol. 2, p. 180).

At that point, then, the only change found necessary by the committee was to eliminate the additional 1-year disability for House members. The discrimination against the Senate would appear to relate to the key role given it in the nomination and confirmation process.

On September 3 the final debate on the provision took place. The language agreed to is similar to that ultimately adopted. Farrand, volume 2, pages 489–492. The debate appears as follows:

Mr. Pinkney moved to postpone the Report of the Committee of Eleven (see Sept. 1) in order to take up the following,

"The members of each House shall be incapable of holding any office under the U— S— for which they or any other for their benefit, receive any salary, fees or emoluments of any kind, and the acceptance of such office shall vacate their seats respectively." He was strenuously opposed to an ineligibility of members to office, and therefore wished to restrain the proposition to a mere incompatibility. He considered the eligibility of members of the Legislature to the honorable offices of Government, as resembling the policy of the Romans, in making the temple of virtue the road to the temple of fame.

On this question

N. H. no. Mas. no. Ct no— N— J. no. Pa ay. Md. no Va. no N.C ay SC—no Geo. no. [Ayes—2; noes—8.]

Mr. King moved to insert the word "created" before the word "during" in the Report of the Committee. This he said would exclude the members of the first Legislature under the Constitution, as most of the Offices wd. then be created.

Mr. Williamson 2ded. the motion.[9] He did not see why members of the Legislature should be ineligible to *vacancies* happening during the term of their election.[10]

Mr. Sherman was for entirely incapacitating members of the Legislature. He thought their eligibility to offices would give too much influence to the Executive. He said the incapacity ought at least to be extended to cases where salaries should be *increased*, as well as created, during the term of the member. He mentioned also the expedient by which the restriction could be evaded to wit: an existing officer might be translated to an office created, and a member of the Legislature be then put into the office vacated.

Mr. Govr. Morris contended that the eligibility of members to office wd. lessen the influence of the Executive. If they cannot be appointed themselves, the Executive will appoint their relations & friends, retaining the service & votes of the members for his purposes in the Legislature. Whereas the appointment of the members deprives him of such an advantage.

Mr. Gerry though the eligibility of members would have the effect of opening batteries agst. good officers, in order to drive them out & make way for members of the Legislature.

Mr. Gorham was in favor of the amendment. Without it we go further than has been done in any of the States, or indeed any other Country. The experience of the State Governments where there was no such ineligibility, proved that it was not necessary; on the contrary that the eligibility was among the inducements for fit men to enter into the Legislative service.

Mr. Randolph was inflexibly fixed against inviting men into the Legislature by the prospect of being appointed to offices.

Mr. Baldwin remarked that the example of the States was not applicable. The Legislatures there are so numerous that an exclusion of their members would not leave proper men for offices. The case would be otherwise in the General Government.

Col. Mason. Instead of excluding merit, the ineligibility will keep out corruption, by excluding office-hunters.

Mr. Wilson considered the exclusion of members of the Legislature as increasing the influence of the Executive as observed by Mr Govr Morris at the same time that it would diminish, the general energy of the Government. He said that the legal disqualification for office would be odious to those who did not wish for office, but did not wish either to be marked by so degrading a distinction—

Mr. Pinkney. The first Legislature will be composed of the ablest men to be found. The States will select such to put the Government into operation. Should the Report of the Committee or even the amendment be agreed to, The great offices, even those of the Judiciary Deparment which are to continue for life, must be filled whilst those most capable of filling them will be under a disqualification

On the question on Mr. King's motion

N— H. ay. Mas. ay— Ct. no. N. J. no. Pa. ay. Md. no. Va. ay N— C. ay. S— C. no. Geo— no. [Ayes — 5; noes — 5]

The amendment being thus lost by the equal division of the States, Mr. Williamson moved to insert the words "created or the emoluments whereof shall have been increased" before the word "during" in the Report of the Committee

Mr. King 2ded. the motion. &

On the question

N— H— ay— Mas— ay— Ct. no. N— J. no. Pa. ay. Md. no. Va. ay. N— C. ay. S. C. no. Geo— divided. [Ayes — 5; noes — 4; divided — 1.]

The last clause rendering a Seat in the Legislature & an office incompatible was agreed to nem: con:

The Report as amended & agreed to is as follows.

"The members of each House shall be ineligible to any Civil office under the authority of the U. States, cerated, or the emoluments whereof shall have been increased during the time for which they shall respectively be elected — And no person holding any office under the U. S. shall be a member of either House during his continuance in office."

Adjourned

The ultimate version of the clause represents a victory for the view of Madison, who had led a number of previous attempts to amend the provision in a like manner. His remarks are therefore important to an overall understanding of the scope of the prohibition and demonstrate that the compromise he sought to effect was designed to pinpoint certain potential major abuses for absolute prohibition while maintaining encouragement for legislative service. Following are excerpts from the June 23 debates:

Mr. M(adison) renewed his motion yesterday made & waved to render the members of the 1st. branch "ineligible during their term of service, & for one year after—to such offices only as should be established, of the emoluments thereof, augmented by the Legislature of the U. States during the time of their being members." He supposed that the unnecessary creation of offices, and increase of salaries, were the evils most experienced, & that if the door was shut agst. them, it might properly be left open for the appointt. of members to other offices as an encouragmt. to the Legislative service.

[2] All page references to the debates are from Farrand, "The Records of the Federal Convention of 1787," 4 vols. (Yale University Press, 1966).

Mr. Alex: Martin seconded the motion.

(Mr. Butler. The amendt. does not go far eno' & wd. be easily evaded)

Mr. Rutlidge, was for preserving the Legislature as pure as possible, by shutting the door against appointments of its own members to offices, which was one source of its corruption.

Mr. Mason. The motion of (my colleague) is but a partial remedy for evil. He appealed to (him) as a witness of the shameful partiality of the Legislature of Virginia to its own members. He enlarged on the abuses & corruption in the British Parliament, connected with the appointment of its members. He cd. not suppose that a sufficient number of Citizens could not be found who would be ready, without the inducement of eligibility to offices, to undertake the Legislative service. Genius & virtue it may be said, ought to be encouraged. Genius, for aught he knew, might, but that virtue should be encouraged by such a species of venality, was an idea, that at least had the merit of being new.

Mr. King remarked that we were refining too much in this business; and that the idea of preventing intrigue and solicitation of offices was chimerical. You say that no member shall himself be eligible to any office. Will this restrain him from availing himself of the same means which would gain appointments for himself, to gain them for his son, his brother, or any other object of his partiality. We were losing therefore the advantages on one side, without avoiding the evils on the other.

Mr. Wilson supported the motion. The proper cure he said for corruption in the Legislature was to take from it the power of appointing to offices. One branch of corruption would indeed remain, that of creating unnecessary offices, or granting unnecessary salaries, and for that the amendment would be a proper remedy. He animadverted on the impropriety of stigmatizing with the name of venality the laudable ambition of rising into the honorable offices of the Government; an ambition most likely to be felt in the early & most incorrupt period of life, & which all wise & free Govts. had deemed it sound policy, to cherish, not to check. The members of the Legislature have perhaps the hardest & least profitable task of any who engage in the service of the state. Ought this merit to be made a disqualification?

Mr. Sherman, observed that the motion did not go far enough. It might be evaded by the creation of a new office, the translation to it of a person from another office, and the appointment of a member of the Legislature to the latter. A new Embassy might be established to a new court & an ambassador taken from another, in order to *create* a vacancy for a favorite member. He admitted that inconveniencies lay on both sides. He hoped there wd. be sufficient inducements to the public service without resorting to the prospect of desireable offices, and on the whole was rather agst. the motion of Mr. Madison.

Mr. Gerry thought there was great weight in the objection of Mr. Sherman. He added at another objection agst. admitting the eligibility of members in any case that it would produce intrigues of ambitious men for displacing proper officers, in order to create vacancies for themselves. In answer to Mr. King he observed that although members, if disqualified themselves might still intrigue & cabal for their sons, brothers &c, yet as their own interest would be dearer to them, than those of their nearest connections, it might be expected they would go greater lengths to promote it.

Mr. Madison had been led to this motion as a middle ground between an eligibility in all cases, and an absolute disqualification. He admitted the probable abuses of an eligibility of the members, to offices, particularly within the gift of the Legislature. He had witnessed the partiality of such bodies to their own members, as had been remarked of the Virginia assembly by (his colleague) (Col. Mason). He appealed however to (him) in turn to vouch another fact not less notorious in Virginia, that the backwardness of the best citizens to engage in the legislative service gave but too great success to unfit characters. The question was not to be viewed on one side only. The advantages & disadvantages on both ought to be fairly compared. The objects to be aimed at were to fill all offices with the fittest—characters, & to draw the wisest & most worthy citizens into the Legislative service. If on one hand, public bodies were partial to their own members; on the other they were as apt to be misled by taking characters on report, or the authority of patrons and dependents. All who had been concerned in the appointment of strangers on these recommendations must be sensible of this truth. Nor wd. the partialities of such Bodies be obviated by disqualifying their own members. Candidates for office would hover round the seat of Govt. or be found among the residents there, and practise all the means of courting the favor of the members. A great proportion of the appointments made by the States were evidently brought about in this way. In the general Govt. the evil must be still greater, the characters of distant states, being much less known (throughout the U. States) than those of the distant parts of the same State. The elections by Congress had generally turned on men living at the seat of (the fedl) Govt' or in its neighbourhood.—As to the next object, the impulse to the Legislative service, was evinced by experience to be in general too feeble with those best qualified for it. This inconveniency wd. also be more felt in the Natl. Govt. than in the State Govts as the sacrifices reqd. from the distant members wd. be much greater, and the pecuniary provisions, probably, more disproportiate. It wd. therefore be impolitic to add fresh objections to the (Legislative) service by an absolute disqualification of its members. The point in question was whether this would be an objection with the most capable citizens. Arguing from experience he concluded that it would. The Legislature of Virga would probably have been without many of its best members, if in that situation, they had been ineligible to Congs. to the Govt. & other honorable offices of the State.

(Mr. Butler thought Characters fit for office wd. never be unknown.)

Col. Mason. If the members of the Legislature are disqualified, still the honors of the State will induce those who aspire to them, to enter that service, as the field in which they can best display & improve their talents, & lay the train for their subsequent advancement.

(Mr. Jenifer remarked that in Maryland, the Senators chosen for five years, cd. hold no other office & that this circumstance gained them the greatest confidence of the people.)"

On the question for agreeing to the motion of Mr. Madison. Massts. divd. Ct. ay. N. Y. no. N. J. ay. Pa. no. Del. no. Md. no. Va. no. N. C. no. S. C. no. Geo. no. [Ayes—2; noes—8; divided—1.]

Mr. Sherman movd. to insert the words "and incapable of holding" after the words "eligible to offices" wch. was agreed to without opposition.

The word "established" & the words "Natl. Govt." were struck out of Resolution 3d;

Mr. Spaight called for a division of the question, in consequence of which it was so put, as that it turned in the first member of it, "on the ineligibility of the members *during the term for which they were elected*"—whereon the States were, Massts. divd. Ct. ay. N. Y. ay. N. J. ay. Pa. no. Del. ay. Md. ay. Va. ay. N. C. ay. S. C. ay. Geo. no.

[Ayes—8; noes—2; divided—1.]

On the 2d. member of the sentence extending ineligibility of members to one year after the term for which they were elected (Col. Mason thought this essential to guard agst—evasions by resignations, and stipulations for office to be fulfilled at the expiration of the legislative term. Mr. Gerry had known such a case. Mr. Hamilton. Evasions cd. not be prevented -:- as by proxies—by friends holding for a year, and them opening the way &c. Mr. Rutlidge admitted the possibility of evasions but was for controuling them as possible.)" Mas. no. Ct. no. N.Y. ay. N. J. no. Pa. divd. Del. ay. (Mard. ay.) Va. (no)" N. C. no. S. C. ay. Geo. no.

[Ayes—4; noes—6; divided—1.]

Mr. Madison. My wish is that the national legislature be as uncorrupt as possible. I believe all public bodies are inclined, from various motives, to support its members; but it is not always done from the base motives of venality. Friendship, and a knowledge of the abilities of those with whom they associate, may produce it. If you bar the door against such attachments, you deprive the government of its greatest strength and support. Can you always rely on the patriotism of the members? If this be the only inducement, you will find a great indifferency in filling your legislative body. If we expect to call forth useful characters, we must hold out allurements; nor can any great inconveniency arise from such inducements. The legislative body must be the road to public honor; and the advantage will be greater to adopt my motion, than any possible inconvenience.

In summary, it may be fairly concluded from the course of the debates that it was the concensus of the framers that some prohibition had to be placed on the eligibility of Members of Congress for executive office in order to guard against the possibility of office seeking and executive influence; and that the compromise ultimately reached was based primarily on a fear that a total disqualification during a term of office and for 1 year thereafter would materially affect the supply of able men available to move to executive positions and also the ability of the Legislature to attract capable persons to run for office in the first place.

It seems apparent that the prohibition finally agreed to was meant to be absolute. Nothing has been discovered in the debates which leads to a contrary conclusion; and the remarks as to its potential for easy evasion through indirect means lends weight to the view that at least the minimum sought to be accomplished by the ultimate compromise was to prevent a direct and blatant grant of legislative or executive favor. Stated differently, the price of the compromise, which was sought to insure the availability of high caliber talent to the executive, was the possibility of indirect evasion. The alternatives were a complete bar on officeholding during a Member's tenure, thereby cutting off a source of talent, or no bar at all, which would leave open the door to the perceived evil. The latter alternative does not appear to have been seriously considered.

Thus, the nature of the compromise effected at the convention—that is, the fact that the prohibition was scaled down from an absolute disqualification during tenure plus 1 year to a disqualification upon the occurrence of certain alternative conditions, and the fact that it was not a compromise vis-a-vis a proposal for no bar at all—the nature of the evil

sought to be remedied, and the clear and certain terms of the provision, point strongly toward the conclusion that the disqualification of a member was meant to be absolute during his term of service upon the happening of either condition. Contemporary commentaries and subsequent legal opinions appear to support this view.

POST-CONVENTION COMMENTARIES

For comments of both Madison and Hamilton in their papers supporting the adoption of the Constitution tend to support both the purpose and scope of article I, section 6, clause 2 as adduced above.

In Federalist Paper No. 55, Madison sought to meet the argument that the proposed House of Representatives had too few Members to be entrusted with the great powers granted it. In rebutting the contention Madison commented on the emoluments clause as follows:

Is the danger apprehended from the other branches of the federal government? But where are the means to be found by the President, or the Senate, or both? Their emoluments of office it is to be presumed, will not, and without a previous corruption of the House of Representatives cannot, more than suffice for very different purposes; their private fortunes, as they must all be American citizens, cannot possibly be sources of danger. The only means, then, which they can possess, will be in the dispensation of appointments. Is it here that suspicion rests her charge? Sometimes we are told that this fund of corruption is to be exhausted by the President in subduing the virtue of the Senate. Now, the fidelity of the other House is to be the victim. The improbability of such a mercenary, and perfidious combination of the several members of government, standing on as different foundations as republican principles will well admit, and at the same time accountable to the society over which they are placed, ought alone to quiet this apprehension. But, fortunately the Constitution has provided a full further safeguard. The members of the Congress are rendered ineligible to any civil offices that may be created, or of which the emoluments may be increased, during the term of their election. No offices therefore can be dealt out to the existing members but such as may become vacant by ordinary casualties; and to suppose that these would be sufficient to purchase the guardians of the people, selected by the people themselves, is to renounce every rule by which events ought to be calculated, and to substitute an indiscriminate and unbounded jealousy, with which all reasoning must be vain. The sincere friends of liberty who give themselves up to the extravagancies of this passion are not aware of the injury they do their own cause. As there is a degree of depravity in mankind which requires a certain degree of circumspection and distrust, so there are other qualities in human nature which justify a certain portion of esteem and confidence. Republican government presupposes the existence of these qualities in a higher degree than any other form. Were the pictures which have been drawn by the political jealousy of some among us faithful likenesses of the human character, the inference would be that there is not sufficient virtue among men for self-government; and that nothing less than the chains of despotism can restrain them from destroying and devouring one another.

In Federalist No. 76, Hamilton defended the integrity of the Senate in the nomination and confirmation process from speculation that undue influence would be brought to bear on the body by the President. His defense rested, in part, on the disqualification clause:

To this reasoning it has been objected that the President, by the influence of the power of nomination, may secure the compliance of the Senate to his views. The supposition of universal venality in human nature is little less an error in political reasoning than the supposition of universal rectitude. The institution of delegated power implies that there is a portion of virtue and honor among mankind, which may be a reasonable foundation of confidence. And experience justifies the theory. It has been found to exist in the most corrupt periods of the most corrupt governments. The venality of the British House of Commons has been long a topic of accusation against that body in the country to which they belong, as well as in this; and it cannot be doubted that the charge is, to a considerable extent, well founded. But it is as little to be doubted that there is always a large proportion of the body which consists of independent and public-spirited men who have an influential weight in the councils of the nation. Hence it is (the present reign not excepted) that the sense of that body is often seen to control the inclinations of the monarch, both with regard to men and to measures. Though it might therefore be allowable to suppose that the executive might occasionally influence some individuals in the Senate, yet the supposition that he could in general purchase the integrity of the whole body would be forced and improbable. A man disposed to view human nature as it is, without either flattering its virtues or exaggerating its vices, will see sufficient group of confidence in the probity of the Senate to rest satisfied, not only that it will be impracticable to the executive to corrupt or seduce a majority of its Members, but that the necessity of its co-operation in the business of appointments will be a considerable and salutary restraint upon the conduct of that magistrate. Nor is the integrity of the Senate the only reliance. The Constitution has provided some important guards against the danger of executive influence upon the legislative body. It declares that "No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office."

In both of the quoted references the implication is that executive influence in the form of offers of civil office, or an enriched office, would not be effective during the term of individual members.

Similar confirmation of the purpose and scope of the provision is to be found in Joseph's Story's Commentaries on the Constitution of the United States (Da Capo Press Reprint Edition, 1970):

§ 864. The next clause regards the disqualifications of members of congress; and is as follows: "No senator or representative shall, during the time, for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time. And no person, holding any office under the United States, shall be a member of either house of congress during his continuance in office." This clause does not appear to meet with any opposition in the convention, as to the propriety of some provision on the subject, the principal question being, as to the best mode of expressing the disqualifications.[2] It has been deemed by one commentator an admirable provision against venality, though not perhaps sufficiently guarded to prevent evasion.[3] And it has been elaborately vindicated by another with uncommon earnestness.[4] The reasons for excluding persons from offices, who have been concerned in creating them, or increasing their emoluments, are to take away, as far as possible, any improper bias in the vote of the representative, and to secure to the constituents some solemn pledge of his disinterestedness. The actual provision, however, does not go to the extent of the principle; for his appointment is restricted only "during the time, for which he was elected;" thus leaving in full force every influence upon his mind, if the period of his election is short, or the duration of it is approaching its natural termination. It has sometimes been matter of regret, that the disqualification had not been made co-extensive with the supposed mischief; and thus have for ever excluded members from the possession of offices created, or rendered more lucrative by themselves.[1] Perhaps there is quite as much wisdom in leaving the provision, where it now is.

§ 865. It is not easy, by any constitutional or legislative enactments, to shut out all, or even many of the avenues of undue or corrupt influence upon the human mind. The great securities for society—those, on which it must for ever rest in a free government—are responsibility to the people through elections, and personal character, and purity of principle. Where these are wanting, there never can be any solid confidence, or any deep sense of duty. Where these exist, they become a sufficient guaranty against all sinister influences, as well as all gross offences. It has been remarked with equal profoundness and sagacity, that, as there is a degree of depravity in mankind, which requires a certain degree of circumspection and distrust; so there are other qualities in human nature, which justify a certain portion of esteem and confidence. Republican government presupposes the existence of these qualities in a higher form, than any other.[1] It might well be deemed harsh to disqualify an individual from any office, clearly required by the exigencies of the country, simply because he had done his duty.[2] And, on the other hand, the disqualification might operate upon many persons, who might find their way into the national councils, as a strong inducement to postpone the creation of necessary offices, lest they should become victims of their high discharge of duty. The chances of receiving an appointment to a new office are not so many, or so enticing, as to bewilder many minds; and if they are, the aberrations from duty are so easily traced, that they rarely, or never escape the public reproaches. And if influence is to be exerted by the executive for improper purposes, it will be quite as easy, and in its operation less seen, and less suspected, to give the stipulated patronage in another form, either of office, or of profitable employment, already existing. And even a general disqualification might be evaded by suffering the like patronage silently to fall into the hands of a confidential friends, or a favourite child or relative. A dishonourable traffic in votes, if it should ever become the engine of party or of power in our country, would never be restrained by the slight network of any constitutional provisions of this sort. It would seek, and it would find its due rewards in the general patronage of the government, or in the possession of the offices conferred by the people, which would bring emolument, as well as influence, and secure power by gratifying favourites. The history of our state governments (to go no farther) will scarcely be thought by any ingenuous mind to afford any proofs, that the absence of such a disqualification has renedered state legislation less pure, or less intelligent; or, that the existence of such a disqualification would have retarded one rash measure, or introduced one salutary scruple into the elements of popular or party strife. History, which teaches us by examples, establishes the truth beyond all reasonable question, that genuine patriotism is too lofty in its honour, and

too enlightened in its object, to need such checks; and that weakness and vice, the turbulence of faction, and the meanness of avarice, are easily bought, notwithstanding all the efforts to fetter, or ensnare them.

At the risk of belaboring the point, it should be emphasized that one of Story's criticisms of the prohibition is that it did not go far enough in simply restricting a Member from appointment to civil office during his term of office. Significantly, this left "in full force every influence upon his mind if the period of his election is short, or the duration of it is approaching its natural termination," thus implying that if evasions were to take place they would have to take effect after a Member's term expired.

FOOTNOTES

[1] Mr. Doddridge's Speech in the case of Houston, in May, 1832; Mr. Burges's Speech, Ibid.

[2] Journ. of Convention, 214, 319, 320, 322, 323.

[3] 1 Tuck. Black. Comm. App. 198, 214, 215, 375.

[4] Rawle on the Const. ch. 19, p. 184, &c.; 1 Wilson's Law Lect. 446 to 449.

[1] Rawle on the Constitution, ch. 19. See 1 Tuck. Black. Comm. App. 375.

[1] The Federalist, No. 55.

[2] 2 Elliot's Debates, 279.

SUBSEQUENT LEGAL OPINIONS AND AUTHORITIES

No Federal court has passed upon scope of the inhibition of article I, section 6, clause 2. The question was raised in a court suit emanating from the appointment of Justice Hugo Black to the Supreme Court. Prior to this appointment, Congress passed legislation improving the financial positions of justices retiring at age 70. At the time Black was a Senator from Alabama. The situation gave rise to the case of *Ex parte Albert Levitt*, 302 U.S. 673 (1937), which the Supreme Court dismissed for lack of standing on the part of the petitioner without passing on the merits.

Two Attorney General opinions considering the issue have found the literal language of the provision to be controlling. The first, 17 Op. Atty. Gen. 365 (1882), involved the attempted appointment of a former Senator to an office created after he had resigned his Senate seat but before his term of office had expired. The facts were as follows: Kirkwood was elected as Senator from Iowa for a term expiring on March 4, 1883. He resigned in March 1881 to become Secretary of the Interior and in that same year resigned as Secretary and returned to private life. In 1882 the office of Tariff Commissioner was created by Congress and Kirkwood was proposed as the nominee. However Kirkwood's eligibility was questioned and at the request of the President, Attorney General Brewster rendered an opinion in which he held that Kirkwood was indeed ineligible for appointment.

It is unnecessary to consider the question of the policy which occasioned this constitutional prohibition. I must be controlled exclusively by the positive terms of the provision of the Constitution. The language is precise and clear, and, in my opinion, disables him from receiving the appointment. The rule is absolute, as expressed in the terms of the Constitution, and behind that I cannot go, but must accept it as it is presented regarding its application in this case. I caused careful search through the opinions of the Attorneys General for a precedent upon this question, but none has been found. No opinion is recorded in which the subject is considered. Neither is there any record of published cases in the reports of the United States that touch upon this point. Among the decisions of the State courts four cases only were found in which a like constitutional prohibition has been considered. They are not directly in point here, and I can obtain no help from them to avoid the conclusion I have before expressed. They maintain in effect the same principle and adopt the same rule of interpretation which I here submit disables Governor Kirkwood from receiving this appointment.

A later opinion by Acting Attorney General Conrad, on facts analogous to that raised in the situation now in question, is in agreement. That opinion, reported in 21 Op. Atty. Gen. 211 (1895), involved Senator Matthew W. Ransom of North Carolina, who was elected to a term beginning March 4, 1889. In 1891, during his term, Congress raised the salary of the Ambassador to Mexico. On February 23, 1895, Ransom was nominated to be the envoy to Mexico and was confirmed the same day. Ransom took the oath of office on March 4, after his senatorial term had expired, and received his commission on March 5. Thereafter, the auditor for the State Department refused to pay his salary because of the apparent conflict with article I, section 6, clause 2.

The Acting Attorney General found that the constitutional prohibition is directed against appointment and held that since the appointment occurred on February 23, during the senatorial term, it was a nullity due to Ransom's ineligibility.[3]

THE APPOINTMENT OF PHILANDER C. KNOX

There exists one precedent involving legislation designed to skirt the inhibiting feature of the emoluments clause. The incident arose in 1909 with the announcement of the intended appointment of Senator Philander C. Knox as Secretary of State. It was thereafter discovered that Knox was constitutionally ineligible, the salary of the Secretary's office having been increased by a law passed while he was a Senator.[4] Knox's term was not due to expire until March 3, 1911. To remedy the situation, legislation was introduced in the Senate (S. 9295) reducing the salary in question to what it had been before the increase. The constitutionality of the action was vigorously debated. A minority report accompanying the bill (House Rep. No. 2155, 69th Cong., 2d sess.) stated:

We do not believe that a provision of the Constitution that is so clear and emphatic should be sought to be annulled or suspended in the manner attempted by the passage of this bill. The emoluments of the Secretary of State were increased by the Fifty-ninth Congress. The occupant of that office has been regularly receiving these emoluments. We believe that the mischief undertaken to be provided against by this provision of the Constitution clearly embraces the act of appointing one of the said United States Senators to the office of the Secretary of State. It might be said, and truly, that this mischief is remote in any event; however this may be, it contained sufficient danger for the framers of the Constitution to provide against it. If the Constitution prohibits it, surely it can not be argued that if this prohibition can be so easily overcome by the device of reducing the salary below what in the judgment of the Congress should be, with the hope which in this case is almost a certainty, of the salary being restored to its present amount, that that would not be clear evasion of the plain provision of the Constitution. The office of the Secretary of State will be probably held for eight years by its next incumbent, and a designing Senator, which the Constitution seeks to provide against, could reasonably anticipate, that although his salary would be temporarily reduced in the closing years of his senatorial term, at the expiration of that term it would, through his influence, be restored to the amount to which it was placed by Congress of which he was a member, and thus he would receive the higher salary from at least two to probably eight years.

The debates on the floor of the House were particularly heated, as the following excerpts demonstrate. Representative Clayton spoke in favor of the bill, arguing the mere recission of the pay increase satisfied the constitutional prohibition. His speech was followed by a series of opposition statements by Members covering a wide variety of legal and practical objections. At the heart of the opposition's contentions was the view that the legislation would effectively amend the Constitution. (43 CONGRESSIONAL RECORD 2390–2404).

Mr. CLAYTON. Mr. Speaker, the bill under consideration, and which has just been read at the Clerk's desk, in and of itself in nowise offends against any provision of the Constitution. No one has said—and, I take it, no one will contend—that the enactment of this particular measure will be in violation of the organic law, but the most that is urged against it is that it is an attempt to avoid an alleged ineligibility which may arise hereafter in a possible case. This bill simply seeks (1) to repeal that part of the act of June 30, 1908, which relates this composition at the rate of $8,000 per annum, which was the former statute covering the subject; (2) to provide that there shall be no emoluments attached to the office of Secretary of State other than those in force on the 1st day of May, 1904; (3) and stipulates that the pending measure, if enacted, shall be in force from and after March 4 next. It seems to me too plain for argument, and therefore a waste of time, to say that there can be no constitutional obstacle to the passage of this bill.

Undoubtedly this is true, unless we look beyond the terms of this measure and consider as inseparably related to it the possibility of the appointment of Senator Knox to the office of Secretary of State. If we were permitted to follow the example of a good lawyer before a court, we would confine ourselves to the case at bar, to the particular question before the tribunal, rather than seek for a moot case, and discuss a question that might arise before some other tribunal in some other case at some future time.

Mr. Speaker, in considering the pending measure I believe we have nothing to do with what may be the question presented to the Senate in the near future upon the happening of a possible contingency. To put it plainer, I do not believe that in considering the measure now before the House we have anything to do with a decision of the question which will be presented to the Senate when that body sits as a part of the appoint-

[3] See also Hill v. The Territory of Washington, 2 Wash. Terr. Repts. 147, where the court invalidated the election of a county treasurer on the ground that at the time of his election he was ineligible (he held a reserve commission in the U.S. Army) under then-existing law to hold office and that an amendment of the law subsequent to the election which lifted the disqualification was ineffective to validate his election.

[4] 34 Stat. 948 (1907).

ing power to consider the nomination of Senator Knox as Secretary of State, which nomination is now probable, with every prospect of being made a certainty on the 4th of next month.

I have no objection to urge against this bill which reduces the salary of the Secretary of State. By its very terms it does not relate to any other matter. If I had the opportunity I would vote to reduce the salary of every other Cabinet officer to $8,000. I do not believe that any man has ever accepted a place in any presidential cabinet on account of any salary inducement. It seems to me that $8,000 per annum is enough salary for such a position. Therefore, because this bill does not violate any provision of the Constitution and does reduce the salary of the Secretary of State, I shall vote for it.

I concede, Mr. Speaker, that many of my associates here, whose opinions I value highly, do not agree with the line of argument that I have pursued; so, out of deference to them and for the sake of further argument, I shall consider as best I can in the brief time allowed me the question of the eligibility of Senator KNOX for the portfolio of Secretary of State in the Cabinet of the incoming President.

The second paragraph of section 8 of Article I of the Constitution of the United States is in the following language:

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States which shall have been created or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a Member of either House during his continuance in office.

To correctly understand any provision of law it is essential to know that good which it is intended to provide and the evil which it is intended to prevent. The rule is stated by an eminent authority to be as follows:

The mischief intended to be removed or suppressed or the cause or necessity of any kind which induced the enactment of a law are important factors to be considered in its construction. The purpose for which the law was enacted is a matter of prime importance in arriving at a correct interpretation of its terms.

Again Judge Story says.

The reason and spirit of the law, or the causes which led to its enactment, are often the best exponents of the words, and limit their application.

And again he says:

The rules then adopted are, to construe the words according to the subject-matter, in such a case as to produce a reasonable effect, and with reference to the circumstances of the particular transaction. Light may also be obtained in such cases from contemporary facts or expositions; from antecedent mischiefs, from known habits, manners, and institutions; and from other sources almost innumerable, which may justly affect the judgment in drawing a fit conclusion in the particular case. (Story on Const., vol. 1, pp. 305–307.)

These rules apply in the construction of any part of a constitution as well as they do in the construction of a statute. A reference to the debates in the convention which framed our Constitution will reveal the fact that there was a twofold purpose in rendering Senators and Representatives ineligible to offices created, or the emoluments of which were increased during the time for which they were elected. It is worthy of note that when this provision was under discussion in that convention, it was attempted to make the bar against Senators and Representatives perpetual, and that this was defeated. This provision was designed in the first place to protect the people from such Senators and Representatives who might be willing to create offices or increase salaries in order that they might enjoy them; and, in the second place, it was designed to remove Congress as far as possible from the influence which such appointments might give the executive over the legislative branch of the Government. If the object was to prevent Senators and Representatives from increasing the salaries of offices and then becoming the beneficiaries of such increase by executive appointment, it obviously follows that the repeal of the law which increased the salary of the Secretary of State would remove the case of Senator KNOX from the reason of the rule, and I think it manifest that it would also remove his case from the operation of the rule.

There can be no dispute that, by repealing the law which increased the salary and restoring the old salary, Senator KNOX, as Secretary of State, would not be benefited by the law passed while he was a Member of the Senate; and therefore the reason which prompted the framers of the Constitution to adopt that provision rendering Senators and Representatives ineligible to certain offices pointed out in the provision which I have read would no longer be applicable. The maxim that "When the reason ceases the rule itself ceases" is not of universal application, and it must be conceded that no matter what the reason of the rule may be, if the rule itself still applies to a given case, then the rule must be followed. Those who contend that the repeal of the law increasing the salary of the Secretary of State will not render Senator KNOX eligible base their contention on the clause which declares, "or the emoluments whereof shall have been increased during such time." Reading that language in the light of the purpose which it was intended to serve, it seems plain to me that it contemplates a continuing condition, and applies, therefore, in a case only where the officer would enjoy the increased emoluments. In the event of the enactment of this bill and the appointment of Senator KNOX he will not "be appointed to any civil office * * * the emoluments whereof shall have been increased." This bill does not attempt to repeal a fact, as is tritely stated, but it seeks to repeal a condition created by a legislative enactment, and it is not to be denied that if Congress has created it can remove the condition. The power to create carries with it the power to destroy.

I venture the opinion that this provision was not intended to apply to a case where an act was passed by Congress, and afterwards, for any reason, repealed, thus reporting the old status. This view is sustained by the rule of construction, that when a statute has been repealed it is the same as to future consequence as if it had never been enacted, unless in the repealing act there is some saving clause.

It is a well-known doctrine applied in construing penal statutes, that if a statute denouncing a given act as a crime has been repealed there would be no warrant or authority for the prosecution of a person for the offense denounced by that statute, even though the offense was committed before the statute was repealed. The prosecution in such a case could not proceed except under the law existing at the time of the trial.

"The general rule is that when an act of the legislature is repealed without a saving clause it is considered, except as to transactions past and closed, as though it had never existed." (Section 282 (162), Lewis Sutherland, Statutory Construction and cases cited.)

"The repeal or expiration of a statute imposing a penalty or forfeiture will prevent any prosecution, trial, or judgment for any offense committed against it while it was in force, unless the contrary is provided in the same or some other existing statute. * * *

"There can be no legal conviction for an offense unless the act be contrary to law at the time it is committed; nor can there be judgment unless the law is in force at the time of the incitement and judgment."

Section 286 (166), Lewis Sutherland, Statutory Construction and cases cited.

If this be the true rule, then we may say that for a stronger reason, we must conclude, that in testing the right to an office, the law as it exists when the test comes ought to govern.

We speak of this question as a constitutional disqualification, but it must be remembered that the Constitution does not prohibit, in a case like that under consideration, proprio vigore, that there must be some statute enacted before the constitutional disqualification can attach; and it seems to me that, when called upon to decide the question of eligibility vel non, the decision must be made under the Constitution and upon the statutory law existing at the time of the decision. Ineligibility is made up of the constitutional provision and a statutory enactment. If the statute has been repealed before the question of ineligibility arises, there is then no law to which the constitutional provision can be applied.

On account of his high character, eminent ability, and long and successful experience in public life, Senator Knox will doubtless be nominated by the President to the Senate on March 4 next for Secretary of State. There will then be no existing statute increasing the emoluments of that office enacted while he was a Senator, and I doubt not that the Senate will confirm him. That great body is fully capable of interpreting any provision of the Constitution. Perhaps it is not too much to say that the interpretation of this provision of the Constitution in such a case is confided to the Senate as a part of the appointing power. In my judgment that tribunal will not "stick in the bark" and say that there was at one time a statute increasing the emoluments of the Secretary of State, enacted while Mr. Knox was a Senator, but will go deeper and put their decision upon the ground that on the 4th of March next, there is no statuture increasing the emoluments of the office of Secretary of State, enacted during the time for which Senator Knox was elected, and therefore no constitutional disqualification arises.

It is evident, and it is complimentary to that distinguished gentleman, that when he was selected, conceding that he has been selected, by Mr. Taft as the ranking member of his official family, the matter of salary was not thought of by him, and therefore this question as to his eligibility never occurred to him. Had the salary been any inducement to him the question discussed here today would naturally have presented itself for his learned consideration. [Applause.]

Mr. GILLESPIE. Mr. Speaker, as I understand it, in this case we have no reason, no right, to refer to the constitutional convention and what occurred there, because the provisions of the Constitution in question are plain, they are emphatic, they are unequivocal. The salary of the Secretary of State has been increased. The increased salary has been received for two years. The constitutional prohibition is complete. Mr. Speaker, what attitude would we be in here if we were considering the passage of a statute like this?

"Be it enacted, etc., That any Senator or Representative may, during the time for which he was elected, be appointed to any civil office under the authority of the United States the emoluments whereof shall have been increased during the time for which he was elected: *Provided, however,* That such Senator or Representative shall not receive the increased salary, but shall only receive such salary as was fixed by law before the said increase."

What would we be attempting to do? To amend the Constitution of the United States by legislative enactment, and that is the purpose of this bill. Mr. Speaker, I do not know how others feel, but for myself I will forever feel humiliated if this Congress in this way deliberately passes this act to override the

Constitution of the United States. I believe it not only violates the letter of the Constitution, but it violates the spirit of the Constitution. Are we going to say that the United States Senators or Members of the House may engage in these evil machinations and schemes, in these designs which always involve the increase of other salaries, and then pass a bill like this, temporarily reducing the salary, as an avenue of escape? This is not a question of reducing a salary, and everybody here knows it. If the question were upon its merits of reducing the salary of the Secretary of State, I believe that there would not be 10 per cent of the Members of this House who would vote to reduce the salary of the Secretary of States from $12,000 to $8,000. I myself would vote tomorrow to restore this salary to $12,000. No; it is not a question of reducing a salary, and we can not shield ourselves behind that proposition. Any Senator or Member would know, if appointed under such circumstances, that his influence within his party, if it is strong enough to enable him to be appointed Secretary of State, would be strong enough to have this salary restored. It is true the bill says that no future Congress shall restore this salary. This is only another absurdity of this bill. We can not control future Congresses. Absurdities accumulate in this bill. The salary of the Secretary of State is too low now, and that is what nearly all of us believe. You are voting upon this bill upon the other proposition, and not upon the merits of the proposition incorporated in the bill. I do not charge that anything of evil entered into the raising of the Secretary of State's salary. I do not believe that such was the case, but I say all the possible mischief that the Constitution undertakes to protect the country from lives in this act. It is a violation of both the letter and the spirit of this provision of the Constitution. Mr. Speaker, when the temperance people come here for legislation, they are told the Constitution is in their way; when labor demands legislation, its representatives are told the Constitution is in their way. Let us live up to the Constitution. If it applies to one let it apply to all. [Applause.]

Mr. HARDWICK. Mr. Speaker, the gentleman from Alabama [Mr. CLAYTON], who opened the debate and favors the bill, is both ingenious and candid in his presentation of the question.

He is ingenious in beginning his argument by calling attention to the fact that no gentleman can base his opposition to the pending measure upon constitutional objections to the Senate bill itself, because everyone must readily concede that Congress has the undoubted power to either increase or decrease the salary of the Secretary of State. The gentleman is not willing, however, to maintain a disingenuous position, so he candidly concedes that the question that is really behind the measure, and from which the motive for its passage springs, is not economy, but an attempt to so modify existing law as to render it possible for the distinguished Senator from Pennsylvania [Mr. KNOX] to accept the high office of Secretary of State in the Cabinet of our incoming President, for which distinguished honor it is authoritatively stated that he has been selected.

Let me say, before I enter into the argument I wish to make, that I have no wish to annoy or embarrass our incoming President, or his administration, particularly with reference to the selection of a Cabinet.

The rules of propriety and good taste would forbid that such a course should be adopted by any member of the opposing party, save upon the most important grounds and for the gravest reasons. Besides, it happens, in this particular matter, that few Members of this body more freely concede and more sincerely admire the great ability of Senator KNOX as a lawyer and as a statesman than I. I believe that he would make a great Secretary of State, and I regret that constitutional objections, as I understand the question, forbid it.

In 1904 Mr. KNOX was elected by the legislature of Pennsylvania to be United States Senator from Pennsylvania for the term beginning March 4, 1905, and ending March 4, 1911. He accepted the office, and from March 4, 1905, up to the present moment has been engaged in the performance of its duties. By the act of February 26, 1907, during the term for which Mr. KNOX was elected Senator and while he was actually serving as such Congress increased the salary of the Secretary of State from $8,000 to $12,000 per annum.

Paragraph 2, section 6, Article I, of the Constitution of the United States provides:

"No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time, etc."

Now, on February 26, 1907, "during the time for which" Mr. KNOX was "elected" Senator, the "emoluments" of the office of Secretary of State were increased. So it appears, from the plain words of the Constitution itself, that on February 26, 1907, Mr. KNOX became constitutionally ineligible to appointment as Secretary of State, and that such ineligibility, in the very words of the Constitution itself, continued "during the time for which he was elected" Senator, to wit, up to March 4, 1911. It seems to me that the question is so simple that to merely state it in the very words of the Constitution is all that is required to carry conviction. But able lawyers in the House and elsewhere have either intentionally or unintentionally sought to complicate the question and to muddy the waters by an entirely irrelevant and wholly useless discussion of the "meaning" of this paragraph of the Constitution, the evil it sought to remedy, and the motives that actuated its framers.

No gentleman on this floor, no lawyer here or elsewhere, is better acquainted than I am with the well-settled doctrine that in construing organic law, or statutory law, either for that matter, all of these matters ought to be taken into consideration, under some circumstances, so that the law may be properly understood; but, until the discussion over this bill and the question behind it arose, I never heard of a lawyer of respectable ability, anywhere, seriously contending that reference ought to be made to these sources of information, to these rules of construction, unless the language to be construed is of doubtful meaning or uncertain significance. That this doctrine of construction, sound enough and wise enough when applicable, should first be distorted and then invoked in order to create a doubt where none exists and to afford an opportunity to evade by "construction" constitutional language so plain that it speaks for itself, says what it means, and means what it says is equally shocking to my judgment as a lawyer and my common sense as a man. I do not believe that either lawyer or layman can accept such a doctrine.

Under the Constitution of the United States Senator KNOX is now ineligible to hold the office of Secretary of State, and will be until March 4, 1911, and no act of Congress, and no number of acts of Congress, can remove the constitutional bar which attached to him on the 26th day of February, 1907, when the Congress of which he was a Member, during the term for which he was elected, increased the salary of the Secretary of State.

The constitutional provision in question does not mean, as our opponents in this debate would have the House and the country believe, that no Member of Congress shall be appointed to an office the salary of which is higher at the time of such appointment than it was when his congressional service began. If it had meant that, it would have been a very simple matter to have said just that, and in fewer words than were employed in the provision that was adopted.

But the gentlemen who favor this bill insist that if Senator KNOX does not receive as Secretary of State greater compensation than attached to that office when his term as Senator began the "spirit" of the Constitution will have been complied with. Let us examine this argument for just a moment. Suppose Mr. KNOX becomes Secretary of State, and suppose at some time between March 4, 1909, and March 4, 1911, at which latter date the term for which Mr. KNOX was elected Senator expires, Congress should again increase the compensation of the Secretary of State above $8,000; then who can deny that not only the letter of the Constitution would have been disregarded, but its spirit, even as that "spirit" is understood and defined by the friends of the Senate bill?

If the construction which the friends of this bill contend for is sound, and the status of the salary at the very date of appointment is to be alone considered, how easy it would be to reduce this salary from $12,000 to $8,000 on the 3d day of March, 1909, let Senator Knox qualify as Secretary of State on the 4th day of March, 1909, and then on the 5th day of March, after he had been appointed and confirmed as Secretary, restore the salary to $12,000. In the event procedure of that kind were had, what would become both of the letter and the "spirit" of the Constitution? And the fact that such procedure is possible under the "construction" contended for by the advocates of this bill is the plainest demonstration of the unsoundness of their contention and the surest warning against the danger of such tampering with the Constitution.

It is my earnest hope that when the President-elect and the distinguished gentleman whom he has selected to head his Cabinet examine into this question carefully, and with the great legal ability for which both of them are so justly distinguished, that, regardless of any action of Congress on this salary matter, neither of them will be willing to signalize the new administration's advent by so patent, so palpable a violation of the Constitution they have sworn to support. It will be most unfortunate if these gentlemen do not rise not only to the proprieties but to the duty of the occasion.

So far as I am concerned, my course in this matter is easy enough. I believe the Constitution says exactly what it means and means precisely what it says. I am convinced that Mr. Knox will not be eligible to appointment as Secretary of State until March 4, 1911, and that no "enabling act" of Congress can override, repeal, or modify the Constitution so as to make him eligible. I shall not, therefore, lend myself to this scheme to override the Constitution and to disregard its plain, simple, and unambiguous language.

Mr. GAINES of West Virginia. I decline to be interrupted further.

But, Mr. Speaker, constitutional propositions should not be construed in so technical a manner. In 12 Wallace, the Supreme Court of the United States says:

"Nor can it be questioned that when investigating the nature and extent of the powers conferred by the Constitution upon Congress, it is indispensable to keep in view the business for which those powers were granted. This is a universal rule of construction—"

Says that court—

"applied alike to statutes, wills, contracts, and constitutions. If the general purpose of the instrument is ascertained the language of its provisions must be construed with reference to that purpose and so as to subserve it."

Now, can anybody doubt that if we put this office in a position where there will have been no increase of salary, where it can

not by any possible construction be held that there was a hope held out to any Senator in voting for the increase that he might get that increase, if we put it back to where it was, destroying the possibility that any such purpose should have animated him in voting for the increase, have we not complied with this rule of construction and subserved the purposes of the Constitution?

And, says the Supreme Court, there are more urgent reasons for looking to the purpose sought to be accomplished in examining the powers confererred by a constitution than there is in construing a statute, will, or contract. We do not expect to find a constitution minute in details.

In connection with the rule of construction laid down by the Supreme Court of the United States just cited, let us see what the object is of the constitutional provision which we are considering.

The reason for excluding persons from office, says Story, who have been concerned in creating them, or increasing their emoluments, is to take away, as far as possible, any improper motive in the vote of the Representative, and to secure to his constituents some solemn pledge of his disinterestedness.

The object of the Constitution is plain to everybody. I have taken the trouble, however, to cite this great authority for the statement of the purpose of the Constitution.

Now, then, if we take away that increase of salary, will we not have strictly complied with the Constitution? Gentlemen talk as if there was a constitutional ineligibility on the part of the distinguished Senator from Pennsylvania. On the contrary, Mr. Speaker, the only ineligibility is created by statute; and that ineligibility which Congress has by law created Congress can by law remove.

Mr. Speaker, this is not a new question. It has been passed upon twice—once, at least, in the National Government and once in the State of New Jersey. In the case of Senator Lot M. Morrill, of Maine, the very question was involved; and because the statute which had increased the salary of Cabinet officers, and which had been passed during the term for which he had been elected, had also been repealed, Senator Morrill was eligible to appointment in the Cabinet, although the time for which he had been elected Senator had not expired.

The New Jersey case was that of Ex-Governor George T. Werts, who was appointed to the supreme court, although his term as senator had not expired and during that term the salary had once been increased. But because the salary had been again reduced to what it had formerly been, he was deemed to be eligible to the appointment, notwithstanding a provision in the New Jersey constitution similar to the one we are now considering.

Also introduced into the debates was an "Unofficial Opinion of Assistant Attorney General Russell" which supported the validity of the proposed method of lifting the disqualification. The text of the opinion follows:

APPENDIX

UNOFFICIAL OPINION OF ASSISTANT ATTORNEY-GENERAL RUSSELL

FEBRUARY 10, 1909.

The question has been submitted for my unofficial opinion whether a Member of the present Senate of the United States could be appointed, after the 4th of March next, but prior to the expiration of the period for which he was elected, to the office of Secretary of State, the salary of which was increased since his election, provided Congress should in the meantime restore the salary to what it was when he entered the Senate. The question involves the construction of the Constitution of the United States (Art I, sec. 6. par. 2), which reads as follows:

"No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a Member of either House during his continuance in office."

It is a well-recognized principle of construction, frequently applied by the Supreme Court to the laws and the Constitution—as, for example, in the Legal Tender cases, the income-tax decision, and in a case (143 U.S., p. 457) involving the question whether a minister contracting to remove to the United States was prohibited from entry by the contract-labor law—that a thing may be within the law and yet without the letter of the law, and vice versa. In the decision of the first-mentioned case the Supreme Court said (12 Wall., 531):

"Nor can it be questioned that, when investigating the nature and extent of the powers conferred by the Constitution upon Congress, it is indispensible to keep in view the objects for which those powers were granted. This is a universal rule of construction, applied alike to statutes, wills, contracts, and constitutions. If the general purpose of the instrument is ascertained, the language of its provisions must be construed with reference to that purpose and so as to subserve it. In no other way can the intent of the framers of the instrument be discovered. And there are more urgent reasons for looking to the ultimate purpose in examining the powers conferred by a constitution than there are in construing a statute, a will, or a contract. We do not expect to find in a consititution minute details. It is necessarily brief and comprehenive."

In the contract-labor case concerning the minister the Supreme Court used this language:

"It is a case where there was presented a definite evil, in view of which the legislature used general terms with the purpose of reaching all phases of that evil; and thereafter, unexpectedly, it is developed that the general language thus employed is broad enough to reach cases and acts which the whole history and life of the country affirm could not have been intentionally legislated against. It is the duty of the courts, under those circumstances, to say that however broad the language of the statute may be, the act, although within the letter, is not within the intention of the legislature, and therefore can not be within the statute."

Applying this familiar principle to the language of Article I, section 6, should we regard that language as prohibiting the appointment of a Senator to an office the salary of which, during the term for which he was elected, has been increased and afterwards diminished, so that at the time of his proposed appointment it is no greater than when he was elected Senator?

Is the general purpose of the language of section 6 such that to prohibit an appointment under those circumstances comes within that purpose, or, on the other hand, does the suggested appointment fall outside of the purpose and therefore outside of the law?

An examination of commentaries on the Constitution and of the debates in the convention which framed it leaves no doubt that the purpose, and the sole purpose, of paragraph 2, section 6, Article I, was to destroy the expectation a Representative or Senator might have that he would enjoy the newly created office or the newly created emoluments. (See Rawle on the Constitution, 2d ed., p. 189; Story on the Constitution, sec. 667; First Tucker's Blackstone, appendix, p. 375; Supp. to Elliott's Debates on the Constitution, pp. 189, 229, 375–378, 503–506, and 559.)

The reasons why the framers of the Constitution sought to destroy that hope was to prevent the vote of the Representative or Senator from being influenced by it. However that may have been, those in favor of the provision and those opposed to it concurred in understanding, what is manifest on the face of the provision itself, that the object, and sole object, to be accomplished was to destroy that hope.

Now, if in the case supposed here there could be no such hope, that object can not be accomplished by preventing the appointment. And certainly no such hope can exist, because, if the increase is made and continued, the Representative or Senator can not be appointed. If, on the other hand, it is made and then unmade, he can not get, or hope for, anything more than if there had been no such increase.

In my opinion, therefore, the case presented falls outside of the purpose of the law and is not within the law.

CHARLES W. RUSSELL,
Assistant Attorney-General.

The bill passed by a vote of 178 to 123, and the law became effective on March 4, 1909. (35 Stat. 626.)

As the above excerpts indicate, the debates were intense and the ultimate decision was reached by a close partisan vote. Although the Knox appointment stands as an important legislative precedent, it, of course, did not resolve the constitutional question involved. Cf. *Myers* v. *United States*, 272 U.S. 52, 175 (1926), where the legislative decision of the First Congress regarding the removal power of the President was deemed to have constitutional significance.

ANALYSIS AND CONCLUSIONS

The basic argument in support of the constitutional efficacy of remedial legislation designed to remove the disqualification imposed by article I, section 6, clause 2 is that such legislation does not violate the intent and spirit of the constitutional inhibition since the very reason for the principle of the provision has been removed. As succinctly stated by Representative Clayton during the 1909 debates:

If the object was to prevent Senators and Representatives from increasing the salaries of offices and then becoming the beneficiaries of such increase by executive appointment, it obviously follows that the repeal of the law which increased the salary of the Secretary of State would remove the case of Senator Knox from the reason of the rule, and I think it manifest that it would also remove his case from the operation of the rule. (42 CONGRESSIONAL RECORD 2391).

Resolution of the issue, however, would not appear to be so simple. In the search for the meaning or intent of constitutional provisions the common rule of construction is that first resort is made to the words of the provision in question, and where they are clear and unambiguous and not in conflict with other provisions of the document, the search for meaning goes no further. Thus in *Lake County* v. *Rollins*, 130 U.S. 662, 670–671 (1889) the Supreme Court expressed the rule as follows:

The object of construction, applied to a constitution, is to give effect to the intent of its framers, and of the people in adopting it. This intent is to be found in the instrument itself; and when the text of a constitutional provision is not ambiguous, the courts, in giving construction thereto, are not at liberty to search for its meaning beyond the instrument.

To get at the thought or meaning expressed in a statute, a contract or a constitution, the first resort, in all cases, is to the natural signification of the words, in the or-

der of grammatical arrangement in which the framers of the instrument have placed them. If the words convey a definite meaning which involves no absurdity, nor any contradiction of other parts of the instrument, then that meaning, apparent on the face of the instrument, must be accepted, and neither the courts nor the legislature have the right to add to it or take from it. *Newell* v. *People*, 7 N. Y. 9, 97; *Hills* v. *Chicago*, 60 Illinois, 86; *Denn* v. *Reid*, 10 Pet. 524; *Leonard* v. *Wiseman*, 31 Maryland, 201, 204; *People* v. *Potter*, 47 N. Y. 375; Cooley, Const. Lim. 57; Story on Const. § 400; *Beardstown* v. *Virginia*, 76 Illinois, 34. So, also, where a law is expressed in plain and unambiguous terms, whether those terms are general or limited, the legislature should be intended to mean what they have plainly expressed, and consequently no room is left for construction. *United States* v. *Fisher*, 2 Cranch. 358, 399; *Doggett* v. *Florida Railroad*, 99 U. S. 72.

There is even stronger reason for adhering to this rule in the case of a constitution than in that of a statute, since the latter is passed by a deliberative body of small numbers, a large proportion of whose members are more or less conversant with the niceties of construction and discrimination and fuller opportunity exists for attention and revision of such a character, while constitutions, although framed by conventions, are yet created by the votes of the entire body of electors in a State, the most of whom are little disposed, even if they were able, to engage in such refinements. The simplest and most obvious interpretation of a constitution, if in itself sensible, is the most likely to be that meant by the people in its adoption.

Such considerations give weight to that line of remark of which *The People* v. *Purdy*, 2 Hill, 31, 36, affords an example. There, Bronson, J., commenting upon the danger of departing from the import and meaning of the language used to express the intent, and hunting after probable meanings not clearly embraced in that language, says: "In this way . . . the constitution is made to mean one thing by one man and something else by another, until in the end it is in danger of being rendered a mere dead letter, and that, too, where the language is so plain and explicit that it is impossible to make it mean more than one thing, unless we lose sight of the instrument itself and roam at large in the boundless fields of speculation."

Words are the common signs that mankind make use of to declare their intention to one another; and when the words of a man express his meaning plainly, distinctly and perfectly, we have no occasion to have recourse to any other means of interpretation.

The provisions of article 6, section 2, clause 2 admit of no uncertainty. In plain terms they state that ineligibility for appointment to an office attaches to all Members of Congress during the remainder of their terms if a new office is created or if the compensation of an old office is increased during the term in which they are serving. No exception is apparent. Indeed, reference to the last clause of section 2, "and no person holding any office under the United States, shall be a Member of either House during his continuance in office," lends further support to such construction. Taken as a whole, the section reads as a consistent, unqualified prohibition against office holding under strictly specified circumstances. Interpolation of an exception after the words, "or the emoluments shall have been increased," which would in effect read "except in individual cases where Congress deems it necessary to waive the disqualification," plainly renders the emoluments clause meaningless.

The applicability of the above-stated rule of construction would also appear to be particularly pertinent in the instant situation since we are not dealing with the grant of an amorphous power ("to regulate commerce") or the prohibition of a particular type of action ("no bill of attainder or ex post facto law shall be passed.") which requires reference outside the confines of the constitutional instrument for meaning. The reason for the rule of construction is to prevent resort to sources of information which would make doubtful and uncertain, or intrude exceptions, where words are clear and unambiguous and admit of no exception. Avoidance of the rule in such circumstances would appear to nullify the attempt at certainty made by the framers. To repeat Attorney General Brewster's admonition regarding the proper manner of construing this provision:

It is unnecessary to consider the question of the policy which occasioned this constitutional prohibition. I must be controlled exclusively by the positive terms of the provision of the Constitution. The language is precise and clear, and, in my opinion, disables him from receiving the appointment. The rule is aboslute, as expressed in the terms of the Constitution, and behind that I can not go, but must accept it as it is presented regarding its application in this case. 17 Op. Atty. Gen. 365, 366.

Notwithstanding the foregoing, as indicated earlier, reference to the intent of the framers would appear to support the plain language rather than to inject a doubt as to the scope of the prohibition. The initial prohibition proposed at the Convention was absolute in nature. The compromise ultimately effected was based on a desire not to foreclose the availability of able men to hold executive offices or to discourage competent individuals from seeking legislative office. There was full recognition that the compromise meant that the entire extent of the perceived evil—office seeking and executive influence—would not be covered. Specific instances of indirect evasion were mentioned, including the possibility that a Member nearing the end of his term could accept an office and with certainty expect the compensation of that office to be raised in a subsequent session of Congress. See, for example, Farrand, volume 1, page 390; Cf. Story, volume II, page 332. The purpose of the framers appears to have been to inhibit all attempts at direct evasions, with the thought that the inclusion of this perhaps halfway measure would serve as a guiding moral principle and reminder for cases not covered. In the words of Rutledge on this very point—

I admit, in some cases, it may be evaded; but this is no argument against shutting the door as close as possible. Farrand, vol. 1, p. 394.

Returning now to the instant situation, it would seem that, if the emoluments clause does not preclude removal by legislative act of a disqualification previously imposed by it, the provision is easily obviated. During the 1909 Knox debates, it was argued that by decreasing the salary of the Secretary of State to what it had been prior to the beginning of Knox's term, there could be no possible aggrandizement to Knox, thereby removing the reason for the constitutional inhibition. But it is to be noted that the provision does not require an inquiry into the purpose of legislation creating an office or raising the compensation of an old office. The legislation itself triggers the disqualification and this would seem to be the case even if, hypothetically, the original triggering legislation raised the compensation of an old office to a level which was still below that being received by Members of Congress themselves. A disqualification arises under the emoluments clause upon the performance of a legislative act, not as a result of a particular legislative purpose. It would seem doubtful that even the loftiest legislative purpose may serve to remove a disqualification.

An argument may also be raised that the action of the 60th Congress in passing similar remedial legislation on behalf of Senator Knox is a controlling constitutional precedent in the present instance. The Supreme Court's decision in *Powell* v. *McCormack*, 395 U.S. 486 (1969), would appear to negative that contention.

Powell raised the question whether a Congressman could be constitutionally denied his seat on grounds other than his failure to meet the standing requirements of age, citizenship, and residence contained in article I, section 2, of the Constitution, requirements which the House specifically found Powell had met. The Court held that in judging the qualifications of its Members under article I, section 5, Congress is limited to the standing qualifications expressly prescribed by the Constitution in article I, section 2, and that Powell was entitled to a declaratory judgment that he was unlawfully excluded from the 90th Congress. Of significance here is the Court's rejection of respondent's argument that Congress own understanding of its power to judge qualifications, as manifested in many past cases in which it had excluded Members who had otherwise met the constitutionally prescribed qualifications, should be controlling. The Court held that such precedents, even if they had been consistent, were not controlling. They were only relevant insofar as they aided in gaining insight into the framers' intent but impliedly even then their value as precedents is lessened the further removed they are from the Convention of 1787. Moreover, the Court further held—

[A]n unconstitutional action . . . taken before does not render that same action any less unconstitutional at a later date.

The relevant portion of the Court's opinion states (395 U.S. at pp. 546–547):

Had these congressional exclusion precedents been more consistent, their precedential value still would be quite limited. See Note, The Power of a House of Congress to Judge the Qualifications of its Members, 81 Harv. L. Rev. 673, 679 (1968). That an unconstitutional action has been taken before surely does not render that same action any less unconstitutional at a later date. Particularly in view of the Congress' own doubts in those few cases where it did exclude members-elect, we are not inclined to give its precedents controlling weight. The relevancy of prior exclusion cases is limited largely to the insight they afford in correctly ascertaining the draftsmen's intent. Obviously, therefore, the precedential value

of these cases tends to increase in proportion to their proximity to the Convention in 1787. See *Myers* v. *United States*, 272 U.S. 52, 175 (1926). And, what evidence we have of Congress' early understanding confirms our conclusion that the House is without power to exclude any member-elect who meets the Constitution's requirements for membership.

As previously indicated, the 1909 Knox debates were heated and partisan. They were preceded by 122 years in which there had been no substantial precedent other than the two above-cited Attorney General's opinions which appear contrary to the legislative action taken. In light of Powell, therefore, the 1909 precedent may not be deemed controlling.

It is, therefore, concluded that there is substantial doubt that remedial legislation to rescind an increase in the compensation for the office of Attorney General in order to remove the disqualification of the proposed nominee for that office is in accord with the letter and intent of Article I, section 6, clause 2 of the Constitution and that it would serve to lift the disqualification.

Mr. President, I personally like our colleague, Senator SAXBE, and I am very sorry to have to raise a constitutional question concerning this proposed appointment. When Senator SAXBE's nomination was first made public, I did not feel that there was any problem of this nature involved, and I so told him. I vaguely remembered the Knox precedent, to which I have alluded, and it was at first my belief that that precedent had laid to rest any doubts about the constitutional provision here involved. However, upon careful reflection and considerable study, I have come to the conclusion that it is my duty—in accordance with my oath to uphold and defend the Constitution—to at least raise the constitutional question. It is for this reason that I urge the Senate and the Judiciary Committee to evaluate the matter and make a determination as to the constitutionality of the appointment. We have a responsibility as Members of a legislative body to consider constitutional questions when we seriously believe, and have ample reason to believe, that they are present. I think we have even more reason to consider the constitutionality of an appointment to a high Cabinet post of one of our esteemed colleagues. There is nothing personal in my taking this position. I have no intention to delay this legislation, and, as a matter of fact, last week, when this bill was first introduced, I at that time asked unanimous consent, to which an objection was made, that the bill be jointly referred to the Committee on Post Office and Civil Service and the Committee on the Judiciary, so that consideration and study could go forward concurrently within both of those committees.

I do believe, however, that the Senate, as one of the guardians of the people's liberties, will be severely judged by the people if it does not view the appointment of one of its own respected Members with the same objectivity that it would view a nominee who is not one among us.

I may be wrong in my opinion that this appointment is unconstitutional. I try to remember always that I can be mistaken and often am. It is for this reason that I want to know what the opinions are of some of the people in this country, who are constitutional experts—whether they be law professors, constitutional lawyers, or other persons well versed in the Constitution and the historic debates that occurred during the Constitutional Convention.

It may be difficult, with the brief period of time we have in which to report the bill back, and on such short notice, to insure the attendance before the Judiciary Committee of many of these eminent authorities, but I would at least hope that some would appear and that others would submit statements which could be included in the hearings record.

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

Mr. ROBERT C. BYRD. I yield.

Mr. MANSFIELD. I want to commend the Senator for the course which he has taken on this particular matter. I want to assure the Senate that it is a question of constitutionality which motivates the distinguished assistant majority leader, the Senator from West Virginia (Mr. ROBERT C. BYRD). I think it is far better to settle the question before, rather than to have it come up afterward.

It is my hope that this matter can be settled satisfactorily within the time period to which the Judiciary Committee unanimously agreed, which has the full approval of the distinguished Republican leader, the Senator from Pennsylvania (Mr. HUGH SCOTT).

Only until this matter is disposed of, I understand, will it be possible for the White House to forward to the Senate the nomination of Senator WILLIAM SAXBE to be Attorney General of the United States.

I agree also that, as far as our own membership is concerned, they should not be given preferential or special treatment, but should be considered on the same basis as any other nominee for a position which requires Senate confirmation.

We all know BILL SAXBE. We all like him. We think he is a good Senator. But what this will do is serve to protect Mr. SAXBE rather than to serve as a deterrent to his consideration for the office to which the President of the United States has nominated him.

So I want to say that I support the stand of the distinguished assistant majority leader 100 percent. I think he is doing the right thing. And I think that the Senate, when it thinks about it, will agree unanimously with him, and that as far as the nomination is concerned, it will not hold that up except for a very small period of time. So the Saxbe nomination is not being held as a hostage, but the Senate, I think, is observing the rule of law as it applies to confirmations and nominations. That is as it should be and that is as it will be.

I again commend the distinguished Senator from West Virginia (Mr. ROBERT C. BYRD).

Mr. ROBERT C. BYRD. Mr. President, I thank my very distinguished majority leader.

ORDER OF BUSINESS

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

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

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. ROBERT C. BYRD. Mr. President, I am informed that the Senator from Michigan (Mr. GRIFFIN) does not want to utilize his time under the order. I, therefore, ask unanimous consent that the order be vacated.

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

TRANSACTION OF ROUTINE MORNING BUSINESS

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

QUORUM CALL

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

ORDER FOR ADJOURNMENT

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 10.30 a.m. tomorrow.

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

(Later in the day this order was modified to provide for the Senate to convene at 9 a.m. tomorrow.)

ORDER FOR RECOGNITION OF SENATORS GRIFFIN AND ROBERT C. BYRD AND FOR TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, after the two leaders or their designees have been recognized under the standing order, the distinguished assistant Republican leader, the Senator from Michigan (Mr. GRIFFIN), and I each be recognized for not to exceed 15 minutes

and in that order, and that there then be a period for the transaction of routine morning business for not to exceed 15 minutes.

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

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BURDICK, from the Committee on the Judiciary, with amendments:

S. 663. A bill to improve judicial machinery by amending title 28, United States Code, with respect to judicial review of decisions of the Interstate Commerce Commission, and for other purposes (Rept. No. 93-500).

By Mr. HRUSKA, from the Committee on the Judiciary, without amendment:

S.J. Res. 126. A joint resolution to authorize and request the President to issue annually a proclamation designating the fourth Sunday in May of each year as "Grandparents Day" (Rept. No. 93-501); and

S.J. Res. 168. A joint resolution to authorize the President to designate the period from February 10, 1974, through February 16, 1974, as "National Nurse Week" (Rept. No. 93-502).

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

S. 1418. A bill to recognize the 50 years of extraordinary and selfless public service of Herbert Hoover, including his many great humanitarian endeavors, his chairmanship of two Commissions of the Organization of the Executive Branch, and his service as 31st President of the United States, and in commemoration of the 100th anniversary of his birth on August 10, 1974, by providing grants to the Hoover Institution on War, Revolution, and Peace (Rept. No. 93-503).

EXECUTIVE REPORTS OF COMMITTEES

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

By Mr. EASTLAND, from the Committee on the Judiciary:

Henry A. Schwarz, of Illinois, to be U.S. attorney for the eastern district of Illinois;

John H. deWinter, of Maine, to be U.S. marshal for the district of Maine;

John L. Bowers, Jr., of Tennessee, to be U.S. attorney for the eastern district of Tennessee;

John J. Twomey, Jr., of Illinois, to be U.S. marshal for the northern district of Illinois;

Leonard F. Chapman, Jr., of Virginia, to be Commissioner of Immigration and Naturalization;

Charles H. Anderson, of Tennessee, to be U.S. attorney for the middle district of Tennessee;

Leigh B. Hanes, Jr., of Virginia, to be U.S. attorney for the western district of Virginia;

R. Jackson B. Smith, Jr., of Georgia, to be U.S. attorney for the southern district of Georgia;

Jack V. Richardson, of Kansas, to be U.S. marshal for the district of Kansas;

Rex Walters, of Idaho, to be U.S. marshal for the district of Idaho;

Rex K. Bumgardner, of West Virginia, to be U.S. marshal for the northern district of West Virginia;

Leon T. Campbell, of Tennessee, to be U.S. marshal for the middle district of Tennessee;

James T. Lunsford, of Alabama, to be U.S. marshal for the middle district of Alabama;

Leon B. Sutton, Jr., of Tennessee, to be U.S. marshal for the eastern district of Tennessee;

George R. Tallent, of Tennessee, to be U.S. marshal for the western district of Tennessee; and

James E. Williams, of South Carolina, to be U.S. marshal for the district of South Carolina.

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

Mr. MAGNUSON. Mr. President, as in executive session, I report favorably sundry nominations in the Coast Guard which have previously appeared in the CONGRESSIONAL RECORD and, to save the expense of printing them on the Executive Calendar, I ask unanimous consent that they lie on the Secretary's desk for the information of Senators.

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

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. PASTORE:

S. 2696. A bill to amend title 38 of the United States Code to provide pension benefits for widows and children of certain persons whose inservice death occurred not in the line of duty. Referred to the Committee on Veterans' Affairs.

By Mr. ERVIN (for himself, Mr. MATHIAS, Mr. KENNEDY, Mr. MANSFIELD, Mr. BROOKE, Mr. BURDICK, Mr. HRUSKA, Mr. YOUNG, and Mr. PASTORE):

S. 2697. A bill to protect the constitutional rights of the subjects of arrest records and to authorize the Federal Bureau of Investigation to desseminate conviction records to State and local government agencies, and for other purposes. Referred to the Committee on the Judiciary.

By Mr. RIBICOFF:

S. 2698. A bill for the relief of John J. Egan. Referred to the Committeee on the Judiciary.

By Mr. MUSKIE (for himself, Mr. FULBRIGHT, and Mr. METCALF):

S. 2699. A bill to amend section 315 of the Communications Act of 1934, in order to require the furnishing of equal opportunities in the use of a broadcasting station to the national committee of the major opposition political party in certain cases when the President uses such station. Referred to the Committee on Commerce.

By Mr. MONDALE (for himself, Mr. JAVITS, Mr. NELSON, Mr. STAFFORD, Mr. WILLIAMS, Mr. RANDOLPH, Mr. KENNEDY, Mr. CRANSTON, Mr. MONTOYA, Mr. HUGHES, Mr. HATHAWAY, Mr. PELL, Mr. SCHWEIKER, Mr. BROOKE, and Mr. RIBICOFF):

S. 2700. A bill to postpone the the implementation of the Headstart fee schedule. Referred to the Committee on Labor and Public Welfare.

By Mr. PELL:

S. 2701. A bill to require the establishment of safety standards for snowmobiles, and for other purposes. Referred to the Committee on Commerce.

By Mr. MAGNUSON (for himself, Mr. CANNON, Mr. COTTON, Mr. HOLLINGS, Mr. MCINTYRE, Mr. PASTORE, Mr. PELL, Mr. STEVENSON, and Mr. TUNNEY):

S. 2702. A bill to provide that daylight saving time shall be observed on a year-round basis. Referred to the Committee on Commerce.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. PASTORE:

S. 2696. A bill to amend title 38 of the United States Code to provide pension benefits for widows and children of certain persons whose inservice death occurred not in the line of duty. Referred to the Committee on Veterans' Affairs.

Mr. PASTORE. Mr. President, I send to the desk a bill to amend title 38 of the United States Code to provide pension benefits for widows and children of certain servicemen whose inservice death occurred not in the line of duty.

Recently a Veterans' Administration claim for benefits was called to my attention involving constituents, a widow of a deceased military officer and their five children, who, because of an inequity in the Veterans' Administration law, were refused compensation. The officer, although he had a distinguished military career, did not die in line of duty.

Under the law, if a commissioned officer is killed not in the line of duty, the Veterans' Administration has no discretion whatsoever with respect to granting benefits to his surviving wife and children.

However, in the case of a career enlisted man who should die under the same circumstances—not in the line of duty—his spouse and children would receive benefits, because the deceased enlisted man would be treated as a veteran.

This quirk in the law arises, because an enlisted man reenlists for several tours of duty until he accumulates sufficient time to retire.

However, a commissioned officer is considered to serve constantly from the date of his commission until he either retires or dies on duty or not in the line of duty. In either event, the deceased officer cannot be treated as a veteran under the Veterans' Administration law, whereas an enlisted man who is killed under similar circumstances would be treated as a veteran insofar as survivor's benefits are concerned.

The bill I have introduced would provide that the surviving spouse and family of an officer, who dies not in the line of duty, and who has completed at least 2 years of honorable service, would be treated in identical fashion as the family of a deceased enlisted man and would be entitled to non-service-connected VA benefits.

I think it is only equitable that the widow and surviving children of a commissioned officer be treated the same as the widow and surviving children of an enlisted man. After all, whether an officer or an enlisted man on active duty dies in line of duty or through his own negligence, the ones who really suffer are those that the serviceman leaves behind—his family.

I understand from Veterans' Administration officials that the cost of this legislation will be negligible since very few service families will qualify for benefits under this bill.

I hope that the Veterans' Affairs Committee, under the able leadership of Senator VANCE HARTKE, will act favorably and expeditiously on this legislation, because I know of one family from Rhode

Island in desperate need of the assistance which this bill would provide.

By Mr. ERVIN (for himself, Mr. MATHIAS, Mr. KENNEDY, Mr. MANSFIELD, Mr. BROOKE, Mr. BURDICK, Mr. HRUSKA, Mr. YOUNG, and Mr. PASTORE):

S. 2697. A bill to protect the constitutional rights of the subjects of arrest records and to authorize the Federal Bureau of Investigation to disseminate conviction records to State and local government agencies, and for other purposes. Referred to the Committee on the Judiciary.

(The remarks of Mr. ERVIN on the introduction of the above bill and the ensuing discussion appear later in the RECORD during the debate on the conference report on H.R. 8916, the State-Justice-Commerce and the Judiciary appropriation bill, 1974.)

By Mr. MUSKIE (for himself, Mr. FULBRIGHT, and Mr. METCALF):

S. 2699. A bill to amend section 315 of the Communications Act of 1934, in order to require the furnishing of equal opportunities in the use of a broadcasting station to the national committee of the major opposition political party in certain cases when the President uses such station. Referred to the Committee on Commerce.

PRESIDENTIAL RESPONSE TIME ACT

Mr. MUSKIE. Mr. President, the age of television has produced a potential for the perfection of democracy—the opportunity to present to the public at large, in their homes, the great political issues of the day, and the proposed responses of our political leaders.

In 1970, testifying before the Subcommittee on Communications in favor of a proposal to insure Congress some greater measure of national television exposure, I had occasion to observe that, used to its fullest, television could determine the outcome of every political issue and, in fact, every national issue. But television has not yet been successfully integrated into our political system. There is yet no mechanism to insure adequate access to television while protecting against unequal advantage. And the cost of television advertising has led to perversion and abuse of political campaigns.

The use of television in Presidential politics illustrates some of the most difficult of these problems. Different Presidents use television differently; but regardless of the individual who occupies the White House, or his party, by his access to television he exercises unmatched political power which threatens to create an imbalance between the President's and his opponent's ability to communicate with the electorate. Although there may be dispute about how to remedy this imbalance, a remedy surely must be found.

Today I introduce, as a basis for formulating a possible remedy, the Presidential Response Time Act, to give the opposition party access to television to respond to the President during Presidential and congressional election years. I am pleased that Senators FULBRIGHT and METCALF are cosponsoring this measure.

The tremendous impact a President's use of television can have on the opposition political party, Congress, and even the judiciary has been described in a newly published book entitled "Presidential Television"—Basic Books, New York, 1973—by former FCC Chairman Newton N. Minow, Writer John Bartlow Martin, and Washington Attorney Lee M. Mitchell. This book, produced with the support of the 20th Century Fund, is a welcome analysis of the critical relationship of politics and television.

Each succeeding President, this study reports, has made more effective use of the power the President alone holds to appear simultaneously on all national radio and television networks at prime, large-audience hours whenever and in whatever format he wishes. Today the President, and only the President, has this unique opportunity to present his image and his explanation of his policies and plans to the American voting public. The study suggests that this power of Presidential television can affect the continued ability of the opposition party and the Congress to perform the very important function which our political and constitutional traditions have led the public to expect of them—checking and balancing Presidential discretion.

To counterbalance a President's use of television, the authors of "Presidential Television" suggests that Congress periodically hold special prime-time sessions to debate the most important issues before us and that we allow the broadcast of these sessions by the networks. They further suggest that the major political parties and the networks agree upon the broadcast of periodic "National Debates." And they propose that the opposition party be given a right to respond to Presidential television appearances during important preelection periods. The legislation I introduce today is based on this latter suggestion contained in the book "Presidential Television."

The Presidential Response Time Act establishes a right of response to Presidential appearances for the opposition political party during the 90 days prior to a congressional election and during a period commencing January 1 before a Presidential election—if the opposition's own Presidential candidate, if any, would not already be entitled as a result of the President's appearance to broadcast time under present "equal time" provisions. During these periods, the major opposition party is given a right to "equal opportunities" when the President uses a radio or television station. "Equal opportunities" is defined to provide reasonably equal broadcast time in terms of length and audience potential of the time period. If the President has chosen the format of his appearance, the opposition party may choose its format; if the President's appearance has been carried simultaneously on more than one network, the opposition party response is to be carried simultaneously also. Exceptions to the opposition party response right are provided for Presidential appearances in newscasts or news documentaries and on-the-spot coverage of news events where the President's appearance is incidental. The bill also establishes an exemption from the "equal time" requirement for appearances of a candidate in an opposition party response to a Presidential broadcast.

The cosponsorship of this measure by Senators FULBRIGHT and METCALF is particularly welcome. Senator FULBRIGHT, in 1970, introduced a similar measure, which I cosponsored, which would have required broadcasters to provide network television time to congressional representatives. And Senator METCALF, as chairman of the Joint Committee on Congressional Operations, has displayed a consistent interest in the role of television in the work of Congress. I commend their continued concern with the problems of television and politics.

Mr. President, we must insure that Presidential television does not dangerously imbalance politics and Government. I hope the Presidential Response Time Act will be considered by Congress as a possible remedy to that imbalance.

I ask unanimous consent that the bill, and an article in the Washington Star-News by Messrs. Minow, Martin, and Mitchell, be inserted in the RECORD.

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

S. 2699

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 315 of the Communications Act of 1934 is amended—

(1) in subsection (a) by striking out "or" at the end of clause (3), by inserting "or" at the end of clause (4), and by inserting after clause (4) the following:

"(5) broadcast time made available pursuant to subsection (b) of this section,";

(2) by redesignating subsections (b) through (g) as subsections (c) through (h), respectively, and by inserting after subsection (a) the following new subsection:

"(b) If the facilities of any broadcasting station are used by the President of the United States within a period of ninety days preceding a general election of members of the House and Senate of the United States or, in a year in which a presidential election is to be held, within a period commencing January 1 of such year and ending on the day of such election, and if subsection (a) of this section is not applicable to such use, then the licensee of such station shall afford equal opportunities to the national committee of the major opposition political party. Appearances by the President on any—

(1) bona fide newscast,

(2) bona fide news documentary (if the appearance is incidental to the presentation of the subject or subjects covered by the news documentary), or

(3) on-the-spot coverage of bona fide news events (if the appearance is incidental to the event), shall not be deemed to be use of broadcasting station with the meaning of this subsection.';

(3) in redesignated subsection (f) by striking out "subsection (c) or (d)" and inserting in lieu thereof "subsection (d) or (e)";

(4) in redesignated subsection (g)(2) by striking out "subsections (c) and (d)" and inserting in lieu thereof "subsections (d) and (e)"; and

(5) in redesignated subsection (g) by inserting at the end thereof the following:

"(3) For the purposes of subsection (b) of this section, 'major opposition political party' shall mean the political party whose nominees for President and Vice-President of the United States received the second greatest number of votes in the last presidential election; 'equal opportunities' shall mean a time period the length and scheduling of which is reasonably equal in audience potential to that used by the President and a choice of program format if the President's use consisted of a format chosen by him, and where the President's use of a broadcasting station occurs simultaneously with his use of other broadcasting stations, 'equal opportunities' shall also include the same simultaneous carriage."

THE OPPOSITION NEEDS A FAIR SHAKE

(By Newton N. Minow, John Barlow Martin and Lee M. Mitchell)

On the evening of July 15, 1971, a spokesman for the so-called western White House at San Clemente, Calif., told the three major television networks that President Nixon had an announcement he wanted to make on nationwide television. The networks quickly cleared time for the announcement, which would interrupt their regular shows at 10:30.

But even after agreeing to the presidential preemption, the networks did not know the subject of the President's address. Network newsmen with the President in California received neither advance copies of his statement nor pre-broadcast briefings.

Promptly at 10:30 p.m. EDT from studios in Burbank, the President's image appeared in 25 million homes across the country. "I have requested this television time tonight," he said, "to announce a major development in our efforts to build a lasting peace in the world." He then told the American people he had accepted an invitation from Premier Chou En-lai to visit mainland China. At the same time, he revealed that his chief foreign policy adviser, Henry Kissinger, had secretly spent three days in China already.

President Nixon's dramatic announcement of a major reversal of U.S. foreign policy took the news media, the American people, and the rest of the world completely by surprise. And its impact was greatly increased because he made it directly and personally to the American people.

One professional observer, calling this use of television a "bombshell approach to major new announcements," wrote that such an approach almost guaranteed that the first wave of news coverage would be extremely heavy and would be limited to straight reporting, thus giving the new policy powerful momentum—and momentum without critical appraisal: "Surprise makes for confusion and, at least initially, confusion does not make for valuable analysis."

Time and again, and in recent years with increasing frequency, presidents have appeared on television to explain their policies, to mobilize support, to go over the heads of the Congress and the political parties, and to speak directly to the people for their cause—and their reelection.

Recognizing the pervasiveness of television, its role as the electorate's main source of political information, and its ability to convey images, candidates for election have embraced the public airwaves with enthusiasm. By a television appearance, a politician may place his views before a potentially enormous audience; by appearing simultaneously on most major television channels, so that alternative viewing choices are sharply limited, he can assure that much of the potential will be realized. If a viewer is not sufficiently resistant to turn his set off, the political message generally gets through. As one analyst noted:

"When asked, they say that they dislike political broadcasts . . . but when there is no alternative, they watch. There is good reason to believe, moreover, that these are people who were not previously reached. . . . Television has activated them. They now have political opinions, and talk to others about them. It can be demonstrated that they have learned something—even when their viewing was due more to lack of alternatives than to choice."

But the power of political television is not limited to individual candidates or to election campaign periods. Sen. Edmund Muskie has even testified that "used to its fullest, television can determine the outcome not only of any political issue, but more importantly of each and every national issue." The success of candidates' use of television has given rise to presidential television—the use of television (and radio) by an already elected president to advance his legislative programs and his political objectives.

Evidence indicates that the televised presidential address can have an important effect on public opinion of national issues. Polls have disclosed, for example, that public support for a Kennedy tax proposal rose by 4 percent after his television address on the subject; that support for President Johnson's position on Vietnam issues rose by 30 percent after one of his television addresses; and that support for President Nixon's Vietnam policies rose by 18 percent after one of his television addresses. Louis Harris reports a definite "correlation between televised presidential speeches and increased public acceptance of the President's positions."

Effectively used, the presidential television address can undermine the ability of the party out of power to mount an effective electoral challenge.

The public and Congress have turned their attention to financial and fairness problems resulting from the use of television by candidates but have paid relatively little official attention to the rampant growth of presidential television. Yet presidential television may damage, or at least drastically restructure, democratic institutions even more than campaign television: Television's impact threatens to tilt the delicate system of checks and balances among our governmental institutions in the direction of the president.

Though a president has a wide choice of radio and television techniques the most direct form of presidential television is the formal address preempting regular television programs to announce an important event or policy decision.

The three networks usually carry the president's message simultaneously, with the result that in cities served only by network-affiliated stations, viewers have no choice of what to watch; in larger cities, viewing choices are diminished. Presidential television addresses usually are carried at the same time by all major radio networks. More and more, the televised presidential address has been delivered during prime time, the 7:00–11:00 P.M. period during which commercial broadcasting attracts the largest audience.

The opposition can never equal the president's ability to make news. When, in the campaign of 1972, George McGovern, Democratic candidate for President, requested television time to explain why he had asked Sen. Eagleton to resign as his vice-presidential candidate, the networks refused on the grounds that his appearance would not be news unless he were to name Eagleton's successor—something he was not then prepared to do. It is hard to believe the networks would not have given President Nixon television time had he decided to drop Vice President Agnew from his ticket and asked for time to explain why. This is not to suggest that the networks are biased against the Democrats. It is merely to suggest the newsworthiness of the President of the United States.

Because of who he is, newsmen and their editors allow the president to speak for himself. The remarks of an opposition spokesman may be summarized in television news reporting or analysis; the president's views usually are given in his own words. If a president asks for time, network executives can hardly decide that what he wishes to say is less important than what Marcus Welby has to say. Moreover, they are hard put to determine what part of his discourse is most important, especially if he insists that it is all important.

A President is further assured of broadcast time because broadcasters are eager to please him. They are after all, licensed by the federal government, by the Federal Communications Commission. And the president appoints the members of the FCC. Broadcasting is privilege, revocable by the FCC. Since television stations are enormously valuable, commonly worth many millions of dollars, broadcast executives admit to being sensitive about incurring the displeasure of the president and his FCC.

Occupants of the White House have not hesitated to capitalize on broadcaster fears of retaliation. Franklin Roosevelt let the industry know that FCC policies could begin at the White House. President Johnson was quick to let broadcasters know in no uncertain terms when they displeased him. Vice President Agnew has charged broadcasters with being unfair to the President, while reminding them that they operate under government licenses. Whether intentional or not, the incumbent exercises power over broadcast decision-making.

The only restriction upon a president's use of television is imposed not by the broadcasters but by the audience. Franklin Roosevelt once observed that "the public psychology . . . cannot, because of human weakness, be attuned for long periods of time to a constant repetition of the highest note in the scale." At some point too much presidential television exposure will bore the public.

If every appearance of the president on television has political significance, if the president can be regarded as campaigning throughout his term, then it is essential that the opposition—whether it be the opposing political party or some other group formed over a particular issue—somehow maintain the ability to compete. It is not only diffuseness, lack of structure, and lack of a preeminent leader or a single line on issues that have limited the opposition party's effectiveness in responding to presidential television. Lack of comparable access to television severely compounds the opposition's difficulty.

It has been suggested that, in combination, the president's political opponents may even have greater exposure than he. President Nixon's press secretary, Ronald Ziegler, believes that the opposition can "collectively—regularly—and with great impact—attack the president's policy . . . The collective weight of their opposition equals or outweighs the TV statements of the President. It balances without question."

The only way an opposition party spokesman can gain access to television time under his own control is to be given it by the networks or to buy it himself. Occasionally, one of the networks has offered time to the opposition to use as it sees fit. But the networks have never directly given the opposition party simultaneous three-network prime time to present its views and images at a time and in a format chosen by the party—the conditions in which the president operates.

From Jan. 20, 1969, through August 1, 1971, President Nixon made 14 television addresses and held 15 televised news conferences, all carried simultaneously and free by all three

networks, while the opposition party as such made three appearances, *none of them broadcast on all networks simultaneously.*

Of course, the opposition party can buy time. But a half-hour of simultaneous prime time on all networks can cost more than $250,000, more than the opposition should reasonably be expected to spend to balance the President's free appearances. In 1972, it was also more than the Democratic party could afford. And even if it were not, the networks are not eager to disrupt program schedules, and they also fear complaints from sponsors whose commercial messages may happen to appear immediately before or after a controversial political program.

Our proposal is this: "Equal broadcast opportunities" should mean free time when the president's time has been free, at an equally desirable time of day and of a duration approximately equal to the length of the President's broadcast. The national committee should control format of the presentation if the president has had control of his format.

In exercising its "right of response," the party's national committee would not be limited to addressing only those issues raised by the president in his appearance. It could for example introduce its leaders or the party candidate or candidates in the coming election, or both.

When a presidential appearance has been carried simultaneously by the networks, the national committee response should also be carried simultaneously by the networks. Otherwise, the television exposure clearly could not be termed "equal."

Under this proposal, if the president delivered a prime-time, three-network broadcast address to propose an international agreement, for example, radio and television stations (and CATV systems) that carried the address would be obligated to provide the national committee of the major opposition party "equal opportunities."

The party response time should be put in the hands of the party's national committee because the committee is responsible for the party's election campaign. If party members are dissatisfied with their national committee's response, they should work to change it. The committee surely would be more responsive to pressures from party members than would the networks.

The purpose of response time in the periods prior to federal elections is to insure equality in the electoral use of television. Each presidential television appearance can help create a favorable image of the president or his party and may change votes. Even when the president is not a candidate for reelection, his appearance can affect the candidacies of other nominees of his party.

But there should be a limit on the period when response opportunities are required; this avoids the danger, on the one hand, of over-politicizing the presidency and, on the other hand, of boring the public. If the response period were unlimited, the president might have difficulty in maintaining a consensus with which to govern; and the public would have no respite from politics. The proposal establishes, at the least, the right of response during all of a presidential year before the election.

The opposition response should be exempt from the equal time law and the fairness and political party doctrines. This is necessary to prevent a continuing "response" to a "response"—an unnecessary and unfair burden on the broadcaster.

Between elections, the national committee of the opposition party, the national committee of the president's party, and the commercial and public television networks should together develop a plan to present live debates—perhaps titled "The National Debates"—between spokesmen for the two major parties with agreed topics and formats quarterly each year (only twice a year in federal election years). All debates should be scheduled during prime time and broadcast simultaneously by all networks. They should be widely advertised and promoted by the broadcasters and the parties. This proposal should be carried out voluntarily by the parties and networks rather than be required by legislation.

The debate format, including minor parties at times, might help overcome the public's lack of interest in political programs.

In addition to providing television access for the opposition party, "The National Debates" would prevent unfairness to the president's party. Ordinarily, any position that the party in power takes is consistent with the president's position. But important differences sometimes arise, as recent history indicates, between the president and a significant faction of his own party.

We also propose adopting reforms to ensure all significant presidential candidates a minimum amount of free, simultaneous television time. The voters' ability to watch and assess candidates for president and vice president is in danger of being limited by the high cost of television. Each presidential candidate and his running mate shall be given campaign "voters' time" without cost to them—broadcast time provided simultaneously by all television and radio stations. The two major party candidates would receive six 30-minute, prime-time program periods in the 35 days preceding a presidential election; candidates of minor parties of sufficient size would receive one or two half-hour periods depending on the party's relative strength. Candidates could use their voters' time only in formats that "promote rational political discussion and substantially involve live appearance by the candidate." The federal government would compensate broadcasters for voters' time at reduced commercial rates.

In combination, these reforms would do much to protect the traditional functions of the loyal opposition in an electronic era. Between elections, the opposition could develop and present through debate its positions on issues.

In each case, the opposition's television time would equal the president's—free, prime-time, and on all networks simultaneously. The proposals would not, and should not, guarantee successful opposition to the president. But they would provide the opposition party with what it requires to continue as a vital institution, a reasonable chance to take its case to today's marketplace of ideas—television.

Mr. FULBRIGHT. Mr. President, I am pleased to join the senior Senator from Maine (Mr. MUSKIE) in sponsoring legislation which would establish a right of response to Presidential appearances on radio and television. Under this bill, the national committee of the opposition party would be given an automatic right of response to Presidential radio-TV appearances during a Presidential election year or within 90 days preceding a congressional election in a non-Presidential year.

This legislation was recommended in the 20th Century Fund's report on "Presidential Television," coauthored by Newton N. Minow, John Bartlow Martin, and Lee M. Mitchell. Senator MUSKIE and I are introducing this legislation in order to draw attention to this significant report and to stimulate discussion on this highly important topic.

This bill would represent one step toward redressing the communications imbalance that has seriously distorted our constitutional and political systems.

Section 315 of the Communications Act of 1934 would be amended to require that every radio or television station or cable television system which carried an appearance of the President within the designated "response" period provide, upon request, equal broadcast opportunities to the national committee of the opposition political party. Those Presidential appearances in documentaries or spot news coverage in which the President's appearance is only incidental, and appearances that already give rise to "equal time" for an opposition candidate would be exempt from this requirement.

The opposition would receive free time if the President's time was free, and should be at an equally desirable time and of similar duration.

As the 20th Century Fund report states:

The purpose of response time in the periods prior to federal elections is to insure equality in the electoral use of television. Each presidential television appearance can help create a favorable image of the president or his party and may change votes. Even when the president is not a candidate for reelection, his appearance can affect the candidacies of other nominees of his party.

This legislation is aimed primarily at assuring fair and balanced access to television during Federal election periods and deals with the political imbalance which results from the President having relatively unfettered access to TV, while the opposition currently has nothing approaching equal access. This bill would reduce the advantage that a President now enjoys in such a situation—an advantage that I believe is inconsistent with our political and constitutional system.

As I stated earlier, this would be one step toward redressing the communications imbalance which has developed in the television era, an imbalance which threatens serious damage to our democratic institutions.

The issue is stated very well in the report on "Presidential Television":

The Constitution established a presidency with limitations upon its powers—the need to stand for reelection every four years, checks than can be exercised by the Congress and the Supreme Court. The evolution of political parties and a strong two-party system provided a rallying point for opponents on an incumbent administration, enhancing the importance of frequent reelection. An intricate set of constitutional balances limiting the powers of each of the three government branches added force to the separation of government functions. These political and constitutional relationships served the country well for many years. Television's impact, however, threatens to tilt the delicately balanced system in the direction of the president.

As Fred Friendly has written, the almost exclusive Presidential access to television "bestows on one politician a weapon denied to all others," and this device "permits the first amendment and the very heart of the Constitution to be breached."

The bill which Senator MUSKIE and I are introducing would help alleviate the political imbalance which results from Presidential television.

However, it would not really alleviate the imbalance among the coequal

branches of Government which has resulted from the domination of television by the executive branch. It may be recalled that in 1970 I introduced legislation which would have required radio and television stations to provide a reasonable amount of public service time to authorized representatives of the Senate and House to comment upon and to explain issues of public importance. The broadcast time would be made available at least four times a year, consistent with the obligation of broadcast licensees to serve the public interest.

Hearings on "Public Service Time for the Legislative Branch" were held by the Communications Subcommittee of the Committee on Commerce under the chairmanship of the Senator from Rhode Island (Mr. PASTORE), although no final action was taken on the proposal.

That proposal was of an institutional, not partisan, nature. Its purpose was to help restore the constitutional balance between the executive and legislative branches and to guarantee the right of the people to hear diverse and opposing views, regardless of party.

I still feel that there is a strong need for such legislation. A variety of different suggestions have been made about presentations, and I am convinced that a suitable arrangement can be developed. One of the possibilities suggested in "Presidential Television," and one of the alternatives I have mentioned, would be the broadcast of special prime-time evening sessions of Congress. The report specifically proposes:

Congress, in consultation with the television networks, should permit television cameras on the floor of the House and Senate for the broadcast of specially scheduled prime-time evening sessions at which the most important matters before it each term are discussed, debated and voted on. The sessions should be scheduled and broadcast at least four times per year and carried simultaneously by all three networks. These broadcasts should be exempt from the "equal time" law and the fairness and political party doctrines.

Mr. President, without specifically endorsing this proposal, I do commend to the Senate and to those interested in resolving this problem, the report on "Presidential Television." I think it deserves our serious consideration.

I understand that the Joint Committee on Congressional Operations, under the leadership of the Senator from Montana (Mr. METCALF) is also looking into this question and I am hopeful that the committee will come up with some positive recommendations.

As the majority leader, Mr. MANSFIELD, said earlier this year:

It is time for Congress to determine who really should decide what is a fair input by a coequal branch of government into the perceptions of the American electorate.

I believe that any sensible interpretation of a notion of fairness requires that the American people have the input of the Congress on an issue of great vital importance especially when that issue was drawn into question by the President in an attack upon the Congress.

With the revolution of communications in this country, the whole notion of the separation of powers has been significantly diminished by the inordinate input the executive branch, through the President and the Cabinet officers, has on television.

I believe this is a matter of immense importance and that action must be taken to insure that the legislative branch does have access to television. There is certainly nothing in the Constitution which says that, of all elected officials, the President alone shall have the right to communicate with the American people. That privilege was a gift of modern technology, coming in an age when chronic war and crisis were already inflating the powers of the Presidency. The Congress has recently taken steps to reassert itself in the area of war powers and I am hopeful that in the future we can move to right the balance in other areas.

The legislation we have introduced today, in conjunction with action to provide congressional access to television on an institutional basis, would help reaffirm the constitutional principle of coequal branches of government and the democratic principle of fair elections, with equal access to the voter.

As I stated in testimony on behalf of my 1970 proposal, communication is power and exclusive access to it is a dangerous, unchecked power.

Mr. President, I ask unanimous consent to have printed in the RECORD articles by Herbert Brucker, from the Boston Globe of November 7, and by John O'Connor, from the New York Times of November 11.

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

[From the Boston Globe, Nov. 7, 1973]

THE CHECKS AND BALANCES NO LONGER DO

(By Herbert Brucker)

The Twentieth Century Fund has issued a report saying in effect that television has twisted the Constitution out of shape. The checks and balances among the separate departments, says the report, no longer check and balance. Why? Because television has given Presidents one-way access to the American people, while by comparison Congress and the courts are muzzled.

The reception of this report has been as usual in a world too full of a number of things. Here and there there has been comment. But we may expect that the whole study, despite its significance to every citizen, will be filed and forgotten.

This is what the social scientists call technological lag. It takes a long time, maybe a generation, after a public need becomes glaringly obvious for society to get around to bringing itself up to date.

Other examples stare us in the face. If the political and constitutional turbulence now swirling through the nation has proved anything, it is that we are far behind in updating such fundamental political processes as choosing Vice Presidents, providing for presidential succession, and financing political campaigns. The entire national convulsion we are entering was made possible by television's astronomical escalation of the cost of presidential campaigning.

Then, too, there is another defect in our inherited political system that we have done nothing about but talk. This is the pressing need, under today's conditions, for scrapping the Electoral College and substituting the direct election of Presidents. Only luck has saved us, so far, from the disaster inherent in an electoral deadlock thrown into the House.

Well, one thing at a time. To correct the imbalance caused by TV, the Twentieth Century report suggests among other things:

That prime-time debates be arranged for television, including live debates between spokesmen for the two major parties four times a year.

A right of reply for the opposition national committee, any time a President addresses the nation during the 10 months before a national election.

Government purchase of network time, at half price, for presidential candidates.

Additional free television time for all significant presidential nominees in the 35 days before an election.

TV coverage of both houses of Congress for prime-time evening sessions at which important matters are debated and voted on.

One reason proposals along these lines need to be enacted into law is that broadcasters do not cover government and politics as news to anything like the extent newspapers do. Except for giving presidents prime-time TV coverage on all three networks, plus occasional fragmentary exposure of other political figures on the morning and evening news shows, or on the Sunday interview shows, broadcasters charge politicians for time on the air.

Newspapers, to be sure, also welcome political advertising. But with them it is a minor part of their coverage. Most newspapers simply report in their news columns what candidates do and say. There is no reason why broadcasters—who make millions by having free, exclusive use of a portion of the public air—should not give free time to government and politics just as the papers and news magazines do.

Then again we fail to turn advancing technology to our advantage. In our day-to-day following of the Watergate-induced political crisis it is silly that whenever some crucial event takes place in Judge Sirica's court or some other court, we have to put up with an artist's sketch of what it looks like, while an offstage voice tells us what is going on.

We bar cameras and microphones from our courts, and often from our legislatures, though there is no reason why they cannot be kept within bounds there, just as they are at royal coronations, Kennedy or Churchill funerals, or other public events in which dignity rather than staging an entertainment spectacular is the overriding concern.

Of course the Constitution, which has been adapted to changing times for the better part of two centuries, can be adapted to television. All it takes is that we bestir ourselves—and that we choose leaders who can lead.

[From the New York Times, Nov. 11, 1973]

NO BACK TALK FROM THE PRESS, PLEASE

(By John J. O'Connor)

When "Bill Moyers's Journal" returned recently to the public television schedule with "An Essay on Watergate," the occasion was reassuring on several levels, some perhaps not anticipated fully by Moyers himself. Most strikingly, the essay was excellent, succeeding forcefully as a "personal attempt" to get to the roots of the Watergate morality, to explore the premise that "Watergate is something everybody does, it's politics as usual."

The program offered broad and thoughtful perspective at a time when broadcast journalism generally is preoccupied with simply reporting the incredible cascade of news stories concerning the Nixon Administration over the last several months. The result was an object lesson on the potential role of a truly independent public TV system. And, of course, it is hardly coincidence that when, in pre-Watergate days, various Washington officials were demanding an end to news and public affairs programing on public TV, the name of Bill Moyers was prominent on the enemies list.

Those officials presented ingenious and ingeniously empty arguments. From Clay T.

Whitehead, director of the White House Office of Telecommunications Policy, to Patrick J. Buchanan, special assistant to the President, to Henry Loomis, president of the Corporation for Public Broadcasting, the well-orchestrated lament was for a return to "localism," where in effect most stations couldn't monetarily afford to be a threat to anyone.

The official dictum seemed to be "less is more," neatly wrapped in sanctimonious declarations of impartiality. Any detections of an Administrationwide conspiracy to silence, or at least better to control, portions of the press were dismissed with patronizing condescension.

Then, happening to be a day after the showing of "An Essay on Watergate," Senator Lowell P. Weicker Jr., Republican of Connecticut, made public a series of White House documents obtained by the Senate Watergate committee. The memorandums—involving such familiar names as H. R. Haldeman, Charles W. Colson and Jeb Stuart Magruder—were written over 12 months, beginning in February, 1970. At issue was nothing less than a series of efforts to "tear down the institution" of broadcast journalism.

One of the most revealing, both of the Administration and of broadcasting, was a Sept. 25, 1970, memorandum from Colson to Haldeman. Colson had been pressuring top executives of the three commercial networks to deny requests by the Democratic party for free air time to reply to televised Presidential statements. Colson wrote:

'These meetings had a very salutary effect in letting them know that we are determined to protect the President's position, that we know precisely what is going on from the standpoint of both law and policy, and that we are not going to permit them to get away with anything that interferes with the President's ability to communicate."

With the President as the only person in the nation having unlimited and virtually instant access to television, it is curious to find his aides so worried about an "ability to communicate." But, of course, the thrust of their efforts went much further. It concerned the ability of the President to monopolize communications, to eliminate altogether the possibility of questioning and criticism, whether from political opponents or TV commentators. That would be the ultimate victory in a crusade "to protect the President's position."

In his television essay, Moyers presented an especially apt sports context to define the name of the game, the cause reflecting the old American will to win, with a modern twist: "When the one great scorer comes to write against your name, he marks not that you won or lost, but how you played the game."

"The sports writer Grantland Rice formulated the ethic in 1923. In theory, at least, the name of the game was fair play.

"By the nineteen-sixties, football had a new ethic, articulated by Vince Lombardi of the Green Bay Packers and Washington Redskins: 'Winning isn't everything; it's the only thing.'

"In the situation room of the Committee to Re-elect the President, a windowless, well-guarded command post across from the committee's headquarters, the President's team hung a sign borrowed from Lombardi: 'Winning in politics isn't everything; it's the only thing.'

"The name of the game was victory."

If the consequences weren't so tragic for the nation, the playing of the game, the tactics employed, might be almost laughable for their ineptness and miscalculation. Consider another section of the same Colson memorandum:

"To my surprise CBS did not deny that the news had been slanted against us. [William S.] Paley merely said that every Administration has felt the same way and we have been slower in coming to them to complain than our predecessors. He, however, ordered [Dr. Frank] Stanton in my presence to review the analyses with me and if the news has not been balanced to see that the situation is immediately corrected. Paley [chairman of CBS] is in complete control of CBS—Stanton [former president of CBS] is almost obsequious in Paley's presence."

Since the Nixon Administration continues to complain strongly about TV news commentaries, it can only be concluded that CBS did not find any reason to have the situation "immediately corrected." And it was the "obsequious" Stanton who later stood up to the Administration and Congress in the fracas over 'The Selling of the Pentagon" documentary.

The self-deception is almost laughable, but not quite. As Moyers put it, commenting on the entire Watergate quagmire: "It was close. It almost worked. But not quite. Something basic in our traditions held . . . What is best about this country doesn't need exaggeration. It needs vigilance."

By Mr. MONDALE (for himself, Mr. JAVITS, Mr. NELSON, Mr. STAFFORD, Mr. WILLIAMS, Mr. RANDOLPH, Mr. KENNEDY, Mr. CRANSTON, Mr. MONTOYA, Mr. HUGHES, Mr. HATHAWAY, Mr. PELL, Mr. SCHWEIKER, Mr. BROOKE, and Mr. RIBICOFF):

S. 2700. A bill to postpone the implementation of the Headstart fee schedule. Referred to the Committee on Labor and Public Welfare.

HEADSTART FEE SCHEDULE

Mr. MONDALE. Mr. President, today I am introducing on behalf of myself, Senator JAVITS, Senator NELSON, Senator STAFFORD, Senator WILLIAMS, Senator RANDOLPH, Senator KENNEDY, Senator CRANSTON, Senator MONTOYA, Senator HUGHES, Senator HATHAWAY, Senator PELL, Senator SCHWEIKER, Senator BROOKE, and Senator RIBICOFF, a bill which would postpone implementation of the fee schedule for nonpoor children participating in Headstart until July 1, 1975. This same measure has been introduced in the House of Representatives by Congressmen PERKINS, QUIE, HAWKINS, STEIGER, BRADEMAS, BELL and MEEDS.

Mr. President, the fee schedule in question was originally developed as a compromise to gain administration support for the Comprehensive Child Development Act of 1971, which was vetoed by the President. Authority for the same fee schedule was then added to the Economic Opportunity Amendments of 1972, apparently in the belief that it would encourage participation of nonpoor children in Headstart programs. The Department of Health, Education, and Welfare, in exercising its discretion under this authority, set fees for nonpoor children at or very close to the maximum levels permitted by this legislation, and the fee schedule went into effect earlier this year.

The results have been very disturbing. The reports I receive from my own State of Minnesota and from numerous localities throughout the Nation indicate that this fee schedule is causing serious problems both for many families whose children have participated in Headstart or want to participate, and for the Headstart program itself.

Rather than encouraging the participation of nonpoor children in the Headstart program. this fee schedule appears to be decreasing nonpoor participation.

Rather than raising additional funds which could be used to expand Head Start programs, reports suggest that in some cases it is costing more to implement and administer the fee schedule than the fee schedule produces in additional funds.

In addition, in some localities I am told that the fee schedule is causing previously popular Headstart programs to lose community support: is producing a bitterness between poor and nonpoor participants; and is causing special problems for families with handicapped children at the very moment that increased involvement of handicapped children in Headstart programs is required by law.

Mr. President, for these reasons, I am introducing legislation today which postpones implementation of a Headstart fee schedule until July 1, 1975. This bill will provide the authorizing committees and the Congress as a whole an opportunity to review and reconsider the need for a fee schedule during our work next spring regarding the extension of Headstart and the Economic Opportunity Act.

I am hopeful that we can enact this bill in the very near future so that we can end the confusion and difficulties the fee schedule is now creating for families and Headstart programs across the country.

By Mr. PELL:

S. 2701. A bill to require the establishment of safety standards for snowmobiles, and for other purposes. Referred to the Committee on Commerce.

Mr. PELL. Mr. President, today I am introducing a bill that will provide for improved safety in the manufacture and operation of snowmobiles.

The use of the snowmobile in the northern tier of States has increased rapidly over the last few years. It is now estimated that more than 2½ million machines are in use. The sport has added millions of dollars to the economies of the States in the snow belt.

However, Mr. President, this growth has not been without a great price. In the winter of 1967–68, 54 persons lost their lives in snowmobile accidents. In 1968–69, this number increased to 84. By the winter of 1970–71, the number of deaths had risen to 104, including that of a close family friend. Last year, 1971–72, that figure rose to 164. We do not yet have the figures for 1971–73, but it is estimated that 50,000 persons will be injured seriously enough to require treatment at a medical facility. It appears the numbers of deaths will again increase.

Even though the figures on death and injury are sobering, there are other hidden injuries not reflected here. The noise levels of these machines is so great that many operators are sustaining permanent ear damage.

Further, this raucous invasion has created a serious noise problem for the other users of recreation lands. The hiker, the skier, the fisherman, and hunter who seek out the restful solitude of open spaces now find their recrea-

tional calm destroyed by these noisy and dangerous machines.

The speed and lack of control by many operators jeopardizes the safety of other users of recreation spaces.

These factors of noise, speed, and lack of control have a deleterious effect on other parts of the environment. The machines break off tops of young trees, thus permanently damaging or destroying them. Animals have been chased to the point of exhaustion and death. Some hunters have begun using the machines to invade areas which had provided sanctuary to wildlife. Lakes, once inaccessible, are now being depleted of fish.

The bill I introduce today would remedy some of the larger ills associated with the snowmobile. It would set an upper limit on the noise levels of the machines; it would require the manufacturer to provide more safeguards; and finally, it would restrict the operation of these machines on public lands so that the environment and the rights of other users are protected.

Mr. President, snowmobiles have a capacity to contribute to the work and recreational life of our country. But even the most ardent snowmobilers today recognize the desirability and indeed the necessity of reasonable restraints and regulations to protect snowmobile users, the general public and our environment from unnecessary injury and damage. That is the object of this legislation, and in this regard, I want to commend the International Snowmobile Industry Association and manufacturers for recognizing these concerns and undertaking programs to help achieve these goals.

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

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

S. 2701

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

DEFINITIONS

SECTION 1. For the purposes of this Act the term—

(1) "snowmobile" means any device that is propelled by a motor and is designed for oversnow travel; and

(2) "Commission" means the Consumer Product Safety Commission established pursuant to section 4 of the Consumer Product Safety Act (15 U.S.C. 2053).

SAFETY STANDARDS

SEC. 2. The Commission shall establish consumer product safety standards for the snowmobiles pursuant to its authority under section 7 of the Consumer Product Safety Act (15 U.S.C. 2056). Such standards shall include requirements that snowmobiles be equipped with—

(1) a forward-facing white headlight sufficient to distinguish objects at a distance of 200 feet, a red taillight which is visible from a distance of 500 feet, and a battery reserve sufficient to operate both the headlight and taillight for a period of one hour without operating the motor;

(2) not less than 250 square inches of reflective material applied to each side of the snowmobile;

(3) a throttle control which automatically returns to idle after release of the operator's hand;

(4) a windshield of transparent material which extends above the head of a seated operator and which is of sufficient strength to withstand impact and deflect objects encountered at cruising speeds; and

(5) a muffler system sufficient to reduce the operating noise level of the snowmobile to 73 dbA at 100 feet using measurement practices recommended by the Society of Automotive Engineers.

RESTRICTIONS ON USE OF SNOWMOBILES ON PUBLIC LANDS

SEC. 3. (a)(1) Any individual who operates or is a passenger in a snowmobile being operated on the public lands of the United States shall wear, whenever the snowmobile is in operation, a helmet, approved by the Secretary of the Interior pursuant to subsection (d), which provides crash protection.

(2) It shall be unlawful for any individual who operates or rides as a passenger in a snowmobile being operated on the public lands of the United States to carry any firearms on his person or on or attached to a snowmobile.

(b) It shall be unlawful for any individual—

(1) to operate any snowmobile at any speed in excess of ten miles per hour while such snowmobile is within a distance of 100 feet of any pedestrian, building, or any hiking or ski trail;

(2) to use any snowmobile to chase or in any other manner disturb wildlife; and

(3) to operate any snowmobile within any area which has been designated a wilderness area, or cultural or historical site.

(c) Nothing in this section shall be construed to limit the authority of the Secretary of the Interior or his delegate to control or otherwise limit the use of snowmobiles on the public lands of the United States whenever, in his judgment, such use would have a deleterious impact upon such lands.

(d) The Secretary of the Interior shall by regulation prescribe standards for crash helmets and shall cause notice of such standards to be made public within six months after the date of enactment of this Act.

PENALTY

SEC. 4. Violations of the provisions of section 3(a) or (b) of this Act is a misdemeanor punishable by imprisonment for not more than 15 days, a fine of not to exceed $100, or both, for each such violation.

EFFECTIVE DATE

SEC. 5. The provisions of section 3(a)(1) shall become effective 30 days after the date on which the Secretary of the Interior promulgates final regulations for crash helmet standards under section 3(d) of this Act. All other provisions of this Act shall become effective on the date of enactment.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 796

At the request of Mr. PELL, the Senator from New Jersey (Mr. WILLIAMS) was added as a cosponsor of S. 796, a bill to improve museum services.

S. 1260

At the request of Mr. PELL, the Senator from Nevada (Mr. BIBLE) and the Senator from California (Mr. TUNNEY) were added as cosponsors of S. 1260, a bill to provide that daylight saving time shall be observed on a year-round basis.

S. 2661

At the request of Mr. BURDICK, the Senator from Alaska (Mr. GRAVEL) was added as a cosponsor of S. 2661, a bill to amend the Land and Water Conservation Fund Act of 1965 so as to authorize the development of indoor recreation facilities in certain areas.

SENATE RESOLUTION 202—SUBMISSION OF A RESOLUTION ESTABLISHING A SENATE SPECIAL COMMITTEE ON ENERGY DEVELOPMENT

(Referred to the Committee on Interior and Insular Affairs.)

Mr. GOLDWATER. Mr. President, I am submitting today a Senate resolution establishing a Special Committee on Energy Development of the U.S. Senate.

On Wednesday, November 7, the President of the United States went on national television to announce certain actions he was taking or advocating to meet our energy crisis. I thought it was a fine address.

The President outlined measures to conserve our existing sources of energy. More important, over the long haul, he called for a "Project Independence" to meet our energy needs in the future without any foreign energy source. The President stated:

We must have organizational structures to meet and administer our energy programs.

To meet this urgent goal, he advocated the creation of the Energy Research and Development Administration. I have no doubt that the Energy Research and Development Administration could be to energy what NASA has been to space.

Mr. President, it is a fact that a spate of bills has been introduced in both the House and Senate to tackle the energy problem. In the Senate, they have been variously referred to the Committees on Aeronautical and Space Sciences, Banking, Housing and Urban Affairs, Commerce, Interior, and Labor and Public Welfare. I hope I have not overlooked any.

What appears to be happening is that good intentions are being caught in a legislative snarl involving committee jurisdiction and perhaps inertia.

In the near future, Americans will face national speed limits. They will face appeals to reduce the consumption of fuel oil. There may even be rationing. Economic dislocations are inevitable.

Under these circumstances, it seems to me that the Senate of the United States must show it is willing to exercise leadership in order to come to grips with the energy crisis. It must make an effort parallel to that of the President.

In 1958, the Senate of the United States faced a similar situation. In the previous year, on October 4, 1957, the Soviet Union had been the first nation to launch an Earth satellite. There were reverberations throughout the free world. Fear, if not outright anguish, was the prevailing order of the day.

At that time numerous bills and resolutions were introduced in the Senate to spur American research and development in space. They were referred to every

committee imaginable. The legislative situation was chaotic, and rigid jurisdictional lines seemed to prevent forward movement.

On February 6, 1958, the Senate passed Resolution 256 creating the Senate Special Committee on Space and Astronautics. Membership of the committee was composed of the chairmen and ranking minority members of the Committees on Appropriations, Foreign Relations, Armed Services, Interstate and Foreign Commerce, Government Operations, and the senior Senators on the Joint Committee on Atomic Energy.

Mr. President, the history surrounding the creation of the Senate Special Committee on Space and Astronautics is to be found on page 12 of Senate Document No. 116 of the 90th Congress, 2d session, entitled "Committee on Aeronautical and Space Sciences, United States Senate—Tenth Anniversary 1958–1968." I shall read a brief excerpt from that document, I quote:

The Senate established the Special Committee on Space and Astronautics by passing Senate Resolution 256 on February 6, 1958, directing it to study and investigate all aspects of space exploration, including "the control, development, and facilities," and report its recommendations to the Senate by June 1, 1958, but not later than January 31, 1959.

The resolution provided for 13 members, seven from the majority party and six from the minority, to be appointed by the Vice President from the Committees on Appropriations, Foreign Relations, Armed Services, Interstate and Foreign Commerce, Government Operations, and the Joint Committee on Atomic Energy. The selection of the membership revealed the fact that the subject of space exploration created some puzzling problems of committee organization and jurisdiction for the Congress. When the comprehensive nature of space activities was revealed in the hearings held by the Senate Preparedness Investigating Subcommittee, it became evident that the subject matter of component parts of a U.S. space program cut across the jurisdiction lines of several standing committees of the Senate. A different combination of the substantive committees could be involved with each piece of space legislation, in addition to the regular processes of the Committees on Appropriations.

The complicated parliamentary situation which might arise in the referral of bills to the committees was recognized and became a factor in the selection of the Senators appointed to the Special Committee on Space and Astronautics. For the most part, the special committee was composed of the chairmen and ranking minority members of the standing committees which had a logical interest in space exploration.

By creating the special committee and having in its membership the chairmen and ranking minority members of the cognizant Senate committees, the Senate, at that time, clearly showed its determination to the world that America would become first in space.

In a similar fashion, I believe the creation of the Senate Special Committee on Energy Development could show the world that we mean to become self-sufficient in energy and ultimately net exporters of energy.

The special committee would have as its primary task to examine all bills that have been introduced in the Senate involving the energy crisis and report back to the Senate within the time limits stated. In this connection, I would like to quote Senator Lyndon B. Johnson as floor manager of the resolution creating the Special Committee on Astronautics and Space Exploration. He stated, and I quote:

I have no hard and firm conclusions as to the policy that should be adopted. But I do know there is an urgent need to lodge specific responsibility somewhere, and that the decision must be faced up to, and should not be postponed.

End of quote.

I, too, have no hard and firm solutions, but I sense today the same urgency he sensed in 1958.

In addition, the special committee would probably want to examine the following questions arising from the energy crisis:

First. Do the existing jurisdictional lines of the standing committees of the Senate require change?

Second. Is there a need for a new standing committee?

Third. Should the President be authorized to create a new Department, Administration, or Agency?

The proposed Senate Special Committee on Energy Development would be composed of the chairmen and ranking minority members of the following committees:

Aeronautical and Space Sciences;
Appropriations;
Banking, Housing and Urban Affairs;
Commerce;
Interior; and
Labor and Public Welfare.

In addition, the senior Democratic Senator and the senior Republican Senator of the Joint Committee on Atomic Energy would be members. If either or both of these Senators were members of the special committee by virtue of qualifying as members of standing committees, the next senior Senator would take his place.

Following the precedent established in 1958, the chairman would be the majority leader. Accordingly, the total membership would be 15 Senators of which 8 would be from the majority and 7 from the minority.

My resolution closely parallels Senate Resolution 256 of the second session of the 85th Congress. The first section was changed to relate to energy rather than space exploration. Also, the reporting dates for the committee obviously had to be altered.

Section 2 was changed to reflect the committees involved with energy, and provides for 15 members rather than 13.

Section 3 is a verbatim copy from the old resolution. So is section 4.

Section 5 is the same except that the amount is $400,000 instead of $50,000. This larger amount reflects inflation. Also, it reflects the likelihood that a number of outside consultants and experts might have to be paid by the committee and the possibility of extensive travel.

I believe that the same kind of brains, guts, and determination that created and brought the Apollo program to a successful conclusion can do the same thing with energy.

I hope that Americans will not collectively wring their hands as fossil fuels grow scarcer. I hope we will not be content to have a second rate economy characterized by rationing and shortages. I hope we will not allow ourselves to slide down the chute to mediocrity.

Following the Apollo precedent, let us set for ourselves the goal to become self-sufficient in energy during the next decade. Let us set for ourselves the goal of becomming exporters of energy in the following decade.

We can achieve these goals. When we do, we Americans will have met the challenge of a fuller and better life for all mankind. Let us get going.

The resolution is as follows:

S. Res. 202

Resolved, That there is hereby established a special committee which is authorized and directed to conduct a thorough and complete study and investigation with respect to all aspects and problems relating to energy development and energy resource utilization, and the concomitant use of resources, personnel, equipment, and facilities of the Government of the United States of America. All bills and resolutions introduced in the Senate and all bills and resolutions from the House of Representatives proposing legislation in the field of energy development and utilization shall be referred, and if necessary rereferred, to the Special Committee. The committee will be known as the Special Committee on Energy Development of the United States Senate. The Special Committee is authorized and directed to report to the Senate by December 1, 1974, or the earliest practical date thereafter, but not later than June 30, 1975, by bill or otherwise, with recommendations upon any matter covered by this resolution.

Sec. 2. (a) The Special Committee shall consist of fifteen members, eight from the majority and seven from the minority Members of the Senate, to be appointed by the Vice President from the Committees on Aeronautical and Space Sciences, Appropriations, Banking, Housing and Urban Affairs, Commerce, Interior, Labor and Public Welfare, and the Joint Committee on Atomic Energy. At its first meeting, to be called by the Vice President, the special committee shall select a chairman.

(b) Any vacancies shall be filled in the same manner as the original appointments.

Sec. 3. For the purposes of this resolution the Special Committee is authorized, as it may deem necessary and appropriate, to (1) make such expenditures from the contingent fund of the Senate; (2) hold such hearings; (3) sit and act at such times and places during the sessions, recesses, and adjournment period of the Senate; (4) require by subpena or otherwise the attendance of such witnesses and production of such correspondence, books, papers, and documents; (5) administer such oaths; (6) take such testimony, either orally or by deposition; (7) employ on a temporary basis such technical, clerical, and other assistants and consultants; and (8) with the prior consent of the executive department or agency concerned and the Committee on Rules and Administration, employ on a reimbursable basis such executive branch personnel as it deems advisable; and further, with the consent of other committees or subcommittees, to work in conjunction with and utilize their staffs, as it shall be deemed necessary and appropriate in the judgment of the chairman of the Special Committee.

Sec. 4. Upon the filing of its final report, the Special Committee shall cease to exist.

Sec. 5. The expenditures authorized by this resolution shall not exceed $400,000, and shall be paid upon vouchers signed by the chairman of the Special Committee.

NATIONAL ENERGY EMERGENCY ACT OF 1973—AMENDMENTS

AMENDMENT NO. 652

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

Mr. McINTYRE submitted an amendment intended to be proposed by him to the bill (S. 2589) to authorize and direct the President and State and local governments to develop contingency plans for reducing petroleum consumption, and assuring the continuation of vital public services in the event of emergency fuel shortages or severe dislocations in the Nation's fuel distribution system, and for other purposes.

AMENDMENT NO. 653

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

Mr. JAVITS (for himself and Mr. HATFIELD) submitted an amendment intended to be proposed by them jointly to the bill (S. 2589), supra.

AMENDMENT NO. 654

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

NEGOTIATIONS WITH THE GOVERNMENT OF CANADA

Mr. MONDALE. Mr. President, on behalf of myself and the Senator from Missouri (Mr. EAGLETON) I submit for printing an amendment to the National Energy Emergency Act of 1973, S. 2589.

With all the attention recently being given to our supply problems with the Middle East, far too little attention has been paid to our neighbors to the North. In fact, Canada exports more crude oil and refined products to this country than does any other single nation. In the second quarter of 1973, Government figures show that almost 24 percent of our total imports of crude oil and refined oil products came from Canada. This was 2½ times the amount we imported from the Middle East and 50 percent more than we imported from Venezuela.

And, in the area of crude oil alone, we imported almost 33 percent of our total foreign oil in the second quarter of this year from Canada.

Yet, in spite of our reliance on Canada in oil and oil products, we have too often regarded Canada as a steady source of high levels of these vitally needed commodities. We have seemed to assume—until very recently—that Canadian production would inevitably serve American refineries, making Canada our most secure source of foreign oil.

Recent events have indicated that these assumptions may no longer be true. The Mideast oil embargo is but the latest and most dramatic of a series of events which have brought about significant changes in Canadian oil policy, changes which have serious implications for our ability to meet domestic demand during this winter and beyond.

These changes may have profound implications on the energy supply situation in the United States, and in particular on the Middle Western and Eastern States.

And there can be little doubt that Canadian policy is changing.

This past March, the Canadian Government began a system of crude oil export controls and denied applications for increases in exports of Canadian crude oil.

This was the first of a number of actions taken in recent months.

In June, new Canadian controls halted the exports of heating oil and gasoline into the United States, under what was described as a "temporary" policy which could last up to 18 months.

And on September 13, the Canadian Government announced that it would impose immediately a 40 cents per barrel export tax on crude oil, to reflect rising prices on the world oil markets. In late October, that tax was suddenly raised from 40 cents to $1.90 per barrel, thereby adding an additional $2 million per day to the cost of the crude oil we import from Canada.

Early in September the Government announced that it would seek price readjustments before granting export licenses for the month of October.

Most recently, Canada announced that it would reduce shipments of crude oil from a level of slightly over 1.1 million barrels per day in October to 1 million barrels in November. In contrast, last April Canadian exports to the United States reached a peak of almost 1.3 million barrels per day. And, the outlook for months beyond November is cloudy.

In short, in the period since April, Canada has reduced her exports to the United States by 300,000 barrels per day, or about 15 percent of the estimated daily shortage of crude oil we now face in this country.

And with Canada now threatened with a possible cut off of her oil supplies from the Middle East, the Canadian Energy Minister has raised the possibility that Canadian refineries might be required to cut off their exports to the Northeastern United States to maintain a neutral Canadian status.

Perhaps most significantly, however, in early September the Government of Canada also indicated that it was pursuing the construction of a pipeline to run from Ontario to Montreal to carry oil from western Canadian oil fields into eastern Canada. At present, Canada exports over 700,000 barrels per day of oil from western fields into the Middle West and Eastern United States, and imports a significant amount into the eastern part of Canada through pipelines originating in the State of Maine.

If an addition to the present pipelines linking western Canada to Ontario were constructed, and if the supply of crude oil now being exported to the United States were stopped, it would come as a grave blow to the oil-poor regions in the Midwest and East which are now so heavily dependent on this Canadian oil.

The Canadian Government has gone through a difficult period in its own energy affairs, and many of the recent actions which she has taken have been in response to world events beyond her control.

Mr. President, the bill as reported from the Interior Committee does contain a provision granting the President general authority to undertake negotiations.

The amendment I am proposing will strengthen this provision. It directs the President, rather than simply giving him authority, to undertake emergency negotiations with Canada to arrive at an oil policy which will benefit both nations during this period of difficulty by seeking to maximize the trade in oil between the United States and Canada consistent with the national interests of both countries.

In addition, my amendment would require the President to report back to the Congress on an interim basis within 45 days, and on a final basis within 90 days, so that we can all know the progress which has been made in the course of these negotiations.

Within the past 2 months, the White House energy adviser, John Love, has traveled to Canada for informal conversations on energy matters. However, more is needed, and it is needed now. We desperately need high-level emergency negotiations between our two governments to assure that we work together in weathering the present emergency. If we do not, we could witness a continued deterioration in American-Canadian relations over energy, which could deprive us of the single largest source of oil we currently possess.

Mr. President, I believe that emergency negotiations between our Government and the Government of Canada are vitally needed at this time. We must make progress in achieving the type of energy relations with our neighbor to the north which recognizes the need for cooperation in a time of difficulty. And, we must do this now, before a lasting deterioration of American-Canadian energy relations sets in and imperils a major source of our ever-expanding need for petroleum and petroleum products.

Mr. President, I ask unanimous consent that the text of this amendment be printed in the RECORD at the conclusion of my remarks.

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

AMENDMENT NO. 654

On page 16, between lines 2 and 3, insert the following new subsection (c) and renumber all succeeding subsections accordingly:

"(c)(1) The President is authorized and directed to convene negotiations with the Government of Canada, at the earliest possible date, to explore means to safeguard the national interests of the United States and Canada through agreements covering trade in petroleum and petroleum products between Canada and the United States, so as to encourage the maximum volume of such trade consistent with the interests of both nations.

(2) The President shall report to the Congress, on an interim basis, on the progress of such negotiations as may be undertaken pursuant to this subsection, within 45 days of passage of this Act.

(3) The President shall issue a final report to the Congress on the results of such negotiations as may be undertaken pursuant to this subsection, within 90 days of enactment of this Act. Such report shall include recommendations of such legislation as the President shall deem necessary to further the purposes of this Act."

AMENDMENT NO. 655

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

CONTINUATION OF PRICE CONTROLS FOR DURATION OF NATIONAL ENERGY EMERGENCY

Mr. MONDALE. Mr. President, I introduce for printing an amendment to

the National Energy Emergency Act of 1973, S. 2589.

Mr. President, the amendment which I am introducing to the National Energy Emergency Act of 1973 has a very simple purpose—to insure that in the next year, the petroleum industry does not reap windfall profits resulting from our current energy shortage.

Over the past 9 months, profit levels of the major oil companies have skyrocketed, while American consumers have been forced to pay ever higher prices for petroleum products. In the first 9 months of this year, oil industry profits soared by 47 percent from 1972 levels. And in the third quarter alone, profit levels were up 63 percent from 1972 levels.

All of this occurred at a time of severe dislocations for some consumers, and soaring prices for all consumers.

Current phase IV rules for the oil industry basically allow all phases of the industry to pass through increased costs to consumers, but not to pass through any increases in profit margins. For over a month, a running battle was fought by many of us in the Congress with the administration over an initial set of phase IV regulations which penalized the retailer, while allowing the big producers and refiners to pass through all increased costs.

In my opinion, this initial plan was designed to prove that phase IV would not work. The Nixon administration has repeatedly stated that it hopes to do away with economic controls as soon as possible. The Economic Stabilization Act of 1970 will expire at the end of April of 1974, and there is a good likelihood that the Cost of Living Council will not be in existence at that date.

In sum, there is a good possibility that within the next 2 or 3 months—at the very time of severe shortages of energy—all controls will be taken off the petroleum industry. Given this industry's dismal past record of performance, the consequences for consumers could be terrible.

Therefore, the amendment I am introducing states that when the President submits his plan for nationwide emergency energy rationing and conservation, he must also submit a system of price controls for any fuel which he deems it necessary to ration. This price control system would insure that prices for any fuel to be rationed would be stabilized at the levels in existence on the date of initiation of any such rationing plan, and that future price increases would be allowed in amounts no greater than the extent of cost increases actually incurred. In addition, this price control system must include administrative procedures to insure compliance.

These administrative mechanisms might include prolongation of the Cost of Living Council's existence for the oil industry only, or establishment of a new body to take over the functions of the Council and administer a price control system until the energy emergency passes.

Finally, the price control system must also include rules to insure that all segments of the petroleum industry are treated on a fair and equitable basis.

The intent of this amendment is to provide a means for continued price controls over the oil industry through the duration of the nationwide energy emergency period declared by this act. This period of 1 year will be difficult for all Americans. And we should not allow the oil companies to use this period of time in which to further increase their already high profits.

However, if the Nixon administration has its way, there may be no price controls over the oil industry in a very short period of time. This amendment would insure continuation of price controls throughout the next year, thereby providing some measure of stability to soaring petroleum prices.

If all Americans are going to be forced to suffer inconvenience during the next year, certainly the major oil companies who bear much of the responsibility for creating our present difficulties should share in the hardship. The amendment I am introducing today is a first step in this direction.

Mr. President, I ask unanimous consent that the text of this amendment be printed in the RECORD at the conclusion of my remarks.

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

AMENDMENT NO. 655

On page 17, line 18, strike the period and insert in lieu thereof a semicolon, followed by the word "and".

On page 17, between lines, 18, and 19, (3):

"(3) a system of price controls for any fuel to be rationed which will insure that prices for any such fuel shall be stabilized at the level in existence upon the date of the initiation of any such rationing plan, and that future price increases shall be allowed for the duration of the nationwide energy emergency period declared by this Act in amounts no greater than the cost increases actually incurred. Such a price control system shall include administrative mechanisms to insure compliance, and shall include rules to insure that all segments of any industry for which such a price control system is invoked are treated on a fair and equitable basis, so as to avoid hardship to any sector of any such industry."

AMENDMENT NO. 656

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

Mr. HELMS (for himself, Mr. THURMOND, and Mr. HARRY F. BYRD, JR.) submitted an amendment intended to be proposed by them jointly to the bill (S. 2589), supra.

Mr. HELMS. Mr. President, I submit an amendment to S. 2589, the emergency energy bill, which would authorize the President to include limitations on the busing of school children in implementing the national emergency energy rationing and conservation program, to bring about a 25-percent reduction of energy consumption in that area. This could be accomplished by permitting public school pupils to attend the appropriate school nearest their home. Under such circumstances pupils could either walk, in the time-honored American tradition, or in hardship situations, they would be bused no further than to the nearest school.

From time to time, note has been taken of the serious financial impact which the introduction of busing has had upon U.S. education. But the impact upon our energy supply has gone unnoticed. The implication has been always that energy was available in unlimited supply, and that we could be as extravagant in its use as we have been with the taxpayer's dollar. The courts, in fashioning their orders on pupil assignment, have been as heedless of the energy drain created by busing as of the other burdens which they have imposed upon American society.

As a result, children have been denied the right to walk to school in neighborhoods where thousands of children have walked to school in previous generations. From kindergarten age on up, they are now being conditioned to accept vehicular transportation as the normal and expected mode of getting from one point to another. They are being denied the experience of walking, and the opportunity of forming healthful habits which would persist throughout their lives. They are, on the contrary, forming an unhealthy attitude toward the prudent use of our energy resources in the future. These children are growing up in an age when they will be faced with chronic energy shortages at least over the next few decades. We should be educating them to live in the world of today and tomorrow, not the world of yesterday when we had all the gasoline we wanted. Instead, we are training them to accept the idea that it is normal for healthy individuals to have free transportation to their destinations, even when they could and should walk.

Much of the busing today is completely unneeded therefore, and detrimental to the formation of sound attitudes necessary to life in a democracy. We can no longer afford the luxury of training our children to waste our energy supplies.

Nor are the amounts of energy involved insignificant. Based upon a study of gasoline used for busing in the major metropolitan areas of the State of North Carolina, I would estimate that the use of gasoline for busing schoolchildren has at least tripled in the past 4 years wherever the wide-spread use of busing has been introduced under pressure from HEW guidelines or court orders.

Let me give some examples.

In 1969–70, my hometown, the city of Raleigh, had 25 buses which used 26,145 gallons of gasoline to travel 134,654 miles. In 1972–73, the city of Raleigh had 111 buses which used 197,344 gallons to go 750,670 miles.

Think of that, Mr. President. That is an increase of nearly eight times in only 4 years.

The city of Greensboro, in 1970–71 had 107 buses which used 131,817 gallons of gasoline. In 1972–73, the city of Greensboro had 212 buses which used 288,239 gallons of gasoline. That is more than double the use of gasoline in only 1 year.

The city of Winston-Salem, Forsyth County, school district used 307,168 gallons of gasoline in 1969–70, the last year before widespread busing was intro-

duced. In 1972–73, the school district used 711,065 gallons. Again, that is more than double the usage of gasoline.

The city of Charlotte-Mecklenburg County system used 478,343 gallons of gasoline in 1968–69 to travel 1,908,842 miles. Then in April of 1971, the Supreme Court affirmed a busing plan in the famous case known as Swann versus Charlotte/Mecklenburg County Board of Education. In 1971–72, Charlotte used 865,733 gallons of gasoline to travel 3,914,215 miles. And that is not even the whole story. The Charlotte figures do not reflect the miles traveled or the gas used by the City Coach service which is chartered to bus a substantial number of students.

Only a few weeks ago, I discussed in this body a case in the Charlotte-Mecklenburg school system where a single bus is assigned to transport 1 student to West Charlotte High School. This student must arise at 5:30 in the morning, wait for his bus, be transported a distance of 22 miles to school, and then return a distance of 22 miles at night. He is the only student on the bus. The reason for this is that Federal Judge James B. McMillan ordered that 600 students selected for busing to West Charlottee High be chosen by lottery, and this student drew one of what might be called the lucky numbers. His lucky or unlucky number is costing the North Carolina taxpayer more than $3,700 a year to transport one student to school.

Nor is the cost in fuel or dollars the only cost.

In the long rides, children grow restless and boisterous. Last week a young black student leaned out of a bus window for a better look, and his head was struck off when the bus passed a power pole on the curb. Such accidents could happen anytime, but the more children are on buses, the more likely such incidents will take place. He was the second child to be killed on school buses in Charlotte this year.

Mr. President, we have a critical shortage of fuel which is affecting all phases of American life both public and private. The very bill which I am proposing to amend declares that we are in a situation of national emergency, with regard to the usage of fuel. In an emergency an adjustment must be made to accommodate those services which are most essential and which require the least consumption of fuel.

Indeed, the suggestion has been made by some Governors and mayors that it will be necessary to close down our public schools because of scarce energy supplies. This would certainly be a tragedy, especially in view of the fact that substantial amounts of fuel are now being diverted from essential use in connection with public education and used for the purpose of transporting students beyond the schools nearest to their residences.

In examining the figures on gasoline usage which I quoted above, I do not believe anyone could argue that this amazing jump in volume is essential to the operation of public education. This is not a natural growth, it is an unnatural growth. It is wasteful growth. The examples I have given all come from predominantly urbanized areas. They do not represent rural areas where the distances are naturally long and busing has long been accepted. The only reason why children in urban areas need busing is because they have been assigned to schools beyond their home neighborhoods.

My amendment simply says that in setting our priorities we must realize that it is more important to keep the schools open than it is to divert that fuel to a purpose which is frustrating the availability of public education at this time.

At the time when many of these busing plans were ordered put in effect, the availability of fuel was not a factor in their consideration. The Supreme Court said, given the available facts and circumstances at the time such rulings were being made, that busing was a tool available to the courts in shaping what each court considered an equitable remedy to guarantee the equal protection of the law. I submit that those circumstances have drastically changed since that time.

We have reached a point where the various uses of busing must be ranked on a priority scale. Busing is only needed where the distances are too long for a child to walk. But when these distances are artificially created, then such artifical busing can no longer be considered essential. In short, we do not have the fuel left to transport pupils beyond the nearest possible school. Massive busing is no longer available as a reasonable tool for courts to use in shaping their so-called remedies. It is certainly proper for the President to set up energy conservation guidelines to cut energy consumption by limiting unnecessary busing.

Mr. President, it would be foolish to insist upon using our scarce energy resources for nonessential busing when that waste of energy even threatens the continued operation of the schools themselves. I urge every Senator to support this amendment.

Mr. President, I ask unanimous consent that the name of the distinguished Senator from South Carolina be added as a cosponsor of my amendment.

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

Mr. HELMS. Mr. President, I have not sought cosponsors for this amendment, but needless to say I will welcome them.

I ask unanimous consent that the amendment, which I now submit, be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, the amendment will be printed in the RECORD.

Mr. HELMS' amendment (No. 656) is as follows:

At the appropriate place at the end of section 203(b)(2) in title II, insert the following:

Limitations on the transportation of students enrolled in schools operated by local or state educational agencies, as defined in sections 801(f) and 801(k) of the Elementary and Secondary Education Act of 1965, in order that students may walk to school insofar as possible without public transportation, or be transported through public means of conveyance no further than to the appropriate school nearest their residence.

Mr. HARRY F. BYRD, JR. Mr. President, will the Senator from North Carolina yield?

Mr. HELMS. I am delighted to yield to my good friend from Virginia.

Mr. HARRY F. BYRD, JR. I commend the distinguished Senator from North Carolina for offering this amendment today. As I understand the amendment, it would have the effect of reducing gasoline consumption.

Mr. HELMS. That is correct.

Mr. HARRY F. BYRD, JR. It would not affect essential school buses, such as those in rural areas where long distances are involved to get to the nearest school, but the amendment would affect the use of school buses which take a lot of gasoline to haul children to schools far from their own neighborhoods for the purpose of achieving an artificial racial balance in the schools.

Mr. HELMS. The Senator is entirely correct.

Mr. HARRY F. BYRD, JR. And the legislation which the Senate will be considering today and presumably tomorrow, the reason the Senate finds it necessary to consider this legislation is that we are faced with a very grave problem in regard to energy and in regard to gasoline?

Mr. HELMS. Exactly.

Mr. HARRY F. BYRD, JR. The executive branch of the Government is talking about rationing gasoline, so that the average citizen will not be able to get enough gasoline to operate his automobile to go to work; so what the Senator from North Carolina is seeking to do, as I understand it, is eliminate unnecessary public travel, and to eliminate unnecessary busing of schoolchildren for no good purpose at all, but just for the purpose of achieving artificial racial balance in the schools.

I find that the parents in my State greatly object to subjecting their children to this long travel by bus to a school a distance from their home; they want to go to their neighborhood schools. So the amendment offered by the able Senator from North Carolina would achieve, as I visualize it, two objectives: It would save fuel, and it would also do what I think most of the parents want, namely, make it possible for their children to go to the schools nearest their homes, thus protecting the neighborhood school, which I think is a very important concept in American life.

The Alexandria, Va., Committee for Quality Education has just called for a similar change in Alexandria for the same reasons.

I commend the able Senator from North Carolina, and I would be pleased if he would make me a cosponsor of his amendment.

Mr. HELMS. I am delighted to add the Senator's name, Mr. President, if there be no objection, as a cosponsor of the amendment, and I thank the Senator from Virginia for his eloquent comments.

The PRESIDING OFFICER. Without objection, the name of the Senator from Virginia will be added as a cosponsor of the amendment.

Which Senator from South Carolina

did the Senator from North Carolina refer to previously?

Mr. HELMS. Mr. THURMOND.

The PRESIDING OFFICER. Does the Senator from North Carolina wish his amendment to be printed and lie over until tomorrow?

Mr. HELMS. Yes.

Mr. HRUSKA. Mr. President, a point of information.

The PRESIDING OFFICER. The Senator will state it.

Mr. HRUSKA. For what purpose will the matter be printed and lie over?

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

Mr. HRUSKA. For what purpose?

The PRESIDING OFFICER. It is an amendment to S. 2589.

AMENDMENT NOS. 657 AND 658

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

Mr. HASKELL submitted two amendments, intended to be proposed by him, to Senate bill 2589, supra.

AMENDMENT NO. 659

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

Mr. NUNN (for himself, Mr. MCINTYRE, Mr. JAVITS, and Mr. NELSON) submitted an amendment, intended to be proposed by them, jointly, to Senate bill 2589, supra.

NOTICE CONCERNING NOMINATIONS BEFORE THE COMMITTEE ON THE JUDICIARY

Mr. EASTLAND. Mr. President, the following nominations have been referred to and are now pending before the Committee on the Judiciary:

Lincoln C. Almond, of Rhode Island, to be U.S. attorney for the district of Rhode Island for the term of 4 years, reappointment.

Gaylord L. Campbell, of California, to be U.S. marshal for the central district of California for the term of 4 years, reappointment.

Elmer J. Reis, of Ohio, to be U.S. marshal for the southern district of Ohio for the term of 4 years, vice Donald M. Horn, resigned.

James W. Traeger, of Indiana, to be U.S. marshal for the northern district of Indiana for the term of 4 years, reappointment.

On behalf of the Committee on the Judiciary, notice is hereby given to all persons interested in these nominations to file with the committee, in writing, on or before Wednesday, November 21, 1973, any representations or objections they may wish to present concerning the above nominations, with a further statement whether it is their intention to appear at any hearing which may be scheduled.

ADDITIONAL STATEMENTS

THE PROPOSED RESIGNATION OF PRESIDENT NIXON

Mr. GOLDWATER. Mr. President, in the past few days, we have heard a growing demand on the part of some people and publications for the resignation of President Nixon.

And I suggest that many of these suggestions are coming from people who, while honestly concerned and sincere, obviously have not thought through the consequences of a sudden resignation by the President of the United States.

The Constitution, of course, requires that when there are simultaneous vacancies in the Presidency and the Vice Presidency, the office of President shall pass to the Speaker of the House. At the present time, the Speaker of the House is a member of the opposition party. His elevation to the top post in the land while the members of his party in the House and Senate are delaying the confirmation of Republican Vice President-designate GERALD FORD would create a partisan nightmare of unbelievable proportions. It could completely paralyze the Federal Government in a matter of hours and create such havoc that it might take the Nation years to recover.

Mr. President, recently, Mrs. Clare Boothe Luce, an accomplished writer; former Republican Congresswoman from Connecticut and Ambassador to Italy, has addressed herself to this problem in an exceptionally well-written article which appeared October 25 in the Honolulu Star Bulletin. Her thesis is one which I believe all Members of the Congress should read and consider in the light of what all this could mean to the Nation as a whole. I ask unanimous consent to have Mrs. Luce's article published in the RECORD.

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

PRESIDENT ALBERT—A DEMOCRATIC COUP D'ETAT?

(By Clare Boothe Luce)

(Mrs. Luce is a playwright, former Republican Congresswoman from Connecticut and Ambassador to Italy, now residing in Honolulu.)

Orchestrated by powerful Democrats, the public outcry for the resignation, or impeachment, of President Nixon is growing louder.

What would happen, if Nixon, like Agnew, were to resign, or be impeached?

As matters stand today, if Nixon were to resign, or be impeached, his entire administration would go out of office with him, and a Democratic President and a Democratic administration would take over the White House and the entire U.S. government.

The Constitution requires that when there are simultaneous vacancies in the Presidency and the Vice-Presidency, the office of President shall pass to the Speaker of the House.

Today, the Speaker of the House is Carl Albert, a 65-year old Democrat from Oklahoma. And today, the Vice-Presidency is still vacant. The Democratic majority in Congress has refused to confirm the President's Vice-President-designate, 60-year old Minority Leader, Gerald Ford. The excuse given by the Democrats is that it is not in "the interests of the people" to confirm Ford until they have subjected him to a lengthy investigation of his worthiness to hold the office.

They are in no hurry to get on with the investigation. None of Ford's colleagues question his worthiness—he has been in the House for 25 years and is well liked and trusted. It is just not in the interests of the Democratic party to confirm a Republican. For if Nixon can be forced to resign, or if he can be impeached before Ford is confirmed, Democrat Albert would become President, and the Democarts could take over the White House, without the bother and expense of trying to win it in 1976, in a national election.

If this maneuver succeeds, it will mark the first political coup d'etat in American history.

As there is a good chance that it will succeed, it is useful to ask, what would happen if Carl Albert became President?

First, President Albert, the new Captain of the Ship of State (in which we are all somewhat sea-sick and frightened passengers) would find himself without a crew.

When a President leaves office, all his appointees depart with him. There is no tenure of office for presidential appointees, as there is for university faculty members. Their resignations are mandatory, where they are not customary.

This is, of course, logical. An elected official receives his office from the people, and exercises his political power during his term in office by their consent. An appointed official receives his authority directly from the President. When the President goes, his authority vanishes. He becomes not just a lame duck, but a dead duck.

If Nixon should resign, or be impeached, not only his personal staff, but the entire Cabinet, and all the members of all departments, boards, commissions, bureaus, and embassies, throughout America and abroad who had been appointed by him, *must also* relinquish their offices.

Consequently, the day after Nixon resigned. President Albert would suddenly find himself faced with the impossible task of governing without a government. He could, of course, reappoint such few Nixon appointees as might be willing to hang on until he got around (as he most certainly would, under party pressure) to firing them. But unless he were willing to staff his administration overnight with hundreds of political hacks, and ambitious mediocrities, it would take him weeks, and perhaps months, to put together a competent Cabinet, and man the government with able administrators.

The quadrennial American national election process gives a presidential aspirant several years, and a presidential candidate at least six months, to sound out and recruit the members of that large team which we call an "administration." By the time a victorious presidential candidate is inaugurated, all the key members of his government have been chosen and are set to move (with their families) to Washington, and go immediately to work on the people's business. But even then, more time must pass before a new President's appointees can get cracking. Most of his key figures must "go up to the Hill" to seek confirmation from the Senate.

We are now living (or so we are told) in an era of "Post-Watergate morality", in which the Congress insists that *all* presidential appointees—especially all Cabinet members, Supreme Court justices, and ambassadors—must be given a thorough going-over in "the public interest." (The confirmations of some of Nixon's key appointees took months.)

In order to provide President Albert overnight with a new Cabinet and a new administration, would the Congress abandon its newfound "Post-Watergate morality," and rubberstamp any and every "deserving Democrat" that Albert could pull out of the political grab-bag?

The answer depends, does it not, on whether the Democratic majority honestly cares about "the public interest", or is a bunch of hypocrites. But if we assume that they are honorable men, who would subject Albert's appointees to the same close scrutiny and candid criticism that they have meted out in the past to President Nixon's appointees, President Albert would be forced to govern for a very long time with a skeleton administration.

The elevation of Albert to the Presidency

would face the American people with another unique situation. He would be the first President in our history who had not received the Presidency, or the Vice-Presidency, from the hands of the people. He would also be the first President whose personality, personal qualifications, programs and policies were completely unknown to the national electorate. President Carl Who, a stranger to the vast majority of the American people.

Albert would also enter the White House without a Vice-President. If he designated one, and if his choice were confirmed by the Congress, the second highest office in the land would also be occupied by a man who had not been elected by the people. Moreover, both these strangers to the nation's voters would be members of a political party that was soundly repudiated by the voters less than a year ago.

As matters stand, the Congress knows that Albert is as likely as Ford to become President. But it is highly doubtful that a Democratic Congress will now order an investigation of *his* worthiness, as they have of Ford's. There are after all, limits to the Democratic pursuit of "Post-Watergate morality." The senators who voted against an investigation of the Bobby Baker scandals in the Democratic Johnson administration (Ervin, Inouye, and Montoya, for example) are not likely to investigate a potential Democratic President. (After all, he would have thousands of jobs, and billions of dollars to spread among the Faithful.)

All that an honest reporter can say about Congressman Carl Albert is that no important leader of his party has ever sought to convince a convention that Albert would make a first-rate presidential candidate. He has the reputation in the Capitol of being an intelligent and honorable man, but an indifferent leader. He has had a heart attack and some highly placed sources on the Hill say that in the past he has had a drinking problem. (This writer notes the above, because the most respected journalists today insist that the public has the right to know the worst, as well as the best, that is being said by highly placed, informed sources, about the nation's leading political figures.)

For the rest, the elevation of Albert to the Presidency by a "constitutional" Democratic *coup d'etat* is a highly dangerous business, not only for the nation, but for the Democratic party. If Albert should prove to be an unsuccessful President—which is more than likely—considering the chaos and confusion that would follow the event, the nation would suffer greatly. But inescapably, by 1976, the blame would fall on the party who had engineered him into the White House.

The Watergate investigation has been a Pandora's box that has already unloosed a multitude of miseries on the people. Few are left who have confidence in the integrity of the White House. Far too many are also losing confidence in the integrity of the Congress. A cynical Democratic *coup d'etat* might give the *coup de grace* to the people's faith in our two-party system and our constitutional democracy.

THE POWER OF CONGRESS TO VEST IN A FEDERAL COURT THE AUTHORITY TO APPOINT A SPECIAL PROSECUTOR OF CRIMES ARISING OUT OF THE WATERGATE AFFAIR

Mr. ERVIN. Mr. President, Assistant Professor of Law Lee C. Bollinger, Jr., of the University of Michigan Law School, has prepared an illuminating memorandum on the power of the Congress to vest in a Federal court the authority to appoint a special prosecutor of crimes arising out of the Watergate affair. Since this question is now confronting the Congress, I ask unanimous consent that a copy of the memorandum be 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 Consuls, 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 marshalls 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 appointments 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 relevant 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 impermissible 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 question. 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.

A NEW DIRECTION FOR INDIAN AFFAIRS

Mr. STEVENS. Mr. President, the nomination of Morris F. Thompson to be Commissioner of Indian Affairs signals a new direction for the relationships of American Indians and Alaskan Natives to our Federal Government.

Morris has been the regional director of the BIA for the Alaska region. His confirmation is overwhelmingly recommended by Alaskan Natives.

Morris Thompson is a close personal friend. He has demonstrated maturity and judgment far in excess of that which one might anticipate from a man of his age—31.

I ask unanimous consent that his statement before the Senate Interior and Insular Affairs Committee and his biographical sketch be included in the RECORD.

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

STATEMENT OF MORRIS THOMPSON BEFORE THE SENATE INTERIOR AND INSULAR AFFAIRS COMMITTEE'S NOVEMBER 14, 1973, HEARING ON THE PRESIDENT'S NOMINATION OF HIM TO BE COMMISSIONER OF INDIAN AFFAIRS

Mr. Chairman, members of the Committee, it is an honor to appear before you as the President's nominee to become Commissioner of Indian Affairs. I accept this nomination with the full knowledge of the tremendous responsibility entrusted in this position and this Bureau. I accept this responsibility because of the concern for American Indians demonstrated by this Administration, this Congress and the American public. Not only has concern been expressed but much needed action is now being taken that I am confident will lead to real progress in the next several years. I feel that I can contribute to this progress.

The biographical information you have been provided indicates the various positions I have held. What it doesn't provide is my personal philosophy on Indians Affairs. This statement and the exchange we will have in this hearing hopefully will provide you and the Indian people a better understanding of what to expect from the Bureau of Indian Affairs under my direction.

American Indians have a right to expect an effective and efficient Bureau of Indian Affairs. They have a right to expect that the money appropriated by Congress for Indians is spent wisely and that each dollar directly or indirectly benefits Indians at the local and individual level. Indian people have a right to determine what the Indian priorities will be and how they are to be met. In addition, if the Indians desire, and at their own initiative, Indians have a right to direct and administer programs developed for them. The President recognized these rights and therefore established a policy of self-determination for Indians, without the threat of termination of the trust responsibility. I believe in this policy, and as Commissioner will insure that meaningful Indian involvement is an integral part of all Bureau operations.

The right of Indians to expect an efficient and responsive Bureau is very important. It is unfortunate however that in recent months concern with reorganization and realignment appears to have been elevated to a high mission status. Even more unfortunate is that this high concern for organizational changes has somewhat diverted valuable resources and attention from what should be the Bureau's top priorities.

Under my leadership, the Bureau's top priorities will be meeting our trust responsibilities, the delivery of meaningful services, and the achievement of greater Indian self-determination. I hope to do this by providing strong leadership and applying sound management practices to the Bureau's operations.

Within the Department of the Interior, the Secretary establishes all major policies, including those involving Indian affairs. Secretary Morton has given me assurance that I will work closely with him in developing policies on Indian Affairs. He has also assured me that I will have the freedom to select my key staff. These assurances are essential to any new Commissioner. One distinct advantage today however is the fact that the Commissioner will report directly to the Secretary. The ability to select a key staff is also a distinct advantage. The Bureau has several key vacancies both at the Central Office and field levels which is an unusual opportunity to develop a well balanced staff. In my selection of key staff I will be seeking not only technical competence and proven ability but more importantly, I will be looking for people with a deep personal commitment and understanding of Indian problems. Hopefully, this process can be accomplished in a timely manner.

Although we have a tremendous responsibility, I recognize that the Bureau of Indian Affairs is not the total answer to all the problems facing Indians today. Other Federal agencies and State and local Governments also have Indian concerns and responsibilities. It is not only desirable but essential that we work together more closely to take advantage of each other's resources and thinking which hopefully will minimize duplication and maximize total delivery of services. I will make a concerted effort to establish and maintain this needed cooperation.

Of high importance is cooperation between the Congress and the Bureau. I have been following with great interest the progress being made with Indian legislation by this Congress. This progress is more than encouraging in that it demonstrates Congress' understanding of Indians and its sincere desire to provide much needed laws to meet today's needs.

I am extremely hopeful that you will be successful in enacting the Indian legislation before you in the near future. Once enacted, we will be able to more effectively deal with the Indian crises along with the many other foreign and domestic crises facing our country today.

I know that you will want my personal views on many issues facing the Bureau today. Rather than anticipating your specific concerns and attempting to expand on my views in this statement, I will reserve most of my comments for direct response to your questions. You and the Indian people, however, have a right to know what priorities I feel are important in Indian affairs.

If I left you with the impression earlier that I am unconcerned about the organizational structure of the Bureau, this was not my intent. My real intent was to place this concern in its proper perspective. Reorganizations and realignments are administrative problems rather than mission concerns. My primary objective is to insure that whatever form the organization happens to be in now, or whatever form it may take in the future, that it be as effective and responsive as possible. If major changes are warranted, these will be taken at my initiation and under my direction. No major changes will be implemented, however, without full Indian involvement. The most immediate concern is in filling our key positions and becoming fully operational again.

In addition to my concerns for the organization and developing cooperation between the Administration, this Congress and State and local governments, I feel very strongly that our efforts must be consistent with the expressed desires of Indian people. From my experience in Indian affairs I have developed a tremendous respect and confidence in the Indian leadership throughout this country. The quality of this leadership is demonstrated by numerous examples of outstanding tribal government management, a total commitment to the development of both human and natural resources, and the ability to maintain progress without sacrificing Indian culture. What is most impressive is the unwaivering faith Indians have in Indians, that given the opportunity Indians can and will solve Indian problems. Indian tribes must have the opportunity to develop their tribal governments. Resources must be made available to the tribes for this purpose. If assist-

ance is desired, this must be provided without paternalism. Developing effective tribal governments will be a major step towards true Indian self-determination.

The threat of termination has been a major barrier to the development of Indian resources, enterprises and governments in recent years. Whether real or imagined, the feeling existed that any successes might be used as justification for terminating the Federal Government's trust relationship. One of my major priorities will be to overcome this fear.

Basic to the role of the BIA is assuring the fulfillment of the Federal Government's trust and treaty responsibilities to Indian people and their resources. I intend to work closely with Indian people and the Solicitor to better define these responsibilities and see to it that the BIA fully discharges its responsibilities.

Of the many programs developed and administered for the benefit of Indians today, none is more important than Indian education. The American taxpayers are investing millions of dollars in the education of Indian youth. Indian people and all Americans have a right to expect that the best education program possible is being provided to Indians.

It is not enough to say that we are meeting minimum standards of education, or that we are providing an adequate level of education, or that we are doing our best under the circumstances. We must establish the highest standards possible and insure that those standards are met. We must utilize the most modern education techniques available and also develop new ones. We must provide the best materials, equipment and facilities available. Finally, we must insure that our teachers are not only the highest caliber available technically but also that they be personally committed and sensitive to Indian needs. In short we must be sure that each dollar appropriated for Indian education is spent wisely, whether through Bureau-operated systems or through other systems.

I recognize and respect Congressional responsibility to establish Indian policy. I also recognize and respect the oversight responsibility of the Congress to insure that the Congressional intent is met. As Commissioner, I look forward to working very closely with the Congress, the Secretary, and the Indian people in establishing National Indian Policy. Once these policies are established, I pledge to carry them out to the best of my ability.

Mr. Chairman, this concludes my statement. I will be pleased to respond to any questions that the Committee may have.

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. Now, 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

Tanana Day School—Grade 1–8.

BIA Mt. Edgecumbe Boarding High School—Grade 9–12; National Honor Society member; Graduated 1959.

HIGHER EDUCATION

University of Alaska—9/59 to 1/62. Major, Civil Engineering; Minor, Political Science.

RCA Institute, Los Angeles, California—1/62 to 8/63. Completed 18 month course in Industrial and Communications Electronics.

EMPLOYMENT

1963–1967—Electronic Technician at the National Aeronautics and Space Administration's Satellite Data Acquisition Facility at Gilmore Creek near Fairbanks, Alaska.

1967–1968—Deputy Director of Rural Development Agency for State of Alaska in Juneau, Alaska.

1968–1969—Executive Secretary of NORTH Commission for State of Alaska in Juneau, Alaska.

1969–1971—Assistant to the Commissioner (actually Assistant to the Secretary of Interior, Walter J. Hickel) in Washington, D.C.

1971–1973—Area Director of BIA Juneau Area Office in Juneau, Aalska.

SPECIAL QUALIFICATIONS

Public Speaking.

Extensive knowledge of Indian groups and Tribes. Knows many Indian leaders personally.

Extended travel throughout Indian country.

MEMBERSHIPS AND ASSOCIATIONS PRESENT

Alaska Native Foundation.

National Congress of American Indians.

President of Juneau Federal Executive Association.

Governor's Labor Market Advisory Council.

Policy and Evaluation Council of the Center for Northern Education (University of Alaska).

State Manpower Planning Council.

Alaska Health Manpower Committee.

PAST

Rural Affairs Commission.

Alaska Village Electrification Cooperative.

Alaska Business Council.

Fairbanks Native Association.

Alaska Federation of Natives.

UNITED STATES, RHODESIA, AND A WORLD OF LAW

Mr. McGEE. Mr. President, later this week it is anticipated the Senate will begin debate on legislation which would place the United States back into compliance with United Nations sanctions against southern Rhodesia.

In this connection, the Los Angeles Times of October 17 featured an editorial which is an excellent analysis of the issues involved in this legislation. The editorial writer made a very poignant observation when he noted:

> If the United States wants a world of law, it must obey the laws we have. If the laws are mistaken, if they require improvement, then they should be changed or done away with, by means provided by law.

I was particularly impressed with this observation. In essence, the question of our violation of sanctions boils down to a law and order issue. To ignore this fact is to engage in hypocrisy, particularly if we in the Congress continue to advocate law and order on the domestic scene with our rhetoric and then apply a double standard to our conduct internationally. In clear conscience, I cannot apply this double standard and I would hope the Senate would agree with this assessment.

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

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

UNITED STATES, RHODESIA, AND A WORLD OF LAW

Secretary of State Henry A. Kissinger has put the full weight of the Nixon Administration behind efforts to make the nation obey international law on the question of U.N. sanctions against Rhodesia. The support is welcome, but the outcome remains uncertain.

There is an apparent shift in congressional thinking, and there are indications that the House and Senate are now prepared to undo the damage they did two years ago in forcing an American exemption to the sanctions to allow the import of Rhodesian chrome. It was an act as irresponsible as it was illegal, bringing aid and comfort only to some American mining interests, to the white minority that governs Rhodesia, and to their admirers. Now those same advocates of Rhodesian exemptions, faced with a turnabout in Congress, are working hard to postpone action and might resort to filibuster tactics.

Kissinger has reminded the nation that the importation of Rhodesian chrome is not essential to national security. He has emphasized that America's unilateral breach of international sanctions has embarrassed relations with a number of nations, notably the Africans. And for those not persuaded by rectitude, who say: "Who cares?", Kissinger has noted that this has touched major American investments and petroleum interests as well.

There is plenty of room for argument about the wisdom of what the United Nations did in this case, applying for the first time one of its ultimate weapons, mandatory sanctions. But the deed was done with American encouragement and support. The sanctions became binding by law on all members. If they are wrong, then that is a matter for the Security Council. To defy them is to debase the concept of a rule of law.

The sanctions have failed to bring down the white supremacy regime in Salisbury. But they have hurt. They have stood as a world protest against a white minority, constituting 5% of the population, ruling a largely black nation. They have helped assure that this degradation of the black minority is not exploited to the economic advantage of other states within the United Nations.

To argue national security, to tie chrome imports to the cold war and Soviet trade relations, to challenge the efficacy of this approach, all of this is to sow confusion. For there is a single point: If the United States wants a world of law, it must obey the laws we have. If the laws are mistaken, if they require improvement, then they should be changed or done away with, by means provided by law.

That is why it is important for Congress to restore American respect for the sanctions against Rhodesia. Because the overwhelming interest of the nation is a world of law.

REDUCED RATE TRANSPORTATION

Mr. PERCY. Mr. President, as a cosponsor of S. 2651, a bill to authorize reduced rate transportation for handicapped persons and for persons who are 65 years of age or older, or 21 years of age or younger, I am pleased the Senate acted so promptly in taking the bill from the calendar and passing it, but I regret being absent when final action took place.

As one who has long advocated making our transportation system more accessible in financial terms to the elderly, a group with both the time and the desire to travel, I want to commend the Senator from the State of Washington (Mr. MAGNUSON) for his leadership in bringing this more comprehensive piece of legislation to the floor.

I think we all know that in those instances in which airlines, for example, have instituted reduced fares on a standby basis for the elderly, they have been shown to have worked extremely well. Youth fares, although recently judged discriminatory by the CAB, have been successful, I believe, in promoting air travel by many persons who otherwise could not have afforded to travel.

I believe authorizing reduced fares for the young, the elderly, and the handicapped on both air carriers and surface carriers marks a significant step toward finally making a variety of transportation modes available to them.

If these fares become a reality I know it will result in higher income for the industry as well as in a richer and fuller life for many of America's youth, handicapped and elderly.

SONNETS IN MEMORY OF ROBERT KENNEDY

Mr. McGOVERN. Mr. President, the current issue of The Arts in Ireland carries three sonnets in memory of Robert Kennedy by Frank S. FitzGerald-Bush.

I found this poetic tribute to my cherished friend a moving description of what he meant and continues to mean to millions of people.

I therefore ask unanimous consent that these lines be printed in the RECORD.

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

HECHOS SON AMOR—THREE SONNETS IN MEMORY OF ROBERT FRANCIS KENNEDY, 1925–1968

(By Frank S. FitzGerald-Bush)

I

They called him ruthless who had never known
his infinite capacity for love—
knew nothing of that suffering in his own
quite private agony, compounded of
pain and compassion for the pain of others,
accepted without question as a duty
which fell upon him from his fallen brothers.
His closest friends and kindred saw the beauty
that others could not see—the inner grace
derived from those dark hours of despair
from which he drew the strength required to face
that task to which he made himself the heir.
So long as those whose lives he touched still cherish
his memory, his work can never perish.

II

His deeds of love were for all men in chief
for the despised, the poor, both black and white,
the dispossessed; and it has been their grief
that rings the truest—wrings the heart. The sight
of their great numbers ranged along the tracks
on which he made his final journey burns
into the memory. Those whose attacks
on his integrity (though each now turns
to eulogy) urged violent men to rid
them of his troubling presence, are proved wrong:
such dreams as he had dreamed cannot be hid
in graves, nor guns still such a battle song.
The shining cities he envisioned must
rise like the living phoenix from his dust.

III

Above the city where that bright flame keeps
its solitary vigil, two now rest
while into darkened corners hatred creeps
to hide its ugliness from us. The best
of man, despite his frailities, yet survives;
by such example petty souls are raised
a little higher. Note how those two lives,
once sacrificed, are curiously praised
by those who cursed them till they had been felled.
The younger brother slain, now may achieve,
as did the elder, what had been withheld
in life. And those of us who truly grieve
will wear our mourning proudly as a mark
that we may light a flame from one small spark.

AMERICA'S EMERGING BLACK WOMEN

Mr. PERCY. Mr. President, the Chicago Tribune recently featured an excellent series of articles by Yla Eason on the black woman in modern American society.

Through a number of profiles of American black women who have achieved success in the fields of politics, business, education, and art, Ms. Eason shows that although black women have won professional positions of respect and dignity, they have only been able to do so because of extraordinary individual strength and perseverance. Black women, as members of two minority groups, blacks and women, have long faced double difficulty in achieving professional success.

I believe the Chicago Tribune's series provides excellent insights into the career problems, aspirations, and gradually increasing professional opportunities of America's black women and women in general. I ask unanimous consent that the series of articles be printed in the RECORD.

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

TODAY'S EMERGING BLACK WOMAN

(By Yla Eason)

(First in a series)

Addie Wyatt, ambitious and naive, trained as a typist in 1941 and went for her job interview expecting to be hired for the secretarial pool at a meat packing plant.

She was praised for her skills and sailed thru the placement tests, assured she would be hired. Being the only black female applying for the job was no cause for concern to her, for she knew she was qualified.

"What I didn't know at the time," she says from her executive office today, "was that they didn't hire black women as typists."

So she pulled together her survival techniques—making do with what she could—and accepted a job in the packing division.

Today Mrs. Wyatt is international director for women's affairs of the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL–CIO.

But she is quick to say, "I represent the very limited number of women who have made progress in this area." They're the black women emerging today who learned to "get over" in the society and come out with a social conscience.

They've never allowed discriminatory practices to stop them. Black women in America have exhibited strength and perseverance.

Today's black women represent the double minority who feel the sting of racism and labor under the code of sexism in an attempt to overcome both.

And while it's long been said in the black community, "A black woman can always get a job," the unspoken understanding was

that she usually had to get in thru the kitchen door.

Many times, as Mrs. Wyatt adds, "Black women took the undesirable jobs, ones they did not enjoy. But they took them for the survival of their families."

Survival for the black woman often has meant assimilation into the white society, a process requiring more than education or experience in the traditional sense. For black women workers, "being qualified" often has meant "being white," at least on the surface.

If she had to "sound white" on the telephone to get the interview, the black woman studied white speech patterns. By watching white people interact with each other on television, she knew how to "be qualified."

Skills and ambitions were parlayed into a wait at many reception desks until business and industry embraced the Civil Rights Bill, the Equal Opportunity Employment Act, affirmative action, and tokenism.

According to noted sociologist Dr. Joyce Ladner, who has done extensive research on black women in America and Africa and is the author of "Tomorrow's Tomorrow," a study of young black females living in a housing project, "The lives of black women have been shaped by the forces of oppression, but they also have exerted their influence so as to alter certain of these patterns."

One example of black women exerting their influence can be seen by turning to the television newscasts. Most networks today have at least one black woman in front of the camera.

For Carole Simpson of NBC, it took two years of work and two college degrees to become the first black newswoman on the air in Chicago. In 1970, she was the first black female television reporter here.

By 1965, the year she dates as "post-Watts," referring to the riots in Watts, Cal., "I was in a position to turn down job offers." Many black reporters were hired during that period to cover the racial conflicts.

Dr. Ladner explains some of the difficulties black women have had: "They were discriminated against because they were black and because they were females. At the same time, because of the economic conditions in which blacks had to live, black females were not given the same kinds of securities and privileges of being the weaker sex.

"The irony of this," she says, "is that altho she was discriminated against and thrown into that competitive man's world, she was able to operate as a woman and make it work in her behalf."

In 1971, only one in 10 black women had professional positions. By 1973, Money magazine reports, the graduate most in demand seemed to be the black woman with some kind of engineering or business degree.

The success of the black woman in the professional field, according to Cynthia Fuchs Epstein in Psychology Today, "is the combination of being highly motivated, egged on by supportive families, seen as less threatening than black men, and pushed by the feminist tide."

When the storm settled from the intense period of the black liberation movement, the employer was hit by the women's liberation movement and was pressured by government-imposed minority hiring quotas.

Black demands for equality coupled with equal rights for women were the impetus for labor to begin to acknowledge black women.

And now black women are beginning to trickle into the mainstream of society, Dr. Ladner says, "one by one, on society's terms."

While many contend the entry rate of black women into professional fields is accelerating, others share the view of Connie Seals, executive director of the Illinois Human Relations Commission.

"Sure there are about 40 to 50 black women making it professionally today, and they know the other 39 or 49," she says.

The Department of Labor reports black women workers are far more heavily concentrated than white women in the lower paid occupations. Maids, cooks, and household and service workers still account for 43 percent of all employed black women, the department says. Only 19 per cent of the white women workers fall into this category.

The Department of Labor also reports that, despite advances, differences persist in the employment patterns of black women and those of other groups.

Black women are more likely than white women to be in the labor force, to be working wives, and to be working mothers.

Black women workers generally have less formal education, higher rate of unemployment, and lower incomes than their white counterparts.

They also are more likely to be in low-skilled, low-wage occupations. In comparison with minority men, their rates of unemployment are higher and average earnings are lower.

When one examines income data, "one is immediately struck by the fact that black women have been had," says Dr. Jacquelyne J. Jackson, associate professor of medical sociology at Duke University Medical Center in Durham, N.C.

In 1969, she reports, the median income of black females was $2,078—$435 lower than the average white female made, $2,670 less than the average black earned, and $5,812 less than the average white male made.

Dr. Jackson says, "I am especially concerned about the myths which link a black woman's education, employment, and income to her family patterns.

"Such myths tend to reinforce erroneous beliefs directly affecting social policies, which in turn adversely affect many black females."

Labor statistics point to the fact that only three of every 10 black families were headed by women in 1971. Likewise, about half the black women workers were married and living with their husbands, 28 per cent were widowed, divorced, or separated from their husbands, and the remaining 23 per cent were single.

Nevertheless, black women are beginning to make their unique statements in politics, labor, education, business, and the arts.

At least their progress in many closed areas seems to say, "Altho I've got a long way to go before I see equal opportunity, I can look back realistically and see how far I've come and begin to project where I'm going."

One reason for this, Addie Wyatt says, is that "women are more educated. They are going into different fields and are more aware of and sensitive to their rights.

"And they are informing their employers that women work for the same reasons men do—they have something to offer and they need the money."

When the typing job was denied her, she said, "Women in the plant earned more money because they were more organized; so I lost interest in typing and stayed at the packing division.

"As a black worker and a woman," she reflects today, "I knew I could be the first fired and the last hired, and it was important to have union protection and benefits."

To Mrs. Wyatt, "making it" and settling for that is an acceptance of tokenism.

"We have to give recognition to those who have not and who ought to. And we must keep the door open for the development of black women."

In the Monday Tribune's Tempo section: Black women in politics.

THEY'VE OVERCOME A DUAL BIAS

(By Yla Eason)

(Second of five parts)

Led by a few superstars, the black women today are making long, swift, and determined political gains, emerging as a force not to be ignored.

Her stride into the electoral arena has been thru a circuitous route, marked by a slow procession to local officers followed with a quick jump to federal positions.

And in the game of politics where all pluses help, one whammy—black—is piled on another—female. To deal with the double blow, she's had to angle around and backslide until the people could be convinced she could do the job.

She proclaims her savvy with the fact that in just four years, the black female has more than doubled her presence among elected public officials. This represents a 160 per cent increase in the number of black female office holders since 1969.

But considering there are seven million black women of voting age in the United States, her share of the 520,000 elective offices is embarrassingly small.

Sticking fast to the "superstar" label early in the game was Shirley Chisholm, who captured national attention with her self-announced "un-bought, unbossed" manner.

She tagged a number of "firsts" to her name in the process: In 1968 she became the first black female to be elected to U.S. Congress. Again in 1972 she hopped into the Presidential contest as the first black female to run for that office.

Her entry into the latter campaign touched off a controversey among elected black male officials in particular who felt her move was premature and detrimental to black coalition politics.

Her shrewd, sophisticated style of taking care of "number one" showed that not all black women in politics are cut from the same cloth.

In fact, the thread which contributed to her prominence—being the only black female in Congres—can no longer be woven for others. Three black women joined the ranks of Congress this year.

And Mrs. Chisholm has said recently she is "moving in the direction of getting out of electoral politics." She believes Congress has no organized system of getting legislative work done.

But to the casual observer, her aggressive plunge into politics was seen as the green light for other black women with similar ambitions.

There were no major black female political officials in 1969; today there are three.

After serving two terms as city clerk, Doris Davis became mayor of Compton, Cal. The black woman has lengthened her numbers in elected offices from 131 in 1969 to 337 in 1973.

But she has had to fight, persist and struggle to make even a minimal impact on the electoral system. A case in point is Peggy Smith Martin.

"Unsuccessful challenger" and "perennial candidate" were once synonymous with the name Peggy Smith Martin, who was defeated four times for the office of state representative in Chicago.

Winning the right to represent the 26th district in November, 1972, Mrs. Martin took her seat as the only black female in the State House.

"Perseverance," she said, was the key to her victory.

"I always felt one day I would be in the State House. Just as one day I will be President. Then I will feel I have had it made."

But she will be dodging the statistics which show that only half of the black women

elected to offices are still in those positions four years later.

The Joint Center for Political Studies in their research on "Black Women in Electoral Politics" found her lack of tenure in office is a significant drawback for the acquisition of power.

This could be attributed to her lack of campaign funds, an unwillingness to assume the responsibilities of winning and holding a position, or her despair in discovering how difficult it is to change the present system.

Often one elective office is a stepping stone to a higher office. However, the Joint Center reports, there was little mobility among black women elected officials between 1969 and 1973.

Among those who did move upward are State Sen. Barbara Jordan [D., Tex.] and State Assemblywoman Yvonne Braithwaite Burke [D., Calif.]. Both women advanced from the state legislature to the U.S. House of Representatives.

The styles of these two women sharply contrast.

When Barbara Jordan came to Congress in January the word spread that the late President Lyndon Johnson personally called top Congressmen to make sure she got the committee assignments she wanted.

Described as "calm, cold and calculating," Miss Jordan once said, "Politics is equated with power. And black women have always known what power was about."

But the entry of Yvonne Burke to Congress was for many an exciting event. Before her political skills are listed, her beauty, charm, and grace are often mentioned.

An effective force politically, being a female has seemed to be her winning trait. She will be adding another dimension in November when she is expecting a baby—the first member of Congress in history to have a baby while in office.

Approaching politics from a traditional view is Illinois Rep. Cardiss Collins [Dem.—7th Dist.]. She worked more than 20 years as a secretary and a public auditor before running for any political office. And her jump into the House of Representatives was seen as a giant step.

"I came to Congress as a woman whose major contribution is now considered old-fashioned: I came as a wife and a mother," she said recently.

To many she is seen as one who came to Congress, as a widow, filling the unexpired term of her late husband George, with loyalties first to the Democratic party.

She has recently become the target of criticism from the black community and had been charged with "letting black folks down."

Her critics point to the two young white males she chose recently for her top congressional staff positions.

The selection of John D'Arco Jr., son of the 1st Ward Democratic committeeman, as her administrative assistant and Rick Praeger as her legislative assistant has been viewed with suspicion.

Scoffing at the attacks, she remarks, "I realize that [no prior political experience] is a deficiency and that is the reason why you choose your staff carefully. You have enough common sense to know what you want them to do."

She adds, "If I do my job and do it well that will be all the satisfaction I'll need. I'm not out there on an ego trip.

"I'm out here to do the best I can, and I think I can do a lot because I'm dedicated to my people. The only image I'm trying to build is that of a Congresswoman."

At the local level, the most common elective office held by black females are those related to education, primarily school boards.

About 41 per cent of all black female elected officials are in that category, the Joint Center reports. Approximately 31 per cent are concentrated in municipal offices.

Of all black elected officials, black females represent only 12 per cent.

While they account for 25 per cent of all women in the House of Representatives, they represent only six per cent of the 466 women in state level positions.

Today, blacks account for less than one-half of one per cent of all elected officials. In addition to sexual discrimination, the Center concludes, a major explanation for the underrepresentation of black females in elective offices is racial discrimination.

The real measure of what new dimension black women bring to electorate politics will be reflected by the changes they bring about for the total black population, many feel.

(Third of five parts)

A Move To Make a Higher Grade

(By Yla Eason)

A black woman with an education could forget getting a job a few years ago unless she was a teacher or nurse.

Searching for a way to make a living and striving to achieve a degree of responsibility in the community, she sought these two areas of study. Even today, education continues to be the field where she faces the least amount of discrimination against her race and sex.

But her educational level has not been vastly improved. In 1970, the average educational level completed by black women was 10th grade with 58 per cent completing high school. Only 4.4 per cent of black women have completed or gone beyond a college degree.

"During the 1960s the greatest educational gains were not those made by blacks at all, but those made by white males," sociologist Jacquelyne Jackson reports.

Between 1960 and 1970, there was a 1.8 per cent increase in the number of black women who received a bachelor's degree.

That compares with a 1.9 per cent increase for black males, a 4.9 per cent increase for white females, and, highest of all, a 5.2 per cent increase for white males.

The black female's position at the lowest step of the educational level has been firmly dictated by society's constraints.

According to the 1960 census there were only 222 black female attorneys and 487 physicians and no black women architects. These numbers increased to 497, and 1,855 and 107 respectively in 1970.

One reason may be black females have had less access to the most prestigious institutions of higher education than have black males and white females and males.

Dr. Jackson adds that black females receiving higher education have studied largely at the traditional teacher-training institutions, which has greatly affected their occupational patterns.

How have the attitudes of black women toward education changed? In what ways are black females contributing to the education of other blacks?

Two unique black women show how they have been involved in dealing with those issues.

In her office at the Black Women's Community Development Foundation (BWCDF) in Washington, D.C., Inez Smith Reid, executive director, recalls an experience which occurred during the research of her book, "Together, Black Women."

It began as a study of militant black women but she discovered the word militant was not appropriate. "I ended up describing them (the women involved in the black liberation struggle) as 'together' black women."

Among blacks "together" means having made a commitment to being black. It carries with it the responsibility of identifying social injustices and working toward changing them and the willingness to be proud of the black heritage.

BWCDF functions as a funding institution which contributes to studies done by black women about black women.

"We have a fellowship program which is geared toward the noted black scholar who has gotten her formal education and is attempting to contribute something to the scholarly world," Mrs. Reid says.

The other form of fellowship is geared toward the "grass roots" woman who has not had a chance for formal education and wants to improve herself educationally so she can make some input into the black movement.

The foundation sponsored a historic symposium last year in Chicago which brought together more than 200 black women from across the country to discuss their attitudes and their role in America's future.

"One of the mandates that came out of Chicago was one to improve communications abong black women across the country," Mrs. Reid adds. This led to a news pamphlet issued by BWCDF as a medium through which black women can get their ideas out to others.

She makes it a point to emphasize the foundation is not involved in the feminist movement. "We are trying to do things for the total black community."

The foundation services the important purpose of using black women as a source for change and contributing to the amount of educational information about them.

Women are also a source for change on the campus of Howard University in Washington, D.C., where Dr. Lorraine Williams is a silent mover in rearranging the educational approach to history.

"Because there are a lot of misnomers, misconceptions and distortions concerning the history of blacks in America, it is the responsibility for the black historian to reinterpret and reassess history," says Dr. Williams, who is chairman of the history department at the 10,000-student school.

Her own educational pattern speaks of changes that have occurred in the black woman's attitude toward learning.

For her master's degree she studied Germany's imperialistic policies in the Pacific "The emphasis was on Europe and the Western world then," she recalls.

And altho her professors in 1955 "wondered why I had the nerve to study for a doctorate," Mrs. Williams switched her focus of interest to the issues of the Civil War for her Ph.D.

As an educator she is hoping to legitimize different methods of historical data. "I see some evidence of the development and appreciation of social history, where historians will look at society as a whole and take into account contributions from all social levels."

Altho this concept has not gained wide popularity it is incorporated into the traditional educational system at Howard. There the attitudes of the working classes, slave narratives, and deeds of various groups in American society share an importance with presidential papers and books written by professors.

"As we study black history we will become aware of what Benjamin Quarles calls "Black history's diversified clientele," she adds.

Dr. Williams is one of a growing number of educators preparing the historical groundwork for the future education of blacks. Her goal is to insure that blacks themselves contribute to the writing of their history.

(Fourth of five parts)

Persistence Pays Off for a Few

(By Yla Eason)

The black woman in business is a negligible statistic in the financial world. Lacking a history in America as an entrepreneur, her ventures into this area are without precedent.

If her sex is a deterrent to getting into the business world, then her race doubly excludes her full participation.

Received coldly by banks when applying for a business loan, she usually has to go the route of guaranteed federal financing. And often if there is no male—black or white—in the proposed business, she finds her chances for success even slimmer.

With luck, verve, and friends, she is just beginning to make a tiny dent in the money market. But still, in 1973, charm outweighs skill and persistence supersedes all.

As a black woman in business, Ida Lewis' *raison d'etre* is to bring the events and happenings of interest to black people "upfront." Her New York-based magazine, Encore, is the element thru which she accomplishes this.

The former editor of Essence, a black women's magazine, Miss Lewis, 37, worked as a feature writer for Life Magazine, freelanced for the British Broadcasting Co., and wrote for the Washington Post and various foreign publications.

A year ago when she began Encore, "people were saying, 'Ida, black people don't read, you'll never get black people to read.' " Yet today the news monthly has a circulation of more than 100,000.

She adds the problems have been numerous, both on a personal level and from a business end. "But you cannot let these problems become obstacles," she says.

"Generally on a personal level you have problems with men who are very talented. Men are brought up in a society where they don't listen to women.

"However," she adds, "I would not be where I am today if men, some men, did not believe I could do what I am doing. It would have been impossible.

She feels that more blacks must help each other in the business world, "instead of thinking we have to cut the legs of this one and the arms of that one."

And she carries out this idea as a boss. "I don't believe in stifling people's ideas. I think you should give them room to express themselves. The only thing I tell them is to use good taste.

"I don't want to become a mother figure, where mommy makes all the decisions. They understand that I'm the publisher and editor and they respect that."

Making her contribution in an area opened recently to black women, she measures the progress of blacks in America "with how fair black people are with each other."

Sharing this attitude is Chicagoan Ann Rodgers, 41, owner of Village Maid Service, whose aim as a black business woman has been one of upgrading the status of maids.

She explains that a black woman maid has "arrived" in the industry when she's hired to clean office buildings. "This is still one area we haven't broken into," Mrs. Rodgers says, pointing out that virtually all black maids work in private homes.

Seeing the cash benefits of getting big office cleaning contracts, Mrs. Rodgers wanted to expand her business into that area. But unwilling to add that battle to her current one of trying to get a break in the catering business, she has lost interest.

"You have to learn to roll with the punches, be self-determined, and no matter what, you have to hang in there," is her personal philosophy. Since 1964, when she grabbed her $37 savings to start the business, Mrs. Rodgers has had to fight.

"It has not been easy. Capital has not been coming, and the minute people see you have a brain, they treat you as a sex symbol."

But she's reached her first goal of introducing dignity into the maid profession. The women who work for her have 9 to 5 jobs, five days a week, Social Security, vacation benefits and insurance.

"I see women who work for me as peers, and I seek their opinion because they do the work. We relate to each other on a level of respect.

"I can clean an apartment if the need arises," Mrs. Rodgers adds. "I consider myself a super maid, and I have no hangups about the word. It doesn't matter what you call a maid as long as you call her "Mrs."

Making profits for others and herself is the business of Victoria Sanders, 27, a Chicago stock broker who questions whether a black woman *really* makes it in business today.

Educated in business and economics, [she has three university degrees] she gave up her "afro" hairstyle and hip clothes in order to work as an account executive more than seven years ago.

In an article that appeared in The Tribune in 1971 Miss Sanders said, "I don't think of myself as a successful black woman, but as successful—if and when I think in those terms."

Today her salary is in the six figures. Last year she had 23 vacations, is one of four black women stock brokers in America, owns a condominium, drives a foreign sports car, and was recently named vice president of Daniels and Bell, the nation's only black-controlled securities firm.

But she also sees herself as a black woman wondering what way to measure success. While there are advantages ["When I go into an office I'm remembered and there is a lot of opportunity in this work."] she adds that discrimination still exists.

For instance, taxis pass her by. "They assume I'm going south." And often police stop her "just to find out what a prosperous looking black woman does for a living . . . I have had some truly embarrassing experiences.

"However," she says, "These little incidents of racial discrimination serve as a constant reminder that education, money and prominence don't do it for you—that is if you're black and female."

(Last of five parts)

FINDING ART THRU THE LOOKING GLASS

(By Yla Eason)

The role of the black woman in the arts has mirrored her real-life destiny. And only when that destiny improved—largely thru black consciousness and civil rights efforts—did her performing arts image reflect her true worth, dignity, and potential.

As an entertainer, her contact with racial discrimination has perhaps been sharpest, because in it she is pursuing a profession that has great moneymaking potential and where success is coveted.

Today, demands by blacks to see their lifestyle represented on the screen in a manner that reflects black pride has created a slot for the black woman as a movie star.

She is recognized as a new box office attraction; however many are concerned that blacks do not have enough control of the profits made from films about them. Economic discrimination has played a heavy part in reducing the scope of her success.

Success in the performing arts often had more to do with the black actress' ability to conform to contract agreements, agents, and audiences than with talent. And since the monied masses were white, she knew making it big would mean breaking color barriers—and that too meant she had to be better than her white counterpart.

According to Dr. Vada Butcher, dean of the college of Fine Arts at Howard University, Washington, D.C., "the black artist was allowed to perform and function in the world but not without harsh treatment and, often, low pay.

She didn't think in terms of getting a part in a movie unless she was in the role of a domestic. And only when there were plays written exclusively about blacks, such as "Porgy and Bess," could she think of getting a lead role, according to Dr. Butcher.

And since her contributions as a black woman had been systematically excluded from most literature, only a few respectable roles existed.

In 1968 Diahann Carroll was introduced to American television audiences, starring in the first series about a black woman. Miss Carroll was called "girl" 'in the media and referred to herself as "colored" on TV.

And tho her part as a registered nurse was introduced to "help improve race relations," blacks protested the image as one of bleached black.

With black audiences today expecting black movies to have a message for the total community, the image of the black female movie star should be contemporary.

Tamara Dobson emerged this year in such a role, that of Cleopatra Jones. She says today that the role has accomplished almost a: much in message as it has in recognition for her as an actress. A former model, the 6-foot-2 Miss Dobson had played several roles before capturing the lead in "Cleo."

In the movie Cleopatra Jones is a special agent for the federal government who returns home to find that a drug rehabilitation center, operated by her boy friend, has been the target of a drug frameup.

She seeks out the woman dealer and the drug ring supplying the community, and with support from others, karate chops her ways to victory.

"Cleo's achievements are vast and varied," says Miss Dobson. "She has respect, she knows karate, she can be with one man and love one man, she loves her people and she fights drugs—which are a big problem—and she is respected by the government."

The image, she feels, is one black women can identify with—that Cleo is a successful woman with positive goals.

As a black woman she wants to act in movies which will make black girls want to emulate positive black women.

WHY I HAVE CONFIDENCE IN AMERICA'S FUTURE

Mr. ERVIN. Mr. President, one of the Nation's most worthwhile civic organizations is the Exchange Club which has among its prime interests the encouragement of the youth of our land to engage in worthwhile endeavors. In this connection, it makes a national award entitled "National Youth of the Year Award" each year to some young person for outstanding achievements in civic, religious and scholastic activities, and for a philosophy of life expressed in essay form.

As a Senator from North Carolina, I take great pride in the fact that one of my most brilliant young constituents, Miss Helen Meredith, of Burlington, N.C., was named the recipient of the Exchange Club's 1973 National Youth of the Year award on the basis of her outstanding achievements in civic, religious, and scholastic activities, and for her essay entitled "Why I Have Confidence in America's Future." I feel that our Nation stands in need of her optimistic outlook at this time, and for this reason, I ask unanimous consent that her essay be printed in the RECORD.

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

WHY I HAVE CONFIDENCE IN AMERICA'S FUTURE

(By Helen Meredith)

America, America, you took me as your child,
You nurtured me, and watched me grow,
And showed me things profound.
I learned the pride and joy of my heritage so sweet,
And a reverence for my country to be held from deep within.
No, America, I won't desert you in your hours of woe,
For you've given me all I know and love.
You've placed within my soul a confidence.
"A confidence?" you ask. Why yes,
A confidence in your future as well as mine.
Don't despair, dear friend, for I'll always be true.

What is confidence? To me, confidence is that intangible feeling which tells me that my America will not let me down, and I, in turn, will not forsake her. Every child experiences a period in his life known as an identity crisis, in which he must decide exactly in what he may place his trust and confidence. I decided at a very early age to place my confidence in America for extremely valid reasons. For me, America has never disgusted, disappointed or discouraged me in any way, and I sincerely doubt that it ever will.

Why should I not place my confidence in my America's future? She has withstood almost every test a country can face in its existence. America has lasted through numerous wars, both civil and world-wide; wars which seemed to leave the entire world in devastation. She has suffered several depressions in which many of her loved ones were left homeless and starving. She has faced times of embarrassment and harassment from those within her boundaries as well as those from without her shores. Yet, she still holds her head up high.

In times of trouble and strife, Americans unite. They bind together for the benefit of our nation in an attempt to protect its future. A classic example of this is the advent of World War II. Americans seemed to be unaware or apathetic about what was happening to the world by the aggressive acts of Hitler, Mussolini, and Emperor Hirohito until December 7, 1941. Immediately, an unprepared America became of one accord—right for those treated wrongly; freedom for those oppressed. In less than four years we became a fighting nation; one which remained unbeaten. Peace terms were "American terms." Reconstruction grants were American generosity. People had a common cause in which they could believe, and they stood by it. As one can plainly see, when Americans unite in the face of a common cause, nothing can stop them. Doesn't this immensely boost one's confidence in America's future?

Our ancestors united almost two centuries ago for a common purpose called freedom of religion. They did not comprehend what lay ahead of them. As well as succeeding in attaining their religious goals, they established a democracy.

The whole secret of America's past, present and future lies in this word: democracy. Democracy allows a freedom of thought, not a captivity of the mind. We are not indoctrinated to think and feel as we do. People have the right to make their own personal decisions. Their minds are not possessed by government or a dictator. For example, a person has the right to worship as he desires. He has the freedom to become a Christian, Hindu, Agnostic, Atheist, or a believer of any Creed or Sect. After he makes his decision, he is not beaten imprisoned or threatened by government officials.

I, personally, have chosen to be a Christian. God has placed within my soul a confidence in America's future. Each day I pray that God will bless my nation as well as the inhabitants and leaders. In John, Chapter 14, verses 13 and 14, Jesus states: "You can ask Him for anything, using my name, and I will do it, for this will bring praise to the Father because of what I, the Son, will do for you. Yes, ask anything, using My name and I will do it." This is one reason why I have confidence in America's future. I have faith that God will honor my humble prayer and bless my nation.

My America was also built on the hypothesis that pride in one's country, a sense of liberty, and equality for all men lead to a successful nation. Thus far this hypothesis has proven to be unmistakably accurate. In few countries is it possible for a man to raise the social status into which he is born, but in America a poor, struggling farmer can rise potentially to President of the United States, We have the right to set our goals as high as we desire. However, we must strive to attain these goals.

Many people tend to stereotype the youth of today. They say, "He has no goals or objectives." They tend to believe the teen-agers of today are shiftless and totally incompetent. These people feel that America has a very grim outlook when my generation assumes leadership. However, every generation of Americans in our two centuries of existence has produced some exceptional leaders. There is no doubt in my mind that my generation will do the same. For example, note our high schools and colleges. They are filled with students who are anxious to learn. These young people have a desire to accomplish great things with their lives and it is here that they will have a chance to realize their aspirations. Almost every young person I met has been blessed with one or another talent. If we can unite all these talents for the good of this nation, she shall surely have an unwaveringly bright future.

We must never be content to merely laud the virtues of America and overlook her faults. This apathy is a sign of weakness, but in every form of weakness there exists some degree of strength, and one of this country's greatest strengths has always been the sincere desire of her citizens to rectify whatever shortcomings they might find in the hopes that it might lead to an even better, stronger America. At the appropriate time, I am certain our young leaders will shine as brightly as did our great leaders of the past; all the youth of today lacks is the seasoning of maturity. Yes, I definitely do have confidence in America's future.

NATIONAL DIABETES WEEK

Mr. McGEE. Mr. President, this week has been designated as National Diabetes Week. Diabetes is a major health problem in our Nation, afflicting from 5 to 10 million Americans. Each year, 325,000 new cases are diagnosed.

Although 35,000 deaths are officially attributed annually to the disease, diabetes is the underlying cause of many thousands of deaths that are officially classified under heart disease, stroke, and kidney disease. It is the second leading cause of blindness, producing blindness nearly 20 years earlier than glaucoma, the leading cause.

During this year's observance of Diabetes Week, the prospect of discovering a cure for the disease in the foreseeable future is greater than ever before. The Congress can provide invaluable assistance in the success of our research efforts if it will act favorably on legislation proposed by the distinguished junior Senator from Pennsylvania (Mr. SCHWEIKER) and me.

Senator SCHWEIKER and I have been joined by 30 other Senators in our effort to launch a nationwide attack on diabetes. The Senate Labor and Public Welfare Committee has unanimously approved our bill, and we are now looking forward to positive floor action.

Our attack on diabetes, as proposed in the bill, would be launched on four fronts: research, professional education, patient education, and public education and detection.

Our bill focuses efforts more sharply on the problem of diabetes, not only with increased emphasis within the National Institutes of Health, but also with significantly upgraded funding for an effective assault on the disease. It provides for a prevention and control program to be funded at the level of $17.5 million over the next 3 years. Most importantly, it also provides for a system of national diabetes research and training centers to be funded at a level of $45 million over the next 3 years.

Senator SCHWEIKER and I believe the key section of the bill is the one establishing a minimum of 15 national research and demonstration centers for diabetes. These centers would engage in basic and clinical research in the prevention, diagnosis, control, and treatment of the disease. Included in this effort would be the training of individuals to carry out such activities.

However, in spite of the critical need for mobilizing our resources to finding a cure for the disease, the administration has drastically slashed our medical research programs. This comes at a critical time, particularly since there are some very vital research projects which will be cut out completely due to lack of funds. The cutback in research will close down three projects which hold much hope and promise. One research project is concerned with the development of an artificial pancreas; another is related to the possible correlation of diabetes to viruses; and the third is the transplantation of healthy pancreatic cells into the diseased gland.

In this country today, we are only spending a maximum of $1.60 per diabetic per year on research. With the projected administration cutbacks in medical research, this sum will drop below $1 per diabetic per year.

With this background in mind, I would urge the Congress to take special note of this week and move favorably on our legislation. The significant research being done in this area is vital to discovering a cure for diabetes. The American Diabetes Association has recently prepared an explanation of these research projects which I think would be useful in assisting every Senator to making up his mind on this legislation.

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

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

EXPLANATION OF RESEARCH PROJECTS

Diabetes Week is being observed throughout the United States November 11–17 by a concerned public, led by the affiliate components of the American Diabetes Association. The seriousness of the disease was emphasized by Mrs. Gail Patrick Jackson, Chairman of the Association's Board, who pointed out that diabetes is a major health problem in the United States; the disease afflicts from

five to ten million Americans, with 325,000 new cases diagnosed each year.

Mrs. Jackson stressed that although 35,000 deaths are officially attributed annually to the disease, "diabetes is the real underlying cause of many thousands of deaths that are officially counted under the heading of heart disease, stroke and kidney disease. It is the second leading cause of new cases of blindness, and it produces blindness almost twenty years earlier than glaucoma, which is the leading cause."

During this year's observance of Diabetes Week, prospects are bright for the discovery of a cure for the disease in the foreseeable future. This hope is not based on a single research project, according to Dr. Addison B. Scoville, Jr., President of the American Diabetes Association, but on the work of a number of American investigators in California, Massachusetts, Minnesota, Missouri, New York, Pennsylvania and Texas.

Probably the most promising avenue of research that may lead to a cure for diabetes is the work on the transplantation of beta cells, the cells of the pancreas which produce insulin. Some diabetics seem to have too few beta cells to meet their bodies' insulin demand. Others may have a normal number, but the cells do not release enough insulin. Still others do not adequately utilize the insulin their beta cells produce. The goal of the transplants is to restore the body's ability to manufacture and release the hormone in sufficient amounts.

Diabetic rats have been cured by transplanting beta cells from nondiabetic newborn rats. The transplanted cells have spread through the rodents' bodies, establishing themselves in muscle, liver, fat, the abdominal wall and other tissues and, beyond doubt, have cured the animals' diabetes.

Just as a human may reject a transplanted heart or kidney, however, the rats' bodies eventually reject the transplanted beta cells unless the cells come from rats of the same, highly inbred strain. Nonetheless, it has been shown that tissue loses its susceptibility to rejection after it has been kept in a laboratory culturing medium for a time before transplantation. This culturing technique may solve the rejection problem and the last barrier to human trials will be removed.

Although much more work remains to be done, particularly in the area of rejection of the beta cell implants, the approach is expected to be ready for human trials within the next five years. The ultimate question is whether the transplanting method can prevent the complications of diabetes, which include blindness, kidney failure and blood vessel disorders. These complications are not controlled adequately by insulin injections and may be caused by factors not related to insulin output or high blood sugar.

The available forms of insulin only rarely produce normal blood sugar levels continuously, even when combined with an exact diet and exercise program. Therefore, research has been undertaken in several laboratories focusing upon new systems for treatment of diabetics that will insure normal blood sugar levels on a moment-to-moment basis. The goal is to produce an artificial pancreas or, more accurately, an artificial beta cell, the insulin-producing cell of the pancreas.

Two devices have been already developed which would be components of such an artificial beta cell that would regulate the blood sugar automatically in diabetics as it is done physiologically in nondiabetics.

One of these is a small implantable sensor capable of measuring the blood sugar continuously. Animal studies are underway now to determine the accuracy, sensitivity and longevity of this component. The other is a mini-computer that can be programmed to deliver insulin when the blood sugar rises, and glucose when the blood sugar falls. As soon as this phase is completed, hopefully by mid-1974, trials will be begun in human patients.

The computer and the sensor would be linked with a power supply, an insulin pump and a refillable insulin reservoir in a totally implantable system. It is conceivable that such an artificial beta cell would be available to diabetics by 1976.

Continuing research leads scientists to believe that insulin-taking diabetics may be relieved of the necessity for daily injections of the hormone sooner than many people thought possible. For example, significant progress has been made in the surgical procedures for transplanting pancreases.

The results of such organ transplants have been encouraging. A team of surgeons, using a new technique, has reported that one patient who has received a pancreatic transplant has survived for 22 months and another for 16 months. Both of these patients also had kidney damage due to diabetes, which necessitated kidney transplants.

In addition to providing insulin to handle sugar in the bloodstream, the pancreas secrets vital digestive enzymes into the duodenum, which is the section of the digestive tract just below the stomach. In the new procedure, the digestive role of the diabetic's own pancreas is preserved by leaving it in place. The donor pancreas is inserted in the body in such a way that its unneeded and powerful digestive juices can be drained into the ureter leading from the kidneys to the bladder and thus out of the body in the urine.

As with heart and kidney transplants, tissue rejection poses a problem, although one surgeon has suggested that the pancreas is the least susceptible.

Even though some obstacles to successful pancreas transplantation will doubtless be overcome, the problem of obtaining healthy organs will remain a formidable one. Only time can tell whether the functioning pancreas transplant will prevent or delay the appearance of long-term vascular complications. The operation must be performed in large numbers of insulin-dependent diabetics before the complications develop and the patients' progress studied for over 10 to 15 years.

Still, the hope exists. At some future time, it may be reasonable to offer the operation to individuals whose day-to-day regulation of diabetes is very difficult, even with the most careful adjustment of insulin dosage, and there may be a chance that the condition of their blood vessels will improve.

The word "infection" in connection with diabetes seldom appears outside medical journals and even there only infrequently. Yet there is evidence that it may be a factor in causing the disease.

Measles and mumps viruses are apparently the chief infection culprits. There are clear-cut data, for example, that infants with congenital measles become diabetic more often than can be explained on the basis of chance. It has been known for a long time that mumps virus localizes in the pancreas. Now it has been discovered that in at least one individual the inability to secrete insulin was very clearly related to mumps infection of the pancreas.

Linking this to the fact that diabetes tends to run in families, scientists have suggested the possibility that what some diabetics inherit is the tendency to, first, become infected with a specific virus and, second, to respond to that virus with a specific reaction, such as becoming diabetic.

This raises the possibility that as the genetics of diabetes are studied and the knowledge of its relationship to viral infection increased, it would be possible to prevent diabetes by immunizing the individual against certain viruses.

It has been found that it is entirely possible for one animal to contract diabetes on exposure to another diabetic animal. Research scientists studying a colony of diabetic guinea pigs found that approximately 90 per cent of the stock bred from the original animals became diabetic. In an attempt to breed out the trait, several groups of healthy animals were brought into the colony. In from six weeks to three months, approximately 60 per cent of the new guinea pigs became diabetic. Studies are now in progress to define the route of infection and the nature of the infectious agent.

"As each day goes by," Dr. Scoville continued, "more patients develop the disease and more complications occur which rob our nation of our most valuable resource—our young people, and older ones, too. When a cure is found, restricted diets, insulin injections, expensive oral medication will no longer be necessary. Those facing futures fearing blindness, renal disease and neuropathy will be permanently relieved."

Dr. Scoville stressed that although the volunteer sector of the American public was committed to obtaining contributions to speed the day when a cure and preventive for the disease could be found, this goal would only be achieved when the effort was joined by the Federal government.

"It's time," Dr. Scoville concluded, "for a cure."

WHY CONDEMN ISRAEL AND RHODESIA?

Mr. GOLDWATER. Mr. President, on October 24 an old and valued friend, Mr. C. C. Moseley, president and chairman of the board of the Grand Central Industrial Center, addressed a short letter to Secretary of State Henry A. Kissinger which he feels is of utmost importance. At his personal request, I ask unanimous consent that a copy of Mr. Moseley's letter be printed in the RECORD.

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

OCTOBER 19, 1973.

Hon. HENRY A. KISSINGER,
Secretary of State,
Washington, D.C.

MY DEAR MR. SECRETARY: As Secretary of State you can now do a splendid service to mankind by convincing the United Nations that it should cease condemning little Israel and Rhodesia when absolutely nothing has been done to condemn Russia and China for not granting their people fundamental civil and human rights.

This is rank hypocritical nonsense—there can be no double moral standards when judging little Israel and Rhodesia against Russia and China. Moral integrity is demanded of the U.N. as well as of individuals.

Sincerely,

C. C. MOSELEY, *President.*

CARL McINTIRE, THE FAIRNESS DOCTRINE, AND THE FIRST AMENDMENT

Mr. ERVIN. Mr. President, I wish to bring to the attention of the Senate and the public an exercise of governmental power which I believe has transgressed the limits of constitutional propriety required by the first amendment. I am referring to the closing down by the Federal Communications Commission of radio station WXUR in Media, Pa.

To my knowledge, this represents the first time that the FCC has successfully invoked its so-called "fairness doctrine" to deny the renewal of a broadcasting license. After a prolonged battle, the courts have also now added their approval to

the FCC action. In doing so, they have sanctioned the FCC's violation of the first amendment's guarantee of a free press.

The aggrieved licensee in this case was the Faith Theological Seminary headed by the Reverend Carl McIntire, an outspoken and controversial figure of very conservative persuasion. The seminary acquired the license to WXUR in 1964 when the station was offered for sale by a previous licensee. In accordance with FCC regulations, an application was filed by the seminary asking for approval of the license transfer. After the application was filed, the FCC received letters from many individuals who opposed the transfer of the license to the seminary on the grounds that, given McIntire's outspoken record on controversial issues, the seminary could not be expected to operate the station responsibly or present controversial issues fairly. In the face of such speculative criticism, the seminary filed an amended application which specifically provided that it intended to abide by the "fairness doctrine" and would otherwise present balanced programing. The amended application mentioned by name those programs which it intended to broadcast which would provide such balance.

On March 17, 1965, the FCC approved the license transfer.

When the license came up for regular renewal a little over a year later, however, the station came under renewed criticism. Hearings on the license renewal commenced in October 1967, and lasted through June 1968. At the conclusion of the hearings, the FCC examiner ruled that the license of WXUR should be renewed.

The decision was then taken to the FCC which reversed it on July 1, 1970. The FCC based its decision on the station's failure to fulfill its obligations under the "fairness doctrine"—in other words, it failed, in the Commission's estimation, to present both sides of controversial issues of public importance. The Commission further found that the station had failed to satisfy the promises it had made in the amended transfer application; namely, to abide by the "fairness doctrine" and to present certain specifically named programs designed to balance the station's religious and public affairs programing. The FCC considered this a separate ground for denying the license renewal.

This second rationale was crucial for the three-judge panel of the Second Circuit Court of Appeals, which heard the case on appeal from the FCC order. Judge Tamm, writing for the 2 to 1 majority, affirmed the FCC decision both on the grounds that the "fairness doctrine" had been violated, and that "misrepresentations" had been made regarding the station's programing plans. The concurrence of his colleague, Judge Wright, was based solely on the "misrepresentations" contained in the amended transfer application. Wright specifically rejected, in fact, the "fairness doctrine" as a ground for decision in this case.

After reading the decisions, it is unclear whether WXUR lost its license because of its "misrepresentations," or because it violated the "fairness doctrine." But whether the station lost for one or the other or both reasons, the consequence still is that a unique voice on radio was stilled because of an arbitrary and unique application of FCC rules. Of all the thousands of radio and TV licenses that have come before the FCC since the "fairness doctrine" was enunciated, this is the only station which lost its license for violating the rule. When we recall the extremely controversial nature of Reverend McIntire's opinions, and the fact that the criticism the FCC received came from those who vehemently opposed his views, the real reason for the termination is clear. Dr. McIntire lost his right to speak because of his controversial exercise of the first amendment. The FCC rationales are the formal justification, but not the true cause of the FCC rejection.

Most of the alleged "misrepresentations" made by the station involved its promise to satisfy its responsibilities under the "fairness doctrine" either by general commitments or specific programing. The other "misrepresentations" found by the FCC involved the promise of the station to present other specific programing to insure diversified entertainment for the community being served.

It was established in the case of *FCC* v. *WOKO*, 329 U.S. 223 (1946) that the FCC may deny a broadcast license to any station which consciously misrepresents its intentions in its application for approval. The FCC, however, has no power to require a station to present any specific sort of programing. The Communications Act of 1934 makes that clear. The fact, then, that the station promised specific programs was done on the station's own initiative but was not something the FCC could have legally required—at least in specific terms—from the potential licensee.

Thus, to the extent that it was because of "misrepresentations" that WXUR was put off the air, these were with respect to promises that the FCC had no right to require in the first place.

This is a prime example of the byzantine and devious way that agencies such as the FCC operate. The station was forced by the FCC to make commitments. These, the FCC would argue, were voluntary—it always denies that it ever presumes to dictate programing. That, of course, would violate the first amendment—which the FCC likes to assure us it never would do. Having forced these promises, the FCC then denies the renewal on the grounds that the station failed to keep promises it was not legally required to make in the first place.

When all the legal mumbo-jumbo is cleared away, the fact remains that the FCC chose to apply highly technical rules to this single station, having been forced by outside political pressure to do so. It does not matter that the station's audience was small. Those few people who chose to listen have as much right to hear what they wish—and what WXUR alone was broadcasting—as anyone else. Unfortunately, the FCC and the court chose to regard these technical rules and strained reasoning as more important than the first amendment rights of the station and its listeners.

Last May, the Supreme Court denied certiorari in this case. I would presume that the Court itself was satisfied to let the decision stand on the basis of the station's "misrepresentations" to the FCC rather than tackle the thorny issues involved in the "fairness doctrine." Perhaps if these "misrepresentations" had been based solely on the station's promises to abide by the fairness doctrine or if there had been no "misrepresentations," but only a violation of the "fairness doctrine," the case would have fared differently.

The case calls for a reexamination of the FCC's "fairness doctrine," at least as far as radio stations are concerned. The primary ground of the FCC's refusal to renew the station's license was its failure to present both sides of controversial issues of public importance. It found that WXUR, while presenting a steady diet of topical, controversial public affairs programing, failed to accord sufficient broadcast time to the presentation of contrary views by knowledgeable, articulate spokesmen. Presumably, even without the station's "misrepresentations" in the transfer application, the FCC would have denied the license on these grounds.

The "fairness doctrine" is a curious creature. It was conceived by its inventors as a vehicle to enhance rather than abridge the freedoms of speech and press. It is based on the theory that since broadcasting outlets are limited and available to only a few, the Government must assure that those who control them present more than simply one side of an issue to the public. The Supreme Court in the now famous Red Lion case defended the theory in plain terms:

> Where there are substantially more individuals who want to broadcast than there are frequencies to allocate, it is idle to posit an unbridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write, or publish . . . It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee . . . It is the right of the public to receive suitable access to social, political, esthetic, moral and other ideas and experiences which is crucial here. (395 U.S. 388–90)

I would agree with the Court that the paramount interest here is having an informed public. The question is whether the marketplace ideal is best achieved by requiring that each and every broadcast licensee present both sides of issues, or by "giving them their head." Under ordinary circumstances, I think it is clear that constraints on individual rights of expression can be justified—if ever—only when it is beyond question that the access of the public to the marketplace of ideas will be enhanced. If, as here, broadcasters can be silenced for failing to present both sides of controversial issues, this is tolerable only if the public's access to the marketplace of ideas is thereby promoted.

In the case of radio stations in gen-

eral, and Dr. McIntire in particular, I am not willing to concede that such suppression can be tolerated, because the marketplace ideal has been frustrated. I think, in short, that it is time for a reevaluation of the "fairness doctrine" by both the Congress and the courts, in terms of the realities of modern-day broadcasting—particularly radio broadcasting—and the values preserved by the first amendment. As Chief Judge David Bazelon, dissenting from the Second Circuit's majority opinion, stated:

> I think the time is overripe to take our blinders off and look further toward First Amendment goals than the next regulatory step which the FCC urges us to take in the name of fairness . . . the constitutional *validity of* each and every application of the [fairness] doctrine must be tested on its own, on a case-by-case basis. We must not be guilty of pouring concrete around the foundation of a doctrine which enhances the public's right of access in some circumstances but abridges that right in others.

The underlying rationale of the fairness doctrine is that since broadcasting outlets are so scarce, they must be regulated to insure balanced presentations of controversial issues. This is one assumption which can no longer be accepted without challenge. As of March 1973, there were a total of 7,399 radio stations broadcasting in this country. This compares with a total of 1,761 daily newspapers in circulation, and of these, 1,455 were the sole competitive newspaper in the locale they were serving.[1] Radio stations, on the other hand, are typically in competition with one another, not only for listeners, but for advertisers. Most Americans, wherever they are situated, can receive numerous radio signals, and usually this means they can hear competing views. In Dr. McIntire's case, while WXUR was the sole radio station in Media, Pa., the town was located in the greater Philadelphia broadcasting area within the range of a myriad of radio signals. Given such a broadcasting climate, it is difficult to defend the FCC's right to silence WXUR on the grounds that the public is not being served by the station's failure to present controversial issues fairly. The public has a plethora of radio signals to choose from. It is safe to say that the public in the Philadelphia area had a great variety of "respectable" views to listen to, but only from WXUR could it hear challenges to those views.

What the closing down of WXUR means is the loss to the public of a unique and controversial point of view. In an area with access to many and varied radio signals, the silencing of WXUR represented a reduction in public access to controversial programing. However responsible or rational the quality of the programing may have been, it unquestionably stimulated debate and offered a viewpoint otherwise unheard on the air.

It has now been silenced. The FCC cited not its failure to present controversial programing but its failure to present both sides of controversial programing. In essence, the Commission foresees every licensee saying everything from every point of view. To do less places their license in jeopardy.

I fear that the practical result of this doctrine—at least as far as commercial radio stations are concerned—is that very few say anything about anything from any point of view. The fact that speaking out on any issue of controversy imposes a substantial but uncertain burden on the station to present opposing views makes many reluctant to stick their toes in the waters of controversy at all. The risks are great, and the return too small. Broadcasting outlets are, after all and above all, economic ventures. Anything but "safe" controversy irritates listeners and drives away advertisers.

One can turn in vain from station to station looking for controversial public affairs programing. Instead, most outlets have turned to bland diets of music and hip patter. In Washington, one is struck by the number of all-news stations, all-pop stations, oldies-but-goodies, hard rock, soft rock, and a few classical stations. Together, perhaps, they are a mix that satisfies the general listening audience. But no one could pretend that each meets the varied tastes of radio listeners any more than WXUR did. What the "fairness doctrine" should aim at is not sameness, but variety. The goal should be that every radio listener can find somewhere on the dial a station broadcasting programs that respect his interests. That goal is not met by a doctrine which pretends to have all stations satisfy all tastes, but which works out so that significant audiences are denied any outlet at all. It is very possible that the threat of the "fairness doctrine" has, at least in part, been the cause. I would hazard to say that the doctrine has served to stifle the presentation of controversy and variety more than it has served to promote them.

In any case, the WXUR case deserves further consideration both by the Congress and the courts. The automatic application of the fairness doctrine to all licensed broadcasting outlets of any type in any city or locality regardless of the availability of alternative outlets bears particularly close scrutiny. Certainly in this case its application limits, rather than enhances the access of the public to controversial information of importance. Under such circumstances, it runs afoul of the first amendment.

I should point out that the Federal Communications Commission has undertaken a comprehensive study into the question posed here: Do the fairness policies truly promote a marketplace of uninhibited, wide and robust debate?[2] The Commerce Subcommittee on Communications has also considered the issue in hearings, as has the Judiciary Subcommittee on Constitutional Rights. But despite its long history there is presently no statute which provides for the fairness doctrine. It is a creature of executive regulation and has received the sanction of the courts; the legislative branch has not had a hand in it. I, for one, think that if the fairness doctrine is to remain with us, Congress should take a hand and enact a more flexible standard less susceptible of being abused at the expense of the first amendment.

THE "FAIRNESS DOCTRINE" RECONSIDERED

What the WXUR case illustrates, above all, is that continued, uncritical application of the "fairness doctrine"—without assessing its effects or challenging its assumptions in a given set of facts—can lead to a result quite anomalous with the purposes of the first amendment.

The WXUR case demonstrates that both the FCC and the Congress must reconsider the "fairness doctrine."

I have already stated that the assumption which underlies the "fairness doctrine" is that since broadcast frequencies are limited and therefore available to relatively few, those who are given control have a public responsibility to make good use of the medium.

I do not have any quarrel with this assumption as it stands, but I do quarrel with where it has led us. It has led us, first of all, to require that every broadcast licensee present all sides of controversial issues which he chooses to air. It has also led us to look at each case in a vacuum, in terms of a particular station's isolated performance rather than in the context of the marketplace of ideas. It has, in short, blinded us to the purpose of the first amendment, while paradoxically purporting to enhance it.

It is worth noting that the fairness doctrine does not require licensees to present a specific quantity of controversial programing, although this would seem a natural corollary of the obligation imposed by scarcity of broadcasting outlets. What it requires, instead, is the presentation of opposing views on any issue which the station chooses to air. Implicit in this is the fear that broadcast licensees, operating without constraints, will exercise a powerful, and perhaps even oppressive, influence over public opinion.

In a locality which has very limited access to broadcast signals of any type, the fear might be well founded. But in today's world of modern communications, it is the rare home indeed which is not in range of many broadcast signals. To suppose that a station may become "oppressive" by virtue of its monopoly of the airwaves strikes me as a false and unfounded worry. On the one hand, no broadcasting station is going to stay in business for long without a listening public. To suppose that an "oppressor" station might be able to exist without the support of at least a large segment of the listening public ignores the economic realities of modern broadcasting. Furthermore, with the abundance of available signals in all but the most remote parts of the country, the listener is not forced to listen to what he does not want to. He has only to change the dial.

The requirement that all broadcasters must present both sides of any controversial issue in order that the public will not be misled or intellectually short-changed does not seem founded in a realistic appraisal of today's media. Even more crucial, it works a positive harm to the content of broadcast journalism by inhibiting the presentation of contro-

[1] Report of the Roper Organization, Inc., "What People Think of Television and Other Mass Media, 1959–72," May 1973, p. iii.

[2] FCC Report, Major Matters Before the Commission, December 1972, Docket No. 19260, p. 9.

versial issues of public importance. Any licensee who presents controversial material on one side of an issue, at the same time must undertake to present contrary opinion on the same issue. If he fails to make what the FCC regards as a "reasonable" effort to do so, his license is denied. I think it matters very little whether the FCC is or is not prone to invoke the doctrine. It hangs there all the same as a threat to the station's very existence. When it strikes, as it did WXUR, it tells all the media to be careful lest they also fall victim.

Basically, it chills the station's inclination to advocate. And for those stations who are eager to demonstrate their "public consciousness," either to the public or the FCC, it acts to inhibit the presentation of all but "safe" issues, which are controversial but not too controversial, which are "sexy" but inconsequential. The station can air these without fear of public uproar or FCC attention. Unpopular or emotionally explosive issues, on the other hand, run the risk that people will complain and the FCC will find out. And furthermore, they present a more difficult problem in terms of programing balance because they stimulate greater reaction. More sides demand equal time, and the station is faced with the dilemma of which voice to air. Those disappointed may share their resentment with the FCC. If they are loud enough, the station may—like WXUR—fall victim to a suddenly rejuvenated "fairness doctrine."

However infrequently the fairness doctrine may be invoked to deny a broadcasting license, when it does occur we are presented with a prima facie violation of the first amendment. Here is the government silencing the voice of a broadcaster. I agree with Chief Judge David Bazelon, dissenting in the McIntire case, who stated that—

> [Such] abridgement of individual rights may be tolerated only when in the long run it enhances the right of the public to receive access to the marketplace of diverse views. Obviously, this requires a delicate balancing: any harm to private rights must be outweighed by benefit to the public.

This is a crucial point, because the "fairness doctrine" as presently applied, requires no such balancing. It requires no examination of the particular marketplace of ideas of which a particular station's performance is a part. The FCC may look and does look at its licensee's performance in a vacuum. Under the terms of the "fairness doctrine," it looks only to see if the particular station has made a reasonable effort to present both sides of controversial issues which it airs. It does not have to determine how many other broadcast signals serve the listening area of that particular licensee, nor does it have to determine whether views contrary to the point of view of the jeopardized licensee are being presented on these airwaves. In short, the FCC can ignore the rest of the marketplace. If its licensee is presenting unique, albeit one-sided, views to its listening public, closing it down means a loss and not a gain for the marketplace.

Under Judge Bazelon's formulation, if the public's access to ideas is not in the long run enhanced, silencing an individual station has no justification and constitutes a violation of the first amendment. I could not agree more. But since the FCC need not make such a determination to invoke the fairness doctrine, there is a good chance that first amendment values may be ignored.

If the fairness doctrine is to remain with us, I think it must be restructured to remedy this gaping and critical constitutional defect, and to reduce its chilling impact on broadcast journalism. I propose no bill here, but I do propose a possible approach such legislation might take.

I would begin with the proposition that the fairness doctrine is a justifiable abridgment of the first amendment only if—

First. There is such a scarcity of broadcast signals available to a particular listening area that it is reasonable to assume that competing views on controversial issues are not being presented; or

Second. There is a showing that, regardless of the availability of broadcast signals in the listening area, competing views on controversial issues are, in fact, not being aired.

The fairness doctrine should be revised to incorporate these principles. Before invoking the fairness doctrine to deny a broadcasting license, the FCC should be required to establish a rebuttable presumption of scarcity. This might be accomplished by showing that the particular listening area of the licensee is not served by a sufficient number of other broadcasting signals to assure that competing views of controversial issues are presented. I suggest that this presumption of scarcity would arise in any locality served by less than four broadcasting signals. Once such a presumption was established, it should be sufficient to invoke the provisions of the fairness doctrine, unless the challenged licensee can demonstrate that, despite the limited number of licensees serving its listening area, competing views on controversial issues are, in fact, being aired within the area.

This formulation, it seems to me, would limit the application of the fairness doctrine to those situations where it still has a legitimate role to play. Moreover, it would eliminate much of the uncertainty now felt by both radio and television broadcasters in their presentation of controversial issues.

For all practical purposes, I think the formulation set forth above would put an end to the application of the fairness doctrine to radio. Only those few stations serving remote areas of the country not reached by other signals would be bound. How many such areas there actually are is not readily or precisely ascertainable. The available statistics do indicate, however, that there must be very, very few indeed. As of November 30, 1972, there were a total of 7,351 AM and FM radio stations in operation.[3] This compares with 2,777 radio stations operating in 1949.[4] Out of 230 specified metropolitan areas designated by the FCC, there was a total of 1,750 AM signals received in 1972.[5] This is an average of seven or more AM signals alone received in metropolitan areas. The nonmetropolitan community average was less than two stations per community, but even these communities ordinarily had access to at least one of the designated metropolitan areas.[6] It should also be noted that these figures do not include FM stations which number 2,873 nationwide. These further enhance the already abundant access of the public to radio signals.

The number of radio outlets in this country is so large, in fact, that the FCC cannot and does not attempt to monitor their performance. If the strictures of the fairness doctrine are ever invoked against a radio station, such as WXUR, it is only because the station's performance has been brought to the special attention of the FCC by those who object to it. Violations have been haphazardly identified, and sanctions have been haphazardly applied. The proposed formulation would all but eliminate the present uncertainty and arbitrariness. Most radio stations could proceed with their public affairs programing without the menace of ultimate censure hanging over their heads.

For television, the results would be less clear. While the fairness doctrine, under the proposed formulation, would still have more limited applicability to television than it has at the present, there would probably be greater applicability than in the case of radio. The reason for this is that there is more scarcity.

There are only 927 television stations in operation in the United States as opposed to 7,351 radio stations.[7] But even this relative scarcity pales in view of the growth of television broadcasting and its growing accessibility to the public. In 1949, there existed only 69 television outlets in the United States.[8] Now there are 927.

In 1972, 98 percent of American households with a television could receive three or more television signals. Twenty percent could receive 10 or more. There is no place in America which did not have access to at least one television signal, and only 0.2 percent which did not receive at least two.[9]

Granted, there are these few areas of limited accessibility. The FCC, therefore, would find it easier, under the formulation I have proposed, to establish a presumption of scarcity with television than it would with radio. I suggested the cutoff point for determining scarcity might be reception of less than four broadcasting signals in a given viewing area. According to the A. C. Nielsen Rating Service, 10 percent of American television households in 1970 fell into this category.[10]

I would also suppose that a challenged television licensee would have a more difficult problem than the radio licensee

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[3] FCC statistics quoted in Broadcasting Magazine, 1973 Yearbook.

[4] FCC, 38th Annual Report, Fiscal Year 1972, pp. 165–166.

[5] Id. at p. 199.

[6] Id.

[7] See footnote 1.

[8] See footnote 4 at p. 164.

[9] See footnote 1 at p. iv.

[10] A. C. Nielsen Rating Service, quoted in Broadcasting Magazine.

in establishing actual diversity among those stations whose signals were received in the viewing area. Eighty-seven percent of all television stations are now affiliated with a major TV network."[11] This means, in practical terms, that there is likely to be less diversity available than even pure numbers would indicate.

Still, television broadcasting would be under far less restriction than it is at present. For those stations serving areas with a high degree of programing diversity, the yoke of the "fairness doctrine" would be removed.

As Judge Bazelon suggested, it is high time for the FCC and the Congress to "take their blinders off" to the effects of the "fairness doctrine" as it is now being applied. At its best, it stifles controversy; at its worst, it silences it. In its present condition, it represents a fickle affront to the first amendment.

I have not advocated eliminating the fairness doctrine altogether, because I think it still retains a modicum of relevance. I do think we are tending toward its eventual elimination, but we have not arrived there yet. Perhaps as more stations gain access to the air and greater use is made of existing channels and the broadcast cable, we may be able to dispense with it entirely, leaving broadcasters to the same influences and pressures found elsewhere in the marketplace of ideas. For now, it is crucial that the fairness doctrine be modified in a manner less injurious to the freedom of expression.

I hope the Commerce Committee will take a close look at the WXUR case, and begin to consider how to move broadcasting out of the Government control that was justified in its infancy. It is high time broadcasting be afforded the benefits of the first amendment. More important, it is high time for the public to have the benefits of the first amendment.

DANGER OF PREOCCUPATION WITH WATERGATE

Mr. GOLDWATER. Mr. President, for many months, I have deplored the fact that many pressing national problems have gone unattended while the Nation, the media, and the Government itself were engulfed in developments and discussions regarding the Watergate scandal.

Now, it appears that the concern over this situation is beginning to be felt throughout the Nation. Many State Governors are upset over the fact that while we talk about Watergate other issues of great importance to the welfare and well-being of the American people go unattended.

Recently Gov. Jack Williams, of my own State of Arizona, addressed himself to this question. Because of their importance and timeliness, I ask unanimous consent that Governor Williams' remarks of October 23 to the National Association of Hospital Purchasing Management at Carefree, Ariz., be printed in the RECORD.

[11] FCC News Release, August 23, 1973, "TV Broadcast Financial Data," Table 7.

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

REMARKS OF GOVERNOR WILLIAMS

Thanks to the Arizona Army National Guard, I have made it on time to your meeting. I arrived in a Huey, an assault helicopter, one of thirty such machines of the 997th Aviation Company, which is in training to move troops and supplies into combat zones whenever needed. Many of these helicopters were used in Vietnam, some bore bullet holes, and after thorough overhaul are now being employed on missions of preparedness and peace.

With the draft abolished, with voluntary enlistments below projections and with cutbacks being made in our regular armed forces, the national guard of the United States has assumed a vital role in our defense posture.

Today, the Guard is part of the total first-line forces available to meet the obligations of national defense and treaty commitments. This is a new role, for heretofore the guard was a backup force, albeit a distinguished one.

Today, the guard and other reserve components represent thirty percent of our national military forces, yet it operates on only five percent of the national defense budget.

Training for possible war is just part of its duties, for guard units serve their States and communities in a hundred different peacetime ways.

Last winter, when severe storms halted ground transportation, our helicopters on three occasions carried food, medicine, hay and other supplies to the Navajo Indian Reservation in Northeastern Arizona and to the Havasupai Indians at the bottom of the Grand Canyon.

When a butane explosion took human lives and created a crisis at Kingman in Northwestern Arizona, the guard was summoned to assist local law enforcement officers.

When floods devastated areas along the San Francisco and Gila Rivers in far Eastern Arizona, driving many families from their homes and causing great property damage, the guard carried doctors on mercy missions and evacuated men, women and children.

Gentlemen, I am saying that the National Guard is an integral part of our lives—I am sure that some of you are members—and as good Americans it behooves us to support our National Guard in every way. With your backing, we can be confident that when the guard is needed it will be ready.

The helicopter carried me swiftly and surely to this lovely desert oasis, surrounded by the eternal hills, blessed by a clean, blue sky, but however far I travel, wherever I may go, I cannot escape the travail through which America, and everyone of us as Americans, is suffering this very moment.

The republic has endured many crises, and I pray we will survive this one, but we continue to pay a terrible and unnecessary price for our shortcomings and our inadequacies as a united nation. Our prestige and influence on the international scene are deteriorating. We are wasting time and our energy and our concerns on issues which, it is becoming increasingly apparent to us all, are horrendously political. This when we should be giving the best of our time and our energy and our concerns to vital problems and matters that affect the nation most. We talk about Watergate and virtually ignore, as a startling example, the cold, hard facts that Communist Russia, bent just as strongly toward world domination as it ever has been, is increasing its military strength, building the world's most powerful Navy, surpassing us in air power and missile capabilities, while our great statesmen argue for major cutbacks in our defense budget. Why not televise the military budget hearings and let America know what's going on? That's really important.

My premise is simple, and it is this: There is in America a great and powerful movement to destroy Richard Nixon as President of these United States. The reason: He represents and stands for national policies and beliefs and convictions that are unbearable to the great liberal element in this country.

There has always been a hate-Nixon campaign, deep-rooted, world-wide. We shall never forget the effort to "get" him on the Vietnam war issue and the return of our prisoners of war.

And now the ugliness of Watergate. A shameful sequence of events, yes, and inexcusable, but no sorrier than some of the things that have happened in other administrations in years gone by.

How many remember the fund that Governor Adlai Stevenson of Illinois collected from people who won State contracts? It was conveniently swept under the rug.

Some of the very Senators who are so critical of the President in the Watergate sideshow are the very men who voted against any investigation of the Bobby Baker affair.

The whole Watergate affair, and everything associated with it has deteriorated into a political dogfight.

Now, those who hate the President are talking of impeachment in the name of things good and holy. Baloney.

It must be made apparent to every American that the President has a constitutional responsibility to preserve and protect the integrity of his high office, else he would become a prisoner in the White House, of the Congress and the judiciary. Of course, he is already to some degree a prisoner, his authority to direct military operations severely curtailed, his programs for a better America denied by the vengeful majorities in both the House and the Senate.

It was very unfortunate when someone suggested to the President that Archibald Cox be named head of a Department of Justice team to investigate Watergate.

Cox brought between 40 and 45 attorneys, most of them from Yale and Harvard Law Schools, to Washington to help him with his operation. These lawyers were predominately antiadministration. They were the demonstrators of the 60's, fulminating against the war in Vietnam and taking part in campus dissent.

Cox is reported to have advised his legal army to buy homes in Washington as they would be there three or four years to quote "clean up the government".

Lately, he went far beyond the task to which he was appointed by undertaking to investigate the personal finances of the President.

There isn't an executive in this room who could or would tolerate the insubordination of Archibald Cox.

From the day of his appointment he has taken an adversary position against the President. Archibald Cox has taken sides rather than trying to fulfill the historic duty of an investigator and that is to investigate and study, and impartially seek to uncover the facts concerning a particular case or problem.

I think it is good that the President has chosen a showdown with his tormentors on the constitutional grounds of executive privilege and integrity.

The tapes are no longer the issue, as the Phoenix morning paper, the Arizona Republic pointed out today. The way is clear for both the courts and the Congress to learn what's on them.

A few moments ago the President announced that he would make the "secret" tapes available to the courts. Why they were secret and not confidential is a matter of semantics. Secret sounds more sinister, I

would presume. But again the tapes are no longer the issue. Richard Nixon is the issue himself.

Can he survive?

Meanwhile, the country—you and I and the institutions we represent—are paying an awful price, it may be later than you think.

For myself, I support the President of the United States, and the ideals and national policies for which he stands.

THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, it has now been a quarter century since the General Assembly of the United Nations adopted the text of the Genocide Convention. On December 9, 1948, the United States voted for the adoption of this significant landmark in the development of international law.

It was the United States which took the lead in helping to draft this convention and we were among the first to sign it. Today, over 70 nations have ratified this treaty; we have not.

Mr. President, millions of Americans will feel that a historic achievement has been registered if this convention at long last becomes an accepted part of the law of nations. I am convinced that the time is right and that the Senate must not delay any longer.

It seems to me that the United States should take every opportunity to champion the rules of law in the conduct of nations. It is imperative that we now give fresh vitality to our leadership in the struggle for human rights.

SKYLAB

Mr. SPARKMAN. Mr. President, as we approach the launch date for the third manned Skylab mission, we stand amazed already at the abundance of data returned to Earth from the first two manned missions completed in Skylab. We now find ourselves on the threshold of the completion of what must appropriately be termed one of the most rewarding peaceful achievements in history.

Although America's space program is properly referred to as a collective Government-science-industry venture, a major portion of the success of Skylab should be credited to NASA's George C. Marshall Space Flight Center in Huntsville, Ala.

The Marshall Center provided the Saturn V and Saturn IB launch vehicles for the Skylab missions, just as it did for Project Apollo, in which man so brilliantly explored the Moon. For the 8-month Earth orbit Skylab program, however, the Marshall Center went much further than its traditional role of providing the launch vehicles. As you know, the orbital workshop—crew quarters and laboratory for the Skylab crew members—was made from the third stage of a Saturn V launch vehicle. This workshop was provided by the Marshall Center and its contractors. In addition, the Marshall Center team provided the airlock module, the multiple docking adapter, the Apollo telescope mount, the payload shroud, and many of the experiments aboard Skylab.

In the past the Marshall Center has been identified most often as NASA's launch vehicle development center. The Skylab program reflects the Marshall Center's new image. Today, Marshall's role in this Nation's space program can no longer be described by a single predominant launch vehicle project, such as Saturn. Instead, the center has become a multiproject management and engineering establishment, with a great deal more emphasis on science.

The Marshall Center has a total strength of about 5,000 civil service personnel, with a high percentage of scientists, engineers, skilled management people, and specialized technicians.

The dedication of these people to their tasks was overwhelmingly apparent last spring at the beginning of the Skylab program, when hundreds of employees worked around the clock day after day to help salvage the crippled Skylab during the first few days after the initial launch. The thermal and power problems caused by the loss of a meteoroid shield and solar panel during launch of the Saturn V were solved, and the performance of first and second crews to occupy Skylab far exceeded expectations.

Skylab accurately represents Marshall's new image of diversification, especially in the areas of scientific research. For example, the final Skylab mission will give man for the first time an opportunity to observe a comet from above earth's atmosphere.

The Comet Kohoutek has entered our solar system, and will reach its perihelion December 29. The Marshall Center has lead center responsibility for what might be called "Operation Kohoutek." The entire operation will involve ground observations, balloons, sounding rockets, aircraft, unmanned satellites and probes, with Marshall directing the Skylab portion. The eight telescopes and other instruments of the Apollo telescope mount, developed at the Marshall Center, will give the next Skylab crew wonderful tools for observing the comet's appearance.

Much information with direct benefits for mankind will continue to pour in to scientists throughout the final portion of the Skylab program. However, the total bulk of data that will be collected from the entire Skylab program will take months and, perhaps, even years to study.

Along with other valuable Earth resources experiments, the studies of the various aspects of the growing, harvest, and winter seasons will continue on the final Skylab mission. NASA, however, is not attempting to gather earth resources information from Skylab on a current real-time operational basis. Instead, the objective of Skylab's earth resources program is to test the feasibility of using remote sensing satellites for future work in studying the Earth's natural resources, and to study the usefulness of man in such a system.

In the area of solar astronomy, Skylab is also providing scientists with new and valuable information. For instance, we are learning more about the sun's corona, the hazy atmosphere which surrounds the Sun and bathes the Earth in the Sun's heat. New knowledge is also being gained about the 11-year sunspot cycles of the Sun.

Through studies of the Sun's large, hot volumes of gases, studies that would be impossible in an Earth laboratory, scientists are learning new information concerning plasma physics. This new knowledge of plasma physics is needed for building fusion reactors on Earth, the powerplants of the future.

Looking into the future, beyond the Skylab program, the Marshall Center has a strong role in the space shuttle program. The space shuttle will ferry men and equipment between Earth and low Earth orbit. One of Marshall's major contributions to the Shuttle program will be the development of the shuttle's main engines, which will be the first reuseable rocket engines ever built.

Personnel at the Marshall Center are also developing payloads for the shuttle.

Among the shuttle payloads that Marshall will be responsible for is the spacelab, formerly called sortie lab. The spacelab will be a cooperative venture between NASA and the European Space Research Organization and will provide a shirt-sleeve environment for up to four nonastronaut scientific experiments.

The Marshall Center is also the lead project management center for the large space telescope, another space shuttle payload. The large space telescope will be able to look at galaxies 100 times fainter than those seen by the most powerful ground-based optical telescope. Within the solar system, it will be able to provide long-term monitoring of atmospheric phenomena on Venus, Mars, Jupiter, and Saturn.

Personnel now at the Marshall Center have made outstanding contributions to the exploration of space since the launch of Explorer 1, on January 31, 1958, by a Jupiter C missile. The space age is now turning the corner from an era of exploration to one of exploitation—the use of space technology for the benefit of mankind. Just as the Marshall Center helped to meet the challenge of space exploration, it will help to reap the promises of its beneficial applications.

THE ARENA STAGE

Mr. PELL. Mr. President, the Arena Stage Co., located here in our Nation's Capital, has recently concluded a successful tour in the Soviet Union.

Two distinguished American plays, "Our Town" and "Inherit the Wind," were shown to audiences in Leningrad and Moscow. American musical productions have been presented to audiences in the Soviet Union in the past, but this is the first time—and an historic first time—that they have seen such classic American drama, works which so well relate to our own American scene and to universal values and aspirations.

Reports indicate that the Arena Stage productions were most enthusiastically received, and that the company was welcomed with high esteem.

As chairman of the Senate Special Subcommittee on Arts and Humanities, and as a former officer of the Department of State, I am delighted that the Department's Office of Cultural Pres-

entations has taken the important initiative in sponsoring these plays. And I wish to commend all those responsible for the example they have set in advancing international relations and understanding.

Zelda Fichandler, the producing director of Arena Stage, is to be particularly commended for her talented leadership and for so helping to bring this international cultural event to a happy conclusion.

SAVINGS ON GASOLINE BY ELIMINATING FORCED BUSING OF SCHOOLCHILDREN

Mr. ALLEN. Mr. President, our people are face to face with the prospect of gasoline rationing. I am confident that the average citizen is willing to assume inconveniences and even hardships if necessity compels us to such drastic action. However, it will be a mistake to discount the commonsense of reasoning which governs their reactions to crises of this nature. They are going to insist that rationing of gasoline or other fuels must conform to standards of basic fairness and reasonableness.

Mr. President, fairness and reasonableness demand that gasoline supplies be conserved by the elimination of wasteful and unnecessary consumption. Each of us can identify separate prime targets of unnecessary consumption. However, no example of waste in the consumption of gasoline is more blatant than the artificial demand resulting from arbitrary, unreasonable, and irrational forced busing plans for racial balance which have been imposed by Federal court judges. This waste must stop.

Mr. President, in Alabama the annual consumption of gasoline for operating schoolbuses has increased tremendously in the last 5 years.

Mr. President, much of this increase is attributable to decrees of U.S. District Court judges based on what I am convinced is a mistaken conception of constitutional requirements. For example, some Alabama city school systems have been ordered to bus children for the sole purpose of achieving an arbitrary racial mix in the schools, even though such city school systems had never before operated buses to transport children.

To contend that the U.S. Constitution requires school systems to purchase buses, employ and train bus drivers, establish maintenance shops, and assume the cost of operating, maintenance and obsolescence of busing equipment for no other purpose than to achieve and maintain a racial ratio in public schools is a palpable absurdity. The American people will not buy it.

At a time when the American people are called upon to tighten their belts to make sacrifices in the interest of conserving energy resources, it is incomprehensible that Federal judges should persist in pursuing a course which can lead only to massive discontent, and increased hostility to the judicial oligarchy which has assumed power over the lives of the citizens to order busing of their children in accordance with revealed truth of a bankrupt social science.

Mr. President, commonsense and reasoning must prevail over the judicial oligarchy. Nothing would be more reasonable and rational than to restore the law of the Constitution which protects the right of every school child to attend the school closest to his place of residence, without regard to race, creed, color or national origin. The American people are not going to tolerate busing plans which deny children their inherent right to attend a neighborhood school. They will not tolerate judicial edicts that require children to be forcibly and needlessly transported to a school across town at the cost of millions of gallons of gasoline.

THE WATERGATE MAZE

Mr. HART. Mr. President, I think it not inaccurate to say that we are engaged in a national debate on selecting a path out of the Watergate maze.

At least four paths are available. The President can attempt to ride out the storm. The President can lift the cloud of public distrust by disclosing all his administration knows about Watergate and its many related events. The President can resign. And the Congress can go ahead with impeachment proceedings.

In the physical world, a maze offering a choice of just four paths would not be considered particularly difficult. The Watergate maze, of course, is political, which vastly complicates the choices and the debate. In a political maze, the choice is not among one correct and a host of incorrect paths, but to decide which would be the better path. Further, the wisdom of the choice depends not only on the path chosen, but how you proceed down that path.

For example, a bitter resignation might be more divisive than a fair impeachment and trial, but a highly partisan impeachment on questionable grounds would strain the system more than a graceful resignation.

Beyond those complications, of course, is the fact that in this particular maze, each of the possible paths is not open to each of the players. Only the President can resign. Only Congress can impeach.

The question for Congress, then, is not which path, but whether it should pursue the one path open to it. Also, remembering that the way we proceed is as important as the decision to proceed, Congress must be careful that proper grounds for impeachment are widely understood.

Any discussion of grounds for impeachment must start with the Constitution and be based on history.

In the Constitution, the power to impeach is limited by the language "treason, bribery, or other high crimes and misdemeanors." The nature of the first two offenses are relatively clear, but serious debates have ensued over the meaning of "high crimes and misdemeanors."

One extreme position is that an impeachable offense is whatever Congress considers it to be.

Congressman GERALD FORD took this position in 1970 in urging the impeachment of Supreme Court Justice William O. Douglas, but he was not the first.

A similar view was propounded by Senator Giles of Virginia during the impeachment of Justice Samuel Chase in 1803:

> The power of impeachment was given without limitation to the House of Representatives; and the power of trying impeachments was given equally without limitation to the Senate. . . . A trial and removal of a judge upon impeachment need not imply any criminality or corruption in him . . . (but) nothing more than a declaration of Congress to this effect: You hold dangerous opinions, and if you are suffered to carry them into effect, you will work the destruction of the nation. We want your offices, for the purpose of giving them to men who will fill them better. (J. Q. Adams, *Memoirs* (Philadelphia: 1874) 322.)

If such narrow partisan motives could form the basis for impeachment, impeachment proceedings could degenerate into partisan debates and disputes over policy. The history of English impeachments is replete with such uses of the power. Therefore, this view must be avoided. As deTocqueville observed in 1835:

> A decline of public morals in the United States will probably be marked by the abuse of power of impeachment as a means of crushing political adversaries, ejecting them from office.

A position at the other end of the spectrum holds that "high crimes and misdemeanors" refer only to the commission of indictable offenses.

This view has also received historical support. Justice Chase's defenders took this stance:

> . . . no judge can be impeached and removed from office for any act of offense for which he could not be indicted. It must be by law an indictable offense . . . (Joseph Hopkinson, XI *American State Trials*, 272)
>
> . . . The offense for which a judge is liable to impeachment must not only be a crime or misdemeanor but a high crime or misdemeanor. (Luther Martin, Samuel Butler and George Keatinge: *Report of the Trial of the Hon. Samuel Chase,* Baltimore (1805) App., p. 176.)

In the only Presidential impeachment proceeding, of Andrew Johnson in 1867, the identical defense was adopted by Justice Curtis:

> My first position is, that when the Constitution speaks of "treason, bribery and other high crimes and misdemeanors" it refers to, and includes only, high criminal offenses against the United States, made so by some law of the United States existing when the acts complained of were done, and I say that this is plainly to be inferred from each and every provision of the Constitution on the subject of impeachment. (Trial of Andrew Johnson, President of the United States, on Impeachment, Washington, 1868, pp. 88, 147.)

Although this interpretation has some logical appeal and some historical support, it is too narrow when measured against what these terms relating to impeachment meant at the time the Constitution was written.

Study reveals neither extreme is correct. On the one hand it is clear that the phrase covers more than criminal activity; on the other that the phrase is not the Kafkaesque standard Congressman

FORD implied, but a technical legal phrase with specific historical content and therefore discernible guiding standards.

The Founding Fathers intended quite clearly to place some limit on the impeachment power. During the debate over the Constitution, the standard for impeachment originally was "malpractice or neglect of duty." The Committee of Detail proposed as an alternative, "Treason, or bribery or corruption," which was further reduced by the Committee of Eleven to "treason or bribery." On the floor of the Convention, this term was considered to be too limited, and Mason proposed "maladministration" as an additional ground. Madison felt that "so vague a term—as maladministration—will be equivalent to a tenure during the pleasure of the Senate." The Convention then adopted the traditional phrase of "high crimes and misdemeanors."

Important for our understanding of the purpose of the writers of the Constitution, we should be aware that the term "high crimes and misdemeanors" had a very specialized meaning in this period. It was used only in impeachment proceedings and had been in use for four centuries in England at the time of the Constitutional Convention. It was well understood by the framers of our Constitution to mean, as has been paraphrased by a contemporary scholar, Raoul Berger, that impeachment should lie "for a category of political crimes against the state for persons whose elevated station places them above the reach of complaint from private individuals." Berger categorizes the customary charges under English law as "misapplication of funds, abuse of political power, neglect of duty, encroachment on or contempt of Parliament's prerogative, corruption or betrayal of trust."

For example, in 1388, the Earl of Suffolk was charged with procuring offices for unfit and unworthy persons, and delaying justice by stopping writs of appeal. In 1621, Attorney General Ylverton was brought to task for commencing but not prosecuting suits; Chief Justice Scroggs in 1680 was impeached for discharging a grand jury before they made their presentments.

All were brought under the phrase "high crimes and misdemeanors." None of these were indictable offenses or crimes or misdemeanors. In fact, when the term was first used, "misdemeanor" did not mean crime as developed later in the common law. The phrase was thus restricted, and clearly, to political abuses of office.

During the various debates on these phrases, and in ratification conventions in the States, the Framers defined their understanding of the grounds for impeachment of the Chief Magistrate, or President.

Alexander Hamilton wrote in Federalist Paper No. 65:

> The subjects of its jurisdiction are those offenses which proceed from the misconduct of public men, or in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself.

James Madison demonstrated the need for impeachment by giving a number of examples of what he considered impeachable offenses:

> It is indispensable that some provision should be made for defending the community against the incapacity, negligence or perfidy of the Chief Magistrate . . . He might lose his capacity after his appointment. He might pervert his administration into a scheme of peculation or oppression. He might betray his trust to foreign powers. (*Ferrand*)

> If the President be connected, in any suspicious manner with any person, and there be grounds to believe that he will shelter him, he may be impeached. (J. Elliott, Debates in the Several State Conventions on Adoption of the Constitution (2d Ed. 1835) at 498.)

Madison also pointed out that the President should be held responsible for firing good men as well as for protecting bad men:

> Perhaps the greatest danger . . . of abuse in the executive power lies in the improper continuance of bad men in office. But . . . if an unworthy man be continued in office by an unworthy President, the House of Representatives can impeach him and the Senate can remove him whether the President chooses or not. The danger then consists merely in this: The President can displace from office a man whose merits require that he should continue in it. What will be the motives which the President can put for such abuse of his power, and the restraints that operate to prevent it? In the first place, he will be impeachment by the House before the Senate for such an act of maladministration; for I contend that the wanton removal of meritorious officers would subject him to impeachment and removal from his own high trust. (4 Elliott's Debates 373)

Some Founding Fathers also concluded that a President could be impeached for gross negligence in the appointment and supervision of his staff. In the first Congress after the Constitution was drafted, Madison stated during a debate on the President's power to remove his appointees from office without Senate consent:

> . . . it may, perhaps, on some occasion, be found necessary to impeach the President himself; surely, therefore, it may happen to a subordinate officer, whose bad actions may be connived at or overlooked by the President . . .

> I think it absolutely necessary that the President should have the power of removing from office; it will make him, in a peculiar manner, responsible for their conduct, and subject him to impeachment himself, if he suffers them to perpetrate with impunity high crimes or misdemeanors against the United States, or neglects to superintend their conduct, so as to check their excesses. On the Constitutionality of the declaration I have no manner of doubt.

> (House Committee on the Judiciary, 93rd Congress, 1st Session, Impeachment: Selected Materials 10–11 (Comm. Print 1973)).

Of course, none of these bases of impeachment was to be invoked lightly. Certainly, any President will make mistakes of judgment about some of the many individuals he appoints. The question of impeachment would arise only where the misconduct of the President's staff and appointees is so pervasive and persistent that one is justified in concluding that the pattern of misconduct is either condoned by the President himself or demonstrates gross negligence in the appointment and supervision of his staff.

The Founding Fathers indicated in other ways that they felt the impeachment process was not a criminal one.

They granted the sole power of impeachment to the Congress, which naturally precluded a trial by jury. Yet the sixth amendment in the Bill of Rights guarantees the right of trial by jury "in all criminal prosecutions." They unequivocally described the impeachment as remedial, not punitive, by stating:

> Judgment in cases of Impeachment shall not extend further than to remove from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States. (U.S. Const. Article II, Section 3.)

They further separated the impeachment proceeding from the criminal law by adding that:

> The Party convicted (of impeachment) shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to law. (U.S. Const., Article I, Section 3)

This history indicates that, rather than referring to crimes as we might define them today, the Framers had in mind certain types of offenses, based on grave misconduct, whether civil or criminal in nature. Much more crucial than the categorization of "civil" or "criminal" is the gravity and nature of the suspected misdeed.

Standards have changed in the last 200 years. The issue presented at President Andrew Johnson's impeachment was whether a President who refused to obey a law which he considered unconstitutional, but which was passed by Congress over his veto could be impeached. Most constitutional scholars today believe that the remedy for such a difference of opinion would today lie with the judicial branch.

If the familiar boundaries of the criminal statutes are removed as the basis for impeachment proceedings—and the Founding Fathers intended no such boundaries—we are left with a sense of unease about the limits to be placed on such an inquiry. It is paramount that impeachment should not be used for partisan purposes or for resolution of differences in political philosophy. The Framers clearly intended that limits should be placed on offenses which could properly be considered impeachable.

Any definition of such offenses must take into account the seriousness of the offense, the intentions of the Framers, historical precedents, fundamental constitutional standards such as are contained in the Bill of Rights or embodied in the separation of powers, and deeply held ethical concepts of honesty, fairness, and justice.

In deciding whether to consider impeachment proceedings, we should measure the charges raised against the President, members of his administration and of his campaign committee against those standards.

The list of charges include obstruction of justice by failure to report felonies, by

inducing persons to commit perjury, and by concealing, altering, or destroying evidence of alleged misdeeds by members of his administration.

Also, there have been charges concerning favors purchased through campaign contributions, of illegal wiretapping and of using public money for private and personal comfort.

To some, impeachment sounds more drastic than resignation. It is drastic, but it has a worse image than it deserves.

Impeachment, under the Constitution, is a bill of particulars comparable to an indictment. It is prepared after a full investigation by the House.

The Senate then sits in judgment on the charges. Therefore, to call for impeachment is to call for an investigation, looking to determination of the President's innocence or guilt once and for all.

It should be remembered that impeachment can have a purifying effect. A President who is regarded by many as unworthy of belief might recover his position and capability to govern if impeachment led to the finding of "no cause" or "not guilty."

Because resignation offers no similar opportunity, impeachment may indeed be the less drastic of the two. And for that reason, and because of the nature of the charges raised, I believe it is proper for the House of Representatives to continue its impeachment inquiry.

In the end, impeachment may not be necessary or the best path out of the Watergate maze, but Congress should not shrink from its possible use.

To those reluctant to investigate such a step, I offer the words of George Mason who, in defending the impeachment provisions of the Constitution, asked:

> Should any man be above justice? Above all, shall that man be above it, who (as President) can commit the most extensive injustice?

The proper answers are clear.

Further, the impeachment investigation should proceed whether or not Congress establishes an independent special prosecutor.

The office and person of an independent special prosecutor are needed to convince the public that criminal investigations will be conducted fully, fairly and without interference from persons who might be affected by the investigations.

However, such an investigation deals only with criminal offenses, and as I have suggested, there are noncriminal offenses which would be proper grounds for impeachment. And beyond that, the various investigations into Watergate and related activities already have raised enough charges, criminal and noncriminal, to justify continuation of an impeachment inquiry. Such an inquiry is the only form in which the entire range of charges can be considered together and measured against accepted definitions of offenses which justify impeachment.

THE COST OF LIVING COUNCIL AND SMALL CONSTRUCTION COMPANIES

Mr. SPARKMAN. Mr. President, a subject of continuing concern to all of us is the effectiveness of this administration's wage-price restrictions. It is especially important, it seems to me, that the regulations put forth by the Cost of Living Council not only insure a reasonable chance of controlling inflationary growth but that they not jeopardize the existence of small businesses.

A particular problem has been brought to my attention involving a number of small construction companies in Alabama. Because the problem may exist in other States, I am bringing this matter to the attention of all my colleagues here in the Senate.

The Cost of Living Council has issued a number of regulations that deal with incentive compensation plans. These plans or pay practices generally provide for additional compensation to employees above and beyond their basic salaries. Their purpose, in most instances, is to provide an incentive to employees for increased production. If there is one proposition upon which we can all agree, it is that any effort that effectively increases the productivity of American workers should be encouraged whenever and wherever possible. Increased productivity is a long-range tool against inflation and is the rationale for our establishing the National Commission on Productivity. In those instances where the incentive compensation plans are not geared to productivity, but rather are used as an alternative to unearned profit-sharing, then we have, in my judgment, a legitimate interest in controlling their distribution.

The construction industry, still under tight controls, is a highly competitive industry, as we all know. The use of incentive compensation plans seems to be the rule rather than the exception. In the Southern States in general, and Alabama in particular, where I am more familiar with construction activity, incentive pay geared to employee productivity is the backbone of that industry.

The Cost of Living Council has issued regulations controlling the amount of incentive compensation that companies can pay to their employees. The regulations, as I understand them, establish what is referred to as a base year amount. Once a base year amount is established for a company, then that company can increase the amount in their incentive compensation plan only by the 5.5 percent standard that applies to every other company. The problem, as it has been described to me, is that the base year amount for older, more established companies is set as a rule at the amount paid out in one of the previous 3 years. For example, if company X which has been in business for 20 years has paid out $100,000 in each of the previous 3 years, their base year amount will be $100,000. Next year, company X can increase the amount by 5.5 percent for a total of $105,000.

A new company, by way of contrast, has no previous experience with their plan and a base year amount must be set arbitrarily. In some instances, I am told, the Cost of Living Council has limited the base year amount for these new companies to whatever amounts they were able to pay out in the form of incentive compensation during their first year of operation. Since it is extremely unlikely that any new business can show sufficient profits in their first year of operation to adequately compensate key employees, let alone provide incentive compensation, these new firms will be effectively denied the use of any incentive compensation plan for so long as the economic controls remain on their industry. This approach is bound to work a hardship on these small businesses. In a highly competitive industry, where incentive compensation plans play a major role, these small companies will face hardship if not extinction.

We all want to see an effective curb of inflation. My concern is no less than others in seeing that unearned profits do not reflect themselves in higher and higher prices. Nevertheless, it seems important to me that in an area where pay is directly related to productivity, the Cost of Living Council should do all that it can to encourage productivity increases. Their rulings should show more flexibility, especially in the case of new firms. If the older, more established companies are permitted to enjoy an advantage predicated solely on the fact that they have been in business longer, fewer small companies will be able to continue in existence to compete with them.

I am hopeful that the Council will take a fresh look at this problem and devise a more suitable way to assist new companies in the construction industry. Where productivity is related to incentive compensation, rulings should not favor larger companies over smaller ones.

THE NATIONAL ENERGY EMERGENCY ACT OF 1973

Mr. RIBICOFF. Mr. President, as a cosponsor of S. 2589, the National Energy Emergency Act of 1973, I commend the distinguished chairman of the Interior Committee, Senator JACKSON, for his continued strong leadership in this area. I understand that debate on this measure will begin tomorrow.

Problems associated with energy shortages are not entirely new to people living in New England. For years the residents of Connecticut and other parts of New England have been paying premium prices for No. 2 fuel oil to heat their homes. Independent dealers, who supply 25 percent of all the gasoline and distribute about 75 percent of all the heating oil to Connecticut residents, have for the past year had their own share of problems trying to get a fair share of fuel from the major oil companies.

For almost a year now I have strongly advocated legislation to insure the continued flow of petroleum products to New England at the lowest possible prices to consumers.

In January I cosponsored the New England States Fuel Oil Act to permit unlimited imports of No. 2 home heating oil. Later I sought and received assurance from the administration that its new oil policy committee would establish a special subcommittee to deal with

Connecticut and New England's own particular problems.

In March I joined in introducing Senate Resolution 74, calling on President Nixon to begin negotiations with the other major oil consuming nations leading to bargaining on a government-to-government basis with the oil producing States and not leaving this up to the oil companies.

Had such negotiations started then, the nations of Europe and Japan would probably not be so vulnerable to oil blackmail as they are today.

In May I cosponsored legislation providing for continued sales by major oil companies of gasoline to independent gasoline retailers at the same percentage levels as in a previous base period, and to assure equitable distribution of petroleum products to all regions of the country.

Had this been done, most of the 2,000 independent fuel dealers forced out of business would have been saved.

On June 5 the Senate passed S. 1570, the Emergency Fuel Allocation Act of 1973. This bill included an amendment which I had offered to establish an Office of Emergency Fuel Allocation. The Senate will soon be voting on the conference report of this legislation.

The Senate passed another mandatory fuel allocation bill in an effort to spur the administration into action. But until very recently all we have gotten in the way of an allocation program was an almost incomprehensible system for distributing propane.

Now the administration has finally discovered that we are in an energy crunch. The basic solution offered is that the average citizen tighten his belt. But while individual cooperation in conserving energy is important, is this all that can be done? And can this alone do the job? I think not.

For years American industry burned up more and more energy as a means of increasing productivity. We have even made our automobile engines larger to support poorly engineered antipollution devices. The average American-made automobile today only gets 13.5 miles to the gallon, almost double the gasoline required by its European or Japanese counterpart. Industrial operations in other countries operate with an energy consumption of 10 to 20 percent or less than that required to do the same job as American industry.

This year only 13 percent of the energy used in the United States will be residential, and less than 14 percent used for transportation. Business and industry will account for 45 percent of our total consumption.

While everyone will have to bear his share of the burden, nothing would be more inequitable than putting a substantial tax on gasoline. This threatens to raise havoc with every family budget. There is now much talk about placing a 40 cent Federal tax on every gallon of gasoline. This tax is regressive and would place the burden of cutting back on fuel consumption squarely on the people who can afford it least. It is definitely not an acceptable solution to the current fuel shortages.

If the fuel situation worsens, we might have to give serious thought to gasoline rationing. But this way everyone gets a fair share according to need—not according to ability to pay. I will oppose any move by the administration to push an exorbitant gasoline tax hike through the Congress. We must be extremely watchful as the so-called energy crisis develops, to prevent any measures that spell hardship for people of modest means. Basic fairness is one principle we must certainly honor at a time when so many of our values are being challenged.

The most outstanding feature of our Nation's energy consumption pattern today is our growing reliance on oil.

I have pointed out before that since World War II, the United States has become hooked on oil—with oil companies acting as pushers. Today roughly 45 percent of the energy consumed in this country comes from oil, another 32 percent comes from natural gas, which is largely a byproduct of oil production. Of the remainder, 18 percent is from coal, 4 percent from hydroelectric power, and only 0.5 percent from nuclear plants.

Now, because of our growing dependence on foreign source oil, we are competing directly for this oil with Europe and Japan. This competition has raised serious questions about the value of the American dollar, its impact on our national security, and the role of the United States as a world power. It is clear we must begin confronting these dilemmas without delay.

The bill before us today, S. 2589, sets out a program of action that is needed to meet the problems we face right now. It is specific and it has teeth. This bill's declaration of an energy emergency is backed up by a series of practical, effective proposals. They include programs calling for rationing and conservation, providing clear priorities, describing methods of decreasing energy consumption and insisting upon timely contingency plans.

The purposes of the National Energy Emergency Act are set out as follows:

Declare by act of Congress an energy emergency;

Grant to the President of the United States, and direct him to exercise, specific temporary authority to deal with shortages of crude oil, residual fuel oil, and refined petroleum products, and other fuels, or dislocations in their national distribution system;

Provide a national program to conserve scarce energy resources, through mandatory and voluntary rationing and conservation measures, implemented by Federal, State and local governments;

Protect the public health, safety, and welfare and the national security, and to assure the continuation of vital public services and maximum employment in the face of critical energy shortages;

Minimize the adverse effects of such shortages or dislocations on the economy and industrial capacity of the Nation;

Insure that measures taken to meet existing emergencies are consistent, as nearly as possible, with existing national commitments to protect and improve the environment in which we live; and

Direct the President and State and local governments to develop contingency plans which shall have the practical capability for reducing energy consumption by no less than 10 percent within 10 days and by no less than 25 percent within four weeks of any interruption of normal supply.

This legislation surely points the way to easing this country out of the current energy crunch. As the distinguished Senator from Washington has recently pointed out:

> This measure is not, of course, a substitute for proceeding as soon as possible on pending measures to establish a national energy conservation policy, to build the trans-Alaska pipeline, to undertake a massive energy research and development program, to equitably allocate available fuels to priority users, and to develop a system of national strategic reserves. S. 2589 is an emergency measure which recognizes and urges the executive agencies to take specific steps to deal with this situation.

A recent Treasury Department study outlined eight emergency conservation measures that would save 2 million barrels of oil a day. This figure represents 12 percent of present U.S. consumption. These are the measures outlined:

Reducing speed limits to 50 miles per hour for passenger cars—150,000 barrels a day would be saved;

Increasing load factors on commercial aircraft from 50 percent to 70 percent by consolidating and reducing flights—80,000 barrels a day saved;

Setting home thermostats two degrees lower than average—50,000 barrels a day saved;

Conservation measures in industry—50,000 barrels a day saved;

Limiting hot water laundering of clothes—300,000 barrels a day saved;

Mandatory car tune-ups every 6 months—200,000 barrels a day saved;

Conservation measures in commercial buildings—200,000 barrels a day saved;

Increasing car pools for job commuting—from 1.3 average to 2.3 average per car—200,000 barrels a day saved.

If by measures such as these we can keep the Nation's growth rate of energy consumption to around 3 percent instead of the current 4½ percent annual increase, we can begin to escape from the energy crunch.

In addition to this legislation, which is primarily designed to meet current shortages, we must look to the next decade. In doing so we should not feel helpless or inadequate. The United States has immense natural resources and technological skills at its disposal.

For example:

The United States has an estimated 385 billion barrels of oil that are not yet part of proven reserves or presently re-

coverable. The amount is almost equal to all the oil discovered in the country up to 1971.

The country has 1.8 trillion potential barrels of crude shale oil in oil shale deposits in the Western States.

The United States has 1,178 trillion cubic feet of ultimately discoverable natural gas in its overall energy resource base—a little less than double all the natural gas discovered until 1971.

The U.S. Geological Survey estimates the Nation's total coal resources at 3.2 trillion tons, with 150 billion tons presently recoverable, enough for almost 200 years.

The United States has 1.6 million tons of mineable uranium, 700,000 tons mineable at costs low enough to assure cumulative requirements through 1985.

The problem is that a good part of the above sources are not readily available now. The long-term solution lies in realizing the potential of these abundant resources—a challenge that is welcome to all of us who believe in this country.

Prompt action on another initiative by Senator Jackson, S. 1283, of which I am also a cosponsor, can point the way out of our dilemma. This bill calls for American self-sufficiency in energy in 10 years. By wisely funding research and development programs, we can begin to take advantage of the abundance of our resources. S. 1283 proposes the creation of five quasi-public development corporations to demonstrate energy technologies for shale oil, coal gasification, advanced power cycle development and coal liquefaction. These are the keys to solving our Nation's energy problems.

It should be emphasized. however, that before we start creating new Federal and State bureaucracies, and demanding new sacrifices from the American people, we have to know where we are going. We need a comprehensive energy policy. Then we can decide how much we are willing to spend to get there and how to proceed.

We have yet to come to grips with the built-in conflict between greater self-sufficiency in energy and preservation of the environment. The burning of higher surphur content coal, the development of off-shore soil, the building of deep water ports all raise serious environmental problems.

The realistic solution is to develop technology that can preserve and protect our environment while permitting steady progress toward energy self-sufficiency.

Such a program will truly be a monumental undertaking. It will be difficult from a technical standpoint and complicated in terms of the mix of private and public effort. It is a formidable task—even more imposing perhaps than the Manhattan or Apollo projects. But we must strive to succeed.

I am convinced that with realistic conservation measures, expanded use of coal, orderly development of nuclear power, and creation of a strategic oil reserve, our Nation can achieve both minimal dependence on overseas supplies, acceptable rises in energy costs, and greater efficiency in production.

How we organize ourselves to maximize our still plentiful natural resources against a backdrop of growing scarcity of oil and gas resources will be one of the most crucial problems our Nation will face in the next decade.

What we do in the next few weeks and months might well determine this Nation's rate of economic growth, the physical well-being of all of its citizens, and our future foreign policy direction.

If we are to avoid the nightmare of a permanent crisis, it will be up to the administration and the Congress to make the right decisions now—and it will be up to industry, labor, and the American people to plan and work together for the benefit of all the people of our country.

SURVEY OF CONSTRUCTION NEEDS OF PUBLIC SCHOOLS EDUCATING RESERVATION INDIAN CHILDREN

Mr. FANNIN. Mr. President, the Bureau of Indian Affairs commissioned the National Indian Training and Research Center of Tempe, Ariz., to survey the construction needs of those public schools serving reservation Indian children. This request for a survey came originally from the House Interior Appropriations Subcommittee after it had been besieged by numerous schools for line item appropriations to meet their construction projects. These requests occurred because appropriations for Public Law 815 had been inadequate to meet the needs of those schools which were eligible for support under Public Law 815. The House Committee, however, realized that meeting construction needs through special budget appropriations was a poor approach and thus asked the BIA to survey current needs and assess whether Public Law 815 was the proper vehicle for meeting the needs of reservation Indian children.

The report by the National Indian Training and Research Center has been completed and I have just received a copy. For the information of my colleagues I ask unanimous consent that the report be printed in the RECORD.

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

REPORT—PUBLIC SCHOOL SURVEY OF CONSTRUCTION AID NEEDS RELATED TO THE EDUCATION OF RESERVATION INDIAN CHILDREN

SYNOPSIS OF SURVEY REPORT

1. This survey results from the interest of a House Appropriation Sub-Committee in the acute need for adequate school facilities for reservation Indian children enrolled in public school districts.

2. The record shows a severe backlog of urgently needed construction aid requests under P.L. 81–815, exists.

3. Based on the cooperative and enthusiastic support given NITRC by public school, state and BIA personnel, it is believed that the study covers all eligible districts in need of construction aid. One hundred sixty-two (162) districts in 21 states responded to the survey questionnaires.

4. Enrollment of Indian children in the 162 districts increased by 16,811 students within the last 5 years. The school superintendents estimate that there will be an additional 19,428 Indian students to educate in these same districts within the next 5 years.

5. The immunity of Indian reservation lands from taxation is truly an important factor in the ability of school districts to finance needed facilities.

6. Based on the widely accepted ability measure, the amount of taxable evaluation behind each child, Indian related school districts are much "poorer" in comparison with similar type districts in the state where the district is located.

7. Unused bonding capacity is a vital factor in the ability of most school districts to share in the cost of constructing facilities related to the education of reservation based Indian children. The amount of unused bonding capacity that can be considered *realistically* as an available local resource in computing the construction aid needs of otherwise eligible districts, *is probably the most controversial item in the entire study.*

8. The public school districts in the State of Nevada differ in many ways from the districts in other states and should be considered on an attendance unit basis in comparison with other districts in other states.

9. The justifications for needed facilities are based on three (3) principal factors; (1) rapid increases in the enrollment of Indian children; (2) replacement of temporary, unsafe and inadequate structures; and (3) housing for new and innovative programs for Indian students.

Forty (40) of the 119 high school districts specifically identified housing for new or expanded vocational shops as a major district need. Sixteen (16) districts reported they could enroll a total of *1,637* Federal boarding school students if their construction aid requests were funded.

NITRC personnel visited all major Indian impact districts (those enrolling 50% or more Indian children). Needs and justifications were verified.

Typical of the narrative justifications submitted, is the summary of one quoted the Bark-Harris District, Harris, Michigan. This minor impact district (approximately 10% Indian students) is already bonded to the legal limit allowed by the State.

"At present we have one small gym for physical education classes for the entire school district K–12 (769 students). The gym is occupied every hour of the school day. We are unable to provide the required physical and health classes because of the limited space.

We need additional classroom space to expand our curriculum courses on Indian Culture, Handicraft, Indian Language and other courses of interest to all students.

We need office space for our counselors. (Indian and School office space for our consultants in remedial reading and special education, space for our community director, and conference rooms).

By having the additional facilities we would be able to provide for courses and other activities that Indians would become interested, also would participate in community functions".

10. The rationale for a "liberal" interpretation of what constitute minimum facilities to meet needs is reflected well in the Twentieth Annual Report of the Commissioner of Education pertaining to the Administration of Public Laws 81–874 and 81–815.

11. The survey shows that the urgency for construction aid is *now.*

12. In answer to the question, "If, P.L. 815, as presently operated, was adequately funded, do you believe your needed funds could be secured under this Federal aid program?" The responses were:

67—*Yes,* representing $141,266,215 or 72% of computed need total.

95—*No,* representing $45,453,340 or 28% of computed need total.

No responses resulted from: (1) some districts apparently not aware of recent "liberalization" of what constitutes "minimum school facilities" under P.L. 815 (2) some districts are so low on P.L. 815 priority scales that requests are futile; (3) some districts fail to meet percentage requirements, and (4) some districts are confused with the lack of uniformity between the U.S. Office of Education and the BIA in counting Indian children for program eligibility purposes.

A majority of public school superintendents favor a BIA authority to provide construction aid.

13. Summaries of the grand total of needs is shown in the following table:

Total cost estimate of the 162 reporting districts for all needed facilities is	$237,962,723
Total cost using all available local resources (principally unused bonding capacity)	163,949,044
Total cost using one-half of the unused bonding capacity as a resource	190,764,745

14. Seventy-five (75%) percent of the cost estimates submitted by the districts are considered to be valid.

15. Tribally operated schools under BIA contracts were not considered as a part of the public school survey except for one Indian high school which expects to become a public high school within five (5) years.

17. Our priority measurement was adapted from the method used by P.O. 815 and the district priorities range from 200 (the highest index) to 1 the lowest.

18. The recommendations include a suggested policy guide for the BIA; namely.

1. That, the Bureau of Indian Affairs, in its contact relationships with the higher echelons of the Administration and the Committees of Congress, recommend that the present program under P.L. 815, as amended, be continued as the most logical way to meet the acute construction aid needs of Indian and other Federally impacted public school districts with the important modification that the allocation of funds to Section 14 be increased to 50% of all available funds.

2. That, the Bureau of Indian Affairs seek legislative authority to construct elementary school facilities for the public schools with large Native impacts in the State of Alaska without impairment of the right of such schools to seek funds under P.L. 815, as amended; and

3. That, the Bureau of Indian Affairs seek broad legislative authority to provide grants to Indian impacted public schools for the construction of needed facilities in the event that P.L. 815 is not funded to a sufficient level to meet the acute backlog of needs identified in this study.

It is recommended that the amount of any grant to any individual district should be determined only after a sound engineering survey of needs and costs, and after consideration of the extent that local potentially available resources can be considered realistically in determining the local share of a total project.

INTRODUCTION

Federal interest and participation in the many facets of Indian affairs is apparent in the laws and programs affecting various agencies of the Federal Government. This survey and study results from the manifested interest of a House Appropriation Sub-Committee in the public school construction aid needs related to the education of reservation based Indian children. The Bureau of Indian Affairs was authorized to contract for the survey. The National Indian Training and Research Center (NITRC, a private Indian corporation) was awarded the contract on January 2, 1973.

Construction of needed facilities has not kept pace with the growing school enrollments in federally affected areas. A brief review of Federal construction aid to public schools reveals the pattern. Based on the 1970 U.S.O.E. Twentieth Annual Report of the Administrator of Public Laws 874 and 815, a total of $1,174,279,642 has been reserved or provided public school districts in Federally impacted areas. Of this total $61,741,107 has been reserved or provided under Section 14 which principally serves districts educating Indian children.

As late as 1970, reports of the U.S.O.E. showed 53 project applications on file under Section 14 of P.L. 815 with an estimated entitlement of $38,469,719 and only $1,504,865 allocated to meet this need. Many other districts report that they have not filed P.L. 815 applications because of the apparent futility. The construction aid needs have been compounded since 1970.

Intermittently, the Congress has provided construction aid funds to public school districts through the BIA construction budget (without formal Congressional authorization). This reached a climax (money wise) in the F.Y. budgets of 1972 and 1973 when $4,311,500 was designated for five (5) projects in the three states of Montana, North Dakota and South Dakota.

Referring apparently to this process, an appropriation subcommittee reports:

"Occasionally, the committee has approved funding for a few of these schools where the situation appeared to be critical. However, the problem has intensified each year and has now reached the point where the committees can no longer provide funds for construction of these schools in a hit-and-miss manner without increasing the appropriation far beyond all totals envisioned by those responsible for budgeting proposals."

OBJECTIVES OF THE STUDY

(1) To survey the construction aid needs in the school districts of the 23 states that participate in the Johnson-O'Malley Act program and to analyze and interpret the data with help of the computer. It is a further objective to evaluate additional breakdowns of closely related and concomitant information pertaining to enrollment growth, Indian impacts, resources ability factors and a priority basis to follow.

(2) To develop general policy and guidelines to be used by the Bureau of Indian Affairs in connection with the funding of public school construction in areas of high Indian enrollment. The guides are to establish a feasible methodology for meeting backlogs (on a priority basis) which along with the regularized program will provide a total federal policy to improve Federal interaction with Indian impacted public school districts.

DESIGN FOR THE SURVEY

A study of the Directory of Public Schools served by JOM funds reveals another basic category to better identify Indian impacted districts. Some 40 districts have over 33% Indian impact, many approaching 50%. Many of these are known to be "poor" districts. Hence, it was proposed to identify the districts in the following manner:

Major Impact—with 50% or more Indian enrollment.

Heavy Impact—with 33% to 50% impact.

Minor Impact—under 33% impact.

Unusual Impacts———.

Unusual district situations were to be identified in a special category. These are county-wide districts with major Indian impacts in certain attendance centers and districts that educate out-of-district Indian children. These and any others are to be analyzed as separate unusual situations.

THE WORKING PLAN

The working plan was to develop carefully devised survey questionnaires.* They were developed for easy completion by local school superintendents and for coordination with essential information required in P.L. 815 applications. They were designed also for equating priority schedules. The data collected was to be computerized for the development of various tallies reflecting Indian impact (based on enrollment data and growth rates), effort and ability to finance needed construction needs with full justifications. The questionnaires were designed to also solicit policy recommendations of both state and school district personnel. A separate report was requested from states and district personnel concerning eligible districts that do *not* request construction aid and *why*.

The plan called for the closest possible cooperation with State departments of education and BIA area personnel in arranging initial contacts. All levels of Indian education were to be utilized. Follow-through and follow-ups were to be made to all major impact districts by NITRC personnel.

In support of the methodology the Government through the U.S. Office of Education has granted (through 1970) $1,174,279,642 under P.L. 815, as amended, through essentially the same method herein proposed to determine school construction needs.

SURVEY CONTACTS

Some 458 school districts were contacted in 23 States. These districts were identified by the FY 1973 bulletin *Directory of Public Schools served by Johnson-O'Malley funds.* All states with Indian education personnel in the State Departments of Education were contacted and the survey forms were provided to the districts through their own State Department of Education. Districts in states without liaison personnel at the state level were initially contacted through BIA personnel. Follow-up contacts were made by letters and telephone and on-site visits (to major impact districts) by NITRC personnel.

RESPONDING DISTRICTS

One hundred sixty-two (162) public school districts in 21 states responded to the questionnaires. The districts in Florida and Mississippi did not respond (probably because of the relatively few Indian children in their schools). The two JOM participating districts in Colorado responded, but reported *no* construction aid needs. *Thus 162 in 20 states responded and reported construction aid needs.*

Eighty-six (86) districts in 17 states reported no needs.

Some districts operate coterminous but legally separate elementary and high school districts. Most of these reported as one district instead of two; hence they are reflected in the survey data as only one district.

Six (6) school districts (2 in Minnesota and 4 in New Mexico) responded to the questionnaires too late to be included in computer breakdowns of related data. However, essential information pertaining to these districts is shown only in the latter part of the report. This increases the total number of districts (showing need) from *162 to 168.*

From conversations with state education personnel it can be assumed that the dis-

* See Appendix for a copy of the questionnaire.

tricts which failed to report have little or no construction aid needs related to the education of reservation Indian children.

TYPE OF DISTRICTS RESPONDING

Most districts reporting needs (or a total of 114) have kindergarten through high school programs. Forty-three (43) districts teach only the elementary grades and five (5) districts have only high school programs. All elementary districts also have kindergarten programs with the exception of six (6) districts. One of these (Whiteriver, Arizona) had to abandon the kindergarten program because of the lack of facilities to house the youngsters. The table that follows shows grades taught in the three basic district types: (1) elementary, (2) bigh school, and (3) joint elementary and high school.

Type of grades taught	Number
Kindergarten, elementary, and high school	114
Kindergarten, elementary	43
Elementary	6
High school	5
Total	162

INDIAN IMPACT

State	Major	Heavy	Minor	Unusual	Total	State	Major	Heavy	Minor	Unusual	Total
Alaska	8	1	2	0	11	New Mexico	5	0	0	0	5
Arizona	12	0	4	0	16	North Dakota	2	0	2	0	4
California	0	1	5	0	6	Oklahoma	13	11	11	0	35
Idaho	0	0	1	0	1	Oregon	0	0	2	0	2
Iowa	0	0	1	0	1	South Dakota	3	2	5	1	11
Kansas	0	1	1	0	2	Utah	0	1	0	0	1
Michigan	0	0	4	0	4	Washington	5	0	14	2	21
Minnesota	2	0	1	0	3	Wisconsin	0	0	4	0	4
Montana	13	1	5	1	20	Wyoming	3	0	1	0	4
Nebraska	2	0	1	0	3						
Nevada	0	0	0	8	8	Total	68	18	64	12	162

Note: The table reflects the number and category of Indian Impact by States in the 162 reporting districts.

GROWTH IN SCHOOL ENROLLMENT

The enrollment in the public schools (162 districts) educating reservation based Indian children has increased the past 5 years, a total of 23,502 students. Based on the number of children, Arizona and New Mexico show phenomenal increases in Indian students. The table below reflects both the number and the percentage of increase in the total school enrollment along with the Indian increase in the same districts. The table is ranked from the highest percentage of total school enrollment to the lowest by states.

PAST 5-YEAR GROWTH RATES

State	Total district growth (number)	5-year growth (percent)	Total Indian growth (number)	5-year growth (percent)	State	Total district growth (number)	5-year growth (percent)	Total Indian growth (number)	5-year growth (percent)
Arizona	10,562	56	4,330	47	Nebraska	49	6	0	0
New Mexico	4,358	24	6,807	86	Oklahoma	758	6	1,667	57
Alaska	848	19	452	22	Washington	2,342	6	442	15
South Dakota	1,443	17	930	30	Kansas	32	3	110	94
Utah	396	17	637	101	Montana	295	2	0	0
California	681	16	130	22	Oregon	171	2	12	2
North Dakota	268	15	394	53	Idaho	0	0	30	10
Minnesota	426	14	165	17	Nevada	0	0	398	36
Wisconsin	436	14	114	46	Wyoming	0	0	0	0
Iowa	217	9	22	11					
Michigan	220	7	171	63	Total	23,502		16,811	

The school superintendents estimate there will be an *additional 19,428 Indian students* to educate in these same districts *within the next five (5) years.*

INDIAN LANDS

The land area of districts reporting vary from a few hundred acres to several thousand square miles. Indian reservation lands encompass only a portion of some districts. In others, the district is located entirely within the reservation boundaries. In the table below, districts are grouped in terms of the percent of Indian tax exempt lands that comprise their districts. The extent of other Federal lands known to exist in some districts was not included in the study.

Percent of Indian land within districts	Number of districts
0 to 10	62
11 to 50	56
51 to 89	19
90 to 100	25
Total	162

ABILITY FACTOR—TAXABLE VALUATIONS

Probably the most widely accepted measure of the ability of school districts to finance education operations is the amount of taxable valuation behind each child in the district. To be meaningful this has been computed in terms of the percent of state average taxable valuation behind each child in the particular state where the district is located. Only 24% of the Indian related districts exceed the state average per pupil taxable evaluation. This means that 76% of the reporting districts have computered per pupil taxable evaluations below their particular state average for similar type districts. There is a high relationship between "poor" districts (as measured by per pupil valuations) and their construction aid needs.

The table below shows the number of districts by groups in relation to the percent of state average per pupil valuation.

Percent of State average per pupil valuation	Number of districts
0 to 25	38
26 to 50	39
51 to 75	26
76 to 100	19
Over 100 (that is, exceeds State average)	40
Total	162

AVAILABLE LOCAL RESOURCES

All but eight of the 162 districts in need of construction aid assistance reported some available local resources. Some districts have cash accrual accounts for capital outlay purposes, principally buildings and equipment. Most districts have unused bonding capacities in sufficient amounts as to be practically considered as an available local resource. The extent to which the unused bonding capacity should be considered as a local resource in computing the construction aid needs of otherwise eligible districts is probably the most controversial item in the entire study.

Since unused bonding capacity is a potentially available local resource we have computed the construction aid needs in two ways: (1) by considering all the unused bonding capacity as an available local resource and (2) by considering only one-half of the unused bonding capacity as an available local resource.

This study shows that minor Indian impact districts would be particularly adversely affected if the total unused bonded capacity is considered as an available local resource in computing the amount of Federal participation for otherwise eligible districts. Those districts that already have bonded indebtedness that equals one-half or more of their total bonding capacity allowed by state law, report their inability to pass another bonding program.

The table that follows shows the ratio of unused bonding capacity to the total estimated cost of needed facilities by categories of districts. The ratio is expressed in the percent that total unused bonding capacity bears to total need cost. The table presents the number of districts in each percentage category.

RATIO OF UNUSED BONDING CAPACITY TO ESTIMATED COST OF CONSTRUCTION NEEDS

State	Less than 5 percent	6–25 percent	26–50 percent	51–75 percent	76–100 percent	Over 100 percent	Total
Alaska	2	4	1	1	2	1	11
Arizona	9	5	0	2	0	0	16
California	0	0	0	0	1	5	6
Idaho	0	0	0	1	0	0	1
Iowa	0	0	0	0	1	0	1
Kansas	1	0	1	0	0	0	2
Michigan	1	0	1	0	0	2	4
Minnesota	3	0	0	0	0	0	3
Montana	5	6	4	3	0	2	20
Nebraska	1	0	1	0	0	1	3
Nevada	0	0	1	1	1	5	8
New Mexico	2	1	0	1	1	0	5
North Dakota	2	0	1	1	0	0	4
Oklahoma	5	8	3	10	2	7	35
Oregon	1	0	0	0	0	1	2
South Dakota	0	2	4	2	1	2	11
Utah	0	0	0	1	0	0	1
Washington	1	1	3	2	2	12	21
Wisconsin	0	0	0	0	0	4	4
Wyoming	0	2	0	0	1	1	4
Total	33	29	20	25	12	43	162

NEVADA, AN "UNUSUAL" STATE

In comparison with the 22 other states surveyed, Nevada presents many different factors and situations to equate. Nevada differs from other states in the following ways:

(1) Nevada has county-wide school districts. This distorts comparative percentages with other states especially in counties with nearly all-Indian schools in the remote areas.

(2) Nevada has a $5.00 constitutional tax limitation for all purposes. Thus taxing for schools must compete with all other state and local taxing.

(3) Nevada allows 15% of taxable valuation to be bonded for school facilities. This results in the inability to compute realistically the *unused bonding capacities* for purposes of this study, due to the constitutional limitation.

(4) All county-wide school districts have other types of Federal trust lands in addition to Indian trust lands. Approximately 83% of the state is tax-exempt due to Federal lands or Federally imposed trust on Indian lands. The impacts of other Federal tax-exempt lands affect Indian impacts.

(5) Many of the schools on Indian lands were formerly BIA operated schools. The Indian patrons of these schools still feel the BIA has a responsibility in assisting them to meet their educational needs.

(6) The former "Indian" schools in the large county districts are located in isolated areas, usually great distances from the other schools in the system.

(7) Like other isolated schools attended by Indian children, there is the extra need for the facilities where good career training can be fostered.

EFFORT TO FINANCE EDUCATION

Information on local taxing efforts for all education operations was compiled from the past 5 year period. Attempts to show the relative tax effort of districts in comparison with similar type districts in the particular state was not meaningful due to yearly fluctuations and lack of uniform taxing programs within some states. It was not possible to establish any pertinent relationship between taxing for current school operations and the construction aid needs of the districts.

TYPES OF CONSTRUCTION AID NEEDS

Based on the survey reports the greatest need is for new buildings including totally new education complexes. Expansion of existing facilities, remodeling of existing school plants and other types of needs were tabulated also. The other facilities include such needs as the development of playground areas, teacherages and equipment. Some projects may include the need for a new building as well as additions to other buildings and the remodeling of still other structures. The table that follows shows the types of construction aid needs by states.

TYPES OF CONSTRUCTION AID NEEDS

State	New	Expansion	Remodeling	Other
Alaska	8	3	3	1
Arizona	11	9	3	0
California	5	3	2	0
Colorado	0	0	0	0
Florida				
Idaho	1	1	1	0
Iowa	0	1	0	0
Kansas	2	1	0	0
Michigan	3	2	0	0
Minnesota	2	1	2	0
Mississippi				
Montana	17	13	7	1
Nebraska	3	1	0	0
Nevada	6	5	3	0
New Mexico	5	4	2	0
North Dakota	2	2	0	0
Oklahoma	27	17	16	0
Oregon	2	2	0	0
South Dakota	10	4	5	2
Utah	1	1	0	0
Washington	15	14	10	2
Wisconsin	3	3	1	0
Wyoming	4	1	0	0
Total	127	88	55	6

JUSTIFICATION OF NEEDS

The principal justification of needs as reported by public school personnel, is to provide space for expanding school enrollments. Second to this is the need to replace temporary, worn-out, unsafe and inadequate structures. Superintendents were asked, along with their narrative justifications, to check all the reasons shown in the six (6) categories that best reflect their needs. The number responding in this manner are shown as follows:

1. To house expanded enrollment	97
2. To replace temporary buildings	63
3. To meet health and safety standards	87
4. To develop housing for new and innovative programs	95
5. Will enable district to enroll Indian children now in Federal boarding schools	16
6. Other reasons	27

District officials were asked *how many* Federal boarding school students the district could accommodate if their construction aid needs were adequately funded. The responses of the sixteen (16) districts are in the table below.

State and School District	*No. of Children*
Alaska, Craig City	20
St. Mary's Public Sch	50
Arizona, Chinle No. 24	250
Puerco No. 8	240
Tuba City	150
Montana, Hays & Lodge Pole No. 50	40
Lodge Grass	40
North Dakota, Dunseith No. 1	50
Oklahoma, Oaks Mission	10
Salina J–16	56
Wold Dependent No. 13	20
South Dakota, Smee Independent No. 4	20
Waubay	60
Utah, San Juan County	606
Washington, North Beach No. 64	20
Quinault No. 87	5
Total	1,637

Typical of the narrative justifications is the one quoted from the Bark River-Harris District at Harris, Michigan. This is a minor impact district and one that is already bonded to the legal limit allowed by the state.

"Approximately 10% (72 out of 769) of our students are Indians. We expect this total to exceed 95 students in a few years. All of the Indians are very poor achievers. They rank extremely low on the State Assessment Tests which are given annually to all 4th and 7th graders. Very few finish high school. The school considers attendance the major issue. If Indian students are absent 30%–50% of the time they naturally will be low achievers and will gradually 'drop out.'

"The Indians claim the problem is a lack of stimulation on part of the school. If we cannot stimulate the students, they will not come to school and perform to the best of their abilities. Probably we are both right.

"We believe we are moving in the right direction now. An Indian counselor has been employed this year. We have added three Indian women as aides to work primarily with Indian children, and an Indian man to teach Indian Culture and Language to any Indian or White child who wish to take the classes. Class size average 16–24 students per class.

"The major problem now is a place for them to 'set their feet down.' The Indian counselor uses the lunch serving area for an office. She has to leave while lunch is being prepared and served.

"The Indian aides bounce from room to room each period, wherever they can find a vacant room.

"The Indian Culture instructor does the same. They both use as many as six different areas during a six period day.

"We have a small physical education area that serves grades K–12. As many as 60–70 students use the gym and locker room area. One male teacher is responsible for all of the activities. He cannot do justice to such large groups. A female instructor will be employed for the female students. Both could have jointly running classes if the facilities were available.

"Indians, who are traditionally known as athletes, are holding back and are not even trying to participate in education or athletics. We have only one Indian boy on our

high school basketball team and three on our football team.

"With added facilities more Indian students would become involved if they received more individual attention. Our main job, as I see it, is to re-instill pride in the Indians.

"We cover a land area in excess of 190 square miles. We are near the large Escanaba School system (170 square miles with over 5,000 students).

"There is no other direction for growth to expand but into the Bark River-Harris School System."

In Summary

"At present we have one small gym for physical education classes for the entire school district K–12 (769 students). The gym is occupied every hour of the school day. Many of the 7–12 grade students do not take gym because they are unable to schedule it. We are unable to provide the required physical and health classes because of the limited space. With additional facilities we would provide classes and other activities for all our school children and adults.

"We need additional classroom space to expand our curriculum courses on Indian Culture Handicraft, Indian Language and other courses of interest to all students.

"We need office space for our counselors (Indian and School). Office space for our consultants in remedial reading and special education, space for our community director, and conference rooms.

"By having the additional facilities we would be able to provide for courses and other activities that Indians would become interested, also would participate in community functions.

"The present facility is adequate for 600 students. The district has been growing steadily. We anticipate 900 or more students in the next five years, with approximately 10% Indians.

"Our present debt for building construction is $852,000; we are bonded to the maximum. Our district valuation is $4,800,000 and we levy a total of 20.2 mills for operation and debt retirement."

The need for a "liberal" interpretation of school construction aid requests is no better reflected than in the twentieth Annual Report of the Commissioner of Education pertaining to the Administration of Public Laws 81–874 and 81–815. In this report the Commissioner reviews recent congressional committee actions that support the changes in regulations affecting the Federal construction aid program operated under P.L. 81–815.

"As a result of changing educational needs, purposes and technology, and innovations occurring in elementary and secondary education, it is becoming common practice, particularly in larger school centers, to provide separate gymnasiums and separate auditoriums. During fiscal 1967, the definition of minimum school facilities in the Federal regulations was amended to permit the construction of such separate facilities with P.L. 81–815 funds where the size of pupil enrollment and curriculum requirements justify separate facilities. Further liberalization has resulted from the amendments enacted by P.L. 89–750, requiring applicants to consider excellence of architecture and design of any building constructed with the use of Federal funds by authorizing an amount not to exceed 1 percent of the project grant for incorporation of works of art in building plans, and by requiring that all facilities constructed with the use of Federal funds be made accesible to and usable by handicapped persons.

"When P.L. 90–247 was under consideration, the congressional committees included in the reports on the bill a statement giving the legislative history of the 'minimum school facilities' concept, and recommending the establishment of a more up-to-date concept of minimum school facilities than was included when the law was enacted in 1950 and amended in 1953. The report expressed the view that while the concept has served a useful purpose in the law and should be retained to prevent unnecessary or unwise expenditure of Federal funds, it needs to be modernized to fit the current trends in educational programs, techniques, and purposes; and that, with new devices for instruction becoming more widely used minimum school facilities should include, in addition to regular classrooms, special rooms for speech therapy, remedial reading, music appreciation, language laboratories, electronic data processing, and other facilities and equipment necessary for and useful in conducting special programs or activities for educationally deprived children. The report suggested further that the criterion to be used in approving features in buildings or other specialized facilities should be the need of them in the school program operated by the applicant school district; that is within the concept of minimum facilities to use Federal funds, particularly under subsections 14(a) and 14(b) in appropriate situations for construction of consolidated school facilities when small districts are merged, or to replace small isolated, inadequate buildings with modern facilities, even though the district may have enough classroom space to house all of the children. Also, considerable leeway may be exercised in determining what constitutes minimum school facilities in specific situations in consultation with the State education agency.

"A school district may have sufficient classroom space to accommodate the children in membership in its schools, but not have the minimum school facilities needed to conduct an adequate school program. In such cases, Federal funds under the Act may be approved as indicated above for the construction of the needed minimum facilities, such as library, administrative space, kitchen and cafeteria, or other noncapacity facilities."

It is of special interest to note that 40 of the 119 high school districts reporting, specifically identified the need for new or expanded vocational shop buildings as a major district need.

CONSTRUCTION AID NEEDED NOW

The survey forms provided the option of projecting construction aid needs for one to five years as against the facilities that are needed now.

Based on the reports the overwhelming need for Federal assistance is now. Only fourteen (14) of the 162 districts reported a portion of their needs projected within five (5) years. The cost estimate of projected needs is $6,839,652.

IS THE P.L. 815 PROGRAM ADEQUATE?

Each superintendent was asked "If P.L. 815, as presently operated, was adequately funded, do you believe your needed funds could be secured under this federal aid program?"

The responses were:

67—Yes—representing $141,266,215 or 72% of computed need total.

95—No—representing $45,453,340 or 28% of computed need total.

There are many reasons for the no responses. Many superintendents are not aware of the "liberalization" of what constitutes "minimum school facilities" provided under P.L. 815 as a result of the Congressional committee report accompanying P.L. 90–247. Other superintendents advised that while they might expect some funds under P.L. 815, they felt the amount would be insufficient to meet their needs.

Probably the main reason for the no responses is the fact that P.L. 815 counts only children whose parents actually live or work on the reservation trust land. This eliminates many Indian children who live "near" the reservation trust lands for P.L. 815 construction aid purposes. The BIA counts all Indian children living on or near the reservation trust land for Johnson-O'Malley Act purposes. Hence the minor impact districts where the "on or near" problem exists, much favor a BIA authority to provide construction aid.

THE COST OF NEEDED FACILITIES

The cost of needed repairs and facilities is based on estimates submitted by the reporting districts. The basis of the cost estimates by category for the number of districts responding are:

Recent construction experience or architectural estimates	68
P.L. 815 cost data	49
Overall square feet	5
Other	40

The category "other" represents the least objective basis for the estimates. In general, they are guesses or what is referred to as "horseback estimates." Seventy-five (75%) percent of all estimates are considered to be valid.

SUMMARIES

Total cost estimates of the 162 reporting districts for all needed facilities is	$237,962,723
Total cost using all available local resources (principally unused bonding capacity) is	168,949,044
Total cost using one-half of the unused bonding capacity as a resource is	190,764,745

Other survey data by states, districts and impacts are shown in the Appendix.

LATE REPORTING DISTRICTS

The survey data of six (6) school districts (2 in Minnesota and 4 in New Mexico) were received too late to be included in the computer totals on which the tables in this report are based. Notwithstanding basic information concerning the needs in these districts is shown in a table in the Appendix. Another school district (Red Lake, Minnesota) upgraded their original construction aid need estimate by $4,087,936 too late to be included in the computed total. The addition of these districts increases the computed need total by $12,933,515.

TRIBALLY OPERATED SCHOOLS

Some tribes operate schools under a BIA contract. The needs in these schools were not considered as a part of this public school survey. However, one such school, the Wyoming Indian High School, expects to become a public high school within 5 years. Needs data on this school are shown in the Appendix.

DISTRICTS NOT NEEDING FEDERAL CONSTRUCTION AID

Eighty-six (86) districts in seventeen states (17) reported no Federal construction aid is needed. Some have received prior Federal grants but most of the districts cited local bonding efforts as the primary reason for the adequacy of their school facilities. The identification of the districts and the reasons given for *no construction aid* needed is shown in the Appendix.

PRIORITIES

The most difficult part of the study is determining an objective priority measurement. The difficulty is trying to equate the needs between the schools when the problems and reasons for the problems are so different. Some schools need facilities due to rapid increases in enrollment; and others due to old, wornout, unsafe and already condemned structures. Still others may have adequate classroom space but desperately need a cafeteria, library, vocational shops, home economics laboratories, other auxiliary space and especially teacherages in the vast isolated areas that characterize much of Indian country.

The difficulty of equating needs between schools on a priority basis is multiplied when such variables as the following are considered:

(1) The ratio of Indian children to non-Indians in the total school enrollment;

(2) The ability of school districts to finance needed facilities based on unused bonding capacity or the taxable valuation behind each child (the latter varies greatly in comparison with state averages for similar type districts); and

(3) The unusual situations mostly affecting large county-wide districts with major Indian impacts centered in one or more of the schools operated by the district.

The paramount principle in the development of priorities is the extent of assumed Federal responsibility to meet or share in providing for the needs of Indian children. It is on a similar principle that the priority indexes have been developed and used in administering construction aid assistance to fderally-affected areas under P.L. 815 as amended.

The priority index under the P.L. 815 program is based on the sum of the ratio (%) of federally affected children to the total school membership and the ratio (%) of the number of unhoused children to the adequately housed children computed to the end of the four (4) year increase period. However, the ratio (%) of the unhoused to housed children cannot exceed the ratio (%) of the federally-affected children to the total school membership. The above procedure is applied to each school district except in those instances, like the situations in Nevada, where the attendance units have been determined to be a more practical base.

For purposes of this study the P.L. 815 priority index method has been adopted by substituting Indian children for federally affected children in the application of the priority index formula.

Based on the construction aid needs of the public schools reporting, the priority index for each district, beginning at the highest, is suggested and shown in the table on the following pages. The computed need totals (also shown) have not been adjusted to reflect a more realistic computed need for the unusual Indian impact districts such as the Nevada situation.

District	State	Priority index	Computed need
Santee C–5	Nebraska	200	$877,251
Heart Butte No. 1	Montana	194	1,987,171
Frazer No. 2 and No. 2B	do	164	1,000,208
Hays and Lodge Pole	do	164	2,772,729
St. Mary's	Alaska	160	217,750
Arapaho No. 38	Wyoming	155	80,000
Indian Oasis No. 40	Arizona	149	4,809,606
Ganado No. 19	do	144	4,174,040
Kayenta No. 27	do	143	1,715,000
Chinle No. 24	do	142	11,205,494
Pelican	Alaska	140	526,205
Brockton No. 55	Montana	140	1,261,588
Tuba City Elementary No. 15	Arizona	139	13,605,548
Nett Lake No. 707	Minnesota	138	147,060
Red Lake No. 38	do	138	986,910
Incheliem No. 7	Washington	138	99,952
Taholah No. 77	do	137	790,949
Lame Deer No. 6	Montana	135	462,000
Mineral County	Nevada	135	0
Lodge Grass No. 27	Montana	134	2,262,652
Browning No. 9	do	133	14,687,681
Pryor	do	132	210,485
Whiteriver Elementary No. 20	Arizona	132	3,705,408
Sacaton No. 18	do	130	1,268,301
Babb No. 8	Montana	130	150,237
Alchesay High School No. 2	Arizona	128	2,523,924
Monument Valley High School	do	128	185,000
Dulce Indept. No. 1	New Mexico	127	200,000
Central Consolidated	do	125	506,562
Window Rock No. 8	Arizona	120	750,000
St. John No. 3	North Dakota	120	2,502,932
Ryal D3	Oklahoma	115	184,600
Shannon County Independent No. 1	South Dakota	114	105,300
Box Elder No. 36	Montana	111	34,552
Ft. Washakie No. 21	Wyoming	109	46,605
Stony Point	Oklahoma	109	13,488
Hulbert No. 17	do	109	0
Puerco No. 18	Arizona	107	605,000
Dahlonegah No. 29	Oklahoma	106	465
Magdalena No. 12	New Mexico	105	471,600
Bernalillo No. 1	do	105	773,000
Moccasin No. 10	Arizona	104	100,764
Gallup-McKinley	New Mexico	104	33,110,714
Powhattan No. 150	Kansas	102	386,135
Waubay	South Dakota	101	4,419,200
Jefferson County No. 509J	Oregon	100	231,400
Edgar High School No. 4	Montana	100	828,322
Tenkiller No. 66	Oklahoma	100	141,000
Craig City	Alaska	98	1,971,294
Hardin	Montana	98	0
Elko County	Nevada	97	0
Wolf No. 13	Oklahoma	96	38,433
Greasy School No. 72	do	95	24,428
Bell No. 33	do	95	377,385
Smee Independent No. 4	South Dakota	95	267,837
Wellpinit No. 49	Washington	94	188,852
Harlem No. 12	Montana	93	581,554
Klawock City	Alaska	93	65,000
Cape Flattery	Washington	93	0
Humboldt County	Nevada	90	0
Eight Mile No. 6	North Dakota	90	388,000
Kenwood D–30	Oklahoma	90	31,150
Justice D–54	do	90	0
Elmo No. 20	Montana	88	180,385
San Juan	Utah	86	1,200,000
Hoonah	Alaska	85	60,080
Dunseith No. 1	North Dakota	84	846,000
Todd County Independent	South Dakota	84	361,772
White River Independent No. 29	do	83	486,463
Mt. Adams No. 209	Washington	82	1,114,138
Nespelem No. 14	do	81	0
Nome	Alaska	80	2,233,073
Winnebago	Nebraska	80	171,065
Oaks Mission	Oklahoma	80	144,000
Churchill County	Nevada	80	113,500
Boone D–56	Oklahoma	80	40
Mill Creek Elementary No. 14	Wyoming	80	313,000
Rocky Mountain D–24	Oklahoma	79	12,746
Poplar No. 9	Montana	78	300,000
Graham No. 32	Oklahoma	76	0
Castle No. 19	do	76	12,655
Shady Grove	do	73	12,200
Pleasant Grove	Oklahoma	71	$35,000
Oakville	Washington	70	182,593
Smithville	Oklahoma	70	165,000
Kodiac Island Borough	Alaska	66	400,000
Nome-Beltz Regional	do	65	3,500,000
Grand View No. 34	Oklahoma	65	14,000
Kamsax I–3	do	64	237,000
Maryetta No. 22	do	64	17,654
Salina I–16	do	63	255,796
Page No. 8	Arizona	63	0
New Town No. 1	North Dakota	61	63,532
Mary Walker No. 207	Washington	61	336,000
Wrangell	Alaska	59	1,925,000
Parker No. 27	Arizona	58	1,156,436
Wickliffe D–35	Oklahoma	57	18,615
Spavinaw D–21	do	56	0
San Pasqual Valley Unified	California	54	0
Nenama City	Alaska	53	275,418
Indiahoma No. 2	Oklahoma	53	30,000
Cottonwood D–4	do	52	0
St. Ignatius	Montana	52	438,204
Fillmore D–34	Oklahoma	50	100,000
Andes Central Independent No. 103	South Dakota	50	0
Curlew No. 50	Washington	48	610,000
Anadarko I–17	Oklahoma	46	122,295
Stilwall I–25	do	44	452,000
Haines Borough	Alaska	44	709,557
Marysville No. 25	Washington	44	0
Bark River-Harris	Michigan	43	265,000
Mayetta-Hoyt No. 337	Kansas	43	860,000
Sisseton Independent	South Dakota	40	3,331,720
Baraga Township	Michigan	39	7
Gila Bend Elementary and High School	Arizona	38	258,916
West River No. 18	South Dakota	38	0
Brimley 17–140	Michigan	37	224,034
Hammon Independent	Oklahoma	37	0
Bayfield Junction No. 1	Wisconsin	36	0
Carnegie ISD 33	Oklahoma	35	391,518
Browler Junction No. 1	Wisconsin	34	0
Port Angeles	Washington	34	0
Cusick No. 59	do	34	206,867
Walthill No. 13	Nebraska	30	0
Wind River No. 6	Wyoming	30	0
Canton Public Schools	Oklahoma	29	290,806
Round Valley Unified	California	28	0
Wolf Point No. 45	Montana	28	0
Grand Coulee Dam No. 301–J	Washington	26	0
North Beach No. 64	do	26	0
Indian Camp D–23	Oklahoma	25	0
Quinault No. 97	Washington	22	0
Hood Canal No. 404	do	20	0
Charlo No. 7	Montana	20	245,000
Quillayute Valley No. 402	Washington	20	0
Lakeland Union High School	Wisconsin	20	0
Carson City	Nevada	20	1,855,548
Ronan	Montana	18	417,023
Wilmot Independent	South Dakota	18	1,720,000
Summit No. 19	do	17	61,315
Winner Independ. No. 110	do	16	21,449
Princeton Junction Unified	California	16	0
Tama Community	Iowa	14	0
Park Rapids No. 309	Minnesota	14	0
Toppenish	Washington	12	0
Bishop Elementary	California	12	0
Lyon County	Nevada	12	6,400,000
L'amse Township	Michigan	11	0
Watonga Independent	Oklahoma	11	124,585
Hot Springs No. 14J	Montana	10	262,000
Valley Center Union	California	10	141,247
Umatilla County No. 16R	Oregon	8	0
Wisconsin Dell Jr. No. 1	Wisconsin	8	0
Pocatello No. 25	Idaho	6	1,496,060
Mountain Empire Unified	California	6	0
Nye County	Nevada	5	0
Brewster No. 11	Washington	5	164,000
Sunnyside No. 12	Arizona	4	1,263,682
Bellingham	Washington	3	0
Thurston No. 3	do	2	0
Clark County	Nevada	1	0
Total			163,949,044

RECOMMENDATIONS: DISCUSSION OF ALTERNATIVES

Using data assembled, various alternatives were evaluated in the search for procedures or policies that would best set forth and present for Congressional action, the problem of the construction needs surveyed by this study. These alternatives are listed and discussed under numerical headings for the purpose of identification only with no significance to be placed upon the order of presentation. Every method analyzed will be ineffective if Federal funding is inadequate; however, at any given level of appropriation, it is believed the comments pertain.

1. Continue the existing presentation of public school construction needs to the Department of H.E.W. under the present P.L. 81–815 authorizations and procedures.

This process would provide, in one request, all the public school construction estimates to meet Federal impacts as defined in the law. Information gathered indicates the authorization, generally, would cover the needs involving Indian children recognizing the Department of H.E.W. is empowered to meet special organizational, isolation, or financial anomalies by variations from general policy guidelines when deemed appropriate. Objections to this procedure are that Indian projects, under Section 14, have been assigned a lower priority compared with other Federal impacts. The lack of funding has prevented H.E.W. from making use of their discretionary authorities to give Indian needs under Section 14, special attention.

2. Rely, as in the past, on (a) Congressional interest to provide additions to the BIA budget, of construction projects advocated by public school districts, and on, (b) the insertion, by BIA in its annual budget, as has been undertaken for Alaska, of projects to be transferred to the public schools upon completion.

This process, in light of minimum P.L. 81–815 funding and expenditure limitations, has been effective in meeting Indian needs. Objections to this process are that it fragments the Government's evaluation of construction aid to public schools; that it is based more on expediency than reasoned priority allocation to needs; that it deviates from accepted Congressional legislative and appropriative processes and is, therefore, subject to a parliamentary "point of order". The construction and immediate transfer of BIA facilities to public schools, as in Alaska, although involving important and pressing Indian education problems, might be considered of questionable legislative authority.

3. Seek legislation authorizing the inclusion, in the BIA budget, of funds to construct facilities for public schools educating Indian children, said projects to be developed either as financial grants to the public schools for construction or by the erection of such facilities by BIA construction procedures with transfer of titles to the public schools immediately upon building completion.

This process would consolidate all Federal funding for Indian educational purposes under one budget item and allow for thorough Congressional evaluation and action. It would permit the exercise of judgment in selecting the means of construction to best meet factors such as isolation, size of project, land ownership, and BIA or local construction capabilities. Objections to this process are that it splinters Federal treatment of public school impact situations; that it injects public school needs into the BIA budget; that it requires some duplication of evaluation effort with that used by HEW for all other public school construction aid projects under P.L. 81–815; that the Indian right to a free public school education could be compromised by involving BIA in both advocating Indian rights to schooling and in providing school facilities; and that for the last ten (10) years, budget allocations to Indian school construction have been only 50% of that needed if known Federal school needs are to be met in the next ten (10) years.

4. Continue present P.L. 81–815 authorizations and procedures using the data contained in this study to secure Administration or Congressional committee support to increase the present informal allocation of P.L. 81–815 funds so that Section 14 projects could receive at least a 50% share of each annual appropriation.

This process would retain the established, and it is believed, effective procedures of H.E.W. in determining priorities, meeting exceptional situations, supervising design and construction of public school projects and would, according to the evaluations of this report, more nearly comply with the National policy toward our Indian citizens. It does not require legislative action. It can be developed by H.E.W. or through Congressional Committees on Education. This would retain Federal Assistance to public schools under one appropriation authority; would avoid duplication of staff supervising the allocation of funds, approval of projects and construction of buildings; and would utilize a process that is widely known and understood by public school administrators. It would centralize all public school requests at one agency for a more rational evaluation of priorities; would permit executive decisions on budgetary allowances for public school impacts; and would permit the channelling of all constituent requests to one Committee in each branch of the Congress. Objections to this procedure are that, while Indian program priorities have received much publicity, they have not been too vigorously supported under Section 14 of P.L. 81–815. Other schools and Federal agencies, benefiting by the other sections of P.L. 81–815, relating principally to non-Indians, will have to be convinced of the National determination to implement the stated policy for Indians.

One other dimension to P.L. 81–815 route for meeting all public school construction aid needs related to Federal impacts, is the fact that H.E.W. for P.L. 81–815 purposes counts only children whose parents live or work on Federal properties (as defined in the law) while the BIA counts Indian children who live "on or near" reservations for program eligibility purposes. In application of the "on or near" principle, the BIA, in most state plans, counts all Indian children residing in the districts encompassing reservation tax-free lands for JOM Act program purposes. The desirability of uniform eligibility requirements seems apparent. Whether or not the P.L. 81–815 regulations could be changed by administrative action to achieve uniform eligibility requirements between H.E.W. and the Interior Department is not known.

5. Seek legislative authority for the BIA to construct school facilities for elementary public schools in the State of Alaska without impairing the right of such schools to seek funds under P.L. 81–815.

This process would provide for the particular problems associated with Alaska as a new state; with the developing borough organization of their public school districts; with the problems of small schools in isolated locations; and with the lack of local construction capability. It would assist the State in its willingness to assume responsibility for educating Native citizens and, as a general rule, would involve relatively small installations. Objections to this procedure are the continued involvement of BIA in public school construction; the fragmentation of presenting public school impact needs to Congress; and the duplication of staff effort.

RECOMMENDATIONS—A SUGGESTED POLICY GUIDE

In fullest consideration of all factors compiled in this study that are inherent in the development of broad national policy, it is recommended;

1. That, the Bureau of Indian Affairs, in its contact relationships with the higher echelons of the Administration and the Committees of Congress, recommend that the present program under P. L. 815, as amended, be continued as the most logical way to meet the acute construction aid needs of Indian and other Federally impacted public school districts with the important modification that the allocation of funds to Section 14 be increased to 50% of all available funds;

Discussion: This can be done by Administrative or Committee action without a change in the law.

2. That, the Bureau of Indian Affairs seek legislative authority to construct elementary school facilities for the public schools with large Native impacts in the State of Alaska without impairment of the right of such schools to seek funds under P. L. 815 as amended.

Discussion: This would regularize a policy the Bureau of Indian Affairs has been following for years; namely, of constructing needed facilities in native villages and then turning them over to the public schools for operation.

3. That, the Bureau of Indian Affairs seek broad legislative authority to provide grants to Indian impacted public schools for the construction of needed facilities in the event that P. L. 815 is not funded to a sufficient level to meet the acute backlog of needs identified in this study.

Discussion: This would provide standby authority to the BIA in recognition of the difficulties there might be in securing increased appropriations for the P. L. 815 program. BIA construction aid authority could be sought through changes in the Johnson-O'Malley Act or by separate legislative authority similar to that proposed by the Jackson Bill (S. 1017), 93rd Congress, on which hearings are being held at the time of this report. The amount of the grant to any individual district should be determined only after a sound engineering survey of needs and costs and after consideration of the extent that local potentially available resources can be considered realistically in determining the local share of a total project. The priority procedures suggested in this report should assist in establishing order of consideration of requests.

It should be recognized that all plans hinge upon increased appropriations for construction aid purposes.

The National Indian Training and Research Center has the supporting exhibits on file of the basic survey data submitted by public school district personnel.

District	Grades	Enrollment: Current	Enrollment: Percent Indian	5 yr. growth: Number	5 yr. growth: Percent	District land Percent Indian	Valuation PP percent to State average	Estimated cost of facilities	Less local resources	Computed need
Alaska:										
Craig City	KEH	161	70	72	45	[1] NA	26	$2,000,000	$28,706	$1,971,294
Haines Borough	KEH	474	24	65	16	[1] NA	[1] NA	2,233,770	1,514,213	709,557
Hoonah	KEH	284	85	0	0	[1] NA	14	250,000	189,920	60,080
Klawock City	E	64	97	0	0	[1] NA	18	90,000	25,000	65,000
Kodiack Island Borough	KEH	2,361	33	444	23	[1] NA	28	400,000	0	400,000
Nenana City	KEH	230	52	16	7	[1] NA	34	350,000	74,582	275,418
Nome	KEH	555	80	0	0	[1] NA	33	2,500,000	266,927	2,233,073
Nome-Beltz Regional	H	366	80	212	13	[1] NA	[1] NA	3,500,000	0	3,500,000
Pelican	KEH	41	61	16	64	[1] NA	50	650,000	123,795	526,205
St. Marys	KEH	113	98	101	84	[1] NA	6	250,000	32,250	217,750
Wrangell	KEH	616	35	116	23	[1] NA	[1] NA	2,750,000	825,000	1,925,000
Total		5,265	47	848	19			14,963,770		11,883,377
Arizona:										
Alchesay High School No. 2	H	326	80	97	42	100	11	2,601,152	77,228	2,523,924
Chinle No. 24	KEH	3,418	86	1,533	81	99	35	12,000,000	794,506	11,205,494
Ganado No. 19	KEH	1,698	85	453	36	99	53	4,180,427	6,387	4,174,040
Gila Bend	KEH	816	13	64	9	2	58	1,000,000	741,084	258,916
Indian Oasis No. 40	KEH	1,022	95	423	71	100	5	4,834,100	24,494	4,809,606
Kayenta No. 27	KE	1,050	90	375	56	98	43	1,750,000	35,000	1,715,000
Moccasin No. 10	KE	18	55	0	0	36	82	120,000	19,236	100,764
Monument Valley	H	506	87	278	122	98	45	600,000	415,000	185,000
Page No. 8	KEH	2,036	25	1,233	153	98	90	1,500,000	1,800,000	0
Parker No. 27	KE	1,275	29	233	21	50	78	1,302,646	146,210	1,156,436
Puerco No. 18	KE	714	70	188	38	56	106	850,000	220,000	650,000
Sacaton No. 18	KE	868	99	520	149	96	18	1,400,000	131,699	1,268,301
Sunnyside No. 12	KEH	9,833	2	3,683	60	37	46	3,150,000	1,886,318	1,263,682
Tuba City No. 15	KE	1,711	90	817	91	99	15	13,678,170	72,622	13,605,548
Whiteriver Elementary No. 20	E	1,295	91	262	25	100	7	3,782,636	77,228	3,705,408
Window Rock No. 8	KEH	2,562	86	413	19	99	21	750,000	0	750,000
Total		29,148	46	10,562	56			53,499,131		47,372,119
California:										
Bishop Elementary	E	1,561	12	111	8	1	151	300,000	1,656,417	0
Mountain Empure Unified	KEH	1,015	3	164	19	6	190	1,600,000	2,000,000	0
Princeton Junction Unified	KEH	340	9	10	3	1	296	600,000	1,800,000	0
Round Valley Unified	KEH	394	28	43	12	4	160	409,073	879,351	0
San Pasqual Valley	KEH	662	47	43	7	8	87	200,000	492,411	0
Valley Center Union	KE	739	6	310	75	6	250	1,250,000	1,108,753	141,247
Total		4,711	15	681	16			4,359,073		141,247
Idaho: Pocatello No. 25	EH	11,966	3	0	0	47	64	6,000,000	4,503,940	1,496,060
Iowa: Tama	KEH	2,573	8	217	9	1	82	300,000	3,491,168	0
Kansas:										
Mayetta-Hoyt No. 337	KEH	752	16	2	1	12	45	860,000	0	860,000
Powhatton No. 510	KEH	245	43	30	14	30	202	−750,000	363,865	386,135
Total		997	22	32	3			1,610,000		1,246,135
Michigan:										
Bark River-Harris	KEH	769	9	126	20	3	35	265,000	0	265,000
Baraga Township	KEH	788	15	138	21	11	39	110,000	730,500	0
Brimley No. 17–140	KEH	542	25	46	9	2	53	399,500	175,466	224,034
L'Anse Township	KEH	1,107	11	0	0	11	70	364,000	1,825,000	0
Total		3,206	13	220	7			1,138,500		489,034
Minnesota:										
Nett Lake No. 707	KEH	91	98	0	0	100	1	150,000	2,940	147,060
Park Rapids No. 309	KEH	2,300	7	293	15	1	81	425,000	425,000	0
Red Lake No. 38	KEH	905	99	170	23	99	1	1,000,000	13,090	986,910
Total		3,296	34	426	14			5,662,936		5,221,906
Montana:										
Babb	KE	77	91	7	10	71	[1] NA	300,000	149,763	150,237
Box Elder	KEH	275	86	65	30	33	42	100,000	56,448	34,552
Brockton	KEH	215	98	46	27	49	42	1,297,000	35,412	1,261,588
Browning	KEH	2,165	80	307	17	69	26	14,687,681	0	14,687,681
Charlo	KEH	300	10	0	0	26	65	300,000	55,000	245,000
Edgar	KEH	69	43	5	8	0	80	1,000,000	171,678	828,322
Elmo	KE	48	88	19	65	50	109	200,000	19,615	180,385
Frazer	KEH	205	79	4	2	35	[1] NA	1,120,000	119,792	1,000,208
Hardin	KEH	1,255	36	0	0	43	125	750,000	1,147,843	0
Harlem	KEH	420	57	70	20	55	108	1,000,000	418,446	581,554
Hays and Lodge Pole	KEH	230	99	0	0	96	6	2,788,825	16,096	2,772,729
Heart Butte	KE	196	96	20	11	95	(1)	2,146,400	12,829	1,987,171
Hot Springs	KEH	372	10	8	2	0	87	262,000	0	262,000
Lame Deer	KE	350	85	41	13	98	29	500,000	38,000	462,000
Lodge Grass	KEH	525	69	0	0	48	50	3,200,000	937,348	2,262,652
Poplar	KE	705	62	0	0	49	96	800,000	500,000	300,000
Pryor	KE	70	100	18	36	48	142	300,000	89,515	210,485
Ronan	KEH	1,252	10	119	11	47	84	1,000,000	582,977	417,023
St. Ignacius	KEH	645	27	106	20	46	69	592,240	154,036	438,204
Wolf Point	KEH	1,203	23	0	0	49	101	350,000	754,437	0
Total		10,577	50	295	2			32,695,146		28,237,191
Nebraska:										
Santee No. c-5	KEH	48	100	32	200	16	9	900,000	22,749	877,251
Walthill	KEH	385	15	0	0	21	71	50,000	321,705	0
Winnebago	KEH	324	71	0	0	46	28	300,000	128,935	171,065
Total		757	44	49	6			1,250,000		1,048,316

Footnotes at end of table.

District	Grades	Enrollment: Current	Enrollment: Percent Indian	5 yr. growth: Number	5 yr. growth: Percent	District land Percent Indian	Valuation PP percent to State average	Estimated cost of facilities	Less local resources	Computed need
Nevada:										
Carson City	KEH	5,215	10	1,544	42	1	62	$4,000,000	$2,144,451	$1,855,548
Churchill County	KEH	3,014	6	590	24	2	68	4,500,000	4,386,500	113,500
Clark County	KEH	75,800	1	0	0	1	103	110,000	101,486,042	0
Elko County	KEH	4,052	8	43	1	2	131	400,000	7,463,119	0
Humboldt	KEH	1,756	10	26	2	5	115	243,000	2,955,571	0
Lyon County	KEH	2,574	6	485	23	4	140	12,149,183	5,749,183	6,400,000
Mineral County	KEH	1,783	13	375	27	12	32	412,500	1,500,000	0
Nye County	E	771	4	138	15	5	211	225,000	2,877,300	0
Total		94,965	2	0	0			22,039,683		8,369,048
New Mexico:										
Bernalillo No. 1	KEH	2,835	50	250	9	55	31	1,133,000	360,000	773,000
Central Consolidated	KEH	5,109	83	1,630	46	97	171	2,080,000	1,573,438	506,562
Dulce Independent No. 1	KEH	698	81	80	12	80	197	800,000	600,000	200,000
Gallup-McKinley No. 1	KEH	13,008	63	2,368	22	83	60	33,643,091	532,377	33,110,714
Magdalena No. 12	KEH	644	56	30	5	5	65	501,600	30,000	471,600
Total		22,294	66	4,358	24			38,157,691		35,061,876
North Dakota:										
Dunseith No. 1	KEH	761	65	88	13	13	10	875,000	29,000	846,000
Eight Mile School No. 6	KEH	178	44	38	27	3	52	750,000	362,000	388,000
New Town No. 1	KEH	803	46	129	18	5	30	114,532	51,000	63,532
St. Johns No. 3	KEH	300	50	18	6	62	10	2,538,500	35,568	2,502,932
Total		2,042	55	268	15			4,278,032		3,800,464
Oklahoma:										
Anadarko I-13	KEH	2,139	31	0	0	23	47	130,000	7,705	122,295
Bell No. 33	KE	267	75	29	12	70	6	355,000	17,615	377,385
Boone No. d-56	KE	71	75	1	2	70	133	40,000	39,960	40
Canton	KEH	472	29	64	16	12	146	750,000	459,194	290,806
Carnegie ISD-33	KEH	885	34	8	1	26	71	800,000	408,482	391,510
Castle No. 19	KE	91	40	17	23	11	54	22,000	9,345	12,658
Cottonwood D-4	E	78	27	28	56	1	10	10,000	49,337	5
Dahlonegah No. 29	KE	109	86	2	2	66	21	16,000	15,535	460
Fillmore D-34	KE	76	30	0	0	30	39	111,765	11,765	100,005
Graham I-32	KEH	212	47	22	12	16	40	48,000	58,616	0
Grand View No. 34	KE	314	34	148	89	7	38	40,000	26,000	14,000
Greasy No. 32	KE	254	74	67	36	50	17	50,000	25,572	24,428
Hammon Independent No. 66	KEH	297	38	0	0	4	170	125,000	316,950	0
Hulbert No. 17	KE	218	66	0	0	5	11	8,000	16,800	0
Indiahoma No. 2	KEH	259	32	2	1	16	69	103,000	73,000	30,000
Indian Camp D-23	KE	77	32	7	10	5	466	40,000	199,905	0
Justice D-54	KE	73	85	0	0	60	87	25,000	35,264	0
Kansas I-3	KE H	645	38	28	5	20	21	250,000	13,000	237,000
Kenwood D-30	KE	89	85	21	31	90	10	37,000	5,850	31,150
Marble City D-35	KE	210	54	46	28	3	48	80,000	45,000	35,000
Maryetta No. 22	KE	217	50	94	76	25	10	50,000	32,346	17,654
Oaks Mission	H	469	51	99	27	5	7	150,000	6,000	144,000
Pleasant Grove I-5	KEH	259	38	22	9	16	4	98,000	63,000	35,000
Ryal D-3	KE	71	59	0	0	50	33	200,000	15,400	184,600
Rocky Mountain D-24	KE	114	43	3	3	13	18	23,800	11,054	12,746
Salina I-16	KEH	775	35	76	11	36	20	258,796	3,000	255,796
Shady Grove No. 26	KE	85	30	1	1	6	28	30,000	17,800	12,200
Smithville	KEH	461	32	227	97	5	41	170,000	50,000	165,000
Spavinaw D-21	E	112	31	0	0	3	90	18,000	54,995	0
Stillwell I-25	KEH	1,367	32	115	9	5	28	655,000	203,000	452,000
Stony Point	KE	76	42	21	38	15	140	42,000	28,512	13,488
Tenkiller No. 66	KE	214	50	100	88	5	33	250,000	109,000	141,000
Watonga Independent	KEH	1,116	11	15	1	1	91	144,000	19,415	124,585
Wickliffe D-35	KE	57	50	0	0	64	50	30,000	11,385	18,615
Wolf Independent No. 13	KE	70	40	0	0	5	113	93,000	54,576	38,433
Total		12,299	37	758	6			5,255,361		3,241,859
Oregon:										
Jefferson City No. 509-J	KEH	2,213	30	105	5	10	280	231,400	0	231,400
Umatilla County	KEH	3,775	4	0	0	15	[1] NA	600,000	11,800,000	0
Total		5,988	13	171	2			831,400		231,400
South Dakota:										
Andes Central Independent No. 103	KEH	603	19	4	1	6	78	700,000	913,642	0
Todd County Independent	KEH	1,947	61	330	20	70	37	1,160,000	1,298,228	361,772
Shannon City Independent No. 1	KEH	1,397	91	362	35	83	24	725,000	619,700	105,300
Sisseton Independent No. 1	KEH	1,652	32	31	2	12	58	4,500,000	1,168,280	3,331,720
Smee Independent No. 5	KEH	201	95	0	0	79	3	347,000	79,168	267,837
Summit Independent No. 19	KEH	248	15	11	5	1	102	75,000	13,685	61,315
Waubay Independent No. 184	KEH	512	27	0	0	21	71	5,075,000	655,800	4,419,200
West River No. 18	KEH	631	21	19	8	33	140	300,000	1,491,786	0
White River Independent No. 29	KEH	448	44	31	7	36	116	1,500,000	1,014,537	486,463
Wilmot Independent No. 2	KEH	458	18	0	0	11	112	2,400,000	680,000	1,720,000
Winner Independent No. 110	KEH	1,745	8	352	25	8	133	35,000	13,551	21,449
Total		9,842	40	1,443	17			17,317,000		10,775,056
Utah: San Juan	KEH	2,713	46	398	17	25	285	3,000,000	1,810,000	1,200,000
Washington:										
Bellingham	KEH	8,694	3	0	0	2	75	2,875,000	9,075,000	0
Brewster	KEH	580	7	55	10	18	109	750,000	586,000	164,000
Cape Flattery No. 401	KEH	649	36	0	0	11	135	1,525,000	2,017,967	0
Curlew	KEH	186	22	16	9	17	75	900,000	290,000	610,000
Cusick	KEH	355	17	9	3	2	74	500,000	293,133	206,867
Grand Coulee	KEH	1,515	13	690	84	0	23	500,000	1,457,000	0
Hood Canal	KE	424	18	79	23	15	257	200,000	1,300,000	0
Inchelium No. 70	KEH	188	76	0	0	100	63	350,000	251,048	99,952
Marysville	KEH	5,632	5	977	21	17	67	800,000	1,565,000	0
Mary Walker	KEH	453	14	210	86	11	54	1,450,000	1,114,000	336,000
Mount Adams No. 209	KEH	977	51	0	0	100	55	2,052,000	937,862	1,114,138
Nespelem No. 14	KE	178	83	0	0	99	37	10,000	127,957	0
North Beach	KEH	720	12	11	2	9	357	240,000	5,322,000	0
Oaksville No. 400	KEH	373	28	42	12	13	85	840,000	647,407	182,593
Port Angeles	KEH	4,870	5	0	0	1	90	3,500,000	9,328,936	0
Ruillayute Valley	KEH	1,400	10	75	6	1	91	1,000,000	2,443,809	0

District	Grades	Enrollment: Current	Enrollment: Percent Indian	5 yr growth: Number	5 yr growth: Percent	District land Percent Indian	Valuation PP percent to State average	Estimated cost of facilities	Less local resources	Computed need
Taholah No. 77	KE	159	96	6	4	72	136	$860,000	$69,051	$790,949
Thurston	KEH	6,874	1	774	13	6	50	150,000	6,300,000	0
Toppenish	KEH	2,891	12	56	2	80	44	1,175,000	1,841,044	0
Quinalt	KEH	420	7	20	5	11	116	900,000	995,000	0
Wellpinit No. 49	KEH	195	89	10	5	90	24	250,000	61,148	188,852
Total		37,734	8	2,342	6			20,827,000		3,693,351
Wisconsin:										
Bayfield Joint No. 1	KEH	506	18	117	30	8	28	100,000	101,448	0
Bowler Joint No. 1	KEH	598	22	0	0	13	44	700,000	837,910	0
Lakeland Union High School	H	748	10	174	23	9	199	500,000	9,084,000	0
Wisconsin Dells Joint No. 1	KEH	1,660	4	152	10	1	92	2,200,000	7,751,429	0
Total		3,512	10	436	14			3,500,000		0
Wyoming:										
Arapaho No. 38	KEH	240	80	2	1	100	20	100,000	20,000	80,000
Fort Washakie No. 21	KEH	244	91	0	0	100	116	325,000	278,395	46,605
Mill Creek Elementary No. 14	KE	370	80	3	1	100	41	355,000	42,000	313,000
Wind River No. 6	KEH	430	20	30	8	50	188	500,000	583,393	0
Total		1,284	61	1	0			1,280,000		439,605
Grand total		265,169	22	21,884	9			237,963,723		163,949,044

[1] Not available.

District	Estimated cost of facilities	Less ⅓ local resources	Need (computed)
Alaska:			
Craig City	$2,000,000	$14,353	$1,985,647
Haines Borough	2,233,770	757,107	1,476,663
Hoonah	250,000	94,960	155,040
Klawock City	90,000	12,500	77,500
Kodiack Island Borough	400,000		400,000
Nenana City	350,000	37,291	312,709
Nome	2,500,000	133,464	2,366,536
**Nome-Beltz Regional	3,500,000	0	3,500,000
Pelican	650,000	61,898	588,102
St. Marys	250,000	16,125	233,875
Wrangell	2,750,000	412,500	2,337,500
Total	14,963,770		13,433,572
Arizona:			
Alchesay H.S. No. 2	2,601,152	38,614	2,562,538
Chinle No. 24	12,000,000	397,253	11,602,747
Ganado No. 19	4,180,427	3,194	4,177,233
Gila Bend	1,000,000	370,542	629,458
Indian Oasis No. 40	4,834,100	12,247	4,821,853
Kayenta No. 27	1,750,000	17,500	1,732,500
Moccasin No. 10	120,000	9,618	110,382
Monument Valley	600,000	207,500	392,500
Page No. 8	1,500,000	900,000	600,000
Parker No. 27	1,302,646	73,105	1,229,541
Puerco No. 18	850,000	110,000	740,000
Sacaton No. 18	1,400,000	65,850	1,334,150
Sunnyside No. 12	3,150,000	943,159	2,206,841
Tuba City No. 15	13,678,170	36,311	13,641,859
Whiteriver Elem No. 20	3,782,636	38,614	3,744,022
Window Rock No. 8	750,000	0	750,000
Total	53,499,131		50,275,624
California:			
Bishop Elementary	300,000	828,209	0
Mountain Empure Unified	1,600,000	1,000,000	600,000
Princeton Junction Unified	600,000	900,000	0
Round Valley Unified	409,073	439,676	0
San Pasqual Valley	200,000	246,206	0
Valley Center Union	1,250,000	554,377	695,623
Total	4,359,073		1,295,623
Idaho: Pocatello No. 25 (total)	6,000,000	2,251,970	3,748,030
Iowa: Tama	300,000	745,584	0
Kansas:			
Mayetta-Hoyt No. 337	860,000	0	860,000
Powhatton No. 510	750,000	181,933	568,067
Total	1,610,000		1,428,067
Michigan:			
Bark River-Harris	265,000	0	265,000
Baraga Township	110,000	365,250	0
Brimley No. 17-140	399,500	877,330	311,767
L'Anse Township	364,000	912,500	0
Total	1,138,500		576,767
Minnesota:			
Nett Lake No. 707	150,000	1,470	148,530
Park Rapids No. 309	425,000	212,500	212,500
Red Lake No. 38	1,000,000	6,545	993,455
Total	5,662,936		1,354,485

District	Estimated cost of facilities	Less ⅓ local resources	Need (computed)
Montana:			
Babb	$300,000	$74,882	$225,118
Box Elder	100,000	32,724	67,276
Brockton	1,297,000	17,706	1,279,294
Browning	14,687,681	0	14,687,681
Charlo	300,000	27,500	272,500
Edgar	1,000,000	85,839	914,161
Elmo	200,000	9,808	190,192
Frazer	1,120,000	59,896	1,060,104
Hardin	750,000	573,992	176,078
Harlem	1,000,000	209,223	790,777
Hays and Lodge Pole	2,788,825	8,048	2,780,777
Heart Butte	2,146,400	6,415	2,139,985
Hot Springs	262,000	0	262,000
Lame Deer	500,000	19,000	481,000
Lodge Grass	3,200,000	468,674	2,731,326
Poplar	800,000	250,000	550,000
Pryor	300,000	44,758	255,242
Ronan	1,000,000	291,489	708,511
St. Ignacius	592,240	77,018	515,222
Wolf Point	350,000	377,219	0
Total	32,694,146		30,087,244
Nebraska:			
Santee No. C-5	900,000	11,375	888,625
Walthill	50,000	160,852	0
Winnebago	300,000	64,468	235,532
Total	1,250,000		1,124,157
Nevada:			
Carson City	4,000,000	1,072,226	2,927,774
Churchill County	4,500,000	2,193,250	2,306,750
Clark County	110,000	50,743,020	0
Elko County	400,000	3,731,560	0
Humboldt	243,000	1,477,786	0
Lyon County	12,149,183	2,874,592	9,274,591
Mineral County	412,500	750,000	0
Nye County	225,000	1,438,650	0
Total	22,039,683		14,509,115
New Mexico:			
Bernalillo No. 1	1,133,000	180,000	953,000
Central Consolidated	2,080,000	786,719	1,293,281
Dulce Independent No. 1	800,000	300,000	500,000
Gallup-McKinley No. 1	33,643,091	266,189	33,376,902
Magdalena No. 12	501,600	15,000	486,600
Total	38,157,691		36,609,783
North Dakota:			
Dunseith No. 1	875,000	14,500	860,500
Eight Mile School No. 6	750,000	181,000	569,000
New Town No. 1	114,532	25,500	89,032
St. Johns No. 3	2,537,500	17,784	2,520,716
Total	4,278,032		4,039,248
Oklahoma:			
Anadarko I-13	130,000	3,853	126,147
Bell No. 33	355,000	8,808	346,192
Boone No. D-56	40,000	19,980	20,020
Canton	750,000	229,597	520,403
Carnegie ISD-33	800,000	204,241	595,759
Castle No. 19	22,000	4,673	17,327
Cottonwood D-4	10,000	24,669	0

District	Estimated cost of facilities	Less ½ local resources	Need (computed)
Oklahoma—Continued			
Dahlonegah No. 29	$16,000	$7,768	$8,232
Fillmore D–34	111,765	5,883	105,882
Graham I–32	48,000	29,308	18,692
Grand View No. 34	40,000	13,000	27,000
Greasy No. 32	50,000	12,786	37,214
Harmon Independent No. 66	125,000	158,475	0
Hulbert No. 17	8,000	8,400	0
Indiahoma No. 2	103,000	36,500	66,500
Indian Camp D–23	40,000	99,953	0
Justice D–54	25,000	17,632	7,368
Kansas I–3	250,000	6,500	243,500
Kenwood D–30	37,000	2,925	34,075
Marble City D–35	80,000	22,500	57,500
Maryetta No. 22	50,000	16,173	33,827
Oaks Mission	150,000	3,000	147,000
Pleasant Grove I–5	98,000	31,500	66,500
Ryal D–3	200,000	7,700	192,300
Rocky Mountain D–24	23,800	5,527	18,273
Salina I–16	258,796	1,500	257,296
Shady Grove No. 26	30,000	8,900	21,100
Smithville	170,000	25,000	145,000
Spavinaw D–21	18,000	27,498	0
Stilwell I–25	655,000	101,500	553,500
Stony Point	42,000	14,256	27,744
Tenkiller No. 66	250,000	54,500	195,500
Watonga Independent	144,000	9,708	134,292
Wickliffe D–35	30,000	5,693	24,307
Wolf Independent No. 13	93,000	27,288	65,712
Total	5,255,361		4,114,162
Oregon:			
Jefferson City No. 509–J	231,400	0	231,400
Umatilla County	600,000	5,900,000	0
Total	831,400		231,400
South Dakota:			
Andes Central Independent No. 103	700,000	456,821	243,179
Todd County Independent	1,160,000	649,114	5,108,860
Shannon City Independent No. 1	725,000	309,850	415,150
Sisseton Independent No. 1	4,500,000	584,140	3,915,860
Smee Independent No. 5	347,000	39,584	307,416
Summit Independent No. 19	75,000	6,843	68,157
Waubay Independent No. 184	5,075,000	327,900	4,747,100
West River No. 18	300,000	745,893	0
White River Independent No. 29	1,500,000	507,269	992,731
Wilmot Independent No. 2	$2,400,000	$340,000	$2,060,000
Winner Independent No. 110	35,000	6,776	28,224
Total	17,317,000		17,886,677
Utah: San Juan (total)	3,000,000	905,000	2,095,000
Washington:			
Bellingham	2,875,000	4,537,500	0
Brewster	750,000	293,000	457,000
Cape Flattery No. 401	1,525,000	1,008,984	516,016
Curlew	900,000	145,000	755,000
Cusick	500,000	146,567	353,433
Grand Coulee	500,000	728,500	0
Hood Canal	200,000	650,000	0
Inchelium No. 70	350,000	125,524	224,476
Marysville	800,000	782,500	17,500
Mary Walker	1,450,000	557,000	893,000
Mount Adams No. 209	2,052,000	468,931	1,581,069
Nespelem No. 14	10,000	63,979	0
North Beach	240,000	2,661,000	0
Oaksville No. 400	840,000	323,704	516,296
Port Angeles	3,500,000	4,664,648	0
Quillayute Valley	1,000,000	1,221,905	0
Taholah No. 77	860,000	34,526	825,474
Thurston	150,000	3,150,000	0
Toppenish	1,175,000	920,522	254,478
Quinalt	900,000	497,500	402,500
Wellpinit No. 49	250,000	30,574	219,426
Total	20,827,000		7,015,668
Wisconsin:			
Bayfield Jt. No. 1	100,000	50,724	49,276
Bowler Jt. No. 1	700,000	418,955	281,045
Lakeland Union H.S.	500,000	4,542,000	0
Wisconsin Dells Jt. No. 1	2,200,000	3,875,715	0
Total	3,500,000		330,321
Wyoming:			
Arapaho No. 38	100,000	10,000	90,000
Fort Washakie No. 21	325,000	139,198	185,802
Mill Creek Elem. No. 14	355,000	21,000	334,000
Wind River No. 6	500,000	583,393	0
Total	1,280,000		609,802
Grand total	237,963,723		190,764,745

COMPUTED NEEDS OF STATES BY IMPACT

State	Major	Heavy	Minor	Unusual
Alaksa	$8,848,820	$1,925,000	$1,109,557	0
Arizona	44,693,085	0	2,679,034	0
California	0	0	141,247	0
Idaho	0	0	1,496,060	0
Iowa	0	0	0	0
Kansas	0	386,135	860,000	0
Michigan	0	0	489,034	0
Minnesota	5,221,906	0	0	0
Montana	26,047,642	828,322	1,362,227	0
Nebraska	1,048,316	0	0	0
Nevada	0	0	0	$8,369,048
New Mexico	$35,061,876	0	0	0
North Dakota	3,348,932	$451,532	0	0
Oklahoma	934,337	1,010,636	$1,296,886	0
Oregon	0	0	231,400	0
South Dakota	734,909	3,818,183	1,802,764	$4,419,200
Utah	0	1,200,000	0	0
Washington	2,193,891	0	1,316,867	182,593
Wisconsin	0	0	0	0
Wyoming	439,605	0	0	0
Total	128,573,319	9,619,808	12,785,076	12,970,841

WYOMING INDIAN HIGH SCHOOL,
Ethete, Wyoming, January 18, 1973.

NATIONAL INDIAN TRAINING AND RESEARCH CENTER,
Tempe, Ariz.

Attention: Francis McKinley, Executive Director

Enclosed are estimates for our building needs. We are not a public school yet, but we are involved in redistricting Fremont County, Wyoming, under the State law.

The State committee have recommended that the Reservation have a district and we hope to start operating a Public High School within the next 4–5 years.

We are operating a high school funded by the Bureau of Indian Affairs on year to year basis, until a public high school can be created.

We have some buildings now, but are not adequate for us to gain accreditation and are still working for more facilities so we can offer our Indian Students Facilities needed to fulfull their educational needs to live in the modern society.

Sincerely,

AL REDMAN, *Project Director.*

Enclosures.

Table on the Wyoming Indian high school (Ethete, Wy.) Current enrollment data: 86 (100% Indian):

Total cost estimate	$1,075,000
Less available resources	0
Total computed need	1,075,000

PERTINENT DATA CONCERNING LATE REPORTING DISTRICTS

District	Enrollment: Current	Enrollment: (percent Indian)	Estimated costs	Available resources	Computed need	Priority index
Minnesota:						
Independence No. 115	935	36	$1,272,000	$53,421	$1,218,579	70
Independence No. 576	775	5	2,300,000	1,220,000	1,080,000	10
Red Lake[1]					4,087,936	
New Mexico:						
Espanola No. 45	5,927	6	2,072,000	850,000	1,222,000	12
Grants No. 3	4,929	21	2,100,000	225,000	1,825,000	44
Los Lumas No. 1	3,450	9	1,750,000	280,000	1,500,000	20
Ruidosa	910	7	2,500,000	500,000	3,000,000	28
Total			11,994,000		12,933,515	

[1] Upgraded original need estimated.

	162 districts	Plus total needs of 7 late reporting districts
Cost—estimate	$237,963,723	$254,045,659
Computed need (less available resources)	163,949,044	276,882,559
Computed need (less ½ available resources)	190,764,745	296,401,892

Note: The survey data of the 6 late reporting districts and the 1 district upgrading its original need estimate affect the total construction aid needs as shown in the table.

DISTRICTS IN STATES REPORTING NO CONSTRUCTION AID NEEDED

State	Number of State districts reporting	Needs met by local taxpayers	Needs met by prior Public Law 815 grants
Alaska	8	8	2
Arizona	12	12	5
California	6	6	2
Colorado	2	2	2
Idaho	1	1	1
Michigan	1	1	0
Minnesota	13	13	0
Montana	3	3	0
Nebraska	1	1	0
Nevada	1	1	1
New Mexico	3	3	2
North Dakota	1	1	1
Oklahoma	8	8	5
South Dakota	5	5	1
Washington	10	10	2
Wisconsin	9	9	1
Wyoming	2	2	1
Total	86	86	26

NATIONAL INDIAN TRAINING AND RESEARCH CENTER,
Temple, Ariz., February 28, 1973.

DEAR SUPERINTENDENT OF SCHOOLS: The U.S. Congress, through the Bureau of Indian Affairs, has authorized a survey of the construction needs of public schools enrolling Indian children and which are eligible for certain Federal funding. We are pleased to advise you of our being chosen to make this survey.

Our survey design is developed primarily to present your needs and your recommendations in a comprehensive report along with other school superintendents in the 23-state area. If you have or expect to have (within 5 years), construction aid needs related to the education of Indian children, please complete the brief questionnaire schedules in the attached forms. If no construction aids are anticipated (within 5 years) in your district, we would appreciate very much your completing the last page of this questionnaire.

Please complete at your earliest convenience and return to your State Department of Education unless otherwise instructed by personnel from that office. Hopefully, we can receive your report of needs by April 1, 1973.

If the terminology used in these forms is different from that used in your state, please adapt our form to conform to your state terminology. We are thinking particularly of ADA vs. ADM or ANB, assessed valuation vs. taxable valuation in some states.

Please feel free to call us about any questions you may have concerning the survey. To better serve your interest, we solicit your timely assistance and cooperation.

Sincerely yours,

FRANCIS MCKINLEY, *Executive Director.*

Enclosures.

CONSTRUCTION AID SURVEY OF PUBLIC SCHOOLS ENROLLING INDIAN CHILDREN

Basic Data Schedule:

State:

School District: (Give legal name & number):

Mailing Address:

Telephone Number:

Grades taught. (circle) K 1 2 3 4 5 6 7 8 9 10 11 12.

Enrollment, current year (1972–73):

Total (all students).

Total (JOM Indians).

Percent Indian.

(Use total district enrollment. If unusual Indian impacts exist in certain attendance units of district explain on back of page).

Enrollment, projected for year 1977–78:

Total (all students).

Total (JOM Indians).

Percent Indian.

(Based on growth pattern or other known factors. If other factors explain on back of page).

Ability to finance needed construction:

Land area size of district (acres or sq. miles).

Indian-owned non-taxable land in district (acres or sq. miles).

Percent Indian land in district.

Total amount of assessed valuation in district.

Assessed valuation per child in ADA or ADM.

State average assessed valuation per child (ADA or ADM).

Percent above or below State average.

(For valuation data use prior year published data for similar type districts. If information not available, leave blank for State personnel to complete).

Bonding Capacity:

Amount allowed by State law (actual and 1 yr. anticipated).

Present bonded indebtedness (actual and 1 yr. anticipated).

Unused bonding capacity (actual and 1 yr. anticipated).

Does the State have a construction aid program? Yes; No.

If yes, what is expected for your district?

Effort to finance education:

Total district levy last year (1971–72) (mills or amount per $100 valuation).

Total levy current year (1972–73) (mills or amount per $100 valuation).

Name and Title of Person Completing Forms:

Name:

Title:

Date:

CONSTRUCTION AID NEEDS

Several construction units may be included in a single project. Use an additional page for each separate project.

Project: (Briefly describe each construction unit needed in Project).

Type of construction: (Check all that apply).

New facility.

Expansion of existing facility.

Remodeling.

Other (Specify):

When needed:

Now?

Within years?

Funding Requirement: $———.

Amounts available:

By cash on hand $———.

Bonds (authorized, not sold) $———.

Unused bonding capacity $———.

Other (list) $———.

Total available $———.

Justification of Construction Aid Needs (See Note below).

To house expanded enrollment.

To replace temporary buildings.

To meet health and safety standards.

To develop housing for new and innovative programs.

Will enable District to enroll ——— children now in Federal boarding schools.

Other (specify):

Note: If you already have a brochure of a plan that portrays your construction needs, we would greatly appreciate a copy.

Comments on Justification:

Note: To assist us in the development of priority tables, it is necessary to complete the following:

Total estimated membership of all children (as of end of increase period—1977–78):

(Less) Total normal capacity (of usable or available school facilities):

Total number of unhoused children:

FUNDING POSSIBILITIES AND RECOMMENDATIONS

If PL 815, as presently operated, was adequately funded, do you believe your needed funds could be secured under this Federal Aid program? Yes; No.

Comment:

If PL 815 was amended or altered, do you believe your construction aid need could be then met under PL 815?

Yes—How Amended:

No—Why not:

In addition to PL 815, some school districts, on occasion, have had their critical needs met by special requests to the Congress for inclusion of construction funds in the regular BIA budget. In other instances impact needs have been met by transfer of surplus BIA facilities to the school district under JOM Act authorities. In your opinion, do these latter methods (or a combination with PL 815) provide a better means of meeting your requirements?

Comment:

Or is there some new approach through new Federal legislation that you would recommend to meet justifiable Indian impact requirements.

Comment:

(If more space is needed, use back of page.)

TO BE COMPLETED ONLY BY THOSE SCHOOLS NOT NEEDING FEDERAL CONSTRUCTION AID

The school construction needs in our district have been met by: (Check all that apply)

Local taxpayers through bonding programs.

State construction aid.

Prior PL 815 grants.

The B.I.A. through transfer of surplus buildings; through construction grants designated by the Congress.

Other (specify):

CONSTRUCTION AID SURVEY OF PUBLIC SCHOOLS ENROLLING INDIAN CHILDREN

Supplemental basic data schedule (from State education records)

School district (name and number)

ENROLLMENT DATA (FOR PAST 5 YEARS)

School year	Total (all)	JOM Indians	Percent Indians	Growth rate (percent)
1967–68				
1968–69				
1969–70				
1970–71				
1971–72				

EFFORT TO FINANCE EDUCATION (USE STATE AVERAGE FOR SIMILAR TYPE DISTRICTS)

School year	Tota levy	State average	Above or below State average
1967–68			
1968–69			
1969–70			
1970–71			
1971–72			

Comments by State personnel (especially comments that would assist us in assigning priorities)

Person completing questionnaire:

(Name)

(Title)

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. HUGHES). Is there further morning business? If not, morning business is concluded.

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

STATE, JUSTICE, COMMERCE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS, 1974—CONFERENCE REPORT

Mr. PASTORE. Mr. President, while I am waiting for our counterpart on the Subcommittee on Appropriations for the Departments of State, Justice, Commerce, and the judiciary, I think that we can indulge in some preliminaries which I think will be agreed to by the other side without any objection.

Therefore at this time, Mr. President, I submit a report of the committee of conference on H.R. 8916, and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. HUGHES). The report will be stated by title.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 8916) making appropriations for the Departments of State, Justice, and Commerce, the Judiciary, and related agencies, for the fiscal year ending June 30, 1974, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all the conferees.

The PRESIDING OFFICER. Is there objection to the consideration of the conference report?

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

(The conference report is printed in House proceedings of the CONGRESSIONAL RECORD of November 8, 1973, at page H9720.)

Mr. PASTORE. Mr. President, I would like to point out briefly the major changes from the Senate-passed bill, but before doing so, I ask unanimous consent that a tabulation of the fiscal year 1973 appropriations and the House, Senate, and conference committee allowances for fiscal year 1974 be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. PASTORE. Mr. President, the act making appropriations for the Departments of State, Justice, Commerce, the judiciary, and related agencies, as it passed the Senate, provided a total of $4,459,478,250 in new obligational authority, which sum was a reduction of $63,422,750 below the revised budget estimates.

The conference committee's recommendation provides a total of $4,466,012,000 in new obligational authority. This is an increase of $6,533,750 to the Senate allowance and is $313,066,000 over the House allowance. The conference total represents a reduction—and this is important, Mr. President—of $56,889,000 under the revised budget estimates totalling $4,522,901,000, which sum included $267,821,000 in budget amendments which came directly to the Senate and were not considered by the House.

Mr. President, I would like to now briefly point out the major changes from the Senate-passed bill.

DEPARTMENT OF STATE

For the Department of State, the conferees agreed on a total of $618,599,000, which amount is $12,076,250 above the Senate bill, $22,988,000 above the House allowance, and $14,491,000 below the budget. The Senate considered $24,000,000 in budget amendments not presented to the House.

For salaries and expenses, the conferees recommend $302,800,000, which sum is the Senate allowance and is $1,597,000 below the budget estimate, but is $20,300,000 above the House. Of the total approved, $19,700,000 was contained in budget amendments not considered by the House to combat terrorist activities against American personnel abroad. Increases for the same purposes were also approved in the appropriation accounts for acquisition, operations, and maintenance of buildings abroad—foreign currency account, $100,000 and missions to international organizations, $200,000. This $300,000 was also contained in budget amendments not considered by the House.

For contributions to international organizations, the conference committee recommends $200,000,000, which sum is $14,642,250 above the Senate bill and is a reduction of $2,287,000 below the budget estimate and House allowance. The reduction is to be applied to the U.S. contribution to the International Labor Organization.

For international conferences and contingencies, the recommendation totals $4,500,000, which sum is $300,000 below the Senate allowance, is $686,000 below the budget estimate, and is the House allowance.

For the mutual educational and cultural exchange activities, the committee of the conference recommends $49,800,000 which is $2,000,000 below the Senate bill, $2,000,000 above the House allowance, and $4,250,000 below the budget estimate.

For the Center for Cultural and Technical Interchange, the conferees recommend $6,700,000, which sum is $160,000 below the Senate allowance and budget estimate, and is $200,000 above the House allowance.

The conferees agreed to delete, without prejudice, Senate amendment No. 15 expressing the sense of the Senate with regard to the treatment of minorities in the Soviet Union.

DEPARTMENT OF JUSTICE

For the Department of Justice, the committee on the conference agreed to a total of $1,842,262,000, which amount is $2,000,000 below the Senate bill, $18,562,000 below the revised budget estimate, and $34,150,000 above the House allowance. With regard to the Senate increase over the House, $24,475,000 was contained in budget amendments submitted directly to the Senate and not considered by the House.

The committee on the conference approved the funding for the new Drug Enforcement Administration and a new Narcotics Division as requested in the budget amendments and approved by the Senate.

For the Antitrust Division, the conferees recommend $13,019,000, the budget estimate and House allowance, and $1,000,000 below the Senate allowance,

For the Community Relations Service, the committee of conference recommends $2,818,000, the budget estimate and House allowance of $1,000,000 below the Senate allowance.

With regard to the Federal Bureau of Investigation, the conferees agreed to delete the language added by the Senate—amendment No. 21—regarding the exchange of identification records with officials of the federally chartered or insured banking institutions and officials of State and local governments for purposes of employment and licensing, where State law so requires.

The House conferees took the position that with the exception of the proviso governing the exchange of arrest records, to which they would not agree, the balance of the Senate language as contained in the fiscal 1973 Appropriation Act (Public Law 92–544) was permanent legislation. The conferees understand that this matter is before the Judiciary Committees of the House and Senate and urge expeditious consideration thereof.

For the Law Enforcement Assistance Administration, the committee of conference recommends a total of $870,675,000, the Senate allowance, an increase of $4,675,000 in the House allowance and $15,449,000 below the budget estimate.

Under general provisions, Department of Justice, the conferees agreed to delete a proviso—amendment No. 26—added by the Senate with regard to the anual reimbursement to the Treasury from funds available to the District of Columbia to cover a portion of the cost of U.S. attorneys and U.S. marshals performing services for the District.

DEPARTMENT OF COMMERCE

For the Department of Commerce, the committee of the conference recommends a total of $1,223,578,000, which amount is $4,274,000 below the Senate bill, $12,586,000 above the revised budget estimate, and $261,774,000 above the House allowance. With regard to the Senate increase over the House allowance, $217,446,000 in budget amendments were submitted to the Senate and not considered by the House.

For the programs of the Economic Development Administration, the committee of the conference recommends $203,000,000, the total of the Senate allowance and budget amendments, submitted

to the Senate and not considered by the House. Also approved was the Senate proviso prohibiting the phaseout or discontinuance of EDA programs, including the regional action planning commissions.

For the regional action planning commissions, the conferees recommend $42,000,000, the sum contained in the Senate-passed bill. This item was not considered by the House.

For the Social and Economic Statistics Administration, the committee of conference recommends $17,800,000, which is the amount contained in the Senate bill, is an increase of $3,000,000 over the House allowance, and is a reduction of $9,340,000 in the revised budget estimate. The Senate increase provides $1,800,000 for a survey of the population requested by the Treasury Department in connection with the distribution of general revenue sharing and $1,200,000 in new obligational authority to initiate a census of agriculture.

For the Domestic and International Business Administration, the conference recommends $49,000,000, the Senate allowance, which is $848,000 under the budget estimate and $500,000 over the House.

For the National Oceanic and Atmospheric Administration, the committee of conference agreed on a total of $353,642,000 for this agency, or a reduction of $4,274,000 in the Senate bill of $357,916,000. The conference agreement is distributed as follows:

First. For operations, research, and facilities, $341,642,000, an increase over the House allowance of $1,274,000.

Second. For coastal zone management, the recommendation is $12,000,000, a reduction of $3,000,000 below the Senate recommendation of $15,000,000. The House did not consider this item.

THE JUDICIARY

For representation by court-appointed counsel and operation of defender organizations, the conferees recommend a total of $16,500,000, which sum is $1,000,000 below the Senate bill and $1,000,000 above the House allowance.

For court-appointed counsel in the District of Columbia, the conferees recommend $1,000,000, a reduction of $1,000,000 below the Senate amendment and an increase in the same amount over the House. The conferees agreed that further funding for this activity will be chargeable to the District of Columbia.

RELATED AGENCIES

For the Arms Control and Disarmament Agency, the conferees recommend $7,735,000, a decrease of $200,000 in the Senate bill, an increase of $800,000 over the House, and which sum is the budget estimate. The $800,000 was contained in a budget amendment not considered by the House.

For the Commission on Civil Rights, the conferees recommend a total of $5,700,000, a reduction of $114,000 below the Senate allowance, $134,000 above the House allowance, and $114,000 below the budget estimate.

For the Commission on the Organization of the Government for the Conduct of Foreign Policy, the committee of conference recommends $1,050,000, which sum is $50,000 below the Senate allowance and was contained in a budget amendment of $1,100,000 not considered by the House. In addition, the conferees approved the Senate language to continue this appropriation available until June 30, 1975.

For the Equal Employment Opportunity Commission, the conferees recommend $43,000,000. This sum is a reduction of $3,934,000 in the Senate allowance, is $3,000,000 over the House allowance, and is $3,934,000 below the budget estimate. The conferees approved a limitation of $1,700,000 that can be used to contract with State and local agencies.

For the Marine Mammal Commission, the committee of conference recommends a total of $412,000, which sum is $413,000 below the Senate allowance and budget estimate and is the House allowance.

For the Tariff Commission, the conferees recommend a total of $7,100,000, which sum is $200,000 below the Senate allowance, $100,000 above the House allowance, and $200,000 below the budget estimate.

For the U.S. Information Agency, the conferees recommend a total of $207,414,000 which sum is $6,714,500 above the Senate allowance, is $12,008,000 below the House allowance, and is $24,440,000 below the budget estimate.

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 1973 AND BUDGET ESTIMATES AND AMOUNTS RECOMMENDED IN THE BILL FOR 1974

TITLE I—DEPARTMENT OF STATE

[Note: All amounts are in the form of "appropriations" unless otherwise indicated]

Item	New budget (obligational) authority fiscal year 1973 (enacted to date)[1]	Budget estimates of new (obligational) authority fiscal year 1974	New budget (obligational) authority recommended in House bill	New budget (obligational) authority recommended in Senate bill	Conference action
(1)	(2)	(3)	(4)	(5)	(6)
Administration of Foreign Affairs:					
Salaries and expenses	$269,168,500	$304,397,000	$282,500,000	$302,800,000	$302,800,000
Representation allowances	993,000	1,263,000	1,125,000	1,263,000	1,200,000
Acquisition, operation, and maintenance of buildings abroad	30,000,000	23,169,000	21,173,000	21,173,000	21,173,000
Acquisition, operation, and maintenance of buildings abroad (special foreign currency program)	6,920,000	5,498,000	5,038,000	5,138,000	5,138,000
Emergencies in the diplomatic and consular service	2,100,000	2,100,000	2,100,000	2,100,000	2,100,000
Payment to Foreign Service retirement and disability fund	3,808,000	2,972,000	2,972,000	2,972,000	2,972,000
Total, administration of foreign affairs	312,989,500	359,399,000	314,908,000	335,446,000	335,383,000
International Organizations and Conferences:					
Contributions to international organizations	185,357,750	202,287,000	202,287,000	185,357,750	200,000,000
Missions to international organizations	5,242,400	5,734,000	5,525,000	5,725,000	5,725,000
International conferences and contingencies	3,650,000	5,186,000	4,500,000	4,800,000	4,500,000
International trade negotiations		1,743,000	1,500,000	1,743,000	1,700,000
Total, international organizations and conferences	194,250,150	214,950,000	213,812,000	197,625,750	211,925,000
International Commissions:					
International Boundary and Water Commission, United States and Mexico:					
Salaries and expenses	4,210,000	4,284,000	4,284,000	4,284,000	4,284,000
Construction	20,246,000	6,800,000	3,800,000	3,800,000	3,800,000
American sections, international commissions	748,000	990,000	950,000	950,000	950,000
International fisheries commissions	3,292,000	3,517,000	3,517,000	3,517,000	3,517,000
Total, international commissions	28,496,000	15,591,000	12,551,000	12,551,000	12,551,000
Educational Exchange:					
Mutual educational and cultural exchange activities	45,250,000	54,050,000	47,800,000	51,800,000	49,800,000
Center for cultural and technical interchange between East and West	6,200,000	6,860,000	6,500,000	6,860,000	6,700,000
Total, educational exchange	51,450,000	60,910,000	54,300,000	58,660,000	56,500,000
Other: Payment to International Center		2,200,000		2,200,000	2,200,000
Total, title I, Department of State	587,185,650	[2]633,050,000	595,571,000	606,482,750	618,559,000

Footnotes at end of table.

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 1973 AND BUDGET ESTIMATES AND AMOUNTS RECOMMENDED IN THE BILL FOR 1974—Continued

TITLE II—DEPARTMENT OF JUSTICE

[Note: All amounts are in the form of "appropriations" unless otherwise indicated]

Item	New budget (obligational) authority fiscal year 1973 (enacted to date) [1]	Budget estimates of new (obligational) authority fiscal year 1974	New budget (obligational) authority recommended in House bill	New budget (obligational) authority recommended in Senate bill	Conference action
(1)	(2)	(3)	(4)	(5)	(6)
Legal Activities and General Administration:					
Salaries and expenses, general administration	$14,200,000	$16,427,000	$19,100,000	$15,834,000	$15,834,000
Salaries and expenses, general legal activities	46,800,000	50,253,000	47,200,000	50,111,000	50,111,000
Salaries and expenses, Antitrust Division	12,836,000	13,019,000	13,019,000	14,019,000	13,019,000
Salaries and expenses, U S attorneys and marshals	93,660,000	99,528,000	99,300,000	99,300,000	99,300,000
Fees and expenses of witnesses	11,000,000	13,000,000	12,500,000	12,500,000	12,500,000
Salaries and expenses, Community Relations Service	6,700,000	2,818,000	2,818,000	3,818,000	2,818,000
Total, legal activities and general administration	185,196,000	195,045,000	193,937,000	195,582,000	193,582,000
Federal Bureau of Investigation: Salaries and expenses	358,915,000	366,506,000	366,506,000	366,506,000	366,506,000
Immigration and Naturalization Service: Salaries and expenses	137,484,000	139,698,000	139,698,000	139,698,000	139,698,000
Federal Prison System:					
Salaries and expenses, Bureau of Prisons	118,317,000	129,021,000	128,271,000	128,271,000	128,271,000
Buildings and facilities	42,616,000	14,800,000	14,800,000	14,800,000	14,800,000
Support of U.S. prisoners	19,500,000	22,400,000	21,500,000	21,500,000	21,500,000
Total, Federal prison system	180,433,000	166,221,000	164,571,000	164,571,000	164,571,000
Law Enforcement Assistance Administration: Salaries and expenses	841,397,000	886,124,000	866,000,000	870,675,000	870,675,000
Drug Enforcement Administration: Salaries and expenses		107,230,000		107,230,000	107,230,000
Bureau of Narcotics and Dangerous Drugs: Salaries and expenses	74,653,000		77,400,000		
Total, title II, Department of Justice	1,778,078,000	[3] 1,860,824,000	1,808,112,000	1,844,262,000	1,842,262,000

TITLE III—DEPARTMENT OF COMMERCE

General Administration:					
Salaries and expenses	$8,064,543	$8,000,000	$8,000,000	$8,000,000	$8,000,000
Administration of economic development assistance programs		21,000,000		19,000,000	19,000,000
Special foreign currency program	1,400,000	2,940,000	2,940,000	2,940,000	2,940,000
Total, General Administration	9,464,543	31,940,000	10,940,000	29,940,000	29,940,000
Social and Economic Statistics Administration:					
Salaries and expenses	34,205,000	38,800,000	38,300,000	38,300,000	38,300,000
Periodic censuses and programs	14,579,500	27,140,000	14,800,000	17,800,000	17,800,000
Total, Social and Economic Statistics Administration	48,784,500	65,940,000	53,100,000	56,100,000	56,100,000
Economic Development Administration:					
Development facilities	220,000,000	159,000,000		159,000,000	159,000,000
Industrial development loans and guarantees	50,000,000	5,000,000		5,000,000	5,000,000
Planning, technical assistance, and research	31,468,000	20,000,000		20,000,000	20,000,000
Operations and administration	24,263,000				
Total, Economic Development Administration	325,731,000	184,000,000		184,000,000	184,000,000
Reional Action Planning Commissions: Regional development programs	41,672,000	20,000,000		42,000,000	42,000,000
Domestic and International Business Administration:					
Salaries and expenses	47,088,900	49,848,000	48,500,000	49,000,000	49,000,000
Participation in U.S. expositions	11,500,000				
Total, Domestic and International Business Administration	58,588,900	49,848,000	48,500,000	49,000,000	49,000,000
Foreign Direct Investment Regulation: Salaries and expenses	2,600,000	2,600,000	2,600,000	2,600,000	2,600,000
Minority Business Enterprise: Minority business development	63,934,000	35,231,000	35,231,000	35,231,000	35,231,000
U.S. Travel Service: Salaries and expenses	9,000,000	9,279,000	9,000,000	9,000,000	9,000,000
National Oceanic and Atmospheric Administration:					
Operations, research and facilities	385,430,457	343,089,000	340,368,000	342,916,000	341,642,000
Coastal zone management		5,000,000		15,000,000	12,000,000
Administration of Pribilof Islands	3,232,000	3,113,000	3,113,000	3,113,000	3,113,000
Fishermen's Guaranty Fund	61,000	61,000	61,000	61,000	61,000
Total, National Oceanic and Atmospheric Administration	388,723,457	351,263,000	343,542,000	361,090,000	356,816,000
Science and Technology: Scientific and technical research and services	145,042,100	130,864,000	129,864,000	129,864,000	129,864,000
Maritime Administration:					
Ship construction	455,000,000	275,000,000	275,000,000	275,000,000	275,000,000
Op erating-differential subsidies (appropriation to liquidate contract authority)	(232,000,000)	(221,515,000)	(221,515,000)	(221,515,000)	(221,515,000)
Research and development	29,000,000	20,000,000	19,000,000	19,000,000	19,000,000
Operations and training	34,534,000	35,027,000	35,027,000	35,027,000	35,027,000
Total, Maritime Administration	518,534,000	330,027,000	329,027,000	329,027,000	329,027,000
Total, title III, Department of Commerce	1,612,074,500	[4] 1,210,992,000	961,804,000	1,227,852,000	1,223,578,000

TITLE IV—THE JUDICIARY

Item	New budget (obligational) authority fiscal year 1973 (enacted to date) [1]	Budget estimates of new (obligational) authority fiscal year 1974	New budget (obligational) authority recommended in House bill	New budget (obligational) authority recommended in Senate bill	Conference action
(1)	(2)	(3)	(4)	(5)	(6)
Supreme Court of the United States:					
Salaries	$3,784,000	$3,964,000	$3,964,000	$3,964,000	$3,964,000
Printing and binding Supreme Court reports	416,000	515,000	515,000	515,000	515,000
Miscellaneous expenses	423,000	560,000	560,000	560,000	560,000
Automobile for the Chief Justice	14,600	15,000	15,000	15,000	15,000
Books for the Supreme Court	55,000	63,000	63,000	63,000	63,000
Care of the building and grounds	1,014,000	1,169,000	1,100,000	1,100,000	1,100,000
Total, Supreme Court of the United States	5,706,600	6,286,000	6,217,000	6,217,000	6,217,000
Court of Customs and Patent Appeals: Salaries and expenses	684,000	692,000	677,000	677,000	677,000
Customs Court: Salaries and expenses	2,341,000	2,341,000	2,341,000	2,341,000	2,341,000
Court of Claims: Salaries and expenses	2,139,000	2,154,000	2,154,000	2,154,000	2,154,000
Courts of appeals, district courts, and other judicial services:					
Salaries of judges	27,000,000	27,300,000	27,300,000	27,300,000	27,300,000
Salaries of supporting personnel	77,208,000	85,326,000	83,372,000	83,522,000	83,450,000
Representation by court-appointed counsel and operation of defender organizations	17,472,000	16,000,000	15,500,000	17,500,000	16,500,000
Fees of jurors	18,218,000	18,500,000	18,500,000	18,500,000	18,500,000
Travel and miscellaneous expenses	10,626,000	13,013,000	12,909,000	12,909,000	12,909,000
Administrative Office of the U.S. Courts	3,682,000	4,247,000	3,906,000	3,906,000	3,906,000
Salaries and expenses of U.S. magistrates	6,690,000	7,837,000	7,837,000	7,837,000	7,837,000
Salaries of referees (special fund)	6,755,000	6,991,000	6,991,000	6,991,000	6,991,000
Expenses of referees (special fund)	12,895,000	12,780,000	12,660,000	12,660,000	12,660,000
Commission on Revision of Federal Court Appellate System of the United States	255,000				
Total, courts of appeals, district courts, and other judicial services	180,802,000	191,994,000	188,975,000	191,125,000	190,053,000
Federal Judicial Center Salaries and expenses	1,541,000	2,062,000	2,000,000	2,000,000	2,000,000
Commission on Bankruptcy Laws of the United States Salaries and expenses (special fund)	426,000				
Total, title IV, the judiciary	193,642,600	205,529,000	202,364,000	204,514,000	203,442,000

TITLE V—RELATED AGENCIES

American Battle Monuments Commission: Salaries and expenses	$3,711,000	$3,800,000	$3,800,000	$3,800,000	$3,800,000
Arms Control and Disarmament Agency: Arms control and disarmament activities	10,000,000	[5] 7,735,000	6,935,000	7,935,000	7,735,000
Commission on American Shipbuilding: Salaries and expenses	550,000	205,000	205,000	205,000	205,000
Commission on Civil Rights: Salaries and expenses	4,949,000	5,814,000	5,566,000	5,814,000	5,700,000
Commission on the Organization of the Government for the Conduct of Foreign Policy: Salaries and expenses	200,000	[6] 1,100,000		1,100,000	1,050,000
Department of the Treasury, Bureau of Accounts: Fishermen's Protective Fund	3,000,000				
Equal Employment Opportunity Commission: Salaries and expenses	32,000,000	46,934,000	40,000,000	46,934,000	43,000,000
Federal Maritime Commission: Salaries and expenses	5,679,000	6,040,000	6,000,000	6,000,000	6,000,000
Foreign Claims Settlement Commission:					
Salaries and expenses	743,000	810,000	800,000	800,000	800,000
Payment of Vietnam and U.S.S. Pueblo prisoner of war claims	16,200,000				
Total, Foreign Claims Settlement Commission	16,943,000	810,000	800,000	800,000	800,000
International Radio Broadcasting: International broadcasting activities	39,670,100	49,934,000	45,000,000	45,000,000	45,000,000
Marine Mammal Commission: Salaries and expenses		825,000	412,000	825,000	412,000
National Commission for the Review of Federal and State Laws Relating to Wire-Tapping and Electronic Surveillance: Salaries and expenses		332,000	332,000	332,000	332,000
National Commission on Fire Prevention and Control: Salaries and expenses	450,000				
National Tourism Resources Review Commission: Salaries and expenses	400,000				
Small Business Administration:					
Salaries and expenses	22,560,000	22,300,000	22,150,000	22,150,000	22,150,000
Payment of participation sales insufficiencies	970,000	973,000	973,000	973,000	973,000
Business loan and investment fund	395,000,000	225,000,000	225,000,000	225,000,000	225,000,000
Disaster loan fund	1,855,000,000				
Total, Small Business Administration	2,273,530,000	248,273,000	248,123,000	248,123,000	248,123,000
Special Representative for Trade Negotiations: Salaries and expenses	1,014,000	1,550,000	1,500,000	1,500,000	1,500,000
Subversive Activities Control Board: Salaries and expenses	350,000				
Tariff Commission: Salaries and expenses	6,000,000	7,300,000	7,000,000	7,300,000	7,100,000
U.S. Information Agency:					
Salaries and expenses	190,750,000	203,432,000	202,000,000	190,077,500	196,000,000
Salaries and expenses (special foreign currency program)	12,500,000	7,008,000	7,008,000	5,208,000	6,000,000
Special international exhibitions	5,061,000	4,336,000	4,336,000	4,336,000	4,336,000
Special international exhibitions (special foreign currency program)	357,000	78,000	78,000	78,000	78,000
Acquisition and construction of radio facilities	1,000,000	17,000,000	6,000,000	1,000,000	1,000,000
Total U.S. Information Agency	209,668,000	231,854,000	219,422,000	200,699,500	207,414,000
Total, title V, related agencies	2,608,113,100	612,505,000	585,095,000	576,367,500	578,171,000
Total, title I, II, III, IV, and V, new budget (obligational) authority—appropriations	6,779,093,850	4,522,901,000	4,152,946,000	4,459,478,250	4,466,012,000
Memoranda: Appropriations to liquidate contract authorizations	(232,000,000)	(221,515,000)	(221,515,000)	(221,515,000)	(221,515,000)
Total appropriations, including appropriations to liquidate contract authorizations	(7,011,093,850)	(4,744,416,000)	(4,374,461,000)	(4,680,993,250)	(4,687,527,000)

[1] Includes amounts in 2d Supplemental Appropriation bill, 1973, Public Law 93-50.

[2] Includes $21,800,000 contained in S. Doc. 93-26 and $2,200,000 contained in H. Doc. 93-106 not considered by House.

[3] Includes net increase of $24,475,000 contained in H. Doc. 93-123 not considered by House.

[4] Following items included but not considered by House:

H. Doc. 93-124	$205,000,000
S. Doc. 93-30	$6,140,000
S. Doc. 93-23	1,306,000
S. Doc. 93-35	5,000,000

[5] Includes $800,000 contained in S. Doc. 93-26 not considered by House.

[6] Contained in S. Doc. 93-24 not considered by House.

Mr. PASTORE. Mr. President, I want to say that I am awaiting the arrival of the Senator from Nebraska (Mr. HRUSKA) so that I would be perfectly willing to answer any questions on this matter in the meantime.

Mr. JAVITS. I should like to direct the attention of the Senator from Rhode Island to amendment No. 5 entitled "Contributions to International Organizations." This title appropriates $200 million instead of $202,287,000 as proposed by the House and $185,357,750 as proposed by the Senate, thereby making a reduction of $2,287,000 from the budget request which was the amount appropriated by the House. The manager's report states specifically that this contribution shall be taken away from the International Labor Organization.

The ILO has a budget request with us of $8,709,300. Therefore, this is a 25-percent cut. As this is an organization which we have been associated with for 50 years—I believe it is at least that figure—and it is a tripartite organization—management, labor, and government—doing extraordinarily fine work throughout the world in labor matters especially in terms of labor conventions, endeavoring to elevate the standards of minimum compensation and conditions of work for workers throughout the world, I wonder whether the manager of the bill would be kind enough to tell us what his rationale is for the cut.

Mr. PASTORE. Mr. President, the House was adamant on this. I do not agree with it. We are pursuing it further and have been assured by the State Department that they are working on a budget estimate to be submitted in the next supplemental. I would hope, at that time, that we can restore the $2,287,000. I think it is an obligation that is owed by the U.S. Government. This is a good project. It promotes international liaison with reference to labor relations. It would be rather unfortunate if we sustained such a drastic cut.

I might say to my colleague from New York that I hope we can remedy that situation the next time.

Mr. JAVITS. I thank the Senator very much. It is also characteristic of the Senator from Rhode Island, whose deep understanding of labor matters in the United States and throughout the world has characterized his most distinguished service in the Senate throughout the years he has served here.

I should like to point out, as adding to the record, that we had a considerable "flap" about this matter of the International Labor Organization, which resulted in some kind of dug-in position by President Meany of the AFL–CIO. We went into arrears for a number of years to the great embarrassment of this country and the organization as well as the management, labor, and governmental delegates whom we send annually to the ILO.

That was cleared up finally, and we are now pretty much in balance. But, here we go again. So that I welcome, and, as I said, it is quite characteristic of the distinguished Senator from Rhode Island that he should have the deep feeling he does about this matter. I appreciate his assurances and I know that they will be carried out. I would only offer in every way my full advocacy and cooperation to the Senator from Rhode Island at the proper time.

Mr. PASTORE. I thank the Senator from New York. Now I yield to the Senator from Nebraska (Mr. HRUSKA).

Mr. HRUSKA. Mr. President, on balance, this conference report is a well-considered product and worthy of prompt approval by the Senate.

Some points in the conference report recur from year to year. One of them has just been mentioned by the Senator from New York (Mr. JAVITS). There is no setback in that program, no abridgment of any of its activities pending the consideration of the supplemental. Of course, the Senator from Rhode Island has already given the Senator from New York part of the background on it.

We have canvassed that ground time and again in past years, and in the years when the Senator from New York himself was a member of the Appropriations Committee. But I can assure him that the sentiment for that program and for its activities is firmly fixed, with a great deal of support and cooperation. Therefore, I am confident that there will be no setback or slowing down of the program.

Mr. JAVITS. I thank my colleague from Nebraska very much.

Mr. HRUSKA. I would like to take this opportunity to applaud the leadership of the distinguished Senator from Rhode Island (Mr. PASTORE) who is the chairman of the subcommittee which considered this measure in the Senate.

I can assure my colleagues that Mr. PASTORE and the other Senate conferees worked diligently with our counterparts from the House in producing this document.

I am generally satisfied with most of the provisions contained in the conference report. However, there are certain matters with which I am disappointed. A few of these deserve particular mention.

The Senate-passed bill provided language to cover certain problems relating to the exchange of identification records by the FBI. Identical language was contained in the appropriations bill last year with the addition of the word "hereafter." It was the position of the House that the addition of this word made the entire language regarding the use of FBI records permanent legislation and, therefore, that there was no need for similar language in the bill this year. There has been some difference of opinion on this matter.

Although this report reflects a consensus, it does not appear that any prejudice has been exhibited in the choice and decision of the conference committee on this point.

It should, however, spur the deletion of any language enacted without prejudice to the efforts of the Judiciary Committees of the House and Senate in considering general legislation which would cover this point on a permanent basis. We need that. An appropriation bill is not a proper vehicle for general legislation. I do hope that we can solve this matter at an early date.

The distinguished Senator from North Carolina (Mr. ERVIN) has been working on this type of legislation. The Senator from Nebraska has worked on such proposals in past Congresses.

We now hope to have hearings on this matter and resolve the issue. It will be particularly important as we have more and more of the States developing their own system of crime statistics and determining what sort of information to transmit between the States.

Another point that we have difficulty with is the matter of the appropriation for defense-appointed counsel under the Criminal Justice Act. The history of that act has also been spread on the record; the debates here, our testimony, and in our committee reports.

Annually we have an exercise in the conference report where we go over this matter again and again. There is no question that the history clearly shows, and the law clearly indicates that this matter should be an activity funded through the judiciary. However, Congress in its wisdom, has decided to the contrary.

The main thing is that moneys will be going forward in sufficient degree to take care of the needs of all those to whom defense counsel should be appointed by the courts. There will be no degradation of that program. It will go forward. As time goes on, I hope that we can place it on a permanent basis rather than having to take it up in this rather unsatisfactory case by case basis each and every year.

Accordingly, I commend the leadership of the chairman of the subcommittee, and suggest that quick approval of this appropriation bill will be very much in order. I would be remissed if I failed to pay tribute at this point to the excellent work done by both the Majority and Minority staff during our consideration of this bill.

INTRODUCTION OF S. 2697

Mr. ERVIN. Mr. President, I should like to inform my good friend from Nebraska that I am today introducing a bill to accomplish that very objective for which he and I have been fighting for several years, with respect to FBI records. I am sorry that I have not had the opportunity to consult with him, but I am going to give him a copy of the bill and express the hope that he will join me and other Senators in coponsoring the bill.

Mr. HURSKA. Mr. President, I would be happy to be a cosponsor, sight unseen. I do not mean, however, that I subscribe to the verity of each one of the points and sections contained therein, but knowing the Senator from North Carolina for the great student he is, in any event, it will be a line vehicle for the hearings which I hope will result shortly, and we can pursue the subject in proper fashion.

Mr. YOUNG. Mr. President, I should also like to be a cosponsor of the bill, with the approval of the Senator from North Carolina.

Mr. ERVIN. Mr. President, on the basis of the statements made by the distinguished Senators from Nebraska and North Dakota (Mr. HRUSKA and Mr. YOUNG) I ask unanimous consent to have

their names added as cosponsors of the bill which I introduced a few moments ago, to protect the constitutional rights of the subjects of arrest records, authorizing the FBI to disseminate conviction records to State and local government agencies, and for other purposes.

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

Mr. ERVIN. I am sorry that the Senate conferees were unable to persuade the House conferees to sustain the Senate's position with respect to FBI records and with respect to making provision of funds to compensate for indigent defendants in the courts of the District of Columbia. For that reason, while I do not seek to defeat the conference report, I wish to vote against the conference report because of the omission of the conferees, which is understandable to me, so far as the Senate conferees are concerned, to include those provisions.

THE CONFERENCE REPORT ON H.R. 8916: LEGISLATIVE LEGERDEMAIN

Mr. President, for the second year in a row the Senate has suffered a serious defeat at the hands of House conferees on the appropriations bill for the Departments of State, Justice, and Commerce, the judiciary and related agencies. For the second year in a row the House has imposed its will upon the Senate in regard to two provisions which the Senate adopted unanimously—a ban on Justice Department dissemination of raw arrest records to nonlaw enforcement agencies and full year funding for the appointed counsel program in the District of Columbia.

ARREST RECORDS

In dropping completely Senate amendment No. 21 to H.R. 8916, the Bible-Ervin rider on arrest records, the conference report has trampled upon the constitutional rights of innocent individuals. The House conferees insistence upon dropping the Senate amendment is only the latest chapter in over 2 years of legislative legerdemain by the House Appropriations Committee.

For the past 2 years the Justice Dement, with the help of the House committee, has been attempting to reverse by an appropriations rider a decision by the U.S. District Court for the District of Columbia. That court found that Congress had never authorized the Justice Department to collect from all over the country arrest records on citizens who have never been convicted of a crime and to send that information to nonlaw enforcement agencies and private employers.

On June 15, 1971, the district court for the District of Columbia handed down the decision in the case of *Menard* v. *Mitchell*, 328 F. Supp. 718. The ruling prohibited the FBI's dissemination of arrest and fingerprinting records to nonlaw enforcement agencies. The court based its decision upon an interpretation of section 534 of title 28 of the United States Code, the provision which the Justice Department has relied upon as authority for its collection of fingerprint and arrest record information.

The petitioner, Menard, had argued that inasmuch as he was never convicted, the maintenance and use of his arrest record violated the presumption of innocence, due process, the right of privacy, and freedom from unreasonable search and seizure. Although the court refused to expunge the record on Menard on these constitutional grounds, it recognized that section 534 had to be interpreted narrowly to avoid constitutional infirmities. In the court's words—

Viewed in this light, it is abundantly clear that Congress never intended to or in fact did authorize dissemination of arrest records to any state or local agency for purposes of employment or licensing checks.

The court is merely pointing out to the Justice Department and to the Congress what should have been obvious. When Congress passed section 534 almost 30 years ago it was only attempting to facilitate coordinated law enforcement activities between the Federal and local governments. In the court's words, Congress was only trying—

To assist arresting agencies, courts and correctional institutions in the apprehension, conviction, and proper disposition of criminal offenders.

There is absolutely nothing in the statute or in the debate that even suggests that confidential or harmful information, such as the arrest record of a person whom the Government does not even bother to prosecute, should be collected by the Justice Department and disseminated to private employers to help them in job screening.

Obviously, the Federal Government has no business distributing arrest records to help private enterprise in its hiring practices. Private industry has its own means of checking on applicants, and whom they hire is none of the Government's business. The distribution by the Justice Department of arrest records is like a national "enemies list." It places an unbearable stigma on citizens who may be innocent of wrongdoing. The distribution of an applicant's arrest record almost invariably means that he will not get the job he seeks. The FBI Identification Division receives over 11,000 requests for record searches each day. We cannot know how many times Americans have been denied jobs even though they were found innocent of charges, or the case was dropped, or the original arrest was a mistake, or illegal, or even unconstitutional. Simple justice means that a man should not be denied employment because of an arrest record unless a complete trial record shows he was found guilty by a court of law.

The Menard decision had the effect of bringing the FBI's fingerprint operation to a standstill. However, within a few months Senator BIBLE succeeded in attaching a rider to a supplemental appropriations bill (H.R. 11955) suspending the order in the Menard case. Since this legislation was part of an appropriations bill, it could only be temporary in nature and when the fiscal year 1973 appropriations bill for the FBI was introduced in 1972, it also contained the Bible rider. When it came time to vote on the 1973 appropriations bill in the House, Congressman DON EDWARDS was sustained on a point of order striking the rider as violative of a House rule prohibiting substantive legislation in an appropriations bill.

Although the House bill came to the Senate containing no language authorizing the fingerprint distribution, the Senate Appropriations Committee reinserted the Bible language. When the appropriations bill came to a vote in the Senate, I suggested to the proponents that I planned to make the same point of order as Mr. EDWARDS had made on the House side since the Senate has a similar rule prohibiting substantive legislation in an appropriations bill.

In lieu of making that point of order Senator BIBLE and I agreed to additional language in the Bible rider. I proposed a proviso at the end of the Bible rider which allowed continued dissemination outside the Federal Government but limited such dissemination to arrest records which also indicated that the defendant had pleaded guilty or was convicted of the crime for which he was arrested. The Senate adopted unanimously the Bible-Ervin language.

There is a great deal of confusion as to what happened to the Bible-Ervin amendment in the House-Senate conference last year. According to Senator HRUSKA who did serve on the conference, the only change in the Bible-Ervin amendment was to be the addition of the word "hereafter" so that it would be clear that my proviso would only apply from the point of enactment of the appropriations bill to the end of the fiscal year when the appropriation expires. This was designed to protect the FBI from any civil liability for distribution of arrest records without convictions which had been taking place since the Bible rider was enacted in the fall of 1971.

However, the conference report suggested that the conference committee dropped the Ervin proviso leaving the Bible language. This of course left the FBI in the same position as it had been after the first Bible rider was enacted in the fall of 1971. The Menard order was again temporarily suspended and there was nothing that Congressman EDWARDS or I could do to strike the language because a point of order did not appear available on the conference report.

At the time the Senate considered the conference report, I expressed my dismay at what the conference had done but pointed out that the language was only temporary and promised next year to make the point of order I had been dissuaded from making in 1972. Congressman EDWARDS said essentially the same thing when the conference report was considered on the House side. Therefore, the only legislative history on the provision suggests that it has the effect of suspending the Menard order but only temporarily, that is, until the appropriations legislation expires at the end of the 1973 fiscal year.

However, when the administration presented its fiscal year 1974 budget it took the position that the word "hereafter" in the Bible amendment makes the amendment permanent legislation and that the Menard order has been

permanently repealed by the conference's action. Of course, this is contrary to the legislative history. The case law interpreting appropriations riders suggests that the fingerprint operation would rest upon the infirm foundation at the end of the fiscal year if the Bible rider, or the Bible-Ervin rider is not again added to the FBI appropriation for fiscal year 1974.

As soon as I found out about the administration's position on this matter I wrote to the chairman of the Senate Appropriations Committee (Mr. McCLELLAN). The letter sets out my concern on this matter and reflected my research on the effect of the addition of the word "hereafter." That research confirmed my conclusion that the conference committee's action last year did not permanently enact the Bible rider and that additional authority would be necessary this year if the fingerprint dissemination and national crime information system were to continue to operate this year. I ask unanimous consent that my letter to the chairman of the Appropriations Committee be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. ERVIN. The Senate committee agreed with the position set out in my letter to Senator McCLELLAN. It placed the Bible-Ervin language in H.R. 8916 and no objection was raised on the floor. When the bill got to conference, the House adamantly refused to admit that it had made a mistake in not again proposing legislation similar to the Bible-Ervin rider. The House conferees insisted that the problem had been finally settled last year. They were confident that by simply slipping in the word "hereafter" without any explanation in the conference report or any legislative history, the Bible portion of the rider would be permanently enacted into law. Of course, this was contrary to the conclusion which the Senate committee had reached when it adopted the Bible-Ervin rider, and it was contrary to the understanding of last year's Senate conferees.

The result is not only an affront to the Senate's position and to the rights of innocent citizens. The House's obstinacy on this matter may have placed the whole FBI fingerprint operation in jeopardy again. I would not be surprised if a court case is brought in the near future in which a petitioner like Menard attempts to get a court to prohibit the dissemination of arrest records to nonlaw enforcement agencies. The petitioner could succeed by simply presenting the judge with a copy of the Menard order. I doubt that a judge would be willing to hold that order null and void simply because the conference committee had slipped the word "hereafter" into a conference report on a piece of temporary legislation without any explanation and without any supportive language on the floor of either House of Congress which approved it. It would be especially difficult for a court to rule for the Justice Department in such a case in the face of the Senate committee's and the Senate's conclusion that the Menard order would go back into effect if the Bible rider was not again added to the Justice Department's appropriation bill.

This year's conference report states that—

> The Conferees understand that this matter is before the Judiciary Committees of the House and the Senate and urge expeditious consideration thereof.

In other words, the conference committee is asking the Judiciary Committees of both Houses to move quickly to resolve this legal ambiguity so that the fingerprint operation is not again brought to a halt by a court order.

Therefore, I am today proposing legislation which will temporarily resolve the controversy raised by the Conference Committee's action. This legislation would in effect enact the Bible-Ervin rider into substantive law, but only for a temporary period, until the end of Congress. The legislation only gives temporary authority because I believe that much more comprehensive legislation is needed to deal with the question of law enforcement data banks and information systems. Indeed, the Justice Department is drafting such a comprehensive bill which I understand it will propose in the next few weeks. I am also planning to introduce a more complete bill in the near future. However, an effective temporary stopgap measure should be enacted as a prophylactic measure to make the fingerprint service less vulnerable to an adverse court decision and at the same time protect innocent individuals until such time as Congress enacts comprehensive legislation.

I ask unanimous consent that the bill, together with a memorandum, be printed in the RECORD following my remarks.

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

(See exhibit 2.)

APPOINTED COUNSEL IN THE DISTRICT OF COLUMBIA

Mr. ERVIN. The House conferees also got their "pound of flesh" from the Senate on Senate amendment No. 42 of H.R. 8916. In that amendment, the Senate had provided $2,000,000 for the program for appointed defense counsel in the District of Columbia.

In this controversy, the Administrative Office of the U.S. Courts, unable to carry out its responsibilities under the Criminal Justice Act to provide defense counsel services in the District and unable to convince the Comptroller General that the District government should carry this burden, came to the House Appropriations Committee as a court of final appeal.

The controversy goes back to 1970 when the Senate enacted several significant amendments to the Criminal Justice Act of 1964, which sought to improve the quality of criminal justice in America by improving and expanding the system of public support of defense legal assistance for individuals who are financially unable to obtain counsel in criminal cases. The 1970 amendments to the Criminal Justice Act resulted in expansion of the scope of defense services available to the indigent defendant, an increase in the rate of compensation paid to attorneys representing indigent defendants, and the establishment of Federal public defender organizations within certain Federal judicial districts.

At the same time Congress was focusing attention on the local courts of the District of Columbia. The Court Reform and Criminal Procedure Act was enacted in the same year. This legislation transformed the local trial court from a municipal court of very limited jurisdiction to the court of full general jurisdiction for the District of Columbia. One of the reasons for the enactment of this legislation was to eliminate the severe criminal case backlogs which were then in effect in the Federal District Court for the District of Columbia, which prior to court reorganization handled serious local criminal cases.

Congress addressed both pieces of legislation at the same time and both the Senate and House Judiciary Committees were fully aware of the need to conform the Criminal Justice Act to the reorganization plan. Therefore, when a question was raised as to whether the Criminal Justice Act would continue to apply in the reorganized District of Columbia courts, Congress decided that question in the affirmative, because it was understood that the Federal Government would continue to have a very real impact and an interest in the operations of the revised court system. Indeed, the U.S. attorney for the District of Columbia continues to prosecute serious crimes in the District of Columbia courts.

Furthermore, the Congress felt that all Criminal Justice Act payments should be administered by one agency, the Administrative Office of the U.S. Courts, so that the standards set out in the act would be applied uniformly nationwide. For these reasons the Criminal Justice Act was amended contemporaneous with court reform in the District to provide expressly that the act was to continue to apply to the local courts in Washington. Indeed, it was the Justice Department that urged both in the Constitutional Rights Subcommittee and in the House Judiciary Committee carefully drawn amendments specifically designed to insure that court reform would not impair the continued application of the federally administered Criminal Justice Act program in the District's new courts.

Despite the clear legislative intent expressed by the Congress in both the 1970 amendments to the Criminal Justice Act and the 1970 District of Columbia Court Reorganization Act, there has been considerable controversy involving the means of financing and administering defense services for indigents in the District of Columbia under the provisions of the Criminal Justice Act. The Administrative Office of the U.S. Courts is either reluctant or incapable of administering the Criminal Justice Act funds for the District of Columbia. Last year, in response to a decision by the Administrative Office of the U.S. Courts not to accept vouchers from attorneys providing services under the Criminal Justice Act of the District of Columbia,

the Comptroller General of the United States issued a formal decision.

In this decision, the Comptroller General ruled that the legislative intent of Congress in both of these acts was that Criminal Justice Act funds for the District of Columbia should be administered and budgeted for by the Administrative Office of the U.S. Courts, as is the case with Criminal Justice Act defender funds for the other Federal judicial districts. This ruling is an authoritative interpretation of the law binding on the Administrative Office no less than on other agencies of the Federal Government. However, on October 26, 1972, the Judicial Conference of the United States voted not to include the budget estimates of needed District of Columbia Criminal Justice Act funds in their fiscal year 1974 appropriation request.

The House followed the conference's recommendation and included no appropriation for expenditure of Criminal Justice Act funds in the District of Columbia. Because the District government accepted the Comptroller General's decision as authoritative, it did not ask for funds for the Criminal Justice Act in its budget. We were then faced with the very real danger that the Criminal Justice Act would come to an end in the District of Columbia. Indeed, the appropriation bill enacted earlier this year for the District contains no funds and the only way to save the program is to include the appropriation in this bill.

H.R. 8916 was reported out of the Senate committee with an appropriation for $1.125 million for funding of legal counsel for indigent defendants in the District of Columbia as part of the total $16.623 million appropriation for Criminal Justice Act payments nationwide. This appropriation was less than one-half of the $2.250 million estimated to be necessary for the funding of indigent defendant counseling for the full fiscal year in the District of Columbia. Presumably, the Appropriations Committee intended to resolve this question in the supplemental appropriation for the Federal judiciary. This would simply postpone the crises until March or April of 1974. There is no possible way in which the District of Columbia court system, with its well over 12,500 indigent defendants annually, can operate for the remainder of the fiscal year with the sum provided for by H.R. 8916. It seemed to make little sense to me to build into this appropriation a crisis to be faced next spring.

Therefore, I proposed that the appropriation for the Criminal Justice Act in the District be increased to $2,000,000. My proposal was adopted, but the House conferees insisted that the appropriation be cut in half and that the remainder of the funds be sought out of the District's budget. In light of the Comptroller General's ruling and the absence of legislative authority, the District cannot request money for a Federal program. Therefore, the conference's action raises serious questions as to whether there will be a Criminal Justice Act program in the District of Columbia.

The ultimate effect of the House conferees' position may be that large numbers of indigent criminal defendants in the District of Columbia will not be represented by counsel. In light of recent Supreme Court decisions, especially in the case of *Argersinger* v. *Hamlin*, 407 U.S. 25 (1972), many of these cases may have to be dismissed. That case held that even in misdemeanor cases an indigent defendant had an absolute right to counsel.

CONCLUSION

I am voting against the conference report on H.R. 8916 because it concedes to the House conferees on these two important points. The deletion of the Bible-Ervin rider and the slashing of funds for the Criminal Justice Act in the District of Columbia is not only unjust, but it may end two valuable programs. It may well mean that a vulnerable FBI law enforcement service will have to be halted and that hundreds of criminal cases in the District of Columbia will have to be dismissed—all because House conferees would not compromise. Perhaps it will take such disasters before we take a resolute stand against this kind of clever legislative legerdemain. Perhaps, in the words of an old North Carolinian saying—

You have to hit a mule with a 2 by 4 to get his attention.

EXHIBIT 1

MAY 15, 1973.

Hon. JOHN L. MCCLELLAN,
Chairman, Appropriations Committee,
U.S. Senate.

DEAR MR. CHAIRMAN: In recent years, the Administration has requested in its budget certain language regarding the distribution of criminal records by the Justice Department. This so-called "Bible rider" is language which has been added to the FBI's appropriation for the past few years as a temporary authorization for the Bureau to continue operation of the National Crime Information Center and the collection and dissemination of fingerprint records and "RAP sheets" by the Identification Division of the Bureau. The language is necessitated by the outstanding order in the case of *Menard* v. *Mitchell*, 328 F. Supp. 718 (1971). That order prohibits distribution by the FBI of such criminal records outside the Federal government until the Congress enacts legislative standards designed to protect the security and confidentiality of the information and to protect innocent people from being harmed by its collection and dissemination.

It has been generally recognized that, as Senator Bible described it, the rider is a "stopgap" measure which allowed the FBI to continue its dissemination on a temporary basis until the Congress has enacted the legislative standards required by the *Menard* case. Last year the Senate agreed to a modification I proposed which limited dissemination to records which indicated a conviction. Under the modification, the FBI could continue the dissemination of this information without harming innocent individuals while Congress prepared more precise legislative guidelines.

When H.R. 14989 came from conference the modified rider was dropped, and the original language was retained. When the conference report was before the Senate I announced my determination to object to such improper legislative provisions in any future appropriation bill. My determination has been strengthened by learning from Senator Hruska that the conference had indeed agreed to retain my modification but that this was somehow not reflected in the formal report. Senator Hruska has confirmed his recollection of this unfortunate discrepancy. If the Bible rider or any similar language is proposed again this year, I plan once again to raise a point of order to it as "legislating in an appropriations bill" and, therefore, violative of Senate Rule 16.

In its proposed budget for the coming year, the Administration has not renewed its request for the Bible rider. As a consequence, the temporary authority in P.L. 92-544 to distribute arrest records will expire at the end of the fiscal year since it is settled precedent that provisions such as this do not become general authority unless the clearest intent is expressed at the time.

The Justice Department takes the position that the conference committee's addition of the word "hereafter" makes the Bible language a permanent part of substantive law and that the rider is no longer necessary. However, the legislative history of the Bible rider does not suggest such an intent and the courts have required that Congress be explicit when it intends to amend substantive law with a rider to an appropriations bill. The debate surrounding the bill in committee or on the floor must clearly reflect an intent to permanently change existing substantive law. *United States* v. *Dickerson*, 310 U.S. 554 (1940), *National Labor Relations Board* v. *Thompson Products*, 141 F. 2d 794 (9th Cir. 1944). Aside from the actual debates the court will look to the legislative language itself which must manifest a clear intent to change statutory law and to the location of the rider—whether it appears in a separate provision, labeled in such a manner as to denote a change in substantive law—or whether it is simply a proviso of an appropriations item in which case the language is generally not given permanent effect. *Roccaforte* v. *Mulcahey*, 169 F. Supp. 360 (D. Mass. 1958), aff'd. 262 F. 2d 957 (1st Cir. 1958), *United States* v. *Vulte*, 233 U.S. 509 (1914), *National Labor Relations Board* v. *Thompson Products*, *supra*.

For the following reasons I believe that the simple addition of the word "hereafter" by the conference committee would not meet the above requirements for permanently amending statutory law via an appropriations rider:

First, the conference was never, in all the Congressional discussion of the appropriation bill (H.R. 14989), entrusted with the duty of considering the duration of the Bible rider; on the contrary, all that was ordered for the conference to study were the amendments as they stood. [118 Con. Rec. S 9477-9531 June 15, 1972)].

Second, the inclusion of language which may indicate permanence is not sufficient to establish the *Menard* rider as permanent legislation. The word "hereafter" is not clear on its face as to whether it denotes the rider's effect as extending until the end of the life of the appropriation bill or permanently. "Hereafter" is a minor terminology change and cannot be seen as indicating any change in the duration of the rider absent Congressional debate.

Third, Congressional discussion seems to lead one in the other direction as Senator Bible indicated that the *Menard* rider was "in the nature of a stopgap". 118 Cong. Rec. S 9522 (June 15, 1972). Indeed, Senator Bible noted that the Federal Bureau of Investigation was granted its power to disseminate records each year in Department of Justice appropriation bills and that the 1973 *Menard* rider would have to be approved as the 1972 rider reversing *Menard* would soon expire. 118 Cong. Rec. S 9522 (June 15, 1972).

Fourth, the location of the *Menard* rider in the provision for "Salaries and Expenses" of the FBI indicates the desire to have the rider's effect last only until the termination of the appropriation bill.

Fifth, the Conference reported no debate, no discussion of the added word "hereafter" or the permanency of the rider. *Conference Report*, House Report No. 92-1567, 92nd

Cong. 2nd Sess. (October 10, 1972). In light of the Senate rules, it would appear that "hereafter" if it constituted a major change in the rider would have to be noted in the report and would have subjected the report to a point of order.

Since the Bible rider must be viewed as temporary authority, it is therefore necessary for the Congress to move swiftly on arrest record legislation because the FBI's authority to operate the National Crime Information Center and the collection and dissemination of "RAP sheets" will end on June 30. I am preparing legislation on this question and I understand that the Justice Department is doing the same. Last year similar legislation was referred to the Subcommittee on Constitutional Rights and this year such legislation has been jointly referred to the Subcommittee and to your Subcommittee on Criminal Laws and Procedures. Since we chair these two Subcommittees, I suggest that the staffs of those two Subcommittees begin arrangements for swift joint action on this question so that the FBI does not have to shut down this valuable law enforcement service.

I respectfully request that this letter be made a part of the State, Justice and Commerce Subcommittee's record on the FBI appropriation.

With kindest wishes.

Sincerely yours,

SAM J. ERVIN, Jr.,
Chairman.

EXHIBIT 2

A bill to protect the constitutional rights of the subjects of arrest records and to authorize the Federal Bureau of Investigation to disseminate conviction records to State and local government agencies, and for other purposes

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

SECTION 1. Section 534 of title 28, United States Code, is amended to read as follows:

"§ 534. Acquisition, preservation, and exchange of identification records; appointment of officials

"(a) The Attorney General shall—

"(1) acquire, collect, classify, and preserve identification, criminal identification, crime, and other records; and

"(2) exchange these records with, and for the official use of, the Federal Government, the States, cities, and penal and other institutions for law enforcement purposes.

"(b)(1) The Attorney General may exchange such records with the officials of federally chartered or insured banking institutions to promote or maintain the security of those institutions; and if authorized by State statute, with officials of State and local governments for purposes of employment and licensing.

"(2) Any such exchange under this subsection shall be made only for the official use of any such official. The exchange of any identification or other record indicating that any person has been arrested on any criminal charge or charged with any criminal offense is hereby forbidden unless such record discloses that such person pleaded guilty or nolle contendere to or was convicted of such charge or offense in a court of justice.

"(c)(1) All copies of records of information filed as a result of an arrest that is legally terminated in favor of the arrested individual shall be returned to that individual within 60 days of final disposition and shall not be maintained in the files of any Federal agency, if a copy of the formal court order disposing of the case is presented, or upon formal notice from one criminal justice agency to another. Records of information include fingerprints, photographs or any records or files, except investigative files, relating to that arrest.

"(2) Records of such information may be retained if another criminal action or proceeding is pending against the arrested individual, or if he has previously been convicted in any jurisdiction in the United States of an offense.

"(d) The exchange of records authorized by this section is subject to cancellation if dissemination is made outside the receiving departments or related agencies.

"(e) The Attorney General may appoint officials to perform the functions authorized by this section.

"(f) The Attorney General's authority to disseminate records indicating that an individual has been arrested or charged with any criminal offense to non-criminal justice agencies, pursuant to subsection (b), shall expire on December 31, 1974. After that date the Attorney General shall be forbidden from disseminating such information to non-criminal justice agencies."

MEMORANDUM

(November 12, 1973)

Re: Arrest Records Legislation

The attached draft legislation is designed as a temporary stopgap measure to resolve the controversy raised by the Conference Report on H.R. 8916, the State, Justice and Commerce Appropriations bill for Fiscal 1974. In essence, that controversy concerns the the viability of the outstanding court order against the FBI by the District Court for the District of Columbia in the case of *Menard* v. *Mitchell* 328 F. Supp. 718 (1971). In that case the District court so construed section 534 of title 28 as to prohibit the FBI from disseminating raw arrest records to non-law enforcement agencies. The House takes the position that it has permanently resolved this question; the Senate, of course, disagrees.

The attached legislation would amend § 534 so as to reestablish that authority in the following manner:

Subsection (a) simply restates the existing general language of § 534;

Subsection (b) addresses the issue raised by the *Menard* decision. It is almost identical to the language which Senators Bible and Ervin proposed to H.R. 8916 limiting non-law enforcement dissemination to conviction records.

Subsection (c) also addresses the question of dissemination of non-conviction records to both law enforcement and non-law enforcement agencies. It is almost identical to the recommendations of a recent Justice Department report.

Subsections (d) and (e) are identical to existing language in section 534.

Subsection (f) provides that the Attorney General's authority to disseminate information to non-law enforcement agencies expires at the end of this Congress. This assures that this legislation is only a temporary measure and that the Justice Department will have to return to the Congress for additional authority, hopefully in the form of a comprehensive arrest records bill.

Mr. MATHIAS. Mr. President, I am pleased to join today with the distinguished Senator from North Carolina (Mr. ERVIN) in introducing legislation which will give temporary authority to the FBI to continue its current program of disseminating arrest records for law enforcement and other purposes. That authority is currently in doubt as a result of an outstanding court order against the FBI by the District Court of the District of Columbia in the case of *Menard* v. *Mitchell*, 321 *Fed. Supp.* 718 (1971) and the Senate-House disagreement over the necessity for inclusion of such authority in the State-Justice-Commerce appropriations bill for fiscal 1974.

I join in cosponsoring legislation to give the FBI this temporary authority even though I have been critical of the manner in which criminal justice information has been disseminated in the past. I have been critical because the current FBI operated system for the sharing of this information between the Federal Government and the States has grown up without adequate standards and safeguards governing its use. The National Computerized Information Center established by the FBI and the Federal-State computerized networks for the sharing of criminal justice information which are funded under the Law Enforcement Assistance Administration are not funded on an adequate statutory base. Nor are we today providing the necessary statutory framework which I believe will be necessary to cope with the issues raised by this system when it becomes fully operational. Nevertheless, I am joining Senator ERVIN as a cosponsor of a temporary authority for the reasons set forth below.

The NCIC and participating State systems constitute a vast network for the exchange of information between the law enforcement agencies of the States and the Federal Government and among the States. This system has enormous potential for increasing the capability of law enforcement. When the system is fully operational, each individual police officer could instantaneously have information from all over the Nation concerning suspects at his finger-tips simply by contacting his local computer terminal. Such contact might even be made from a patrol car. This tool can be extremely valuable to police and other law enforcement officials faced with problems which do not respect jurisdictional lines or, in our modern society, distance.

But as with so many technological wonders of our age, this miracle for communicating information raises new problems which must be addressed. In this case, the problems concerning using this system in a way that protects constitutional liberties and civil rights, including the right of privacy.

For that reason, I have favored legislation that would, while authorizing the establishment of such a system, establish basic rules and guidelines governing the types of information that can be included in this system, the procedures for insuring the correctness of such information, and the circumstances of its dissemination. As a member of the Judiciary Committee, I have had called to my attention a number of problems created by the lack of such guidelines.

For instance, I have heard of at least one occasion where a local police officer sold information about individuals which he obtained through the national computer system because he had access to the local computer terminal to a credit union. The only sanction currently available in such a case is termination of the contract under which the information was made available to that local jurisdiction. Under current Federal law, dissemination of information in such a case is not even a crime.

I am pleased that former Attorney General Elliot Richardson was also aware of these types of problems and supported

such legislation. During his tenure, the Department of Justice was readying a draft bill on this subject for presentation to the Congress. I hope that the new Attorney General will favor and support such legislation.

But, in the meantime, the Menard decision requires temporary authority in order that the FBI may lawfully continue to use the NCIC system. The bill we are introducing today would provide such temporary authority until the end of 1974 which will give ample time for the Congress to consider and enact a long-range solution in the form of permanent legislation.

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

Mr. ERVIN. I yield.

Mr. PASTORE. First I want to say that there is tremendous merit in the proposal of the Senator from North Carolina. We argued long and hard to convince the House conferees that they should accept the amendment as it was included in the bill.

The argument has been made that the FBI has taken the position that the amendment as written would be unworkable, which I question. Nothing is unworkable if we try. The important thing is the principle involved, and the principle is good. But the position they took—and I think there was some merit to it—was that this should become permanent law if it is worthy and that, because it falls within the exclusive jurisdiction of the Judiciary Committee, that is where it should originate. It was for that reason that, after we had debated it for some time, we insisted that it be deleted, but emphasized that it was being done without prejudice to the merit of the amendment itself.

At this juncture, I ask unanimous consent that my name also be added as a cosponsor of the bill proposed by the Senator from North Carolina. I do not subscribe to every particular word in the amendment, but I think the principle is good. I believe we ought to hold hearings on it, we ought to go into it extensively, and we ought to come up with a bill that makes some sense, because I think this is an area in which we do need some sense.

I do not think it is right for certain records to be proposed and to be batted around the country when a person applies for a job, especially in a case in which there is an arrest on a menial offense that never comes to trial, and yet it haunts that individual in seeking and obtaining legitimate employment for the rest of his life. That is not fair. I do not think our Founding Fathers ever intended that that be the case.

However, we all agreed that when a person is a criminal and his record is not good, in that case it ought to be told publicly. I think the Senator from North Carolina agrees to that.

What the Senator from North Carolina is talking about is the constitutional rights of an individual, and you just cannot toy with the Constitution without reaching in some instances things that will come back to haunt you. It was for that reason that we finally had to go along.

On the question of providing counsel in the district courts of the District of Columbia, we all understand that the Supreme Court has already ruled that even in the case of a misdemeanor, a defendant is entitled to counsel; and whether or not it is being done under this bill or under the District of Columbia bill, eventually it has to be done, and these people will have to be paid. We have been assured by Mayor Washington, of the District of Columbia, that he proposes to do it that way.

The Judicial Council feels that it should come under the District of Columbia and not under the judiciary aspects of this bill. For that reason, of course, we argued it before the conference, and finally we did have to recede, on the ground that the matter would be taken care of.

I assure the Senator from North Carolina that no matter what the case is, if this is not done on the District of Columbia bill, I will do it on the next supplemental bill.

Mr. ERVIN. I thank the distinguished Senator from Rhode Island, not only for his remarks on this occasion, but also for the fact that he has supported my efforts in respect to the Ervin amendment and also to making provision for counsel for indigents in the District of Columbia, when the bill was before the Senate.

I agree with the Senator that in the long run it is much better to have this question settled by a specific act rather than by an amendment to an appropriation bill or an authorization bill.

Mr. PASTORE. Mr. President, I ask for the yeas and nays on the adoption of the conference report.

The yeas and nays were ordered.

Mr. PASTORE. Mr. President, before I ask that the conference report be agreed to, I take this occasion, first, to compliment my counterpart on the subcommittee, the distinguished Senator from Nebraska (Mr. HRUSKA), and also the ranking Republican member of the Committee on Appropriations (Mr. YOUNG) for the fine cooperation they gave us in the consideration of the bill. The bill contains 86 individual items. We have had 54 amendments to the conference report and more than 2,000 pages of hearings. It took us approximately 5 weeks to hear what the witnesses had to say.

For that reason, I want to pay my compliments to the members of the staff Joseph T. McDonnell, Harold E. Merrick, Gerald P. Salesses, and William Kennedy, of the minority—and to all others on the committee who played a part in the adoption of the report.

Unless there is anything else to be said, I suggest the absence of a quorum before the vote.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. HOLLINGS. Mr. President, at this time I wish to make part of the legislative record clear on the point that the Conference Committee agreed to the separate language of the Senate amendment to H.R. 8916 providing funds for the Coastal Zone Management Act of 1972—Public Law 92-583. The $15 million appropriation in the Senate amendment has, however, been reduced by the conferees to $12 million.

The House had provided no funds for the implementation of the Coastal Zone Management Act on grounds that the administration had not requested the funds necessary to begin this new land and water use program to assist States in the management of their coastal areas. Prior to the reporting of the Senate Appropriations Committee's action on H.R. 8916, however, the administration did decide that the signature of the Coastal Zone Act into law, a year ago, should be affirmed and, that, in fact, the States do need this assistance for their coastal areas.

The President sent an amendment to the fiscal year 1974 budget to the Senate on August 15, 1973. He included a letter from the director of the Office of Management and Budget reporting that funding of the act will "assure beneficial use, protection and development of our coastal waters and adjacent shorelands."

With unanimous consent, which I hereby request, this August 15 request will appear at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. HOLLINGS. Unlike other ongoing programs, the effect of the initial failure of the administration to budget funds for the Coastal Zone Act has caused at least a year's setback in fulfilling congressional intent. It delayed the tooling up of the Coastal Zone Act program at the Federal level and also caused delay at the State level. We, therefore, cannot suffer any withholding of the funds appropriated or other additional delay by the administration.

To deal with this special situation, the language of the Coastal Zone Act appropriation and my statement here today is intended by the Conferees to make it absolutely certain that the legislative history of this appropriation leaves no doubt as to its meaning.

First, we provide that the sums appropriated shall remain available until expended. This is consistent with the language of section 315 of the Coastal Zone Management Act.

Second, we appropriate the total sum of $12 million. It is the conferees' intent that it is to be used as follows: $4 million for grants to States under section 312 of the Coastal Zone Management Act to be used to match State funds on an equal basis to acquire, develop, and operate estuarine sanctuaries pursuant to that section of the Coastal Zone Management Act of 1972; $7,200,000 for grants to States under section 305 of the Coastal Zone Management Act to assist States in the development and administration of coastal zone management programs pursuant to those sections. The Conference Committee understands that the de-

lays caused by the administration have now made it impossible for any State to perfect a management program so as to be able to qualify under section 306. We therefore decided that all of the $7.2 million should be utilized under section 305 which is for developing management programs. For some States, the money will be for a review and fine tuning of existing programs. For others, of course, it will be for the true beginning of the development of a program. The Conference Committee, however, has retained the language of the Senate amendment which also refers to section 306 for the reason that if any of these moneys should remain unobligated in the following fiscal year, the Secretary of Commerce, may wish to designate them, with the approval of both committees, as also available for section 306 grants; and $800,000 for the administrative expenses of the Secretary of Commerce, through NOAA, in carrying out the Coastal Zone Management Act of 1972.

Third, we provide that the expenditures of this appropriation shall not result in, or be used as, an excuse for the withholding of appropriated funds for other NOAA activities. This includes cutbacks in NOAA spending as well. Moreover, the conferees hope that prudence will be exercised and that this appropriation will not be reduced by the administration to repay funds transferred or borrowed from other areas to keep the coastal zone program alive within NOAA for periods during which the administration had failed to request funds unless such repayment is made following consultation with the two committees.

Fourth, we use language which recognizes and declares that the States are legally entitled to receive the moneys appropriated, notwithstanding any attempt to impound them or otherwise not make them available through methods such as jamming the administrative machinery, by not providing regulations or by not processing applications.

Fifth, we require that each coastal State shall receive its share of the coastal zone management funds. If there should be a failure to publish necessary regulations or other administrative failures, it is necessary to indicate each State's entitlement. The regulations, if available, should specify a formula for dividing the funds between the States including relevant considerations to determine the proportions. The extent and nature of the shoreline and area which will be managed, population pressures and the extent of coastal zone problems which the act is designed to assist the States in meeting are criteria that might be used. The provisions of this appropriation measure are not intended to interfere with a reasonable proportional allocation scheme but, instead, we mean to refer to it, if the formula is developed by the executive branch.

Lastly, we have included language to assure that the funds appropriated will not be designated by the administration, directly or indirectly, for use in areas outside a coastal State's coastal zone which that State has included in an application for assistance under a national land use law. This prevents duplication by keeping funds for both programs from being spent in the same geographical area. A coastal State with both programs will designate its coastal zone management act area and its separate land use act area.

EXHIBIT 1

BUDGET AMENDMENTS, 1974, DEPARTMENT OF COMMERCE

THE WHITE HOUSE,
Washington, August 15, 1973.

THE PRESIDENT OF THE SENATE.

SIR: I ask the Congress to consider amendments to the request for appropriations transmitted in the budget for the fiscal year 1974 in the amount of *$5,000,000* for the Department of Commerce.

The details of these proposals are set forth in the enclosed letter from the Director of the Office of Management and Budget, with whose comments and observations I concur.

Respectfully,

RICHARD NIXON.

[Estimate No. 27, 93d Cong., first sess.]

EXECUTIVE OFFICE
OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., August 15, 1973.

The PRESIDENT,
The White House.

SIR: I have the honor to submit for your consideration an amendment to the request for appropriations transmitted in the budget * * *

Department of Commerce—National Oceanic and Atmospheric Administration

Operations, research, and facilities:

Request pending	$343,089,000
Proposed amendments	5,000,000
Revised request	348,089,000

The proposed budget amendment would initiate implementation of P.L. 92-583, the Coastal Zone Management Act of 1972. This Act authorizes the Secretary of Commerce to make grants to coastal states to assist them in the development of a management program for the land and water resources of their coastal zones. With needed broader land use legislation now under consideration by the Congress, "it is now timely to proceed with funding of the Coastal Zone Management Act so as to assure beneficial use, protection and development of our coastal waters and adjacent shorelands."

I have carefully reviewed the proposal for appropriation contained in this document and am satisfied that this request is necessary at this time. I recommend, therefore, that this proposal be transmitted to the Congress.

Respectfully,

ROY L. ASH,
Director.

Mr. HART. Mr. President, it was with deep regret that I learned our conferees on this bill were not able to prevail and keep the $1 million appropriation the Senate added for the Antitrust Division of the Department of Justice.

Frankly, I think Congress is being penny-wise and pound-foolish to keep the antitrust division handicapped by a shortage of funds.

For this is certainly one area of governmental spending which demonstrates a good return on the investment.

For example, antitrust action against five drug companies has directly reduced prices of the important antibiotic tetracycline to consumers by 95 percent. The antitrust action against a number of electrical equipment manufacturers led to treble damage settlements which resulted in more than $500 million being returned to consumers through reduced utility rates.

That settlement alone would finance the division's current budget for more than 40 years.

Surprisingly enough, despite such success, the budget for the division—when measured in 1958 dollars—has decreased since 1950, while the size of the economy has more than doubled. So, in the face of a well-documented trend toward economic concentration, the division employs fewer persons to enforce the antitrust laws than it did 23 years ago.

Mr. President, the additional funds were added to the appropriation for the Antitrust Division by the Appropriations Committee at the request of myself and four of my colleagues on the Judiciary Committee, Senators KENNEDY, BAYH, GURNEY, and TUNNEY. The Senate agreed. But unfortunately, apparently the House conferees did not.

We reluctantly accept the decision of the conference.

But we do not give up on the cause. Hopefully, we can yet this year convince the House of the wisdom of investing in the Antitrust Division.

Mr. TUNNEY. Mr. President, I rise to express my disappointment at the refusal of the House conferees to accept two provisions—one to increase funding for the Antitrust Division of the Justice Department and another to increase funding for the Community Relations Service division of the Justice Department. Both of these increases were of the upmost importance.

Senator HART, myself, and other members of the Judiciary Committee wrote to Senator PASTORE, chairman of the Subcommittee on State-Justice-Commerce appropriations on June 28 asking that the funding level for the Antitrust Division be increased by $3 million. Fortunately, the subcommittee partially acceded to our request and increased the budget request by $1 million. This increase subsequently passed the Senate.

On July 17, I wrote to Senator PASTORE again requesting that the $4 million in funds slashed by the administration from the Community Relations Service budget be restored. Again, the subcommittee attempted to meet this request and $1 million was added to the budget request for CRS and was passed by the Senate.

Although the funding level that I had requested for each division was much higher than what was approved by the Senate, I felt that the $1 million increase for the two functioning in an effective manner. The refusal of the House conferees to accept these modest, but necessary, increases is very distressing to me as it should be to all Americans who feel that we need a strong Antitrust Division to maintain the viability of our free enterprise system and a strong Community Relations Service to insure the continued operation of the only Federal agency charged with conciliating racial disputes.

Both of these issues are extremely important. I would hope that the Congress would reevaluate its position on the need for these increases at the earliest pos-

sible opportunity—hopefully in the supplemental appropriations bill this year.

I ask unanimous consent that the two letters written to Senator PASTORE be printed in the RECORD at this point.

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

JULY 17, 1973.

Hon. JOHN O. PASTORE,
Chairman, Senate Appropriations Subcommittee on State, Justice, Commerce, the Judiciary, Washington, D.C.

DEAR JOHN: It is my understanding that your subcommittee currently is marking-up appropriations that include funding for the Community Relations Service of the Justice Department. The service was set up under the Civil Rights Act of 1964 to help reduce racial tensions and conflicts, but it will all but be dismantled under the administration's 1974 budget, which slashes funds for the service from $6.8 to $2.8 million. This goes beyond cutting to the bone. It cuts through the bone in a meat-axe amputation of the one federal agency charged with conciliating racial disputes. The service, which has shunned publicity, has been spectacularly successful in behind-the-scenes negotiations in preventing violence and settling conflicts. It has worked in major cities in California and in troubled farm lands in the Central Valley. My state would be particularly hard hit by the drastic cut-back, and its two-man Los Angeles office would be closed. I'm sure other areas throughout the United States would be similarly affected and I would urge you and your subcommittee to restore funding to this vital service. Thank you for your consideration.

Sincerely,

JOHN V. TUNNEY,
U.S. Senator.

U.S. SENATE,
Washington, D.C., June 28, 1973.

Hon. JOHN O. PASTORE,
Chairman, Subcommittee for the Departments of State, Justice, Commerce, the Judiciary, and Related Agencies, Committee on Appropriations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is to request an increase of $3 million in the budget for the Antitrust Division of the Department of Justice.

We make this request mindful of widespread concern about inflation and the effect of government spending on the economy.

Economists of various persuasions, including Dr. Arthur Burns, Chairman of the Federal Reserve Board, and Dr. Pierre Rinfret, formerly Special Economic Advisor to President Nixon, have stated that the most effective way to control prices is to increase competition in the marketplace.

The antitrust laws are designed to do just that, and effective enforcement of those laws remain the nation's best defense against unhealthy economic concentration. Certainly, we do not suggest that an additional $3 million for the Antitrust Division will solve the problem of inflation, but we do believe it could help. Equally important, potential savings to consumers from successful antitrust actions could more than offset the increase.

For example, antitrust action against five drug companies has directly reduced prices of the important antibiotic tetracycline to consumers by 95 percent. The antitrust action against a number of electrical equipment manufacturers led to treble damage settlements which resulted in more than $500 million being returned to consumers through reduced utility rates. The electrical equipment conspiracy settlements alone would meet the division's current budget for more than 40 years.

Surprisingly enough, despite such success, the budget for the division—when measured in 1958 dollars—has decreased since 1950, while the size of the economy has more than doubled. So in the face of a well-documented trend toward economic concentration, the division employs fewer persons to enforce the antitrust laws than it did 23 years ago.

As a result, cases which are brought drag on longer; and many actions are not filed because the division is reluctant to take on "big cases" which would tie up a large percentage of its resources. About ten percent of the division's manpower is now working full time on the IBM case. That case was filed over four years ago and has yet to come to trial. Even more striking, Control Data Corporation's private suit against IBM was settled in a pretrial stage with a $15 million payment from IBM to cover Control Data's legal expenses alone. This sum exceeds the division's entire budget.

Unhappily, the hard fact is that to a great extent the cases brought today must be made against giant defendants whose resources swamp those of the Antitrust Division. In 1950, there were only a dozen manufacturing corporations with assets in excess of $1 billion; as a group, they held 18 percent of all manufacturing assets. By 1972, 52 percent of all manufacturing assets were held by 115 "billion dollar" firms.

The Administration has requested about $13 million for the division for fiscal year 1974, a small and clearly inadequate increase over last year's total. An increase of $3 million would allow the division to hire 50 more lawyers and support personnel, including economists. It is our understanding that the division could usefully absorb such an increase.

It seems to us then that our request is consistent with congressional concern about inflation and federal spending. Further, our request should enjoy the support of all of us who believe competition in the marketplace is the best way to control prices and of those who recognize that successful antitrust actions can save consumers many times over the cost to the Federal Government.

With best wishes,
Sincerely,

EDWARD M. KENNEDY,
BIRCH BAYH,
EDWARD J. GURNEY,
PHILIP A. HART,
JOHN V. TUNNEY.

Mr. PASTORE. Mr. President, I move the adoption of the conference report.

The PRESIDING OFFICER. The question is on agreeing to the conference report. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. HARTKE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Washington (Mr. MAGNUSON), the Senator from Utah (Mr. MOSS), the Senator from Wisconsin (Mr. NELSON), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

I further announce that the Senator from Nevada (Mr. BIBLE), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mr. HUMPHREY), and the Senator from Georgia (Mr. TALMADGE) are absent on official business.

I further announce that, if present and voting, the Senator from Washington (Mr. MAGNUSON), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Minnesota (Mr. HUMPHREY) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Nebraska (Mr. CURTIS) is absent by leave of the Senate on official business.

The Senator from Colorado (Mr. DOMINICK), the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. PACKWOOD), the Senator from Ohio (Mr. SAXBE), the Senator from Pennsylvania (Mr. SCHWEIKER), the Senator from Virginia (Mr. WILLIAM L. SCOTT), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

If present and voting, the Senator from Nebraska (Mr. CURTIS), and the Senator from South Carolina (Mr. THURMOND) would each vote "yea."

The result was announced—yeas 80, nays 2, as follows:

[No. 480 Leg.]

YEAS—80

Abourezk	Domenici	McGovern
Aiken	Eagleton	McIntyre
Allen	Eastland	Metcalf
Baker	Fannin	Mondale
Bartlett	Fong	Montoya
Bayh	Fulbright	Muskie
Beall	Gravel	Nunn
Bellmon	Griffin	Pastore
Bennett	Gurney	Pearson
Bentsen	Hansen	Pell
Biden	Hart	Percy
Brock	Haskell	Proxmire
Brooke	Hatfield	Randolph
Buckley	Hathaway	Ribicoff
Burdick	Helms	Roth
Byrd, Harry F., Jr.	Hollings	Scott, Hugh
Byrd, Robert C.	Hruska	Sparkman
Cannon	Hughes	Stafford
Case	Inouye	Stevens
Chiles	Jackson	Stevenson
Church	Javits	Symington
Clark	Johnston	Taft
Cook	Long	Tower
Cotton	Mansfield	Tunney
Cranston	McClellan	Weicker
Dole	McClure	Williams
	McGee	Young

NAYS—2

Ervin	Mathias

NOT VOTING—18

Bible	Kennedy	Scott, William L.
Curtis	Magnuson	Stennis
Dominick	Moss	Talmadge
Goldwater	Nelson	Thurmond
Hartke	Packwood	
Huddleston	Saxbe	
Humphrey	Schweiker	

So the conference report was agreed to.

The PRESIDING OFFICER. The clerk will state the first amendment in disagreement.

Mr. PASTORE. Mr. President, I ask unanimous consent that the amendments in disagreement be considered en bloc.

The PRESIDING OFFICER. Without objection, the amendments in disagreement will be considered en bloc.

The amendments in disagreement are as follows:

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 30 to the aforesaid bill, and concur therein with an amendment, as follows:

In lieu of the matter proposed to be inserted, insert:

"DEVELOPMENT FACILITIES

"For grants and loans for development facilities as authorized by titles I, II, and IV of the Public Works and Economic Development Act of 1965, as amended (79 Stat. 552; 81 Stat. 266; 83 Stat. 219; 84 Stat. 375; 85 Stat. 166), $159,000,000 of which not more than $25,000,000 shall be for grants and loans to Indian tribes, as authorized by title I, section 101(a) and title II, section 201(a) of such Act: *Provided*, That upon enactment of the Indian Tribal Government Grant Act

the unobligated balances of the amounts appropriated for Indian tribes under title I, section 101(a) and title II, section 201(a) shall be transferred to carry out such purposes of the Indian Tribal Government Grant Act."

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 37 to the aforesaid bill, and concur therein with an amendment, as follows:

In lieu of the sum named in said amendment, insert:

"$12,000,000."

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 46 to the aforesaid bill, and concur therein with an amendment, as follows:

In lieu of the matter proposed to be inserted, insert:

"COMMISSION ON THE ORGANIZATION OF THE GOVERNMENT FOR THE CONDUCT OF FOREIGN POLICY

"SALARIES AND EXPENSES

"For necessary expenses of the Commission on the Organization of the Government for the Conduct of Foreign Policy, authorized by title VI of the Foreign Relations Authorization Act of 1972, $1,050,000 to remain available until June 30, 1975."

Mr. PASTORE. Mr. President, I move that the Senate agree to the House amendments to Senate amendments numbered 30, 37, and 46.

The motion was agreed to.

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

Mr. PASTORE. I yield.

Mr. MANSFIELD. Mr. President, I think we ought to reiterate, as we stated at the time the original appropriation bill passed the Senate, that the distinguished Senator from Rhode Island (Mr. PASTORE), the distinguished Senator from Nebraska (Mr. HRUSKA), and the members of the subcommittee—and I am happy to include myself in that list—have done a remarkably effective and efficient job in economizing. The net result of what the Senate has done is a reduction of almost $60 million below the budget presented by the administration.

I think all too often some of our associates are not given the credit which I think is their due, and I think it ought to be brought out also that, as far as the distinguished Senator from Rhode Island is concerned, this is not by any means the first appropriation bill which he has handled in which a significant reduction has been reported.

So, just to make the record straight and to commend the distinguished Senator from Rhode Island personally for the great work he has done in the field of the economy and in the field of cutting expenditures, I want the record to show how I feel. I thank the Senator.

Mr. JACKSON. Mr. President, before I call up the conference report on S. 1570, I just want to join the majority leader in his comments regarding the able senior Senator from Rhode Island. I think, as usual, he has been extremely thoughtful and skillful in separating out the things that could be eliminated and keeping in the things that are essential. I want to join in commending him for the sensible economies he has made. He has handled them very well. He always handles his Appropriations Subcommittee in a manner which I think lends great credit to the Senate in its deliberations on expenditures. I want to join in these commendations.

ENROLLED BILL PRESENTED

The Secretary of the Senate announced that on today, November 14, 1973, he presented to the President of the United States the enrolled bill (S. 1081) to amend section 28 of the Mineral Leasing Act of 1920, and to authorize a trans-Alaska oil pipeline, and for other purposes.

MESSAGE FROM THE PRESIDENT—APPROVAL OF BILLS

A message in writing from the President of the United States was communicated to the Senate by Mr. Marks, one of his secretaries, and he announced that on November 9, 1973, the President had approved and signed the act (S. 607) to amend the Lead Based Paint Poisoning Prevention Act, and for other purposes; and on November 13, 1973, the President had approved and signed the act (S. 11) to grant the consent of the United States to the Arkansas River Basin compact, Arkansas-Oklahoma.

EMERGENCY PETROLEUM ALLOCATION ACT OF 1973—CONFERENCE REPORT

Mr. JACKSON. Mr. President, I submit a report of the committee of conference on S. 1570, and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated by title.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1570) to authorize the President of the United States to allocate crude oil and refined petroleum products to deal with existing or imminent shortages and dislocations in the national distribution system which jeopardize the public health, safety, or welfare; to provide for the delegation of authority to the Secretary of the Interior; and for other purposes having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all the conferees on the part of both Houses.

The PRESIDING OFFICER. Is there objection to the consideration of the conference report?

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

(The conference report is printed in the House proceedings of the CONGRESSIONAL RECORD of November 12, 1973 at p. 36660.

Mr. JACKSON. Mr. President, I ask for the yeas and nays on the conference report.

The yeas and nays were ordered.

Mr. JACKSON. Mr. President, I ask unanimous consent that William Van Ness, Lucille Langlois, Jim Barnes, Grenville Garside, Mike Harvey, and Jerry Verkler, members of the staff of the Senate Committee on Interior and Insular Affairs, be granted the privileges of the floor during the consideration of the conference report on S. 1570, the Emergency Petroleum Allocation Act of 1973.

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

Mr. JACKSON. Mr. President, I yield for a similar request to the Senator from Arizona (Mr. FANNIN).

Mr. FANNIN. Mr. President, I ask unanimous consent that David Stang, Harrison Loesch, Fred Craft, Roma Skeen, and Maureen Finnerty, all of the minority staff, be given the privilege of the floor during the discussion of the conference report on S. 1570.

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

Mr. JACKSON. Mr. President, the Committee on Interior and Insular Affairs on May 17 reported out S. 1570, the "Emergency Petroleum Allocation Act of 1973." This is an emergency measure to deal with an urgent problem to which Members of the Senate need no introduction.

The basic purpose of S. 1570 is to deal with the first peacetime fuel shortages in American history. And if this legislation was needed when the Senate first passed it 6 months ago, its final enactment has become a matter of the highest urgency.

It was already clear 6 months ago that we were not dealing with the isolated spot shortages predicted by some. It was obvious then that we were confronting the prospect of serious, prolonged and widespread shortages which would have a real impact on our economy, which would affect the nature and structure of the petroleum industry, and which would alter the standard of living enjoyed by many Americans.

Today, as a result of the Arab oil embargo, the outlook is grim. We are facing shortages equal to 20 percent or more of our petroleum needs. Rationing has become a necessity. Severe economic dislocations affecting individual jobs and factories and whole industries are inevitable. And there seems no easy way to avoid a degree of personal hardship which, a few months ago, seemed almost unthinkable. Against this background, the basic purpose of S. 1570 to "share the shortages" as fairly as possible seems more valid than ever.

Congress recognized the need to allocate scarce fuels when it authorized the President in the Economic Stabilization Act amendments adopted last April to establish priorities of use and provide for the allocation of crude oil and petroleum products to meet essential needs and prevent anticompetitive effects resulting from shortages. Under this authority, the President inaugurated a voluntary allocation system, which, as we all know, was woefully inadequate to deal with fuel shortages, even before our imported fuel supplies were curtailed.

The failure of the voluntary system was in effect recognized by the administration when it first adopted a mandatory allocation program for propane and then implemented a mandatory program for middle distillate fuels on November 1. I would emphasize, Mr. President, that these existing mandatory programs will

not be disrupted by enactment of S. 1570. The legislation specifically provides that these programs implemented under the authority of the Economic Stabilization Act shall continue in effect until modified pursuant to S. 1570.

S. 1570 goes beyond discretionary authority and mandates action—both by the executive branch and by private industry—to assure the equitable distribution of fuels in short supply.

This act requires the President to prepare and publish priority schedules and plans for the allocation and distribution of fuels which are or may be in short supply. The President is to allocate or distribute such fuels pursuant to these schedules and plans if necessary to achieve the objectives of the act.

The President's authority is to be exercised generally to minimize the impact of fuel shortages or dislocations in the fuel distribution system. More specifically he is required, in implementing his authority under the act, to take such actions as are necessary to protect the public health, safety, and welfare; to maintain public services and essential agricultural operations; to preserve an economically sound and competitive petroleum industry; to provide for equitable distribution of fuels at equitable prices among all regions and areas of the United States and all classes of consumers; to achieve economic efficiency and minimize economic distortion, inflexibility, and unnecessary interference with market mechanisms.

This authority is essential if we are to assure continuation of vital services in the face of critical energy shortages.

The conference report differs from the original Senate bill in a number of respects.

The definition of independent refiner has been expanded, to include definition by percentage of market volume as well as by source of crude, and a category of "small refiner" has been added to the bill. A definition of the United States has been included to assure that possessions of the United States would be covered by this program.

The "dealer day in court" has been dropped from the Senate bill. A dollar-for-dollar passthrough provision has been added from the House bill for net increases in the cost of crude and products.

A provision has been added from the House bill to allow priority consideration for allocation for those users of natural gas who have been curtailed by the FPC. The conference report also accepts House language that, to the extent practicable and consistent with the objectives of the bill, users of liquified petroleum gas may be exempted from allocation if they have no alternative fuel.

And, finally, the conference report provides for a pro rata sharing of shortfalls in refined products and crude, to allow for equitable distribution and to permit new market entries. The bill reflects the conferees' concern that adequate provision be made for crude oil supplies for new or expanded refineries. The assurance of such supplies will make it possible to secure financing for refinery projects and the President is authorized to make adjustments in crude oil allocations for this purpose.

Mr. President, in spite of the differences between the Senate and House bills it is my opinion that the conference report satisfies the goals of the Senate set forth in S. 1570 and will achieve the purposes of requiring essential emergency allocation measures. I urge that the Senate adopt the conference report.

The PRESIDING OFFICER (Mr. HATHAWAY). The Senator from Arizona is recognized.

Mr. FANNIN. Mr. President, I join in the statements of the Senator from Washington, the floor manager of the legislation and chairman of the committee, and commend him for the work in which he was involved in getting this legislation to the committee and through the conference.

Mr. President, S. 1570, the Emergency Petroleum Act of 1973 is the first major congressional design for dealing with our worsening fuel crisis. Historical events have to some degree outrun the scope of the bill—and the Senator from Washington agrees with me that what has happened has caused that to come about—necessitating further steps which will soon be before this body in the shape of S. 2589, the Energy Emergency Act. We will recall that the Senate passed S. 1570 last June, and it was designed to meet the energy problems apparent to us at that time. The explosion in the Mideast and the consequent cutoff of Mideast oil supplies has changed and worsened our situation to a degree demanding further steps and more severe action both by the Congress and the administration. Nevertheless, S. 1570 is necessary and fully appropriate in its own right. S. 2589 is designed to carry forward, on the initial framework provided by S. 1570, the major changes in our circumstances and uses of energy which the national interest now demands. The conference committee of the House and the Senate could take these matters into consideration, since the bill did not go to conference until after the interruption of our Mideast supply.

The success of S. 1570 and its required Executive regulations, requires the wholehearted cooperation of and prompt action by all segments of our oil and gas industry, from the largest of the vertically integrated majors to the smallest of the independent refiners and marketers. In order to obtain this cooperation—which will be willingly given by the industry if it is allowed to do so—it will be necessary in our consideration of S. 2589 that certain accommodations be made with regard to rules and regulations to be established as pertinent to maximizing the cooperation of the industry in helping to effectuate and implement equitable fuels allocation. Since the House version contained no such provisions and it was beyond the authority of the conferees to enlarge the Senate language, and since the breadth and depth of the upcoming emergency was unknown at the time the Senate passed its bill last June, relevant provisions of S. 1570 are obviously insufficient.

For this reason it was the unanimous understanding of the conferees that the problem again would be addressed in S. 2589 on the Senate side and its counterpart or counterparts in the House, and further adjustments made as required to obtain the fullest and widest industrywide implementation.

I would just say that with regard to certain accommodations to be made with regard to rules and regulations to be established as pertinent to maximizing the cooperation of the industry in helping to effectuate and implement equitable fuels allocation, it is necessary, in order to accomplish this, that S. 2589 include those stipulations that we were not able to include in S. 1570, to obtain the fullest and widest industrywide cooperation.

Mr. JACKSON. Was the Senator referring to the problem of antitrust?

Mr. FANNIN. I am referring to the cooperation and assistance that would be necessary. That could involve some stipulations of antitrust.

Just to pose the question, is it not correct that what we are doing in S. 2589 is seeking to accomplish some of the objectives that would perhaps arise in connection with S. 1570? We were not able to do it in S. 1570; we did not have the emergency existing at that time. So in S. 2589 we have gone beyond that point.

Mr. JACKSON. Yes. The Senator is referring to the emergency bill that will come up after this one?

Mr. FANNIN. Yes.

Mr. JACKSON. It is our intention to cover several areas. As the Senator knows, one is to provide grants-in-aid to the States, which are not covered in this bill, to enable them to handle the costs of administration that the States will be obligated to carry out as, in effect, agents of the Federal Government. We are doing this in order to avoid a Federal bureaucracy.

Mr. FANNIN. Yes.

Mr. JACKSON. Then, in addition, we are preparing an amendment to S. 2589, which will relate to the antitrust problem.

Mr. FANNIN. Yes.

Mr. JACKSON. And I hope we will have that ready in time for action tomorrow.

Mr. FANNIN. Yes. I just wanted to bring out that we——

Mr. JACKSON. It is not in this bill.

Mr. FANNIN. Not in this bill.

Mr. JACKSON. I mean in this conference report.

Mr. FANNIN. In the S. 1570 conference report or bill, but we hope it will be covered either within the legislation, or that by the time the amendments are adopted it will be covered.

Mr. JACKSON. The Senator is correct.

Mr. FANNIN. And the Government can have the coordination and cooperation——

Mr. JACKSON. The point is, we did not have the opportunity to take care of it in this bill or in this conference report, but we intend to deal with that problem.

Mr. FANNIN. Yes.

Mr. JACKSON. In connection with S. 2589.

Mr. FANNIN. I thank the distinguished Senator from Washington for confirming my understanding in this matter.

Mr. President, these provisions will not constitute a precedent. What is proposed is primarily an expansion of section 708

of the Defense Production Act of 1950, now limited to the allocation of oil imports for national defense purposes only to cover the overall civil emergency with which we are faced. In other words, section 708 of the Defense Production Act of 1950 allows certain industry cooperation and joint actions which would otherwise be prohibited to occur in the case of oil importations only when required for national defense reasons. S. 1570 and S. 2589, which the Senate will also shortly have under consideration, should extend such exemptions to the allocatory process for all supplies of crude oil and refined products, whether foreign imports or domestically produced.

The report of the conferees also explains the understanding of the conference committee with respect to the authorities conferred on the President by the Economic Stabilization Act of 1970 vis-a-vis the authorities conferred by S. 1570. It was not and is not intended by the conferees that the authority to control prices of crude oil and refined products conferred by section 4(e) of the act should supplant Economic Stabilization Act authority in the realm of oil and gas. Only in cases in which the purposes of the current act cannot be carried out under the former pricing authorities need the President rely solely on the new authority conferred by S. 1570. In other cases he will be able to operate under the authorities conferred by both acts. For purposes of avoiding litigation and controversy, I recommend that both such authorities be cited in the rules and regulations which will be promulgated by the executive branch in carrying out S. 1570.

Mr. President, one other area of the manager's report should be specifically referred to in order that the Senate may have a full understanding of the overall plan and program proposed by S. 1570. Section 4 of the act sets out the requirements of the Mandatory Allocation plan and subsection b(1) of that section requires that the regulations provide for various priorities in such allocations. One of the overriding requirements of any allocation plan is to make full use of the entire refining capacity of the United States. In order to do so the act takes care of the small and independent refiners who do not have their own sources of crude oil supply.

But it should be noted that such allocations might not operate to the prejudice, percentagewise, of the refining capacities owned and operated by the major oil companies. So long as the inflow to U.S. refineries equals or exceeds the 1972 input, the small and independent refiners are to receive at least the amount of their 1972 allocations. If—as we anticipate will occur—the total countrywide input to our refiners falls below that of 1972, then it becomes necessary to "share shortages." If this occurs, the small and independent refiners will still receive their fair share of available supplies, but not to the percentage detriment of the large refiners. As my colleague Senator HANSEN put it, if our total input falls 15 percent below 1972 levels, then each refinery in the country should be operating at 85 percent of its capacity. As shown by section 4(c)(1)(B) of S. 1570, the reductions must be prorated. The intentions of the conference committee in this regard and indeed its intentions in how the allocation scheme, provided by the act, will generally be implemented by the administration are explained on pages 3 to 8 of the managers' report.

Mr. President, S. 1570, the Emergency Petroleum Allocation Act of 1973 presents a first step toward meeting our present dilemma. Its inadequacies can be partially rectified in S. 2589. But even that act fails to provide proper incentives to stimulate supply. Thus, in S. 1570 we are merely spreading shortages around.

Mr. HANSEN. Mr. President, who has the floor?

Mr. JACKSON. Mr. President, I have the floor. I yield to the Senator from Wyoming.

Mr. HANSEN. Mr. President, I thank my distinguished colleague the chairman of the Committee on Interior and Insular Affairs, very much for his graciousness in yielding to me.

Mr. President, all of us are concerned and deeply disturbed over the growing energy crisis in the United States. There are some among us who have felt for some several years that the direction we were taking would lead to catastrophe. Earlier, a few years ago, these warnings were falling upon deaf ears, and instead of taking heed or even bothering to look into the situation, each person for himself, it was easy to brush aside the remarks that were being made as simply parroting the best interests of the oil companies in America.

I think that no one needs to recognize that some of the warnings made several years ago were, indeed, prophetic. The unfortunate thing is the situation is even more serious than some of us at that time had believed it might develop into being.

Japan is faced with a very critical situation today. No one needs to tell the Japanese how serious it is. They are making all sorts of predictions as to what the extreme impact of being denied the petroleum and oil supplies they have been able so far to acquire throughout the rest of the world will have on their economy.

So, in that general framework of a widening and growing international concern over the energy crisis, we are taking up this bill today.

Let me say that the Committee on Interior and Insular Affairs has been very active. We have actually dealt with six different pieces of legislation this year. They are S. 268, the Land Use Policy Planning and Assistance Act. S. 425, the Surface Mining Reclamation Act. S. 1570, the Emergency Petroleum Allocation Act—now before us. S. 1081, the Federal Land Right-of-Way Act—that is the Alaskan pipeline. S. 2176, the National Fuels and Energy Conservation Act. S. 2589, the National Energy Emergency Act.

Mr. President, what disturbs me is that all of us in this country know we are going to be faced with some very serious and critical problems this winter, problems that go beyond the closing of factories, the suspension of jobs, the drying up of income, problems that go right to the heart of life in America, that threaten there will not be enough fuel to keep homes in America warm this winter, that schools will undoubtedly have to be closed, that store hours and business activities generally will be curtailed in order to accommodate America's lifestyle in this time of emergency to a very greatly shortened supply of energy. These are some of the prospects that we are looking at today.

It is because of this fact that, with the exception of the Alaska pipeline bill, Mr. President, not one of the actions we have taken so far really addresses the problem of supply. I am disturbed because that is the case.

The distinguished Senator from Oklahoma (Mr. BARTLETT) was able to get an amendment to the Alaska pipeline bill which exempted from control by the Cost of Living Council, and from other impositions that otherwise would apply to production from the stripper wells in this country, that amount of petroleum that comes into the marketplace. As a consequence, because of his efforts, which were in the main opposed by many members of the Committee on Interior and Insular Affairs, we did do something about supply.

The fact is, Americans will be very grateful to the Senator from Oklahoma (Mr. BARTLETT) this winter that his stripper well amendment was tied into the bill, because it will mean simply that this will be oil that can be used this winter—now. We do not have to drill any more wells. We do not have to explore the Outer Continental Shelf in areas where we have not, so far, explored there.

All we have to do is to let the price rise so that it will continue to be economically feasible for stripper well operators to produce the oil that without the relief that comes from being freed from price controls they would be leaving in the ground.

It is just that simple.

Whenever it costs as much to bring the oil above ground as the oil sells for, at that point in time any intelligent operator in the oil business—and they are all intelligent—will close that well down.

So America had the hard choice to make. It really was not a hard choice, because we did not give the average American any chance to make that choice, but if we had, I am certain that there would have been no doubt at all in the minds of nearly everyone of the 210 million of us that we would rather have fuel at a higher price than to have frozen water pipes, to have cold homes, to have stores closed and factories closed and people out of jobs, and cars and trains and ships and planes unable to move. Yet that was the prospect. I was surprised that there were as many people as was the case in Congress who failed to understand and appreciate the seriousness of the issue they faced.

I am equally disturbed, because we do not yet, some of us, seem to understand

the workings of the economy that we have in the United States of America.

When the Defense Production Act was passed a number of years ago, we recognized then that if we wanted to have enough of anything that might be in short supply and that was critical to this country, the best way to get it was to guarantee a price for it. It worked, because back in World War II, this idea was brought into being when, despite the fact that most farms and ranches in America were practically without help, we knew we had to have food.

What did we do at that time?

The Government of the United States guaranteed a price for wheat. When it guaranteed that price for wheat, it stimulated an effort such as this country has seldom made in its nearly 200 years of history, an outpouring from the farms of America which met the challenge of World War II. We were able to feed not only our own people, our troops at home and overseas, but other nations as well.

Now we are not going to solve the energy crisis by taking the narrow, myopic view that all we really want to deal with is simply to try to spread the misery around. Yet, so far, with the exception of the Alaskan pipeline legislation, that is about all we are doing. That is just about all we are doing, spreading the misery around.

I say that America has the brains, America has the initiative, and America will respond to the challenge to find more oil.

Why do I say that?

There are many reasons, Mr. President. One is that a lot of Dr. William Pecora's testimony, barely more than a year and a half ago, bore out that, in his judgment, being the distinguished geologist he is, head of the U.S. Geodetic Survey and later Under Secretary of the Interior, there was still to be found in America probably as much as 100 times the amount of oil and gas this Nation used in all of 1971.

I know the time is growing late, and I am fully aware of it, but I think it is important for people to understand what the issue is.

I am going to say this, because I do not want someone coming here this winter saying we have failed to understand the situation.

There will be plenty of people questioning Congress this winter when there is no oil to heat homes, when the water pipes become frozen, or when jobs dry up, because there is no energy to run the plants, or when schools close. There are going to be plenty of questions asked of this Congress, such as, "Why did you not do something about it?"

The fact is, we have not done very much about it. Certainly we can do a lot more about it.

What can we do?

If we had the good sense—and that is all that is required—to turn this industry loose and recognize the fact that it costs a lot more to drill a well now than it did a few years ago and that no one in his right mind will go out and try to discover a gas well when up until a few months ago the Federal Power Commission put a lid on the price of gas that resulted in its costing more to drill a well for natural gas than the natural gas would be worth at the price the Federal Power Commission permitted it to be sold. So that is going to be part of the reason why we can do something about it.

I know that our drilling activity for petroleum supplies generally has dropped off. If we compare 1956 with 1972, we are drilling about half the number of wells we drilled in 1956. Yet, our consumption of energy has been four times as much. So, really, if we had been interested in keeping up with the energy supply in the United States, we should have been drilling four times as many wells as we were drilling.

The way we can get interest back in that drilling is to make it more profitable for people to drill. Yet, we hear the statement that the oil companies are running in money, that profits are way up. What many people do not stop to realize is that there are all kinds of oil people. There are big, major companies, and they have had properties expropriated in the Middle East. In the continental United States, on the other hand, we have many people—mostly independents—who discover between 75 and 80 percent of all our wells here. They have not been all that prosperous, I know. We have many of them in Wyoming. I know how activity there has dropped off. It has dropped off simply because the average profit that the independent oilman made on his investment ranged from approximately 3.5 to 6.5 percent.

When that has been the fact, there has been little reason for people to put their money in that kind of activity, drilling these wildcat wells, to try to find them, when they could do better any other place. That is exactly what American businessmen have done. These independent oilmen depend upon others in their communities for drilling funds. They go to all kinds of people who may have some surplus money; and unless the oilmen are able to demonstrate that it is a good risk to put money into that kind of operation, the people are not going to invest. The fact is that it has not been a good risk, because the return on that sort of activity, as I say, has been between 3½ and 6½ percent.

One of the reasons why I am concerned about this bill is that we talk about trying to solve the energy crisis by exceeding the maximum efficient rate of production. Some people probably do not know what is meant by the maximum efficient rate. That is the rate of production at which an oil well can be produced so as to assure the recovery of most of the oil that is in the ground. We only get about a third of the oil that is in the ground now, with our present technology. That rate is fixed after consultation with engineers, with petroleum geologists, by State regulatory agencies, in cooperation and in consultation with the U.S. Department of the Interior people in most areas. So that it is not a rate that is made by the oilman. It is a rate of production that is arrived at, in the hope to set the figure at which a well may be produced and above which it should not be produced if you want to get as much of the oil out of the ground as you can.

When we talk about trying to solve an energy problem that all experts say will extend for a period of several years, it makes no sense at all to me to talk about and to make provision for exceeding the maximum efficient rate. Yet, in other legislation we have before us, that is what is done.

A second problem arises there, and that comes about, because a taking has been achieved when the Government orders that we exceed the maximum efficient rate. What it means is that the person who owns the oil lease or who, indeed, may own the oil, if he owns the land in fee simple, is not going to be getting as much of his oil above ground as could be gotten above ground. So this is important. It is important not only because we will not get all the oil we can otherwise get, but also because in exceeding the maximum efficient rate, we can actually be taking a person's property, because we are denying him the opportunity to get all or as much of the oil out of the ground as he should get out of the ground.

I will vote for this bill with reluctance, because I know that the public generally believes that many of the things that are called for in it will be good. I understand that when you face an emergency situation, as we do, it is inevitable that many innocent people are going to be hurt. I want to do what I can to help that situation. But I do deplore the fact that, for whatever reasons each of us may have in his own heart, we have not had the courage or the good judgment yet, outside of authorizing the Alaskan pipeline, to take any significant action that addresses the problem of supply.

If the Japanese had the options we have, if almost any other country in the world had the options we have, my guess is that they would respond differently from the way we are responding.

We will have to come around, sooner or later—mark my words—to doing some of the things I am talking about here today. We have oil prospects all over the continental United States, on the Outer Continental Shelf, that we are not trying to get into production in an aggressive fashion.

The other fact impinges upon this supply situation, and that is the impact of NEPA legislation. It has been agreed, I understand, by the committee managers and those on the Committee on Public Works that we will leave it up to the Committee on Commerce to write any suggested changes or exemptions that may apply to NEPA in order to shorten the time given those who may raise environmental questions that delay taking the actions I think the United States should take.

Mr. President, I hope that people throughout America will understand what the energy situation is and will respond in a fashion so as to call to the attention of Members of Congress in a way that cannot be misunderstood that, while they support those actions which will help spread the misery around, they would hope very much that we would have the courage and the foresight and

the good commonsense to recognize that we will not correct the problem until we get at the basic issue of improving supply.

I thank the distinguished Senator from Washington.

Mr. JACKSON. Mr. President, I yield to the able Senator from North Carolina such time as he may require.

Mr. HELMS. Mr. President, I simply want to commend the distinguished Senator from Wyoming. He touched on a facet of this situation that very much needs to be discussed with the American people, so that they may understand the origin of the problem.

I think the Senator from Wyoming will agree that we are in this crisis today, because Government has been trying to improve on free enterprise.

What has happened in this fuel crisis is what will happen each time the Government meddles and interferes with the process of free enterprise. I, like the Senator from Wyoming, shall vote for the conference report. I shall do so reluctantly because of the same defects and the same situations he so eloquently discussed.

But I wish to call attention to one feature of the conference report which I briefly acknowledge as probably being helpful to the people of my State. I refer to the language found on page 4, in paragraph 3 of section 4. For the record, I wish to read it at this time so there will be no mistake about it:

(3) The President in promulgating the regulation under subsection (a) shall give consideration to allocating crude oil, residual fuel oil, and refined pretroleum products in a manner which results in making available crude oil, residual fuel, or refined petroleum products to any person whose use of fuels other than crude oil, residual fuel oil, and refined petroleum products has been curtailed by, or pursuant to a plan filed in compliance with, a rule of water of a Federal or State agency, or where such person's supply of such other fuels is unobtainable by reason of an abandonment of service permitted or ordered by a Federal or State agency.

I hope it is understood by the Senate that this is a message to the President, because of the situation that exists in my State and many other States with respect to natural gas customers operating on an interruptible contract.

Under a Federal Power Commission ruling that was to have taken effect on November 16, hundreds of factories in North Carolina would have been closed and thousands of wage earners thrown out of work because of lack of gas for heating and processing. The State of North Carolina has brought suit against the FPC and, after the entire North Carolina congressional delegation joined in as amicus curiae, a stay was obtained in the District of Columbia Court of Appeals. If we lose this suit, the situation will be grave. But even if the State of North Carolina wins this suit, it will require many millions of gallons of fuel oil to take up the slack if further curtailment is required. But under any curtailment ordered by a Federal or State agency, these customers would get high priority for other fuel allocations.

This is the way the measure provides relief for these people and businesses that otherwise would have to go out of business. I hope the record is clear that the President's opportunity and duty is to make certain that this particular section is implemented.

Mr. JACKSON. Mr. President, I ask unanimous consent to have printed in the RECORD letters from Dr. John Dunlop, Director of the Cost of Living Council, and Gov. Daniel Evans of the State of Washington, Chairman of the National Governors' Conference, concerning S. 1570.

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

ECONOMIC STABILIZATION PROGRAM,
COST OF LIVING COUNCIL,
Washington, D.C., November 13, 1973.

Senator HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR SENATOR JACKSON: The purpose of this letter is to confirm my understanding of the intentions of Congress in enacting various provisions of the Emergency Petroleum Allocation Act of 1973 (S. 1570) as they are affected by the Economic Stabilization Act of 1970, as amended and the amendments to Section 28 of the Mineral Leasing Act of 1920, authorizing the Trans-Alaska Pipeline (S. 1081).

I. STRIPPER WELL EXEMPTION

Both the Trans-Alaska Pipeline Bill (hereinafter referred to as "the pipeline bill") and the Emergency Petroleum Allocation Act (hereinafter referred to as "the allocation act") contain provisions for exempting from price controls so-called stripper wells—i.e., those wells producing 10 barrels a day or less. The language of the two bills, though similar in many respects, contains several important differences. Section 406(a) of the pipeline bill provides as follows:

"The first sale of crude oil and natural gas liquids produced from any lease whose average daily production of such substances for the preceding calendar month does not exceed ten barrels per well shall not be subject to price restraints established pursuant to the Economic Stabilization Act of 1970, as amended, or to any allocation program for fuels or petroleum established pursuant to that Act or to any Federal law for the allocation of fuels or petroleum."

The comparable provision in Section 4(e)(2)(A) of the allocation act provides as follows:

"The regulation promulgated under subsection (a) of this section shall not apply to the first sale of crude oil produced in the United States from any lease whose average daily production of crude oil for the preceding calendar year does not exceed ten barrels per well."

You will note that the pipeline bill refers to both "crude oil and natural gas liquids" whereas the allocation act refers only to "crude oil." In addition, you will note that the pipeline bill embodies a base period for determining eligibility for the exemption expressed as the average daily production "for the preceding calendar month" while the allocation act contains a base period expressed in terms of average daily production "for the preceding calendar year."

It is my understanding that in enacting a stripper well exemption as part of the allocation act which differs from a similar provision previously enacted as part of the pipeline bill, it is the intention of Congress to pre-empt the earlier provision by the later provision and that once the exemption established by the allocation act is implemented, the exemption previously enacted as part of the pipeline bill will no longer be of any force or effect.

Further, it is my understanding that the term "crude oil" as used in Section 4(e)(2) of the allocation act is intended to encompass all crude petroleum produced at the wellhead, including both crude oil and crude oil condensates including natural gas liquids such as propane, butane, and ethane. The term is clearly not intended to include natural gas, however. Natural gas production and pricing would continue to be regulated by the Federal or state agency having jurisdiction over such production.

In some cases, through adjustments in the production process it is possible to vary the proportion of crude oil and crude oil condensates that are ultimately produced at the wellhead. If the exemption were construed to apply only to crude oil itself and not crude oil condensates, there would be an incentive to modify the production process to gain advantage of the exemption. Some of the production process modifications that might result in an effort to maximize crude production and minimize condensate production could be counter productive in terms of maximizing total recovery from a reservoir.

It is my understanding that it is the intention of Congress not to permit this form of "gaming" of the exemption, but that rather it is the intention of Congress to embody within the term "crude oil" as used in Section 4(e)(2) of the allocation act both crude oil and crude oil condensates produced at the wellhead.

I also note that the language of the Conference Report accompanying the pipeline bill contains specific admonitions to the administering agency to construe strictly the language of the exemption to accomplish the supply-enhancement objectives of the exemption and to insure that the exemption is not in any way broadened. Specifically the Report states:

"Congress specifically intends that the regulations shall, among other things, prevent any 'gerrymandering' of eases to average down high production wells with a number of low production stripper wells to remove the high production wells from price ceilings. The sole purpose and objective of this Section 406 is to keep stripper wells—those producing less than ten barrels per day—in production and to insure that the crude oil they produce continues to be available for U.S. refineries and U.S. consumers. It is not intended to confer any benefit on the owners and operators of wells producing in excess of ten barrels per day."

I have attached the pertinent language from the Conference Report as Appendix A to this letter. It is my understanding that in enacting the stripper well exemption as part of the allocation act, that the Congress intends that the same considerations as those set out in the pipeline bill Conference Report shall be applied by the administering agency.

II. PRICING PROVISIONS

Section 4(a) of the allocation act contains authority to issue regulations specifying or prescribing prices for crude oil, residual fuel oil and each refined petroleum product. This authority is separate and apart from the authority to stabilize prices for these and other products contained in the Economic Stabilization Act of 1970, as amended.

It is my understanding that in enacting the authority to control prices in Section 4(a) of the allocation act, it is not the intention of Congress to pre-empt the field and extinguish the authority to control prices in the petroleum industry under the Economic Stabilization Act. Rather, it is my understanding that the two authorities are to have coincident applicability. I am mindful of the purpose expressed at page 26 of the Conference Report on the allocation act that "Congress intends to force the Administration to rationalize and harmonize the objectives of equitable allocation of fuel,

with the objectives of the Economic Stabilization Act." But it is my understanding that in the language which follows that sentence, the Congress is expressing its intention to continue the applicability of price control authority in the petroleum industry pursuant to the Economic Stabilization Act. Thus, so long as the Economic Stabilization Act remains in effect and is invoked with respect to the petroleum industry, prices in that industry would be subject to control under the authority of both the Economic Stabilization Act and the allocation act and the administering agency which has been delegated price control authority under both statutes would be obligated to comply with the provisions of both. Of course, should the Economic Stabilization Act, which expires on April 30, 1974, not be extended, then the authority of the allocation act would constitute the exclusive basis for controlling prices in the petroleum industry.

In that connection, it is my understanding that, assuming the Phase IV price regulations in the petroleum industry are continued, the provisions of Section 150.354 of those regulations providing for release from crude petroleum ceiling price rules of new crude petroleum and base production control level crude petroleum would not be deemed inconsistent with or require modification because of the language of Section 4(a) of the allocation act which refers to "prices specified in (or determined in a manner prescribed by)" the regulation therein provided for.

III. PERSONNEL PROVISIONS

Section 5(a) of the allocation act as reported by the Conference Committee provides, among other things, that certain personnel authorities contained in the Economic Stabilization Act of 1970 shall apply to functions under the Emergency Petroleum Allocation Act of 1973 to the same extent such authorities apply to functions under the Economic Stabilization Act of 1970. It is my understanding that the intent of this provision is to establish personnel authorities in addition to those now used by the Economic Stabilization Program and not to require that these existing authorities be shared with whatever agency is designated to carry out the provisions of this bill. Specifically, it is my understanding that the Congress intends by this provision to authorize the placement of not to exceed twenty positions in GS–16, 17, and 18 in addition to the number of positions which may be placed in those grades under Section 5108 of title 5, United States Code, in order to carry out functions under the Emergency Petroleum Allocation Act of 1973, without requiring a reduction in the number of positions currently authorized pursuant to Section 212(d) of the Economic Stabilization Act of 1970 for carrying out functions under the Economic Stabilization Act.

We appreciate the opportunity to express our views on this subject and I urge you to contact me or my colleagues at the Cost of Living Council if we may furnish any further information.

Sincerely,

JOHN T. DUNLOP,
Director.

EXCERPT FROM CONFERENCE REPORT ACCOMPANYING S. 1081 AMENDING SECTION 28 OF THE MINERAL LEASING ACT OF 1920, AND TO AUTHORIZE THE TRANS-ALASKA PIPELINE

15. Section 406, relating to stripper oil wells, was a Senate floor amendment to S. 1081. The Conferees have adopted the general concept of the floor amendment, but have added new provisions to insure that the exemption is narrowly defined and prudently administered, and to insure that the incentive being granted is properly limited in accord with congressional intent.

The purpose of exempting small stripper wells—wells whose average daily production does not exceed ten barrels per well—from the price restraints of the Economic Stabilization Act (now in Phase IV) and from any system of mandatory fuel allocation is to insure that direct or indirect price ceilings do not have the effect of resulting in any loss of domestic crude oil production from the premature shutdown of stripper wells for economic reasons.

As of January 1, 1973, there were 350,000 stripper wells producing ten barrels a day or less. Stripper wells account for 71 percent of all of the oil wells in this country, but produce an average of only 3.6 barrels per day, or only 13 percent of total U.S. domestic crude production.

Many stripper wells are of only marginal economic value. When the costs of their operation exceeded the value of their production, they are shut in, and a known and developed crude oil reserve is lost to U.S. production. Removing Phase IV price restraints from these marginal stripper wells has the effect of increasing the value of the crude oil they produce by about $1.30 per barrel (the difference between $4.02, the current per-barrel ceiling average under Phase IV, and $5.32, the per-barrel average price for "new" domestic crude oil production which is not subject to Phase IV). This price incentive will encourage owners and operators of stripper wells to maintain production and to keep these wells in operation for longer periods of time than would be possible if the value of their crude oil production were determined under Phase IV price ceilings. This increased incentive will, it is anticipated, permit stripper well operators to make new investments in the eligible wells and improve the gathering and other facilities for moving this oil to market.

The words "first sale" in Section 406(a) refer to the initial sale from the producer to a refiner, oil broker or other party. Thereafter, the exemption expires and any applicable provision of the Economic Stabilization Act or any mandatory allocation program may apply.

The exemption also runs only to "crude oil and natural gas liquids." It does not run to natural gas produced by these wells. Natural gas production and pricing continue to be regulated by the Federal or State agency having jurisdiction over the particular wells involved.

The Congress intends that the provisions of this section will be strictly enforced and regulated by the administering agency to insure that the limited exemption of this class of wells for the express purposes described above is not in any way broadened. To achieve this, Congress authorizes on-site inspections to insure compliance. Congress also directs that the administering agency shall promulgate regulations to implement the provisions of this section before it becomes operative. The Conferees expect the administering agency to utilize State data regarding production volumes, and to provide by regulation safeguards against the manipulation of gerrymandering of lease units in a manner that evades the price control and allocation programs.

These regulations shall be so designed as to provide safeguards against any abuse, overreaching or altering of normal patterns of operations to achieve a benefit under this section which would not otherwise be available. Congress specifically intends that the regulations shall, among other things, prevent any "gerrymandering" of leases to average down high production wells with a number of low production stripper wells to remove the high production wells from price ceilings. The *sole* purpose and objective of this Section 406 is to keep stripper wells—those producing less than ten barrels per day—in production and to insure that the crude oil they produce continues to be available for U.S. refineries and U.S. consumers. It is not intended to confer any benefit on the owners and operators of wells producing in excess of ten barrels per day.

The Congress also intends that the regulations provide appropriate limitations and provisions in the definition of "lease" to insure that an administratively workable system is established which does not permit abuse.

OFFICE OF THE GOVERNOR,
Olympia, Wash., November 13, 1973.

Re S. 2589.

Hon. HENRY M. JACKSON,
Chairman, Senate Committee on Interior and Insular Affairs, Old Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Thank you for the opportunity to discuss the above-captioned bill with you yesterday. As I mentioned, the States have a vital interest in the terms of this measure and the ways in which emergency procedures may be devised and implemented in the energy field.

Under the terms of the Regulations issued for Allocation of the Middle Distillates, every State has been asked to establish procedures for administering a hardship reserve. This has meant setting up machinery, recruiting personnel and making offices and special telephone lines available to carry out our responsibilities. At this point in time, it is impossible to estimate exactly how much will be required in each State to carry forth the responsibilities for Middle Distillates. I can only tell you that the costs are being borne out of emergency State funds and, in most cases, personnel and facilities dedicated to other purposes have been diverted to this task.

In addition to the burdens involved in the allocation program, most States have also become active in the quest to conserve energy. From Washington to Florida and from California to Connecticut, States have invested their funds and personnel resources to devise and implement programs of conservation. These have been innovative and effective. They have included prohibitions on outdoor lighting, lowering of speed limits, revisions of temperature settings in public buildings, encouragement of revisions of shopping hours in commercial establishments and provisions to make it easier for home owners to increase insulation and installation of storm doors and windows. Public awareness programs have been undertaken and research for new energy sources and wiser use of existing resources have been underwritten in whole, or in part, by dozens of States.

I have recited the foregoing record to illustrate the desirability of inclusion of provisions in the above-captioned bill for financial aid to the States so that they can play the most effective role in the effort to bring supply and demand into some rational balance. A spot check of the States indicates that in moderate sized States such as Maryland and Georgia, the total personnel complement committed directly to the allocation and conservation programs will total about 20 clericals and 10 professionals per year. This approximates $350,000 a year per State in direct salaries and at least 25 percent more in indirect costs for this complement—a total of more than $400,000 a year. This outlay comes in a period when State legislatures have not met and before any new responsibilities are entrusted to the States under the terms of the above-captioned bill and S. 1540 and the regulations which the Administration will issue pursuant to them.

I am in the process of canvassing the States to determine more closely the personnel complement each of them anticipates under existing programs and can only guess at the ancillary costs of such programs as reducing speed limits and enforcing other conservation measures. This is all over and

above the research efforts at State academic institutions and those coordinated by science advisors to the Governors and the State legislatures. I would note that the Western Governors have not only not shrunk from the responsibilities this crisis has thrown on their shoulders but they have sought a voice in the program for allocation of propane.

It is also safe to assume that the President will delegate additional responsibilities and duties to the States under the terms of Section 5(b) of S. 1570 as reflected in the Conference Report for that bill (House Report 93-628). The States do not seek to avoid such new responsibilities—they readily accept them because the States have a unique capacity to identify vital needs and priorities in their own jurisdictions and to make the decisions which will carry forward the purposes of an allocation and imaginative conservation program.

Although there is broad authorization given to the President to draw up Regulations we would like some assurance that States could have a set-aside of Middle Distillate fuels to use for emergency assistance. The existing procedures preclude States from purchasing fuels for resale or arranging for suppliers to hold back some fuels to respond to emergencies. Informal cooperation of suppliers and distributors has been helpful. However we cannot rely on this base in the months ahead when supplies fall even further behind demand.

I am meeting with the Executive Committee of the National Governors' Conference and the New England Governors tomorrow and I have every confidence that I speak for them in the observations contained in this letter. Moreover, the National Governors' Conference has established an Energy Policy Project which is actively working not only with the States and federal government, but also with county and city governments. We are trying to make certain that each State is as effective as possible and that regional cooperation is facilitated. We are in the midst of a canvass of every State to determine the resources it will require to carry out its responsibilities. We should have the results within the next two days and will forward them to you.

On behalf of the National Governors' Conference and as Governor of our own State I look forward to working with the Congress and the Administration as well as other units of government and many private citizens and organizations as we go about the important work of refining a viable national policy and programs which are needed to implement such a policy for a problem that will be with us for years to come.

Sincerely,

DANIEL J. EVANS,
Chairman, National Governors' Conference.

Mr. JACKSON. Mr. President, Governor Evans is concerned over the need for a grant-in-aid program to assist the States in fulfilling their responsibilities under the act.

While the conference report does not so provide, a provision to achieve this purpose was adopted by the committee on Monday in connection with the consideration of S. 2589, the Energy Emergency Act of 1973.

Dr. Dunlop's letter concerns the interpretation of certain sections of the conference report. I concur and I believe it was the intent of the conference committee to concur in the interpretation Dr. Dunlop places on the language of the report.

Mr. STEVENS. Mr. President, I would like to clarify one point in the allocation provisions of this legislation. Does the term "public service" in section 4(b)(1)(b) include "the transportation and delivery of mail by the U.S. Postal Service, its lessors, rural carriers, contractors, and air carriers"?

I seek this clarification because it is essential that the transportation and delivery of mail have a high priority in the allocation of fuel. In my capacity as a member of the Post Office and Civil Service Committee, I have become aware of several factors which make it essential to the well-being of the Nation that Congress make it clear that the transportation and delivery of mail is to be included within the priority provisions of this legislation.

Prompt delivery of the mail depends upon the efforts of thousands of small businessmen who hold contracts with the Postal Service for highway and air taxi mail transportation. Without expression of congressional intent that the transportation and delivery of the U.S. mail is a priority item for the allocation of fuel during the coming winter, these thousands of key contractors may not be able to obtain sufficient fuel for their vehicles and the entire mail system may be seriously impaired. Many inhabitants of rural America who depend upon star route box delivery to bring them their mail may be literally cut off from the outside world.

Absent congressional intent that a priority fuel allocation status be given to the transportation and delivery of mail, postal contractors may find themselves forced to procure their fuel piecemeal—literally driving from pump to pump trying to get enough fuel to complete an important mail run. The resulting slowdown in the carriage of mail to and from processing centers would greatly increase the costs of mail processing by disrupting the steady volume of mail necessary for the efficient operation of Postal Service facilities. This situation could literally cripple mail service during the high volume Christmas season period.

The Postal Service supplements its own delivery fleet with up to 82,000 vehicles leased from commercial sources and from mail carriers themselves. Without specific mention of the priority fuel allocation status of mail delivery, the owners of these vehicles may not be able to obtain sufficient fuel to operate them. This will not only hamper mail delivery, but will also contribute to the deterioration of postal labor relations with those employees who lease their own vehicles to the Postal Service.

Under the previous voluntary system of fuel allocation, the Postal Service had increasing difficulty in finding dealers willing to enter long-term contracts to supply fuel for postal vehicles. The lack of specific mention of mail transportation in the list of activities enjoying priority status in the allocation of fuel was a great disadvantage in this regard. An expression of congressional intent that mail transportation be included within priority status in fuel allocation will prevent the recurrence of this problem.

As you know, Postmaster General Klassen recently publicized nationwide mail delivery standards and he has made a strong commitment to meet those standards. The Postal Service cannot meet these commitments it has made to the American public unless the fuel necessary to carry out its task is made available. Therefore, I should like to direct a question to the chairman of the committee. Am I correct in assuming that it is our intent to include delivery of mail by the U.S. Postal Service, its lessors, rural carriers, contractors, and air carriers within the priority fuel allocation provisions of this legislation?

Mr. JACKSON. The Senator is absolutely correct. It should be made clear that the Postal Service is one of the vital public services included in section 4(h)(i)(k) of the bill.

The PRESIDING OFFICER. The question is on agreeing to the conference report. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Massachusets (Mr. KENNEDY), the Senator from Utah (Mr. MOSS), the Senator from Wisconsin (Mr. NELSON), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

I further announce that the Senator from Nevada (Mr. BIBLE), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mr. HUMPHREY), and the Senator from Georgia (Mr. TALMADGE) are absent on official business.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY) and the Senator from Massachusetts (Mr. KENNEDY) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Nebraska (Mr. CURTIS) is absent by leave of the Senate on official business.

The Senator from Colorado (Mr. DOMINICK), the Senator from Oregon (Mr. PACKWOOD), the Senator from Ohio (Mr. SAXBE), the Senator from Pennsylvania (Mr. SCHWEIKER) and the Senator from Virginia (Mr. WILLIAM L. SCOTT) are necessarily absent.

If present and voting, the Senator from Nebraska (Mr. CURTIS) and the Senator from Oregon (Mr. PACKWOOD) would each vote "yea."

The result was announced—yeas 83, nays 3, as follows:

[No. 481 Leg.]

YEAS—83

Abourezk	Fannin	McGovern
Aiken	Fong	McIntyre
Allen	Fulbright	Metcalf
Baker	Goldwater	Mondale
Bayh	Gravel	Montoya
Beall	Griffin	Muskie
Bellmon	Gurney	Nunn
Bennett	Hansen	Pastore
Bentsen	Hart	Pearson
Biden	Hartke	Pell
Brooke	Haskell	Percy
Burdick	Hatfield	Proxmire
Byrd, Harry F., Jr.	Hathaway	Randolph
	Helms	Ribicoff
Byrd, Robert C.	Hollings	Roth
Cannon	Hruska	Scott, Hugh
Case	Hughes	Sparkman
Chiles	Inouye	Stafford
Church	Jackson	Stevens
Clark	Javits	Stevenson
Cook	Johnston	Symington
Cotton	Long	Taft
Cranston	Magnuson	Thurmond
Dole	Mansfield	Tower
Domenici	Mathias	Tunney
Eagleton	McClellan	Weicker
Eastland	McClure	Williams
Ervin	McGee	Young

NAYS—3

Bartlett	Brock	Buckley

NOT VOTING—14

Bible	Kennedy	Schweiker
Curtis	Moss	Scott, William L.
Dominick	Nelson	Stennis
Huddleston	Packwood	Talmadge
Humphrey	Saxbe	

So the conference report was agreed to.

Mr. JACKSON. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

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

The motion to lay on the table was agreed to.

NATIONAL ENERGY EMERGENCY ACT OF 1973

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate turn to the consideration of Calendar No. 473, S. 2589. I do this so that the bill will be the pending business.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

Calendar No. 473, S. 2589, a bill to authorize and direct the President and State and local governments to develop contingency plans for reducing petroleum consumption, and assuring the continuation of vital public services in the event of emergency fuel shortages or severe dislocations in the Nation's fuel distribution system, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana? The Chair hears none, and it is so ordered.

The Senate proceeded to consider the bill, which had been reported from the Committee on Interior and Insular Affairs with an amendment to strike out all after the enacting clause and insert:

That this Act may be cited as the "National Energy Emergency Act of 1973".

TITLE I—STATEMENT OF FINDINGS AND PURPOSES

SEC. 101. FINDINGS.—The Congress hereby determines that—

(a) shortages of crude oil, residual fuel oil, and refined petroleum products caused by inadequate domestic production, environmental constraints, and the unavailability of imports sufficient to satisfy domestic demand, now exist;

(b) such shortages have created or will create severe economic dislocations and hardships, including loss of jobs, closing of factories and businesses, reduction of crop plantings and harvesting, and curtailment of vital public services, including the transportation of food and other essential goods;

(c) such shortages and disclocations jeopardize the normal flow of interstate and foreign commerce and constitute a nationwide energy emergency which is a threat to the public health, safety, and welfare and can be averted or minimized most efficiently and effectively through prompt action by the executive branch of Government;

(d) disruptions in the availability of imported energy supplies, particularly crude oil and petroleum products, pose a serious risk to national security, economic well-being, and health and welfare of the American people;

(e) interruptions of energy supplies, both in the near term and in the future, will require emergency measures to reduce energy consumption, increase domestic production of energy resources, and provide for equitable distribution of available supplies to all Americans;

(f) the development of a comprehensive energy policy to serve all of the people of the United States necessitates the regulation of intrastate delivery and use of energy resources, other than natural gas, in order to insure the effective regulation of interstate and foreign commerce in energy;

(g) because of the diversity of conditions, climate, and available fuel mix in different areas of the Nation, a primary governmental responsibility for developing and enforcing emergency fuel shortage contingency plans lies with the States and with the local governments of major metropolitan areas acting in accord with the provisions of this Act.

SEC. 102. PURPOSES.—The purpose of this Act is to—

(a) declare by Act of Congress an energy emergency;

(b) grant to the President of the United States, and direct him to exercise, specific temporary authority to deal with shortages of crude oil, residual fuel oil, and refined petroleum products, and other fuels, or dislocations in their national distribution system;

(c) provide a national program to conserve scarce energy resources, through mandatory and voluntary rationing and conservation measures, implemented by Federal, State, and local governments;

(d) protect the public health, safety, and welfare and the national security, and to assure the continuation of vital public services and maximum employment in the face of critical energy shortages;

(e) minimize the adverse effects of such shortages or dislocations on the economy and industrial capacity of the Nation;

(f) insure that measures taken to meet existing emergencies are consistent, as nearly as possible, with existing national commitments to protect and improve the environment in which we live; and

(g) direct the President and State and local governments to develop contingency plans which shall have the practical capability for reducing energy consumption by no less than 10 per centum within ten days and by no less than 25 per centum within four weeks of any interruption of normal supply.

TITLE II—EMERGENCY FUEL SHORTAGE CONTINGENCY PROGRAMS

SEC. 201. DECLARATION OF EMERGENCY.—The Congress hereby declares that current and imminent fuel shortages have created a nationwide energy emergency.

SEC. 202. PRESIDENTIAL AUTHORIZATION.—(a) The President is hereby authorized and directed to implement emergency fuel shortage contingency programs as provided for in this title.

(b) For the duration of the energy emergency, the President is further authorized to enter into appropriate understandings, arrangements, or agreements with foreign states, or foreign nationals, or international organizations, to adjust and allocate imports of fossil fuels, or take such other action as he deems necessary, with respect to trade in fossil fuels, in order to achieve the purposes of this Act. Any such formal agreement shall be submitted to the Senate of the United States, and shall be operative, but shall not become final until the Senate has had fifteen days, no less than seven of which shall be legislative days, to disapprove of such agreement.

(c) The declared nationwide energy emergency and the authority granted by this Act shall terminate one year after the date of enactment of this Act. Six months after the date of enactment of this Act, the President shall submit to the Congress an interim report on the implementation of the Act, together with such recommendations for amending or extending the Act as he deems appropriate.

SEC. 203. EMERGENCY FUEL SHORTAGE CONTINGENCY PLANS.—(a) Not later than fifteen days after the date of enactment of this Act, the President shall promulgate a plan for a nationwide emergency energy rationing and conservation program. Such program shall assure, insofar as is practicable, that all vital services will be maintained and that unnecessary energy consumption will be curtailed.

(b) The rationing and conservation program provided for in subsection (a) shall include the following:

"(1) an established priority system and plan, including a program to be implemented without delay, for rationing of scarce fuels quantitatively and qualitatively among distributors and consumers for the duration of the emergency. To the extent practicable such priority and rationing program shall include, but not be limited to, measures adequate to insure that available low sulfur fuel will be distributed on a priority basis to those areas of the country designated by the Environmental Protection Agency as requiring low sulfur fuel to avoid or minimize adverse impacts on public health; and

(2) measures capable of reducing energy consumption in the affected area by no less than 10 per centum within ten days, and by no less than 25 per centum within four weeks after implementation. Such measures shall include, but are not limited to: transportation control plans; restrictions against the use of fuel or energy for nonessential uses such as lighted advertising and recreational activities; a ban on all advertising encouraging increased energy consumption; limitations on operating hours of commercial establishments and public service, such as schools; temperature restrictions in office and public buildings, including wholesale and retail business establishments; and reductions in speed limits.

(c) Within two weeks of the date of enactment of this Act, the President shall also promulgate requirements for emergency energy conservation and contingency programs to be developed by each State and major metropolitan government, to implement the Federal program described in subsection (a) above. Such programs, which must be developed within eight weeks after the date of enactment of this Act and submitted for approval to the President, shall include at a minimum the provisions set forth in subsection (b) above. The President shall approve and direct the States to implement those State plans or portions thereof which he determines meet the requirements of this section for emergency energy conservation and contingency programs and which are necessary to deal with the energy shortage conditions facing the Nation.

(d) In the event that a State or major metropolitan government fails to design and implement a contingency program as provided for in subsection (c), the Federal program implemented pursuant to subsection (a) above, shall remain in effect for such State or metropolitan government.

(e) The President shall direct immediate implementation of those rationing and conservation measures contained in the plans in this section as needed to achieve the purposes of this Act.

(f) Nothing contained in this Act shall authorize the President to regulate or allocate natural gas not otherwise subject to the jurisdiction of the Federal Power Commission, except for the purpose of prohibiting the burning of gas for decorative purposes and except as provided in section 204(a) of this Act: Provided, however, That State regulatory bodies having jurisdiction over such natural gas shall cooperate with the President to achieve the conservation objectives of this Act.

SEC. 204. FEDERAL ACTION FOR FUEL CONSERVATION. — Notwithstanding any action taken on the part of State or local governments pursuant to the rationing and conservation programs required by section 203:

(a) the President may, in accordance with the rationing and conservation program required by section 203, require, after balancing on a plant-by-plant basis the environmental effects of such conversions against the need to fulfill the purposes of this Act, that any major fossil fuel burning installations, including existing electric generating plants, which now burn petroleum or natural gas and which have the ready capability and necessary plant equipment to burn coal or other fuels, to convert to burning coal or other fuels as their primary energy source. Any installation so converted will be permitted to continue to use such fuel for at least one year, subject to the variance procedure of the Clean Air Act, as amended, (42 U.S.C. 1857 et seq.). Insofar as practicable, conversions shall first be required for those plants where the use of coal or other fuels will have the least adverse environmental impact. Such conversions shall be carried out contingent upon availability of coal, and the maintenance of reliability of service in a given service area. The President shall require that fossil fuel fired electrical powerplants now in the planning process be designed and constructed so as to have the capability of rapid conversion to burn coal.

(b) (1) the Interstate Commerce Commission, with respect to carriers subject to regulation under sections 1(1) and 304(a)(1) of title 49, United States Code (49 U.S.C. 1(1), 304(1)(a)), the Civil Aeronautics Board, and the Federal Maritime Commission, with respect to carriers operating in the domestic trades of the United States including its territories and possessions, for the duration of the energy emergency, in addition to their existing powers, shall have the authority on their own motion or by motion of any interested party, to review and make reasonable and necessary adjustments to the operating authority of carriers within their respective jurisdictions in order to conserve fuel while providing for the public convenience and necessity. Such adjustments may include but need not be limited to adjusting and rationalizing the operations of such carriers with regard to frequency of service, points served, scheduling to prevent duplication of service and reviewing or adjusting rate schedules to reflect such adjustment and rationalization. Actions taken pursuant to this paragraph may be taken, notwithstanding any other provision of law after hearings in accordance with section 553 of title 5 of the United States Code. Any person adversely affected by an action shall be entitled to a judicial review of such action in accordance with chapter 7 of title 5 of the United States Code.

(2) within fifteen days after the date of enactment of this Act, the Civil Aeronautics Board, the Federal Maritime Commission and the Interstate Commerce Commission shall report separately to the appropriate committees of the Congress on the need for additional regulatory authority in order to conserve fuel during the energy emergency while continuing to provide for the public convenience and necessity. Each such report shall identify with specificity—

(1) the type of regulatory authority needed;

(2) the reasons why such authority is needed;

(3) the probable impact on fuel conservation of such authority;

(4) the probable effect on the public convenience and necessity of such authority; and

(5) the competitive impact, if any, of such authority.

Each such report shall further make recommendations with respect to changes in any existing fuel allocation programs which are deemed necessary to conserve fuel while providing for the public convenience and necessity.

(3) the regulatory agencies subject to this subsection (b) may, where appropriate, consult with departments or agencies of the Federal Government having expertise or jurisdiction over the modes of transportation involved.

(c) the President shall develop and implement federally sponsored incentives for the use of public transportation, including priority rationing of fuel for mass transit systems, and Federal subsidies for reduced fares and additional expenses incurred because of increased service, for the duration of the energy emergency. For the purposes of this section, paragraph (3) of subsection (e) of section 142 of title 23, United States Code, is amended as follows: strike the period at the end of the paragraph and add the following: "except that, with respect to the purchase of buses and rolling stock for fixed rail, the Federal share shall be 80 per centum."

(d) the President shall solicit recommendations from the Secretary of the Department of Transportation as to changes in Federal and State policies relating to motorized transport on the interstate highway system which would result in significant savings of fuel.

(e) all Federal departments and agencies, including the Federal regulatory agencies, are directed to undertake a survey of all activities over which they have special expertise or jurisdiction and identify and recommend to the Congress and to the President, within thirty days of enactment of this Act, specific proposals to significantly increase energy supply or to reduce energy demand through conservation programs.

SEC. 205. AIR QUALITY REQUIREMENTS.—Should a Presidential order to change fuels pursuant to subsection 204(a) 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.

SEC. 206. ENVIRONMENTAL IMPACT STATEMENTS.—No major action taken under this Act shall, for a period of one year after initiation of such action, be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 856). However, prior to taking any such major action that has a significant impact on the environment, if practicable, or in any event within sixty days of taking such action, an environmental evaluation, with analysis equivalent to that required under section 102(2)(C) of the National Environmental Policy Act of 1969, to the greatest extent practicable within this time constraint, shall be prepared and circulated to appropriate Federal, State, and local government agencies and to the public for a thirty-day comment period after which a public hearing shall be held upon request to review outstanding environmental issues. Such an evaluation shall not be required where the action in question has been preceded by compliance with the National Environmental Policy Act of 1969 by the appropriate Federal agency. Any action taken under this Act which will be in effect for more than a one-year period, or any action to extend an action taken under this Act to a total period of more than one year shall be subject to the full provisions of the National Environmental Policy Act of 1969 notwithstanding any other provision of this Act.

SEC. 207. FEDERAL ACTIONS TO INCREASE AVAILABLE DOMESTIC PETROLEUM SUPPLIES.—The President is authorized to initiate the following measures to supplement domestic energy supplies for the duration of the emergency:

(a) Require on a mandatory basis the production of designated existing domestic oilfields at their maximum efficient rate of production, which is the maximum rate at which production may be sustained without detriment to the ultimate recovery of oil and gas under sound engineering and economic principles. Such fields are to be designated by the Secretary of the Interior, after consultation with the appropriate State regulatory agency. Data to determine the maximum efficient rate of production shall be supplied to the Secretary of the Interior by the State regulatory agency which determines the maximum efficient rate of production and by the operators who have drilled wells in, or are producing oil and gas from such fields.

(b) Require, if necessary to meet essential energy needs, production of certain designated existing domestic oilfields at rates in excess of their currently assigned maximum efficient rates. Fields to be so designated, by the Secretary of the Interior or the Secretary of the Navy as to the Federal lands or as to Federal interests in lands, under their respective jurisdiction shall be those fields where the types and quality of reservoirs are such as to permit production at rates in excess of the currently assigned sustainable maximum efficient rate for periods of ninety days or more without excessive risk of losses in recovery.

(c) Require the adjustment of processing operations of domestic refineries to produce refined products in proportions commensurate with national needs and consistent with the priorities established in accordance with section 203.

(d) (1) Require production of oil and gas from the currently developed resources of the naval petroleum reserves whenever the availability of petroleum products to the Armed Forces of the United States necessitates that the Department of Defense be accorded special priority for the purchase of petroleum products from United States suppliers under the terms of the Defense Production Act of 1950. Such production is the equivalent of production for "national defense" as used in section 7422 of title 10, United States Code, as amended, and related sections.

(2) Expedite the full exploration and development of Naval Petroleum Reserves Numbers One, Two, and Three, and expedite the full exploration of Naval Petroleum Reserve Number Four.

(e) Order the acceleration of lease sales of energy resources on public lands, subject to existing law, to include, but not limited to, oil and gas leasing onshore and offshore and geothermal energy leasing: *Provided,* That the exemptions provided for in section 206 shall not be applicable to this subsection 207(e).

SEC. 208. ADVERSE IMPACT ON EMPLOYMENT.—In carrying out his responsibilities under this Act, the President shall take into consideration and shall minimize, to the fullest extent practicable, any adverse impact of actions taken pursuant to this Act upon employment. All agencies of government shall cooperate fully under their existing statutory authority to minimize any such adverse impact.

TITLE III—ADMINISTRATION AND AUTHORIZATIONS

SEC. 301. CONGRESSIONAL APPROVAL.—Within two weeks after the date of enactment of this Act, the President shall submit to Congress his proposals for the emergency contingency programs provided for in title II of this Act, and proposals for implementing such programs. The Congress may, within fifteen days of such submission, five of which must have been in legislative session, by concurrent resolution specifically disapprove of all or part of the program or proposal.

SEC. 302. (a) LOCAL ADMINISTRATION.—The President may, in the implementation of any nationwide energy emergency rationing and conservation program, utilize a system

of State and local offices as provided in this section.

(b) STATE AGENCIES.—The President is authorized to permit appropriate State agencies to operate the program within each State through local boards or other local agencies, including appeal agencies, as may be necessary to insure that the nationwide program is implemented within each State in a manner responsive to the immediate needs of the locality and consistent with the nationwide energy emergency rationing and conservation program. The State agencies are authorized and may be directed to consult with the elected officials of each locality when appointing the officials of such local agencies.

(c) ADDITIONAL FUNCTIONS.—The legislature of any State may in the development of any program of energy rationing or conservation, authorize the State agency to perform additional functions under State law: *Provided*, That the President may, by regulation, require such additional functions to be approved prior to their being implemented by the State agency.

SEC. 303. ECONOMIC INCENTIVES.—The Secretary of the Treasury and the Director of the Cost of Living Council are hereby authorized and directed to study and recommend to the Congress specific incentives to increase energy supply, reduce demand, and to encourage private industry and individual persons to subscribe to the goals of this Act and to comply with the requirements of programs developed and implemented pursuant to this Act. The study and recommendations required by this section shall include an analysis of the actions required to implement the principle that the producers and users of energy should pay the full long-run incremental cost of obtaining incremental supplies of energy.

SEC. 304. STATE LAWS.—No State law or program in effect on the date of enactment of this Act, or which may become effective thereafter, shall be superseded by any provision of this Act or any program issued pursuant thereto except insofar as such State law or program is inconsistent with the provisions of this Act.

SEC. 305. FEDERAL FACILITIES.—Whenever practicable, and for purposes of facilitating the transportation and storage of fuel during the effective period of this Act, agencies or departments of the Federal Government are authorized to enter into arrangements for use by domestic public entities and private industries of equipment or facilities which are in idle status or otherwise excess to the short-term needs of such agency: Provided, however, That such arrangements shall be made at fair market prices and only after a finding by the agency of nonavailability of suitable equipment or facilities within private industry in the region of need.

SEC. 306. SANCTIONS.—Any person who

(a) Willfully violates any order or regulation issued pursuant to this Act shall be fined not more than $5,000 for each violation.

(b) Violates any order or regulation issued pursuant to this Act shall be subject to a civil penalty of not more than $2,500 for each day he is in violation of this Act, for each violation.

SEC. 307. LOANS TO HOMEOWNERS AND SMALL BUSINESSES.—The Federal Housing Administration and the Small Business Administration are authorized to make low interest loans to homeowners and small businesses for the purpose of installing new and improved insulation, storm windows, and more efficient heating units.

SEC. 308. NATIONAL ENERGY EMERGENCY ADVISORY COMMITTEE.—(a) There is hereby created a National Energy Emergency Advisory Committee which shall advise the President with respect to all aspects of implementation of this Act. The chairman of the committee shall be the Director of the Office of Energy Policy. In addition to the chairman, the committee shall consist of fifteen members appointed by the President, who shall represent the following interests: energy industry, including producers, refiners, transporters, and marketers; transportation; industrial energy users; small business; labor; agriculture; environmental; State and local government; and consumers.

(b) The head of each of the following agencies shall designate a representative who shall serve as an observer at each meeting of the advisory committee and shall assist the committee to perform its advisory functions;

(1) the executive departments as defined in section 101 of title 5, United States Code;

(2) Interstate Commerce Commission;

(3) Atomic Energy Commission;

(4) Federal Power Commission;

(5) Federal Trade Commission;

(6) Civil Aeronautics Board; and the

(7) Federal Maritime Commission.

SEC. 309. ADMINISTRATIVE PROCEDURE.—(a) Except as expressly provided otherwise in this Act, the functions exercised under this Act are excluded from the operation of subchapter 11 of chapter 5, and chapter 7 of title 5, United States Code, except as to the requirements of sections 552, 553, 555(c), and 702 of title 5, United States Code.

(b) Any agency authorized by the President to issue rules, regulations, or orders under this Act shall, in regulations prescribed by it, establish procedures which are available to any person for the purpose of seeking an interpretation, modification, or recission of, or an exception to or exemption from, such rules, regulations, and orders. If such person is aggrieved by the denial of a request for such action under the preceding sentence, he may request a review of such denial by the agency. The agency shall, in regulations prescribed by it, establish appropriate procedures, including a hearing where deemed advisable, for considering such requests for action under this section.

(c) To the maximum extent possible, any agency authorized by the President to take any action under this Act shall conduct formal hearings for the purpose of hearing arguments or acquiring information bearing on actions or proposed actions, other than procedures to which section 553 of title 5, United States Code would apply according to subsection (a) of this section, taken or to be taken under sections 203, 204, 205, 206, 207, and 312 of this Act.

SEC. 310. JUDICIAL REVIEW.—Judicial review of administrative rulemaking of general and national applicability done under this Act may be obtained only by filing a petition for review in the United States Court of Appeals for the District of Columbia within thirty days from the date of promulgation of any such rule or regulation, and judicial review of administrative rulemaking of general, but less than national, applicability done under this Act may be obtained only by filing a petition for review in the United States Court of Appeals for the appropriate circuit within thirty days from the date of promulgation of any such rule or regulation, the appropriate circuit being defined as the circuit which contains the area or the greater part of the area within which the rule or regulation is to have effect.

Notwithstanding the amount in controversy, the district courts of the United States shall have exclusive original jurisdiction of all other cases of controversies arising under this Act, or under regulations or orders issued thereunder, except any actions taken by the Civil Aeronautics Board, the Interstate Commerce Commission, Federal Power Commission, or the Federal Maritime Commission, except that nothing in this section affects the power of any court of competent jurisdiction to consider, hear, and determine in any proceeding before it any issue raised by way of defense (other than a defense based on the constitutionality of this title or the validity of action taken by any agency under this Act). If in any such proceeding an issue by way of defense is raised based on the constitutionality of this Act or the validity of agency action under this Act, the case shall be subject to removal by either party to a district court of the United States in accordance with the applicable provisions of chapter 89 of title 28, United States Code.

SEC. 311. MATERIALS ALLOCATIONS.—To achieve the purposes of this Act, the President is authorized to take such action as may be necessary to allocate supplies of materials associated with production of energy supplies, and equipment to the extent necessary to maintain and increase the production of coal, crude oil and other fuels.

SEC. 312. GRANTS TO STATES.—The President is hereby authorized to make grants to any State or major metropolitan government, in accordance with, but not limited to, section 302 for the purpose of assisting such State or local government in developing, administering, and enforcing emergency fuel shortage contingency plans under this Act and fuel allocation programs authorized under the Emergency Petroleum Allocation Act of 1973 (Conf. Rept. No. 93-628, Nov. 10, 1973).

SEC. 313. STUDY OF HEALTH EFFECTS OF SULFUR OXIDE EMISSION.—In order to determine the health effects of emissions of sulfur oxides to the air resulting from any conversions to burning coal pursuant to section 204 (a) the Department of Health, Education, and Welfare shall, in cooperation with the Environmental Protection Agency, conduct a study of acute and chronic effects among exposed populations. The sum of $5,000,000 is authorized to be appropriated for such a study.

SEC. 314. AUTHORIZATIONS.—There are hereby authorized to be appropriated such funds as are necessary for the purposes of this Act.

SEC. 315. SEPARABILITY.—If any provision of this Act or the applicability thereof is held invalid, the remainder of this Act shall not be affected thereby.

Amend the title so as to read: "A bill to declare by congressional action a nationwide energy emergency; to authorize the President to immediately undertake specific actions to conserve scarce fuels and increase supply; to invite the development of local, State, National, and international contingency plans; to assure the continuation of vital public services; and for other purposes."

Mr. MANSFIELD. Mr. President, the purpose of making the bill the pending business is to make it available when the Senate comes in tomorrow and completes the special orders and morning business.

The PRESIDING OFFICER. Under the order of yesterday the committee amendment in the nature of a substitute has been agreed to and the bill as thus amended is to be treated as original text for purpose of further amendment.

ORDER FOR ADJOURNMENT TO 9 A.M.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that, when the Senate adjourns today, it stand in adjournment until the hour of 9 a.m. tomorrow.

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

AMERICAN REVOLUTION BICENTENNIAL ADMINISTRATION—CONFERENCE REPORT

Mr. HRUSKA. Mr. President, I submit a report of the committee of conference on H.R. 7446, and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. JOHNSTON). The report will be stated by title.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 7446) to establish the American Revolution Bicentennial Administration, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all the conferees.

The PRESIDING OFFICER. Is there objection to the consideration of the conference report?

There being no objection, the Senate proceeded to consider the report, which reads as follows:

CONFERENCE REPORT

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 7446) to establish the American Revolution Bicentennial Administration, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendment numbered 6.

That the House recede from its disagreement to the amendments of the Senate numbered 1 and 4, and agree to the same.

Amendment numbered 2: That the House recede from its disagreement to the amendment of the Senate numbered 2, and agree to the same with an amendment, as follows: In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SEC. 7. (a) (1) There are hereby authorized to be appropriated annually to carry out the provisions of this Act, except for the program of grants-in-aid established by section 9(b) of this Act, not to exceed $10,000,000, of which not to exceed $1,375,000 shall be for grants-in-aid pursuant to section 9 (a) of this Act.

(2) For the purpose of carrying out the program of grants-in-aid established by section 9(b) of this Act, there are hereby authorized to be appropriated such sums, not to exceed $20,000,000, as may be necessary, and any funds appropriated pursuant to this paragraph shall remain available until expended, but no later than December 31, 1976.

And the Senate agree to the same.

Amendment numbered 3: That the House recede from its disagreement to the amendment of the Senate numbered 3, and agree to the same with an amendment, as follows: In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SEC. 9. (a) The Administrator is authorized to carry out a program of grants-in-aid in accordance with and in furtherance of the purposes of this Act. The Administrator may, subject to such regulations as he may prescribe—

(1) make equal grants of appropriated funds in each fiscal year of not to exceed $25,000 to Bicentennial Commissions of each State, territory, the District of Columbia, and the Commonwealth of Puerto Rico, upon application therefor;

(2) make grants of nonappropriated funds to nonprofit entities, including States, territories, the District of Columbia, and the Commonwealth of Puerto Rico (or subdivisions thereof), to assist in developing or supporting bicentennial programs or projects, Such grants may be up to 50 per centum of the total cost of the program or project to be assisted.

And the Senate agree to the same.

Amendment numbered 5: That the House recede from its disagreement to the amendment of the Senate numbered 5, and agree to the same with an amendment, as follows: In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

(b) For the purpose of further assisting each of the several States, the Territories, the District of Columbia, and the Commonwealth of Puerto Rico in developing and supporting bicentennial programs and projects, the Administrator is authorized, out of funds appropriated pursuant to section 7(a)(2) of this Act, to carry out a program of grants-in-aid in accordance with this subsection. Subject to such regulations as may be prescribed and approved by the Board, the Administrator may make grants to each of the several States, Territories, the District of Columbia, and the Commonwealth of Puerto Rico to assist them in developing and supporting bicentennial programs and projects. Each such recipient shall be entitled to not less than $200,000 under this subsection. In no event shall any such grant be made unless matched by the recipient.

And the Senate agree to the same.

JOHN L. MCCLELLAN,
EDWARD M. KENNEDY,
ROMAN HRUSKA,
Managers on the Part of the Senate.

HAROLD D. DONOHUE,
JAMES R. MANN,
M. CALDWELL BUTLER,
Managers on the Part of the House.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 7446) to establish the American Revolution Bicentennial Administration, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Conferees agreed to the language of Senate Amendment No. 1 amending Section 4 of H.R. 7446. This language is consistent with the basic principle of the legislation in encouraging State and local participation in the Bicentennial observance. The Senate language further implemented this purpose in providing that the Administrator is to coordinate his activities to the extent practicable with those being planned by State, local and private groups. He is further authorized to appoint special committees with members from among those groups to plan such activities as he deems appropriate.

The Senate amended Section 7(a)(1) of the House bill by placing a ceiling of $10,000,000 annually for the expenses of the Administration. Included in that amount was an authorization of not more than $2,475,000 for annual grants of $45,000 to each State, Territory, the District of Columbia and the Commonwealth of Puerto Rico. The provision for the $45,000 grants was contained in a parallel amendment to Section 9 of the bill which authorized the Administrator to make equal grants from appropriated funds of not more than $45,000 to each of the recipients.

The Conferees agreed to reduce the $45,000 figure to $25,000 per entity and the annual authorization for this grant program to $1,375,000.

Section 7(a)(2) as added by the Senate authorized an appropriation of not more than $20,000,000 for grants-in-aid on a matching basis to the several states to assist them in developing and supporting Bicentennial programs and projects as provided in the new Section 9(b) as added by the Senate, the amount to remain available until expended but no later than June 30, 1976.

The Conferees changed this date to December 31, 1976, because of the continuing celebrations and commemorations anticipated throughout the calendar year of 1976.

The language of Section 9(b) as contained in the Conference Report is the revised language agreed to by the Conferees. The Senate language provided that the amounts received under Section 9(b) by any State could not exceed $100,000 per state on a matching basis. In Conference, it was agreed to change this language so that each recipient would be entitled to not less than $200,000 in grants on a matching basis under the Subsection. In addition, the District of Columbia, the Territories and the Commonwealth of Puerto Rico were included as eligible recipients. The Conferees recognized that each jurisdiction would, therefore, be assured of the right to participate in this grant program up to the amount of $200,000. The language of the Subsection makes it clear that these grants are subject to regulations prescribed and approved by the Board. The $200,000 amount is available for grants to each jurisdiction and considered obligated for that purpose, which, if not used, would lapse. It is not intended that the unused portion of the $200,000 minimum earmarked for each jurisdiction will be available for distribution to any other jurisdiction or for any other purpose. The remaining funds under the $20,000,000 authorization are automatically available for grants to any eligible jurisdiction that presents a program found acceptable to the Administration.

The Conferees retained Senate Amendment No. 4. It is merely a conforming amendment made necessary by the renumbering changes in Subsection (a) of Section 9.

The Senate Conferees receded from Senate Amendment No. 6 which would have provided that the Administrator would serve as Chairman of the American Revolution Bicentennial Board and the Vice Chairman shall be elected by members of the Board from members of the Board. The Conferees agreed to retain the original House language providing that the Chairman and Vice Chairman shall be elected by members of the Board from members of the Board other than the Administrator.

The Conferees intend that the regulations provide a reasonable period for applications for grants by eligible entities.

JOHN L. MCCLELLAN,
EDWARD M. KENNEDY,
ROMAN HRUSKA,
Managers on the Part of the Senate.

HAROLD D. DONOHUE,
JAMES R. MANN,
M. CALDWELL BUTLER,
Managers on the Part of the House.

Mr. HRUSKA. Mr. President, I ask that the printing of the conference report and related papers as a Senate report be waived. That requirement will be complied with by the other body.

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

Mr. HRUSKA. Mr. President, this bill originated in the House of Representatives. On October 10 of this year the Senate approved a different version. There were very satisfactory conference meetings between the two bodies, and the result is the report which is at the desk.

At this point, I would like to take the opportunity to make some brief observations regarding the conference report.

The Senate conferees on this bill were

Senator McCLELLAN, Senator KENNEDY, and myself. Along with the House conferees, we worked diligently to resolve those differences which exist between the House and Senate version of H.R. 7446. For my part, I am generally pleased with the outcome of our conference; I believe that the Senate conferees brought back to this body a document which maintains many of the Senate amendments to the House-passed bill. On other matters, the conference report reflects a compromise struck in an atmosphere of differing views. The results of our conference were achieved through the efforts of bipartisan cooperation.

I would like to take a brief moment Mr. President, to comment on some of the most important aspects of the conference report.

The Senate version of H.R. 7446 made special note of the recognition and consideration which the new Bicentennial Administration should give to plans and programs developed by State, local, and private groups. The House conferees agreed to this amendment.

Another of the Senate amendments authorizes not to exceed $10,000,000 annually for the expenses of the new Bicentennial Administration and sets aside $2,475,000 for a continuation of $45,000 annual planning grants to each State. The House agreed to the $10,000,000 annual authorization and the conferees agreed to a reduction of the $45,000 grant to $25,000 annually per State, which comes to a total of $1,375,000 yearly.

The Senate had further amended the House version of H.R. 7446 by authorizing $20,000,000 for a new matching grant program to the States with a ceiling of $400,000 available to each State. The House agreed to the $20,000,000 figure but suggested that the basic approach of the grant program be restructured. The conferees, thus, agreed that under this grant program at least $200,000 would be available to each State or territory on a matching basis. The remaining portion of the $20,000,000 or roughly $9,000,000 would be made available to all such jurisdictions on a competitive basis through regulations establishcd by the American Revolution Bicentennial Board.

Finally, the Senate conferees agreed to recede from the Senate amendment which would have required that the Administrator serve as Chairman of the Board. Thus, the original House language has been restored and provides that these positions shall not be held by the same person.

For my part, Mr. President, I have serious reservations regarding the restoration of the House language on this point. Our previous experiences and the pressing importance of bicentennial efforts seemed to dictate the importance of a streamlined and tightly structured organization. The Senate amendment contemplated that a fusing of these two positions would solve this problem. Nevertheless, the conferees expressed the view that the Administrator under the House provision will be able to operate effectively by virtue of a guarantee that he will have authority over day-to-day operations and be 1 of the 11 Board members.

Mr. President, as I indicated earlier, I am generally satisfied with the conference report on H.R. 7446.

I believe that it is imperative for the Congress to act upon this bill so that authority can be given for the creation of a new Bicentennial organization.

Time is moving quickly, and cannot be recaptured. Much work must be done throughout the country to assure that the celebration of our Nation's 200th anniversary in 1976 is a worthy and memorable occasion.

I recommend the report to my colleagues for their approval, and I yield to the Senator from Arkansas.

Mr. McCLELLAN. Mr. President, I only wish to recommend the approval of the report. The conferees met for about 2 hours yesterday and went over the bill thoroughly, and resolved their major differences in a manner which I think reasonably satisfactory to all parties, and I think the conference report should be adopted.

The PRESIDING OFFICER (Mr. JOHNSTON). The question is on agreeing to the conference report.

The report was agreed to.

Mr. McCLELLAN. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. HRUSKA. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. McCLELLAN. 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 (Mr. JOHNSTON). Without objection, it is so ordered.

AUTHORIZATION FOR COMMERCE COMMITTEE TO HAVE UNTIL MIDNIGHT TO FILE REPORT ON DAYLIGHT SAVING BILL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Commerce Committee have until midnight tonight to file its report on the daylight saving bill.

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

ADOPTION OF HOUSE CONCURRENT RESOLUTION 378—PROVIDING FOR ADJOURNMENT OF CONGRESS OVER THANKSGIVING HOLIDAY

Mr. ROBERT C. BYRD. Mr. President, I ask the Chair lay before the Senate a message from the House on House Concurrent Resolution 378.

The PRESIDING OFFICER laid before the Senate House Concurrent Resolution 378, which was read as follows:

Resolved by the House of Representatives (the Senate concurring), That when the House adjourns on Thursday, November 15, 1973, it stand adjourned until 12 o'clock meridian, Monday, November 26, 1973.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

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

Mr. ROBERT C. BYRD. Mr. President, I offer an amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 1, line 4, strike out "1973." and insert: 1973, and that when the Senate adjourns on Wednesday, November 21, 1973, it stand adjourned until 12 o'clock meridian, Monday, November 26, 1973.

The amendment was agreed to.

House Concurrent Resolution 378, as amended, was agreed to.

The title was appropriately amended so as to read:

Concurrent resolution providing for an adjournment of the Congress over Thanksgiving Holiday.

ORDER FOR ADJOURNMENT TO 9 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, when the Senate completes its business today, it stand in adjournment until 9 a.m. tomorrow.

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

ORDER FOR RESUMPTION OF UNFINISHED BUSINESS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, after the conclusion of routine morning business, the Senate resume the consideration of the unfinished business.

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

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the Senate will convene at 9 a.m. tomorrow. There will be two orders for the recognition of Senators—Mr. GRIFFIN and Mr. ROBERT C. BYRD—in that order, and each for not to exceed 15 minutes. Morning business will follow, for not to exceed 15 minutes, with a 3-minute limitation on statements therein.

The Senate will then resume consideration of S. 2589—to deal with emergency fuel shortages. Amendments thereto will be in order, and yea-and-nay votes will occur during the day.

ADJOURNMENT TO 9 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 9 a.m. tomorrow.

The motion was agreed to and at 1:02 p.m., the Senate adjourned until tomorrow, Thursday, November 15, 1973, at 9 a.m.