the Japanese. "And now, after this, with the Americans."

TOUR ENDS

Our little walk around the ship, after again passing through the officers' lounge where three young men watched a Baton Rouge television station, ended back in the captain's office.

He passed out glasses, then poured a portion of a dark, brownish-black liquid in the the glasses with Russian vodka. "Bvoka."

Only the brown stuff was not vodka. It said what it was: "Melnais Balzams." He filled the glasses with Russian vodka, "Bvoka."

The glasses sat there. The captain sat back and smiled. I asked if the ship's crew drinks much vodka on a voyage. "No, only the captain drinks vodka." And that, he said, only when guests are present.

Some ships apparently have alcohol. But, and although the translation slipped a little here, I got the impression the Ussurijsk crew is not allowed to keep it.

FRIENDSHIP TOAST

Kuzmenko leaned forward, picked up his glass. I did the same. We waited. He smiled, held out his glass.

"To our friendship."

We drank. Like him, one gulp, and it was gone. It was interesting, and very good.

Curious, I asked about the brown liquid. He did not know the translation, but looked it up in two books on his desk. He found it. One look and I was sorry I asked. The word translated to "embalm."

By the time I turned around, the captain filled the glasses again.

"To our friendship."

LACKAWANNA, N.Y., YOUTH, 12, WINS NATIONAL TITLE

HON. THADDEUS J. DULSKI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 1, 1973

Mr. DULSKI. Mr. Speaker, a 12-year-old Lackawanna, N.Y., boy, Peter Jancevski, has won a "Punt, Pass, and Kick" contest in national competition involving a million youngsters.

Last year, Peter was runnerup in finals for 11-year-olds and this year he showed his ability by winning the national championship in his class.

The contest starts at the local level and progresses up the line to the national final held in connection with the "Pro Bowl" matching the American Football League All-Stars and the National Football League All-Stars.

Peter went to Dallas, Tex., last month as the representative of the American Football Conference and competed against the representative of the National Football Conference.

Peter wore the uniform of the Buffalo Bills and, incidentally, it was a Buffalo Bills' running back, O. J. Simpson, who led the AFL All-Stars to a stunning 33–28 victory.

The son of Mr. and Mrs. Kiri Jancevski, of Lackawanna, Peter was born in Yugoslavia and came to the United States 9 years ago.

All of Lackawanna and Buffalo are indeed proud of Peter's victory. He showed last year that he is championship caliber and this year he proved it by winning the national title.

SENATE—*Friday, February 2, 1973*

The Senate met at 12 o'clock meridian and was called to order by the Acting President pro tempore (Mr. METCALF).

PRAYER

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

Eternal Father, whose grace is sufficient for all our needs, as we turn from the busy pace of life about us and quiet our hearts in Thy presence, we beseech Thee to guide us through the labor of this day by the light of Thy spirit. May we fear only to be disloyal to the highest and best we know, or to ignore the truth Thou hast made known, or to betray those who love and trust us.

Help us this day to meet its joys with gratitude, its difficulties with fortitude, its duties with fidelity. Bring us to the evening unashamed and with a peaceful heart.

We pray in the Redeemer's name. Amen.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the Senate by Mr. Marks, one of his secretaries.

STATE OF THE UNION—MESSAGE FROM THE PRESIDENT (S. DOC. NO. 93–3)

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the President of the United States, which was ordered to lie on the table and to be printed:

To the Congress of the United States:

The traditional form of the President's annual report giving "to the Congress Information of the State of the Union" is a single message or address. As the affairs and concerns of our Union have multipled over the years, however, so too have the subjects that require discussion in State of the Union messages.

This year in particular, with so many changes in Government programs under consideration—and with our very philosophy about the relationship between the individual and the State at an historic crossroads—a single, all-embracing State of the Union Message would not appear to be adequate.

I have therefore decided to present my 1973 State of the Union report in the form of a series of messages during these early weeks of the 93rd Congress. The purpose of this first message in the series is to give a concise overview of where we stand as a people today, and to outline some of the general goals that I believe we should pursue over the next year and beyond. In coming weeks, I will send to the Congress further State of the Union reports on specific areas of policy including economic affairs, natural resources, human resources, community development, and foreign and defense policy.

The new course these messages will outline represents a fresh approach to Government: an approach that addresses the realities of the 1970's, not those of the 1930's or of the 1960's. The role of the Federal Government as we approach our third century of independence should not be to dominate any facet of American life, but rather to aid and encourage people, communities, and institutions to deal with as many of the difficulties and challenges facing them as possible, and to help see to it that every American has a full and equal opportunity to realize his or her potential.

If we were to continue to expand the Federal Government at the rate of the past several decades, it soon would consume us entirely. The time has come when we must make clear choices—choices between old programs that set worthy goals but failed to reach them and new programs that provide a better way to realize those goals; and choices, too, between competing programs—*all* of which may be desirable in themselves but only *some* of which we can afford with the finite resources at our command.

Because our resources are not infinite, we also face a critical choice in 1973 between holding the line in Government spending and adopting expensive programs which will surely force up taxes and refuel inflation.

Finally, it is vital at this time that we restore a greater sense of responsibility at the State and local level, and among individual Americans.

WHERE WE STAND

The basic state of our Union today is sound, and full of promise.

We enter 1973 economically strong, military secure and, most important of all, at peace after a long and trying war.

America continues to provide a better and more abundant life for more of its people than any other nation in the world.

We have passed through one of the most difficult periods in our history without surrendering to despair and without dishonoring our ideals as a people.

Looking back, there is a lesson in all this for all of us. The lesson is one that we sometimes had to learn the hard way over the past few years. But we did learn it. That lesson is that even potentially destructive forces can be converted into positive forces when we know how to channel them, and when we use common sense and common decency to create a climate of mutual respect and goodwill.

By working together and harnessing the forces of nature, Americans have unlocked some of the great mysteries of the universe.

Men have walked the surface of the moon and soared to new heights of discovery.

This same spirit of discovery is helping us to conquer disease and suffering that have plagued our own planet since the dawn of time.

By working together with the leaders of other nations, we have been able to build a new hope for lasting peace—for a structure of world order in which common interest outweighs old animosities, and in which a new generation of the human family can grow up at peace in a changing world.

At home, we have learned that by working together we can create prosperity without fanning inflation; we can restore order without weakening freedom.

THE CHALLENGE WE FACE

These first years of the 1970s have been good years for America.

Our job—all of us together—is to make 1973 and the years to come even better ones. I believe that we can. I believe that we can make the years leading to our Bicentennial the best four years in American history.

But we must never forget that nothing worthwhile can be achieved without the will to succeed and the strength to sacrifice.

Hard decisions must be made, and we must stick by them.

In the field of foreign policy, we must remember that a strong America—an America whose word is believed and whose strength is respected—is essential to continued peace and understanding in the world. The peace with honor we have achieved in Vietnam has strengthened this basic American credibility. We must act in such a way in coming years that this credibility will remain intact, and with it, the world stability of which it is so indispensable a part.

At home, we must reject the mistaken notion—a notion that has dominated too much of the public dialogue for too long—that ever bigger Government is the answer to every problem.

We have learned only too well that heavy taxation and excessive Government spending are not a cure-all. In too many cases, instead of solving the problems they were aimed at, they have merely placed an ever heavier burden on the shoulders of the American taxpayer, in the form of higher taxes and a higher cost of living. At the same time they have deceived our people because many of the intended beneficiaries received far less than was promised, thus undermining public faith in the effectiveness of Government as a whole.

The time has come for us to draw the line. The time has come for the responsible leaders of both political parties to take a stand *against* overgrown Government and *for* the American taxpayer. We are not spending the Federal Government's money, we are spending the taxpayer's money, and it must be spent in a way which guarantees his money's worth and yields the fullest possible benefit to the people being helped.

The answer to many of the domestic problems we face is not higher taxes and more spending. It is less waste, more results and greater freedom for the individual American to earn a rightful place in his own community—and for States and localities to address their own needs in their own ways, in the light of their own priorities.

By giving the people and their locally elected leaders a greater voice through changes such as revenue sharing, and by saying "no" to excessive Federal spending and higher taxes, we can help achieve this goal.

COMING MESSAGES

The policies which I will outline to the Congress in the weeks ahead represent a reaffirmation, not an abdication, of Federal responsibility. They represent a pragmatic rededication to social compassion and national excellence, in place of the combination of good intentions and fuzzy follow-through which too often in the past was thought sufficient.

In the field of economic affairs, our objectives will be to hold down taxes, to continue controlling inflation, to promote economic growth, to increase productivity, to encourage foreign trade, to keep farm income high, to bolster small business, and to promote better labor-management relations.

In the area of natural resources, my recommendations will include programs to preserve and enhance the environment, to advance science and technology, and to assure balanced use of our irreplaceable natural resources.

In developing human resources, I will have recommendations to advance the Nation's health and education, to improve conditions of people in need, to carry forward our increasingly successful attacks on crime, drug abuse and injustice, and to deal with such important areas of special concern as consumer affairs. We will continue and improve our Nation's efforts to assist those who have served in the Armed Services in Viet-Nam through better job and training opportunities.

We must do a better job in community development—in creating more livable communities, in which all of our children can grow up with fuller access to opportunity and greater immunity to the social evils and blights which now plague so many of our towns and cities. I shall have proposals to help us achieve this.

I shall also deal with our defense and foreign policies, and with our new approaches to the role and structure of Government itself.

Considered as a whole, this series of messages will be a blueprint for modernizing the concept and the functions of American Government to meet the needs of our people.

Converting it into reality will require a spirit of cooperation and shared commitment on the part of all branches of the Government, for the goals we seek are not those of any single party or faction, they are goals for the betterment of all Americans. As President, I recognize that I cannot do this job alone. The Congress must help, and I pledge to do my part to achieve a constructive working relationship with the Congress. My sincere hope is that the executive and legislative branches can work together in this great undertaking in a positive spirit of mutual respect and cooperation.

Working together—the Congress, the President and the people—I am confident that we can translate these proposals into an action program that can reform and revitalize American Government and, even more important, build a better life for all Americans.

RICHARD NIXON.

THE WHITE HOUSE, *February 2, 1973.*

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Thursday, February 1, 1973, be dispensed with.

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

AMENDMENTS TO THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 17, S. 261.

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

The assistant legislative clerk read as follows:

S. 261, to amend the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 to provide for minimum Federal payments for four additional years, and for other purposes.

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

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

S. 261

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 207 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1898) is amended by striking out "July 1, 1976," and by inserting before the period at the end of such section "required by section 210, and in the case of any real property acquisition or displacement occurring prior to July 1, 1974, such Federal agencies shall pay 100 per centum of the cost of such payments and assistance required by section 305".

(b) Section 211(a) of such Act is amended to read as follows: "(a) The cost to a State agency of providing payments and assistance pursuant to sections 206, 210, 215, and 305, and cost to a person of providing payments and assistance pursuant to section 223(a), shall be included as part of the cost of a program or project for which Federal financial assistance is available to such State agency or person, and such State agency or person shall be eligible for Federal financial assistance with respect to such payments and assistance in the same manner and to the same extent as other program or projects costs, except that, notwithstanding any other law in the case where the Federal financial assistance is by grant or contribution the

Federal agency shall pay the full amount of the first $25,000 of the cost to a State agency or to a person of providing payments and assistance for a displaced person under sections 206, 210, 215, and 223(a) to July 1, 1976, and under section 305, on account of any acquisition occurring prior to July 1, 1974, and in any case where such Federal financial assistance is by loan, the Federal agency shall loan such State agency or person the full amount of the first $25,000 of such cost."

(c) Title II of such Act is amended by adding at the end thereof the following new section:

"INTERIM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION EXPENSES

"SEC. 222. (a) During the period from July 1, 1972, through June 30, 1973, the head of a Federal agency is authorized to pay to a State which is not in compliance with this Act such sums in excess of the first $25,000 of cost as may be necessary to make all payments and provide all assistance required by this Act.

"(b) On and after July 1, 1973, or such earlier date that a State is able, under its laws, to comply with sections 210 and 305, the head of a Federal agency shall (1) not approve any grant to, or contract or agreement with, any State agency, of the kind referred to in such sections, unless such State agency satisfies the head of the Federal agency that the State is taking appropriate measures to repay to the United States an amount equal to the payments made by the Federal agency in carrying out subsection (a) of this section that the State would have paid if it had been in full compliance with such sections after July 1, 1972, or (2) after giving the State agency a reasonable period of time to seek funds to repay the United States the amounts of such payments, deduct sums totaling the amounts of such payments from Federal assistance available under any grants, contract, or agreement (except relocation payments) from the Federal agency, to that State agency, over a period and in a manner that shall not substantially and adversely affect the programs or projects so assisted.".

(d) Section 101(3) is amended by inserting immediately after "means" the following: "a State,".

(e) Section 101(6) is amended by inserting immediately after "personal property from real property" the following: "which he or his personal property lawfully occupies," and by adding at the end thereof the following: "In any administrative or judicial determination as to lawful occupancy, occupancy shall be deemed to be prima facie evidence of lawful occupancy, and the burden of proving unlawful occupancy shall be on the party alleging unlawful occupancy.".

(f) Title II of such Act, as amended by subsection (c) of this section, is amended by adding at the end thereof the following new sections:

"ASSISTANCE TO SPECIFIED PROGRAMS AND PROJECTS UNDERTAKEN DIRECTLY BY CERTAIN PERSONS

"SEC. 223. (a) Notwithstanding any other provision of law, whenever a program or project to be undertaken (A) by a person, other than an individual, furnished Federal financial assistance for such program or project under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), under title VI of the Public Health Service Act (42 U.S.C. 291), under section 301 of the Public Health Service Act (42 U.S.C. 241), under title IV of the Housing Act of 1950 (12 U.S.C. 1749), or under the Higher Education Facilities Act of 1963 (20 U.S.C. 701), or (B) by a State agency furnished Federal financial assistance for such program or project under the United States Housing Act of 1937 (42 U.S.C. 1401) for the rehabilitation or modernization of public housing, and the Federal financial assistance is furnished by a Federal agency pursuant to a grant, contract, or agreement and such program or project will result in the forced displacement of any person, the head of the Federal agency furnishing such financial assistance shall insure that the following payments and services be provided—

"(1) fair and reasonable relocation payments and assistance to or for such displaced persons, as are required to be provided by a Federal agency under sections 202, 203, and 204 of this title;

"(2) relocation assistance programs offering the services described in section 205 to or for such displaced persons; and

"(3) prior to the approval of the grant, contract, or agreement by the head of the Federal agency, that decent, safe, and sanitary replacement dwellings will be available to such displaced persons within a reasonable period of time prior to displacement in accordance with section 205(c)(3).

"(b) Notwithstanding any provision of law, whenever a program or project to be undertaken by a person furnished Federal financial assistance for such program or project under section 235(j) or section 236 of the National Housing Act, as amended (12 U.S.C. 1715z(j), 1715z–1), or under section 101 of the Housing and Urban Development Act of 1965, as amended (12 U.S.C. 1701s), by a Federal agency pursuant to a grant, contract, or agreement will result in the forced displacement of any person, the head of the Federal agency furnishing such financial assistance shall insure the provision of and provide full payment for—

"(1) fair and reasonable relocation payments and assistance to or for such displaced persons, as are required to be provided by a Federal agency under sections 202, 203, and 204 of this title;

"(2) relocation assistance programs offering the services described in section 205 to or for such displaced persons; and

"(3) within a reasonable period of time prior to displacement, decent, safe, and sanitary replacement dwellings to such displaced persons in accordance with section 205(c)(3).

"(c) The head of any Federal agency providing Federal financial assistance pursuant to the programs or projects identified in subsections (a) and (b) of this section shall insure that relocation payments and other benefits provided under this section reach only displaced persons.

"REMOVAL OF VACANT IMPROVEMENTS

"SEC. 224. No department, agency, or instrumentality of the Federal Government administering any program providing Federal financial assistance shall, for the purpose of assuring compliance with this Act, impose any limitation on the removal of vacant improvements located on real property acquired in connection with such a federally assisted project."

SEC. 2. Section 202(a)(2) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 is amended by inserting immediately before the semicolon a comma and the following: "except that in any case where it is impracticable to determine such relocation expenses the payment shall be for the actual direct losses".

SEC. 3. Title III of the Uniform Reloctaion Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1898) is amended by adding at the end thereof the following:

"DONATIONS

"SEC. 307. Nothing in this title shall be construed to prevent a person, after he has been tendered the full amount of estimated just compensation as established by the approved appraisal of the fair market value of the subject property, from making a gift or donation of such property or any part thereof or of any of the compensation paid therefor, to a Federal agency, a State, or a State agency, as such person shall determine.".

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 93–10), explaining the purposes of the measure.

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

PURPOSE

The purpose of S. 261 is to amend the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 to provide Federal funding of the first $25,000 for relocation payments for persons displaced by federally assisted programs and projects and expand the coverage of the Act to specified other programs.

Until July 1, 1972, the Federal Government reimbursed State agencies for the first $25,000 of any relocation payment required by the Act. Since July 2, 1972, the State and local governments have shared all relocation costs with the Federal Government on a formula basis, in the same manner and to the same extent as other programs or project costs are shared. S. 261 deletes the reference to July 1, 1972, and provides full Federal funding of the first $25,000 for any single relocation payment until July 1, 1976.

A second major purpose of S. 261 is to expand the coverage of the Act to persons displaced by eight specified Federal programs. As now written, the Act provides benefits only to persons displaced by any program or project undertaken by a Federal agency or a State or State agency acting at the request of a Federal agency. S. 261 provides benefits to federaly assisted projects and programs undertaken by persons, as defined by the Act, in addition to Federal and State agencies.

S. 261 also authorizes the head of a Federal agency to pay a State not in compliance with the Act, such funds as are necessary to make all payments and provide all benefits that are required by the Act. For constitutional and other reasons, a number of States have not passed the necessary enabling legislation. S. 261 allows the States not in compliance to act as conduits for payment of Federal funds in excess of $25,000 until June 30, 1973.

Other provisions of S. 261 amend the Act as it relates to the removal of vacant improvements on land acquired for federally assisted projects, the donation of property to a Federal or State agency, the status of illegal occupants of real property acquired by a Federal or State agency and the payment for direct losses of tangible property as a result of moving or discontinuing a business or farm operation.

BACKGROUND OF PRESENT LAW

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 was passed on January 2, 1971, after more than 6 years of consideration by the Subcommittee on Intergovernmental Relations of the Committee on Government Operations.

The initial recommendations were developed in a study by the Select Subcommittee on Real Property Acquisition of the House Public Works Committee in 1964 and in a special report, "Relocation: Unequal Treatment of People and Businesses Displaced by Governments," prepared by the Advisory Commission on Intergovernmental Relations in 1965. On the basis of these recommendations, the Uniform Relocation Act (S. 1681) was introduced in 1965. The Subcommittee on Intergovernmental Relations held hearings in 1965, and the bill passed the Senate in 1966. However, the bill did not pass the House.

The same legislation was introduced at the beginning of the 90th Congress in 1967 as part of the Intergovernmental Coopera-

tion Act (S. 698). The proposal again passed the Senate, but the House, while passing S. 698, deleted the titles relating to relocation assistance and land acquisition.

These deleted provisions were again introduced at the beginning of the 91st Congress as the Uniform Relocation Assistance and Land Acquisition Policies Act of 1969 (S. 1).

The Senate held additional hearings, and for the third time the bill passed the Senate. The bill passed the House with amendments near the end of the session. The Senate concurred in the House changes without a conference and the Act was signed into law on January 2, 1971 (Public Law 91–646).

The Uniform Relocation Act established for the first time a single uniform Federal policy for relocating persons forced to move from their homes or businesses located in the path of Federal or federally assisted programs. These programs displace an estimated million or more families every 10 years. Before the adoption of the Act, many of these programs had inconsistent or inadequate policies regarding displacement and relocation. In a typical hardship neighborhood families living on one side of a street would receive fairly negotiated prices for their land and generous relocation payments and assistance, while families on the other side would be offered prices for their homes below appraised values and be paid no relocation assistance at all. The Uniform Relocation Act was designed to bring order and consistency to such chaotic situations.

The Act also increased the relocation benefits available to persons displaced by Federal and federally assisted programs. The relocation payments authorized by the Act are designed to compensate a displaced person for all economic losses caused by his displacement and to return him to an economic position comparable to his economic position before his displacement. The relocation benefits provided in the Act include payments for moving expenses, reimbursements for losses of personal property, and additional compensation, over and above any condemnation award the displaced person may have received for his home, to enable him to buy "comparable" replacement housing which is "decent, safe, and sanitary."

The Act has three titles. Title I consists of definitions. Title II, the relocation title, requires that relocation assistance be paid and advisory services be made available to displaced persons, and that no Federal or federally assisted project be undertaken unless assurances are obtained that comparable, decent, safe, and sanitary replacement housing will be available for displaced persons prior to their displacement. Title III establishes a uniform policy governing the acquisition of land to guide Federal and State agencies in negotiations with owners for land acquisition.

FEDERAL FINANCING OF THE FIRST $25,000 OF RELOCATION COSTS

Until July 1, 1972, the Federal Government paid the first $25,000 of the cost to a State agency of providing relocation payments and assistance to a displaced person. However, after July 1, 1972, section 211(a) of the Act, which covers federally assisted programs, provides that State and local governments begin sharing relocation costs with the Federal Government on a formula basis, in the same manner and to the same extent as other program or project costs are shared. Section 207, which covers the case where a State acquires and furnishes property as a required contribution incident to a Federal program or project, provides that after July 1, 1972, State and local governments must begin to pay all relocation costs in the same manner and to the same extent as they have paid for the acquisition of the property. S. 261 deletes the reference to July 1, 1972, in both sections and inserts July 1, 1976.

As introduced in the Senate in 1965, the Uniform Relocation Act provided reimbursement of all individual relocation payments up to $25,000, and Federal sharing according to the projects' cost sharing formula above that amount. This provision reflected the way relocation costs were financed in the urban renewal and public housing programs at that time. The provision was intended to be a permanent feature of the Act.

Title VIII of the Intergovernmental Cooperation Act of 1967 (S. 698) contained a similar section providing for full Federal funding of relocation costs up to $25,000 for an indefinite period of time. But this provision was modified and passed by the Senate in 1968 to provide full Federal funding only until the end of a transition period, and cost sharing according to the formula governing each program at the end of the transition period.

The third relocation measure (S. 1, in the 91st Congress), which eventually became law, incorporated this modified position and provided for full Federal reimbursement up to $25,000 only until July 1, 1972.

S. 1819, the 1972 Amendments to the Uniform Relocation Act, as introduced by Senators Baker and Brock, provided for the deletion of the reference to July 1, 1972, and would have made permanent full Federal funding of the first $25,000 per displacee. However, different versions of S. 1819 passed the House and the Senate, and the S. 1819 agreed to by a House-Senate Conference Committee provided for an extension of full Federal funding until July 1, 1976. Neither House acted on the legislation before Congress adjourned.

By deleting the reference to July 1, 1972, and inserting July 1, 1976, S. 261 makes full Federal funding up to $25,000 a feature of the Act for four additional years. Testimony at the hearings held on S. 1819 revealed a range of consideration supporting this approach to financing relocation payments.

First, cost sharing has imposed severe financial hardships on State and local governments that they are not prepared to bear. The present language, which provided for full Federal funding for a short transition period and cost sharing thereafter, was inserted in the bill in 1968 as a compromise between the supporters of the original version and those who argued that a short transition period would give States and local governments time to budget for the increased relocation costs. However, much of the evidence presented at the time of hearings conducted on S. 1819 indicates that the financial difficulties facing State and local governments have increased in severity in the last several years. Imposing this new cost on States and localities amounts to revenue sharing in reverse, asking State and local governments to pick up an expense that has been paid almost entirely by the Federal Government. Testimony at the hearing on S. 1819 revealed a widespread concern that cost-sharing relocation expenses would force local governments to curtail the scope of present and anticipated renewal programs.

Second, the financing of relocation costs on a cost-sharing basis has in effect scrapped full Federal funding for relocation payments up to $25,000 which has been applied to urban renewal, public housing, and mass transportation since the early 1960s, and to other HUD programs, like model cities, since the middle of the decade. The July 1 elimination of the ongoing intergovernmental fiscal relationship represents a step away from the funding arrangements that have been in operation in major programs for nearly a decade.

Third, adoption of the cost-sharing formula governing each program has tended to undermine the salutary uniform treatment that was a paramount goal of the 1970 legislation. Relocation costs now vary from program to program according to their matching formula. The Federal Government pays 90% of the relocation costs for individuals displaced by an interstate highway, for example, but only 66% of the costs of relocating those forced to move because of a typical urban renewal program. This approach generates differing relocation attitudes and practices among the agencies involved at all levels of government.

Fourth, the 1970 legislation represents a declaration of a new national policy that is being superimposed by the Federal Government in a blanket fashion on all existing federally assisted programs. Federal funding of the Uniform Relocation Act assures that fullest implementation of this national relocation policy.

The main argument against the extension of full Federal funding of relocation payments up to $25,000 is that relocation payments are a part of the project costs and should be cost shared on the same basis that project costs are shared. At the hearing held on S. 1819, Frank C. Carlucci, then Associate Director of the Office of Management and Budget, testified that cost sharing would encourage State and local government agencies to choose Federal projects and select locations in a way that would minimize relocation costs. On the other hand, Robert Hubbard, representing the National Association of Housing and Redevelopment Officials, testified that the cost considerations are not a significant factor in the selection and location of most urban renewal projects. Even in those cases where cost considerations may be a factor in selecting a project, relocation costs usually make up a very small proportion of total project costs, so that even large changes in relocation costs would translate into relatively small changes in total costs and would have a relatively small impact on decisions based on overall cost considerations.

INTERIM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION EXPENSES

Section 221(a) of the Uniform Relocation Act provides that "this Act shall take effect on the date of its enactment." However, in order to permit States whose laws or constitutions do not permit State agencies to provide all the benefits required by the Act, Section 221(b) further provides that, until July 1, 1972, the Act is applicable only to the extent that "such State is able under its law to comply". After July 1, 1972, the Act became fully applicable to all States. The effect of the language was to provide States a transition period to obtain comprehenseive enabling legislation permitting them to comply with the Act.

S. 261 adds new Section 222 which allows the head of a Federal agency through July 1, 1973, to pay to a State, not in compliance with the Act, funds as are necessary to make all payments and provide all benefits that are required by the Act. S. 261 further provides that the Federal agency head shall take all reasonable steps to recover the portion of these payments which would have been the non-Federal share if the State had been in lawful compliance with the Act, and authorizes the Federal agency head to deduct any delinquent non-Federal share from future program payments from the Federal agency to the State.

As the Act is now written, the head of a Federal agency may not approve any grant, contract, or agreement with a State agency, "on or after the effective date," unless he receives assurances from the State agency that all benefits required by the Act will be provided. Where a State agency, because of a lack of legal authority, has been unable to make such assurances after July 1, 1972, this provision acts to prevent the head of a Federal agency from approving any grant, contract, or agreement with that agency. The provision can have the effect of cutting off funds for federally assisted programs which displace persons after July 1, 1972.

According to reports prepared by the General Accounting Office, several States have not yet enacted legislation necessary to comply with the Act. Five are in partial compliance for HUD programs. Three States have not complied with any HUD programs. Five States have not complied with legislative requirements relating to the Army Corps of Engineers.

As was illustrated during the hearings on S. 1819, there are several reasons why these States have not been able to comply with all the provisions of the Uniform Relocation Act.

Some States may have failed to enact comprehensive enabling legislation because they had not been fully informed at their regular session of the need to do so by Federal authorities. Evidence prepared and submitted for the record by the National Governor's Conference and the American Association of State Highway Officials during the S. 1819 hearings, revealed that nearly all of the States, in cooperation with HUD and the Department of Transportation, have enacted enabling legislation with respect to the major HUD and highway programs, but have not enacted legislation covering other federally assisted programs. Although States officials in all States received information on the Act from the National Governor's Conference in March 1971, they received no official notice regarding the enactment of comprehensive legislation from the Federal Government until February 1972.

Other States, like Wyoming and Nevada, have legislatures which meet biennially. Although these legislatures were in session at the time of the Act's passage, they may not have been given an adequate opportunity to adopt comprehensive legislation before their adjournment early in 1971.

The Committee believes it unfair to penalize persons displaced by Federal projects in those States that have not been given adequate opportunity to enact implementing legislation. At the same time, however, the Committee does not believe that these considerations justify a general postponement of the effective date. Such a general one-year postponement would, as a practical matter, permit States to proceed with federally assisted projects until July 1, 1973, without providing relocation benefits to displaced persons as required by the Act. A postponement of the effective date would encourage States which have not enacted enabling legislation not to do so until the last possible moment, or to make their own legislation effective on July 1, 1973, in order to avoid the necessity of making relocation payments for an extra year. Material submitted for the hearing record on S. 1918 indicated, for example, that New Jersey had already enacted legislation permitting it to comply with the Act, but made July 1, 1972, the effective date. Finally, a blanket extension would also be unfair to those states which have already acted to bring their laws into compliance with the requirements of the Act.

ASSISTANCE TO SPECIFIED PROGRAMS AND PROJECTIONS UNDERTAKEN DIRECTLY BY CERTAIN PERSONS

The Uniform Relocation Assistance and Real Property Acquisition Act of 1970 now provides benefits to persons displaced by the acquisition of real property by a Federal agency or a State or State agency acquiring the real property as a required contribution incidental to a Federal program or project. S. 261 amends the Act to extend benefits to persons displaced by eight specified Federal programs which may be undertaken by persons other than a Federal agency or a State or State agency.

It was the intent of the Congress to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of all Federal and federally assisted programs and projects. However, the manner in which the Uniform Relocation Act is written excludes persons displaced by Federal projects undertaken by any entity other than an agency of the Federal Government, a State or a State agency. S. 261 partially corrects the deficiency by expanding the coverage of the Act to include eight specified Federal programs.

The programs specified by S. 261 include:

Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) provides low-interest loans for the construction of housing for the elderly or the handicapped. It is administered by Housing and Urban Development.

Title VI of the Public Health Service Act (42 U.S.C. 291), the Hill-Burton Program, provides grants and loans for the construction and modernization of hospitals and other medical facilities. It is administered by the Department of Health, Education, and Welfare.

Section 301 of the Public Health Services Act (42 U.S.C. 241) is the basic authority of the Surgeon General to carry out research and investigations related to mental and physical diseases. It is administered by the Department of Health, Education, and Welfare.

Title IV of the Housing Act of 1950 (12 U.S.C. 1749) authorizes loans and grants for the construction of housing and other educational facilities for students and faculties. It is administered by Housing and Urban Development.

The Higher Educational Facilities Act of 1963 (20 U.S.C. 701) authorizes grants and loans for the construction of academic facilities. It is administered by Health, Education and Welfare.

The United States Housing Act of 1937 (42 U.S.C. 1401) authorizes contracts for financial assistance to States or State agencies for the construction of low-income housing. It is administered by Housing and Urban Development.

Section 235(j) of the National Housing Act (12 U.S.C. 1715z(j)) authorizes mortgage assistance payments in cases of acquisition of four or more single family units (including rehabilitation, where necessary) for resale to low-income families. Section 236 of the National Housing Act (12 U.S.C. 1715z–1) authorizes interest reduction payments on behalf of owners of rental housing project. Administered by Housing and Urban Development.

Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) is the basic rent supplement program for the elderly, handicapped, those displaced by government action, those occupying substandard housing, or victims of a national disaster. Administered by Housing and Urban Development.

ANALYSIS OF THE BILL

Subsection (a) of the first section of S. 261 amends section 207 by striking out "July 1, 1972," and inserting in its place "July 1, 1976," and by inserting at the end of the section "required by section 210, and in the case of any real property acquisition or displacement occurring prior to July 1, 1974, such Federal agencies shall pay 100 per centum of the cost of such payments and assistance required by section 305."

Section 207 of the Act now provides that whenever real property is acquired by a State agency and furnished as a required contribution incidental to a Federal program or project, the Federal agency having authority over the program or project may not accept such property unless such State agency has made all the relocation payments and provided all assistance required of a State agency by sections 210 and 305 of the Act. Section 207 provided that, until July 1, 1972, the Federal Government would contribute the first $25,000 of the cost of providing relocation payments and assistance and other acquisition payments required by such sections. Section 305 requires that the Federal agency head shall not approve any project or program with a State until he is satisfied that the State agency will follow the land acquisition policies in sections 301 and 302, and that the property owners will be paid expenses as specified in sections 303 and 304.

The deletion of "July 1, 1972" and the insertion in its place of "July 1, 1976" would provide full Federal funding of the first $25,000 until July 1, 1976. The addition of "required by section 210, and in the case of any real property acquisition or displacement occuring prior to July 1, 1974, such Federal agencies shall pay 100 per centum of the cost of such payments and assistance required by section 305" would authorize full Federal funding of the first $25,000 until July 1, 1976, to those provisions specified by section 210 and would provide for payment by the Federal Government of 100 percent of the assistance provided in section 305 until July 1, 1974.

Subsection (b) of the first section of S. 261 amends section 211(a) to read as follows:

(a) The cost to a State agency of providing payments and assistance pursuant to sections 206, 210, 215, and 305, and cost to a person of providing payments and assistance pursuant to section 223(a), shall be included as part of the cost of a program or project for which Federal financial assistance is available to such State agency or person, and such State agency or person shall be eligible for Federal financial assistance with respect to such payments and assistance in the same manner and to the same extent as other program or project costs, except that, notwithstanding any other law in the case where the Federal financial assistance is by grant or contribution the Federal agency shall pay the full amount of the first $25,000 of the cost to a State agency or to a person of providing payments and assistance for a displaced person under sections 206, 210, 215, and 223(a), on account of any acquisition or displacement occurring prior to July 1, 1976, and under section 305, on account of any acquisition occurring prior to July 1, 1974, and in any case where such Federal financial assistance is by loan, the Federal agency shall loan such State agency or person the full amount of the first $25,000 of such cost.

Section 211(a), as it exists in the law, provides full Federal payment under sections 206, 210, 215, and 305, of up to $25,000 for individual relocation payments and assistance until July 1, 1972, and for cost-sharing of these payments and assistance thereafter. As amended by the bill, would provide full Federal funding of the first $25,000 for payments and assistance provided for in sections 206, 210, 215, and new section 223(a) until July 1, 1976. In addition the amended section 211(a) would provide full Federal funding until July 1, 1974, of the first $25,000 for individual relocation payments provided for in section 305.

Subsection (c) of the first section of S. 261 amends Title II of the Uniform Relocation Act by adding a new section 222.

Section 222(a) would amend the Act by authorizing the head of a Federal agency, between July 1, 1972 and July 1, 1973, to loan a State which is not in compliance with the Act, such sums in excess of the first $25,000 as are necessary to provide all assistance required by the Act.

Section 222(b)(1) would authorize the Federal agency head after July 1, 1973, to approve any grant with any State agency which has borrowed funds under the provisions of new section 222(a), unless the State agency satisfies the Federal agency head that the State is taking appropriate measures to repay the Federal government the amounts loaned under section 222(a).

Section 222(b)(2) would provide that after July 1, 1973, the Federal agency head may deduct sums totaling the amounts loaned under 222(a) from Federal assistance avail-

able under any grant, contract or agreement (except relocation payments) from the Federal agency. This may be done only in a manner not substantially and adversely affecting the program or project and only after a reasonable repayment time has expired.

Subsection (d) of the first section of S. 261 amends section 101(3) of the Uniform Act by inserting after "means" the following: "a State,". This changes the definition of "State agency" to include a State.

Subsection (e) of the first section of the bill amends section 101(6) by inserting after "personal property from real property" the following: "which he or his personal property lawfully occupies," and by adding at the end thereof "In any administrative or judicial determination as to lawful occupancy, occupany shall be deemed to be prima facie evidence of lawful occupancy, and the burden of proving unlawful occupancy shall be on the party alleging unlawful occupancy."

Section 101(6) as it exists defines the term "displaced person". S. 261 amends that definition by limiting the term to persons lawfully occupying the real property from which they are displaced, but places the burden of proving unlawful occupancy on the party alleging the unlawful occupancy.

Subsection (f) of the first section of S. 261 amends Title II, as amended by subsection (c), by adding sections 223 and 224.

Section 223(a)(A) would provide that when a project or program is undertaken by a person, other than an individual, under section 202 of the Housing Act of 1959 (12 U.S.C. 1701(q), Title IV of the Public Health Service Act (42 U.S.C. 291), section 301 of the Public Health Service Act (42 U.S.C. 241), Title VI of the Housing Act of 1950 (12 U.S.C. 1749) or the Higher Education Facilities Act of 1963 (20 U.S.C. 701), and the Federal financial assistance is furnished by a Federal agency, the head of the Federal agency shall insure that payments and assistance required by sections 202, 203, 204, and 205 are made to persons displaced by the project or program.

The programs specified by new section 223(a)(A), briefly stated, are as follows:

Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) provides low-interest loans for the construction of housing for the elderly or the handicapped. It is administered by Housing and Urban Development.

Title VI of the Public Health Service Act (42 U.S.C. 291), the Hill-Burton Program, provides grants and loans for the construction and modernization of hospitals and other medical facilities. It is administered by the Department of Health, Education, and Welfare.

Section 301 of the Public Health Service Act (42 U.S.C. 241) is the basic authority of the Surgeon General to carry out research and investigations related to mental and physical diseases. It is administered by the Department of Health, Education, and Welfare.

Title IV of the Housing Act of 1959 (12 U.S.C. 1749) authorizes loans and grants for the construction of housing and other educational facilities for students and faculties. It is administered by Housing and Urban Development.

The Higher Educational Facilities Act of 1963 (20 U.S.C. 701) authorizes grants and loans for the construction of academic facilities administered by Health, Education, and Welfare.

Section 223(a)(B) provides that when a project is undertaken by a State agency furnished Federal financial assistance under the United States Housing Act of 1937 (42 U.S.C. 1401) for the rehabilitation or modernization of public housing, and the Federal financial assistance is furnished by a Federal agency, the head of the Federal agency shall insure that payments and assistance required by section 202, 203, 204 and 205 are made to persons displaced by the project. The United States Housing Act of 1937 (42 U.S.C. 1401) authorizes contracts for financial assistance to States or State agencies for the construction of low-income housing. It is administered by Housing and Urban Development.

New section 223(b) would provide that when a project or program is undertaken by a person furnished Federal financial assistance under section 235(j) or section 236 of the National Housing Act, as amended (12 U.S.C. 1715z(j), 1715z-1) or under section 101 of the Housing and Urban Development Act of 1965, as amended (12 U.S.C. 1701s) by a Federal agency, the head of that agency shall insure payments and assistance required by sections 202, 203, 204 and 205 are made to persons displaced by the project or program.

The programs specified by new section 223(b), briefly stated, are as follows:

Section 235(j) of the National Housing Act (12 U.S.C. 1715z) authorizes mortgage assistance payments in cases of acquisition of four or more single family units (including rehabilitation, where necessary) for resale to low-income families. Section 236 of the National Housing Act (12 U.S.C. 1715z-1) authorizes interest reduction payments on behalf of owners of rental housing projects administered by Housing and Urban Development.

Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) is the basic rent supplement program for the elderly, handicapped, those displaced by government action, those occupying substandard housing, or victims of a national disaster administered by Housing and Urban Development.

Section 223(c), as added by S. 261, would stipulate that it is the responsibility of the Federal agency head providing benefits under section 223(a) and 223(b) to insure that relocation payments and benefits provided reach only displaced persons.

Section 224 would provide that no agent of the Federal Government, for the purpose of assuring compliance with the Act, may prohibit the removal of vacant improvements located on real property acquired in connection with a Federal project.

Section 2 of S. 261 amends section 202(a)(2) by inserting before the semicolon a comma and "except that in any case where it is impracticable to determine such relocation expenses the payment shall be for the actual direct losses."

Section 202(a)(2) now provides that the Federal agency head shall make payments to displaced persons for actual direct losses of property as a result of moving or discontinuing a farm or business. This payment is limited, however, to an amount equal to the amount which would have been required to relocate the property. Section 2 of S. 261 would remove that limit in cases where it is not practicable to determine reasonable relocation costs. In such cases the displaced person would be paid for actual losses.

Section 3 of S. 261 amends Title III of the Uniform Act by adding new section 307 at the end. This section 307 amends the Act to provide that nothing in the land acquisition title of the Act shall be construed to prevent a person, after he has received an estimate, from donating his real property to a Federal agency, State, or a State agency.

ESTIMATED COST OF LEGISLATION

The committee has received no official estimates of the cost of the bill to the Federal Government. However, according to the National Association of Housing and Redevelopment Officials, which conduct a survey of local governments participating in various HUD programs, the total cost of relocation deriving from these programs is estimated to be about $375 million in fiscal year 1973. The local share, which under S. 1819 the Federal Government would assume, is estimated to be about one-fourth of this amount, or approximately $95 million.

According to a statement prepared by the American Association of State Highway Officials, the relocation costs deriving from all federally assisted highway programs that would be assumed by the Federal Government under the bill would be much smaller than the relocation costs deriving from HUD programs.

Since HUD and highway programs account for the bulk of all dislocation caused by Federal or federally assisted programs, the committee estimates that the total cost of the bill will be $150 million in fiscal year 1973, and approximately $750 million over the period from fiscal year 1973 to 1978.

WINNING PUBLIC OFFICE BY WALKING

Mr. MANSFIELD. Mr. President, it seems that the latest trend, in running for the Senate at least, is for candidates to walk across their States or up and down their States. By and large, the "LAWTON CHILES formula" seems to have worked with a great deal of success.

A candidate in the State of Illinois traversed that State, east and west, north and south, and he got to be elected Governor.

A candidate in the State of Iowa traversed that State, east and west, north and south, and he was elected to the Senate.

I think that this trend has worked very well in favor of the Democrats to date, and I would hope that it would continue in the future.

It does take stamina and it does take people who are young in heart as well as in spirit.

One of them is Senator DICK CLARK of Iowa, about whom an article was published in the Evening Star and Daily News of February 1, 1973, entitled "Senator DICK CLARK: Saga of Foot Race, with Frogs and Mules." I ask unanimous consent to have this article, written by Martha Angle, printed in the RECORD.

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

[From the Washington Evening Star and Daily News, Feb. 1, 1973]

SENATOR DICK CLARK: SAGA OF FOOT RACE, WITH FROGS AND MULES

(By Martha Angle)

Dick Clark is the Herb Mul-key of Capitol Hill, a kind of sandlot politician who walked out of nowhere into a seat in the U.S. Senate.

Like Mul-Key, the young free agent who'd never played college football but won himself a spot on the Redskins' championship team last year, the 43-year-old Iowa Democrat made the jump to the big time without ever climbing the usual rungs of the political ladder.

This time a year ago, Richard C. Clark, a former university professor, was administrative assistant to Rep. John C. Culver, D-Iowa, in the congressman's 2nd District office back home.

His energies were devoted to setting up a Culver bid for the Senate seat then held by two-term Republican Jack Miller. The organizational groundwork was laid, and a statewide canvass was under way to identify, register and get out the votes of potential Culver supporters.

Clark was preparing to leave Culver's payroll after seven years in order to try for the House seat himself once the congressman declared for the Senate.

URGED TO RUN

But the declaration never came. On Feb. 9, Culver announced that for "family and professional considerations," he had decided to forgo the Senate race and seek a fifth term in the House instead.

His sudden pullout left Iowa Democrats with no candidate. Every other party leader of stature had already committed himself to other races, assuming that Culver had a lock on the Senate nomination. Miller, who had carried all 99 counties in Iowa in 1966, appeared invincible.

The day that Culver announced his decision, Clark started getting phone calls from friends urging him to run for the Senate himself.

"I thought it was crazy for about a day and a half," he recalled.

NOTHING TO LOSE

But the more he considered the notion, the less outrageous it seemed. "After all, I had nothing to lose on God's green earth and everything to gain."

So Clark declared his candidacy for the Senate a week after Culver bowed out. "I thought I had about a 3-to-1 chance," he said.

He had a monumental recognition problem. "Less than one-half of one percent of the voters knew who I was," Clark said. "I had to do something to get my name known."

TOO SLOW

He started in fairly traditional fashion, driving from town to town to meet local Democrats and visit every newspaper office, radio and television station in Iowa, a journey that kept him on the road from late February until late June.

"It was working, but it was too slow," Clark said. A Des Moines Register poll in May showed him running far behind Miller, 57 to 20.

A young candidate for the state legislature suggested that he conduct a walking campaign all across the state a technique previously used successfully by Sen. Lawton Chiles, D-Fla., and Illinois Gov. Dan Walker.

So he bought a couple of khaki safari suits and a pair of comfortable mailman's boots and set out on June 29 from Miller's home town of Sioux City, in western Iowa.

From that day until Oct. 5, he walked and walked and walked—along open roads, past family farms, down the Main Streets of countless small towns, around the business districts of larger cities, through the suburbs and back to the open roads, logging 1,313 miles while the summer sun tanned his face and arms a deep brown and the rains washed road dust off his khakis. Cobblers along the route nailed new heels to his hardworn boots.

He didn't really talk much politics along the walk, or at least he never discussed Miller's record. Instead he listened to people.

When the walk ended, Clark was no longer a stranger to the voters of Iowa. He was still trailing Miller, but the gap was closing. He spent the final month of his campaign zeroing in on the Republican incumbent, attacking his record and clashing with him in debates.

On election day, Clark went home at 8:30 p.m., to await the returns with his wife and two teen-age children.

"The polls had closed in the East and McGovern was taking a beating. I told my wife and kids we were going to lose, that there was no way we could overcome the kind of Nixon landslide that was shaping up.

"Then 20 minutes later, NBC declared me a winner. I couldn't believe it—they hardly had any votes on the board and I just couldn't believe it," Clark said.

The shock of victory was hard to cope with. "I'd never allowed myself throughout the entire campaign to think beyond election day. I'd never thought about actually being a senator. I'd also never faced what I'd do if I lost; I knew I could get a job somewhere."

And the voters of Iowa certainly seemed happy with their surrogate candidate, giving Clark 54.6 percent of the vote on Nov. 7.

THE PEACE IN VIETNAM

Mr. MANSFIELD. Mr. President, the latest issue of the U.S. News & World Report publishes an interesting article entitled "Vietnam Peace—How United States Hopes To Make It 'A Peace That Heals.' "

Also, in connection with this article, are published the "Highlights of a Historic Agreement." The salient points are the pact to end the fighting in Vietnam, as released in an official White House document called Basic Element of Vietnam Agreement.

Mr. President, I ask unanimous consent that both the article and the "Highlights of a Historic Agreement" be printed in the RECORD.

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

[From U.S. News & World Report, Feb. 5, 1973]

HOW UNITED STATES HOPES TO MAKE IT "A PEACE THAT HEALS"

In the wake of a compromise end to America's longest war: both a carrot and a stick to convince Hanoi that keeping the truce is in its interest.

Now that the guns at last are silent in Indo-China, the goal the U.S. seeks is what the White House calls "a peace that heals."

A promise of massive American aid to North Vietnam if it behaves is part of the U.S. formula for bridging the gap between Washington and Hanoi. Moscow and Peking are being asked to lend a conciliatory hand. Other ways will be sought to replace bitter enmity with reconciliation.

The cease-fire agreement, effective January 27, was largely on terms to which President Nixon has held steadfast for four years.

The pact guarantees the objective from which the U.S. has never deviated—"the South Vietnamese people's right to self-determination."

Mr. Nixon told congressional leaders that "by pursuing the course, we've got our POW's coming back—a peace, however fragile, which we have hopes will endure."

SATISFACTORY COMPROMISE

A White House aide called the truce terms "most satisfactory, considering that we didn't win the war—it ended in compromise."

All American prisoners of war are to be flown out of Hanoi in U.S. planes. The airlift is expected to start in February and is to be completed by March 29 as the U.S. withdraws its remaining 23,700 troops from Vietnam.

Nearly 600 American servicemen are listed as captured and more than 1,000 as missing in action. The Reds are obligated to help check on the missing.

Some skeptics in Congress and elsewhere have expressed fear that the truce may be short-lived. They point out that 145,000 North Vietnamese troops remain in South Vietnam and that viability of the agreement hinges on Hanoi's good faith—and on the Saigon Government's continued survival.

Mr. Nixon is counting on the restraining influence of the U.S., the Soviet Union and Communist China as a powerful factor in bringing durable peace to Indo-China after a quarter century of conflict.

Moscow and Peking are to participate in the international conference which is to be convened within 30 days to nail down the cease-fire agreement.

Both of the great Communist powers—suppliers of North Vietnam's war machine—have hailed the truce.

The cease-fire agreement did not specifically extend to Laos and Cambodia. But Henry A. Kissinger, the U.S. negotiator, said there is a "firm expectation" that fighting will be ended quickly in both those countries.

GIVE AND TAKE

The Vietnam accord was marked by compromises and concessions on both sides.

Yet, in Mr. Kissinger's words, "at last we have achieved an agreement in which the United States did not prescribe the political future to its allies, an agreement which should preserve the dignity and the self-respect of all the parties." He added:

"And together with healing the wounds in Indo-China, we can begin to heal the wounds in America."

Release of prisoners, troop withdrawals, elections in South Vietnam and other elements of the agreement are to be supervised by an international commission with a force of 1,160 men, drawn from Canada, Hungary, Indonesia and Poland. A joint military commission with forces from the U.S., South Vietnam, the Viet Cong and North Vietnam will do preliminary work on policing the cease-fire.

The end of American participation in the war changes, but by no means terminates, the U.S. role in Southeast Asia.

U.S. officials say that there now is a "carrot-and-stick" aspect to that role.

REBUILDING RAVAGED NATION

On one hand, the U.S. is ready to take a major part in reconstruction of war-ravaged Indo-China. A "carrot" for North Vietnam is the 2.5 billion dollars in American funds earmarked for Hanoi as part of the 7.5-billion-dollar American program of rehabilitation aid, which is to be augmented by contributions from other nations.

On the other hand, a "stick" is seen in the 600 U.S. warplanes stationed in Thailand and the armada of American warships off the coast of Vietnam. Nothing in the truce agreement requires reduction of these forces. Sharp reduction will come, U.S. officials say, only when the peace seems secure.

In his radio-television address to the nation on January 23, announcing the cease-fire agreement, Mr. Nixon said:

"All parties must now see to it that this is a peace that lasts, and also a peace that heals. . . . This will mean that the terms of the agreement must be scrupulously adhered to. We shall do everything the agreement requires of us and we shall expect the other parties to do everything it requires of them."

LATENT DANGERS

American military men warn that Vietnam will remain a powder keg as the cease-fire undergoes its test during the critical 60-day period in which prisoners of war are released and remaining U.S. combat forces are withdrawn. Acts of aggression could trigger countermeasures that might rip the truce apart.

A major deterrent to large-scale Communist violations, according to U.S. strategists, is Hanoi's uncertainty over how President Nixon would react to blatant disregard of cease-fire terms. Said one official source:

"The President shocked Hanoi with the incursion into Cambodia in 1970, with the mining of North Vietnam's harbors last May, and again with the heavy bombing of the North at Christmastime. In the future, the unpredictability of the President's intentions will be preserved and used as a brake on Hanoi's aggressive inclinations."

Mr. Kissinger said that the presence of 145,000 North Vietnamese troops in South Vietnam reflects battlefield realities under terms of a cease-fire in place. He emphasized that reinforcement or replacement of these troops is prohibited and predicted that attri-

tion would reduce Hanoi's forces in the South.

South Vietnam has more than a million men under arms and a 50-squadron air force of more than 1,000 planes.

Among safeguards for South Vietnam:

Military movement of any kind across the demilitarized zone between North and South Vietnam is prohibited.

Foreign forces are barred from Laos and Cambodia—thus closing off infiltration corridors for the Communists.

There will be early opportunities to test the cease-fire climate in the North. Besides the U.S. teams sent to Hanoi to receive the POW's, American detachments will work with the North Vietnamese in deactivating mines.

PEACE BENEFITS

If the cease-fire holds, both economic and diplomatic gains are expected for the U.S.

For one thing, officials estimate savings to American taxpayers as high as 4 billion dollars this year.

On the diplomatic front, the Nixon Administration will be free to intensify its approach to other pressing questions of foreign policy.

Among these is the Arab-Israeli conflict. Some officials anticipate that Mr. Nixon will launch a new and perhaps dramatic effort to bring peace to the Middle East.

Also cited is an opportunity for more progress in relations with Russia and Communist China. A stable cease-fire in Indo-China will clear the way for Soviet leader Leonid Brezhnev to make the Washington visit planned for this spring and postponed because war raged on in Vietnam. China, some diplomats believe, will be interested in expanding more meaningfully the contacts begun with Mr. Nixon's trip to Peking last year.

Indications are, too, that the U.S. will give more attention to its relations with European allies and Japan—matters of increasing importance, especially in the context of world trade and monetary policy at a time when worry persists about the huge deficit in the U.S. balance of payments.

But, in Washington and other capitals, warnings are heard that the key to peace in Indo-China has not yet been well and truly turned in the lock.

Much depends on Hanoi's attitude. It is pointed out, for example, that Le Duc Tho, North Vietnam's truce negotiator, said this at a Paris news conference on January 24:

"I am a Communist and, according to Marxist-Leninist theories, so long as imperialism persists in the world there will still be wars."

Le Duc Tho also made it plain that there is no change in North Vietnam's determination to achieve eventual rule over both North and South. He said:

"No reactionary force will be able to slow down the march forward of the Vietnamese people."

The bitter divisions were dramatized even in the manner in which cease-fire documents were drawn for the signing in Paris on January 27 by Secretary of State William P. Rogers and the foreign ministers of South Vietnam, North Vietnam and the Viet Cong.

In the signing procedure, Hanoi was not called upon to recognize the South Vietnamese Government, and Saigon did not need to concede recognition of either North Vietnam or the National Liberation Front, the Viet Cong.

Said a Washington specialist on Indo-China: "Political warfare will be brutal."

Seeds of wrath. In his briefing Mr. Kissinger said: "Of course the hatred will not rapidly disappear, and of course people who fought for 25 years will not easily give up their objectives."

Even so, many U.S. officials are hopeful that heed will be paid to the words President Nixon addressed the leaders of North Vietnam: "As we have ended the war through negotiations, let us build a peace of reconciliation."

HIGHLIGHTS OF A HISTORIC AGREEMENT

Following are the salient points of the pact to end the fighting in Vietnam, as released in an official White House document called "Basic Elements of Vietnam Agreement":

MILITARY PROVISIONS

Cease-fire

Internationally supervised cease-fire throughout South and North Vietnam, effective at 7 p.m. EST, Saturday, Jan. 27, 1973.

American forces

Release within 60 days of all American servicemen and civilians captured and held throughout Indo-China, and fullest possible accounting for missing in action.

Return of all United States forces and military personnel from South Vietnam within 60 days.

Security of South Vietnam

Ban on infiltration of troops and war supplies into South Vietnam.

The right to unlimited military replacement aid for the Republic of Vietnam [South Vietnam].

Respect for the demilitarized zone.

Reunification only by peaceful means, through negotiation between North and South Vietnam without coercion or annexation.

Reduction and demobilization of Communist and Government forces in the South.

Ban on use of Laotian or Cambodian base areas to encroach on sovereignty and security of South Vietnam.

Withdrawal of all foreign troops from Laos and Cambodia.

POLITICAL PROVISIONS

Joint United States-Democratic Republic of Vietnam [North Vietnam] statement that the South Vietnamese people have the right to self-determination.

The Government of the Republic of Vietnam continues in existence, recognized by the United States, its constitutional structure and leadership intact and unchanged.

The right to unlimited economic aid for the Republic of Vietnam.

Formation of a nongovernmental National Council of National Reconciliation and Concord, operating by unanimity, to organize elections as agreed by the parties and to promote conciliation and implementation of the Agreement.

INDO-CHINA

Reaffirmation of the 1954 and 1962 Geneva Agreements on Cambodia and Laos.

Respect for the independence, sovereignty, unity, territorial integrity and neutrality of Cambodia and Laos.

Ban on infiltration of troops and war supplies into Cambodia and Laos.

Ban on use of Laotian and Cambodian base areas to encroach on sovereignty and security of one another and of other countries.

Withdrawal of all foreign troops from Laos and Cambodia.

In accordance with traditional United States policy, U.S. participation in postwar reconstruction efforts throughout Indo-China.

With the ending of the war, a new basis for U.S. relations with North Vietnam.

CONTROL AND SUPERVISION

An International Commission of Control and Supervision, with 1,160 international supervisory personnel, to control and supervise the elections and various military provisions of the Agreement.

An international conference within 30 days to guarantee the Agreement and the ending of the war.

Joint Military Commissions of the parties to implement appropriate provisions of the Agreement.

MEMORANDUM ON THE OPERATION OF THE DEMOCRATIC POLICY COMMITTEE AND THE DEMOCRATIC CONFERENCE—JANUARY 1972

Mr. MANSFIELD. Mr. President, it is exactly 1 month that the 93d Congress has been in session. During this period, the Democratic majority has been deeply involved in attempting to set a majority approach in the Senate.

I will read for the RECORD a report of the work of the majority policy committee and the Democratic conference for the month of January. It consists of a background statement on how the policy committee operates and three appendixes: the first is the "Rules of Procedure," where the policy committee, in conjunction with the conference, establishes Democratic positions on issues; the second is a collection of opening statements for the several policy committee and conference meetings during the month of January; the third is a list and the text of the eight major resolutions which have been set forth as Democratic policy in the Senate during this period.

MEMORANDUM ON THE OPERATION OF THE SENATE DEMOCRATIC POLICY COMMITTEE

The Senate Democratic Policy Committee was established in 1947. In the previous year, the LaFollette-Monroney Committee on the Organization of Congress had recommended that "both the House and the Senate establish formal committees for the determination and expression of majority and minority policy" and that "the Majority Policy Committees of the Senate and House serve as a formal council to meet regularly with the Executive to facilitate the formulation and carrying out of national policy, and to improve relationships between the Executive and Legislative Branches of the Government."

These recommendations, of course, were not implemented in full. The House never established a Committee. In the Senate, the Democratic Policy Committee for many years functioned primarily for scheduling legislation for floor action (notably while Presidents Kennedy and Johnson were in the White House) without reference to party policy.

In 1969, after the election of a Republican President, the Democratic Policy Committee adopted a leadership proposal that the Committee should try to fulfill its role of "determination and expression of Majority policy" by identifying and setting forth party positions on major issues on which substantial agreement might exist among Democrats. As a means of so doing, specific procedures were established by the Policy Committee and these procedures were then approved, unanimously, by the Legislative Committee Chairmen and, unanimously, by the Democratic Caucus. (See Appendix I for the procedures of the Senate Majority Policy Committee.) At the beginning of each successive Congress, the procedures have been reaffirmed. Under the procedures, there is provision for frequent and regular meetings of the Policy Committee and closer liaison between the Committee and the Legislative Committee Chairmen. All Democratic

Senators are invited to submit proposals, as possible party positions in the Senate, for discussion by the Policy Committee. As a practical matter, many of the resolutions are delineated by the Leadership.

The proposals take the form of draft resolutions or motions. If two-thirds agreement is reached by the Members present on any such proposal, the resolutions are adopted as party positions. Resolutions adopted by the Policy Committee may also be reinforced by submission to the full Democratic Caucus for concurrence.

It should be noted that the membership of the Policy Committee is selected by the Leadership, subject to the concurrence of the Caucus, on the basis of maintaining a scrupulous balance as to the geographic and philosophic representation of the Democratic Party in the Senate. The actions of the Policy Committee, therefore, can be expected, almost invariably, to reflect the substantial sentiments of the Caucus.

The Policy Committee is also scrupulous in avoiding infringement on the jurisdiction of the Legislative Committees. Policy resolutions do not spell out issues in the language of legislation. Rather, they are designed to delineate the issue and to express the general sentiments of the Democrats in the Senate on that issue, for the guidance of Legislative Committees or whomever else may be concerned. They act to initiate or speed up action in the Legislative Committees and also to serve notice on the Executive Branch as to the Majority sentiments in the Senate.

There is no attempt to bind any Senator to a party viewpoint. Once the issue is on the floor, regardless of the policy resolution, every Senator is free to speak his views and vote his convictions. Hopefully, however, if a Member is of two minds on any particular issue, he will give the benefit of the doubt to the party position and, hence, strengthen the unity of the party image in relationship to that issue.

This year, the Policy Committee has already passed eight resolutions and has endorsed several other proposals, all of which have been approved overwhelmingly in the Caucus. A list of these resolutions and copies of the resolutions are attached as Appendix III. In addition, Appendix II contains statements by the Leadership which reflect some of the subtleties and difficulties involved in the process of arriving at party positions.

APPENDIX I

DEMOCRATIC POLICY COMMITTEE PROCEDURES

(1) The Majority Leadership, that is, the Leader, the Assistant Leader, and the Secretary of the Conference, will try to meet with the legislative Committee Chairman every six weeks for a review of the legislative situation in the Senate and for a discussion of any other matters of interest to the Chairmen.

(2) The Policy Committee itself will meet regularly for lunch every two weeks on Tuesday at 12:30 p.m.

(3) The Committee staff will prepare a special agenda for these meetings which will be separate from that involving the scheduling of routine legislation.

(4) The agenda will include a staff analysis of any significant emerging issues which will be identified primarily from these sources:

a. By reference to the staff from any Member of the Policy Committee;

b. By staff study of legislative proposals, statements or other actions of the Administration; and

c. By reference to this Committee from any of the legislative committees.

(5) The Committee will consider the issues which are thus brought to its attention for the purpose of determining whether they are of a significance and are likely to evoke sufficient party agreement as to warrant the taking of a Policy position.

In this consideration, the Committee will use for its information, staff briefings and memoranda and any other sources deemed useful. A legislative committee chairman will be invited, as necessary, to explain or elaborate on legislation which he believes warrants concerted support from the party.

APPENDIX II

REMARKS OF SENATOR MIKE MANSFIELD, DEMOCRAT, OF MONTANA, AT THE DEMOCRATIC CONFERENCE, JANUARY 3, 1973

We meet, today, with a new majority. We meet with new responsibilities and a new mandate.

The same electorate that endorsed the President increased the Democratic majority in the Senate by two votes. If the re-elected Members (Senators Sparkman, McClellan, Mondale, Eastland, Metcalf, McIntyre and Randolph), and the Senate-elects (Senators Abourezk (S.D.), Biden (Del.), Clark (Iowa), Haskell (Colo.), Hathaway (Ma.), Huddleston (Ky.), Johnston (La.), and Nunn (Ga.)) will stand, the Conference would appreciate the opportunity and the privilege of congratulating them en bloc.

In my judgment, the vote for each of these Senators in November was cast for them as individuals. Each speaks with unique ideological and regional accents. Each has a sensitivity to a particular constituency. Nothing I may say, today, is intended to detract from that basic fact of victory in this or any other free election. Collectively, however, these Senators are representative of the Democratic Party. They reflect the strength of a unified political identity in the midst of ideological diversity, of a party that excludes no sector of the nation, nor any group of Americans.

What I have to say now, I say with all due respect and affection for our distinguished colleague from South Dakota. (And if I may digress for a moment, I would note that not a single Member of the Democratic Majority in the Senate of the 92nd Congress—south, north, east or west—defected to the Republican Presidential candidate in November.) Notwithstanding the outcome of the November election, it should be emphasized that, as a Senator from South Dakota, George McGovern shares the mandate which the electorate has given to the Senate Majority. I have every confidence that we can expect of him a vigorous contribution in its pursuit.

The recent election tells us something of what the people of the nation expect of the Senate. If there is one mandate to us above all others, it is to exercise our separate and distinct constitutional role in the operation of the Federal government. The people have not chosen to be governed by one branch of government alone. They have not asked for government by a single party. Rather, they have called for a reinforcement of the Constitution's checks and balances. This Democratic Conference must strive to provide that reinforcement. The people have asked of us an independent contribution to the nation's policies. To make that contribution is more than our prerogative, it is our obligation.

An independent Senate does not equate with an obstructionist Senate. Insofar as the Leadership is concerned, the Senate will not be at loggerheads with the President, personally, with his party or his administration. The Senate will give most respectful attention to the President's words, his program and his appointments. Every President deserves that courtesy. During the period in which you have entrusted me with the leadership, every President has had that courtesy.

In a similar vein, the rights of the Republican Minority in the Senate will be fully sustained by the Majority Leadership and I anticipate the cooperation of the minority leadership in the operation of the Senate. I would say to the Minority, however, no less than to the Majority, that the Senate must be prepared to proceed in its own way. When conscience so dictates, we must seek to initiate and advance public programs from the Senate and, as indicated, to revise proposals of the Executive Branch.

It is my expectation that the House of Representatives will join in this approach. To that end, the Senate Leadership will seek to establish close and continuing liaison with that of the House. Looking to the needs of the entire nation, moreover, the Leadership will put out new lines of communication to the Governors Conference, notably to its Democratic Members, as well as to the National Democratic Party. We have much to learn from these sources about conditions in the nation. Their contribution can help to improve the design of federal activity to meet more effectively the needs of all states.

There is no greater national need than the termination, forthwith, of our involvement in the war in Viet Nam. This Conference has been in the vanguard in seeking a legislative contribution to rapid withdrawal from that ill-starred, misbegotten conflict. The Majority Conference has resolved overwhelmingly to that effect. Members have voted on the Senate floor, preponderantly, to that effect.

Nevertheless, the war is still with us. Notwithstanding intermittent lulls and negotiations, the prisoners of war remain prisoners and their numbers grow with each renewal of the bombing. The fact is that not a single prisoner has been released to date by our policies; the handful who have come home have done so in consequence of gestures from Hanoi.

The recoverable missing in action have yet to be recovered and their numbers grow. Americans still die in twos and threes and plane-loads. Asians die by the hundreds and thousands. The fires of an enduring hostility are fed by unending conflict. We are in the process of leaving a heritage of hate in Southeast Asia to our children and our children's children. And for what?

With the election behind us, I most respectfully request every Member of the Conference to examine his position and his conscience once again on the question of Viet Nam. I do not know whether there is a legislative route to the end of this bloody travesty, I do know that the time is long since past when we can take shelter in a claim of legislative impotence. We cannot dismiss our own responsibility by deference to the President's. It is true that the President can still the guns of the nation in Viet Nam and bring about the complete withdrawal of our forces by a strike of the pen. It is equally true that the Congress cannot do so. Nevertheless, Congress does have a responsibility. We are supplying the funds. We are supplying the men. So until the war ends, the effort must be made and made again and again. The Executive Branch has failed to make peace by negotiation. It has failed to make peace by elaborating the war first into Cambodia, then into Laos and, this year, with blockade and renewed bombing, into North Viet Nam. The effort to salvage a shred of face from a senseless war has succeeded only in spreading further devastation and clouding this Nation's reputation.

It remains for the Congress to seek to bring about complete disinvolvement. We have no choice but to pursue this course. I urge every Member of this caucus to act in concert with Republican Senators, by resolution or any other legislative means to close out the military involvement in Viet Nam. If there is one area where Senate responsibility profoundly supersedes party responsibility, it is in ending the involvement in Viet Nam.

In view of the tendency of this war to flare unexpectedly, the leadership now questions the desirability of the Congress ever again to be in sine die adjournment as we have been since October 18, 1972. In that constitutional state the Congress is unable to be reassembled on an urgent basis except by call of the President. It is the leadership's intention, therefore, to discuss this gap in congressional continuity with the House leaders. It may well be desirable to provide, at all times, for recall of the Congress by the Congress itself. There is ample precedent for providing standby authority of this kind to the combined leaderships.

If Indochina continues to preoccupy us abroad, the Senate is confronted, similarly, with an overriding domestic issue. The issue is control of the expenditures of the Federal Government. We must try to move to meet it, squarely, at the outset of the 93d Congress.

In the closing days of the last session, the President asked of Congress unilateral authority to readjust downward expenditures approved by the Congress within an overall limit of $250 billion. The President's objectives were meritorious but his concern at the imbalance in expenditures and revenues might better have been directed to the federal budget which is now a tool—not of the Congress, but of the Executive Branch. It is there that the origins of the great federal deficits of the past few years are to be found. The fact is that Congress has not increased but reduced the Administration's budget requests, overall, by $20.2 billion in the last four years.

As the Conference knows, the House did yield to the President's request for temporary authority to readjust downward, arbitrarily, Congressional appropriations. The Senate did not do so. The Senate did not do so for good and proper reasons. The power of the purse rests with Congress under the Constitution and the usurpation or transfer of this fundamental power to the Executive Branch will take the nation a good part of the last mile down the road to government by Executive fiat. That is not what the last election tells us to do. That is not what the Constitution requires us to do.

I say that not in criticism of the President. The fault lies not in the Executive Branch but in ourselves, in the Congress. We cannot insist upon the power to control expenditures and then fail to do so. If we do not do the job, if we continue to abdicate our Constitutional responsibility the powers of the federal government will have to be recast so that it can be done elsewhere.

We must face the fact that as an institution, Congress is not readily equipped to carry out this complex responsibility. By tradition and practice, for example, each Senate committee proceeds largely in its own way in the matter of authorizing expenditures. There is no standing Senate mechanism for reviewing expenditures to determine where they may fit into an overall program of government. A similar situation exists in our dealings with the House. So, if we mean to face this problem squarely, it is essential for us to recognize that the problem is two-fold. It involves: (1) coordination of expenditures within the Senate and; (2) coordination with the House.

In the closing hours of the 92d Congress, Congress created a Joint Committee to recommend procedures for improving Congressional control over the budget. While this committee cannot be expected to conclude its work by February 15, as the statute directs, it would be my expectation that by that date an interim report will have been submitted to the Congress. Thereafter, it is the Leadership's intention to seek the extension of the Joint Committee in the hope that a definitive answer can be found to the problem.

In the meantime, what of the coming session? Unless the Congress acts now to strengthen coordinated control of expenditures, it is predictable that the Executive Branch will press again for temporary authority to do so. It is predictable, too, that sooner or later a Congressional inertia will underwrite the transfer of this authority on a permanent basis.

That is the reality and it ought to be faced squarely here in this caucus and on the floor of the Senate. Unless and until specific means are recommended by the Joint Committee, I would hope that the Conference will give the Leadership some guidance on how an overall expenditures ceiling may be set as a goal for the first session of the 93d Congress. Shall we attempt to do it here in the Caucus? Shall we take a figure by suggestion from the President? Thereafter, how will we divide an overall figure among the various major priorities and programs? How much for defense? For welfare? For labor and so forth?

Who will exercise a degree of control over expenditures proposed in legislation? Can it be done by a committee of committee chairmen? The Appropriations Committee? Should the Majority Policy Committee monitor expenditure legislation before it reaches the Senate floor to determine compatibility with an overall limitation? In any case, where will the necessary budgeting technicians and skilled fiscal officers be obtained? From the General Accounting Office? The Congressional Research Service? By an expanded Senate staff?

I would note in this connection the provisions of the Reorganization Act of 1970 which called for a unified computerized system for the federal government. The system was to permit clarifying various programs and expenditures of the government so that we might know, among other things how much was being spent for each particular purpose. This knowledge is essential for effective control of expenditures on the basis of a program of priorities.

The computer project is being undertaken jointly by the Treasury and the Office of Management and Budget, in cooperation with the General Accounting Office. It is my understanding that the project has concentrated, to date, on the needs of the Executive Branch while those of the Congress are being overlooked. If that is so, this project had better to be put back on the right track. If it is necessary, the Congress should alter the enabling legislation to make certain that we get the information that is needed to control expenditures. It would be my hope that the appropriate committees would move without delay to look into this situation.

If the President seeks the cooperation of the Senate in negotiating an immediate end to the involvement in the Vietnamese war, in the control of expenditures or, in any other matter of national interest, he will have that cooperation. Cooperation depends, however, on a realistic give and take at both ends of Pennsylvania Avenue. In the name of cooperation, we cannot merely acquiesce in unilateral actions of the Executive where the Constitutional powers of Congress are involved as they are in Viet Nam and in the control of expenditures. I would also note in this connection the proclivity of the Executive Branch to impound funds from time to time for ac-

tivities approved by the Congress. This dubious Constitutional practice denies and frustrates the explicit intention of the Legislative Branch.

There are some areas in which, clearly, we can work cooperatively with the President. Defense expenditures, for example, can continue to be reduced to a more realistic level. I am glad to note that the Armed Services Committee and the Appropriations Committee both have been moving to bring about a general reduction of requests of the Executive Branch for these purposes. As a matter of fact, the reduction in defense appropriations amounted to $5.3 billion for FY '73 and I would hope that we will do even better this year.

We should also consider closely the Administration's announced plans to close some domestic military bases during the coming year. The Executive Branch should not overlook the approximately 2,000 installations and bases which we have set up in all parts of the world at a continuing cost of billions of dollars annually. Here, too, there is an area for cooperation with the President. I would suggest most respectfully that the Senate and the President consider jointly both in terms of obsolescence and economy the closing of a good many of these overseas establishments.

In the civilian sector, the President has indicated that the Federal bureaucracy is too large. There would certainly be grounds for close cooperation with the Senate in this sphere. The misuse and underuse of civil servants is a scandalous waste of public funds which is felt especially at a time of rising federal salary scales. To overload the agencies and departments with personnel is also demeaning and deadening to the dedicated men and women in the federal service.

If the President will work with the Congress on this matter, I am persuaded that the Civil Service can be reduced substantially from its present 2.8 million employees. The reduction can be without personal hardships, by a carefully developed program which would permit greater flexibility in transfers among agencies and incentive retirements. Such a program coupled with the natural attrition of death and resignation and with accompanying limits on new hirings could do much to improve the tone of government service and curb the payroll costs which now stand at $32 billion a year.

The President has expressed an interest in proceeding with his earlier proposed plans for reorganizing the Federal government. Clearly, there is a need for reorganization of sprawling, over-extended, over-lapping Executive departments, agencies and commissions. It must be faced as a realistic matter, however, that any basic reorganization in government, is a difficult undertaking at best. In my judgment, a wholesale approach is not likely to achieve anything more concrete now than when it was first advanced two years ago. It would be only a charade. It is my hope, therefore, that the President would concentrate on areas of maximum need. It seems to me that Members of the Senate who have shown a deep interest in this problem can be very helpful in working with the Administration to define those areas.

Turning to our potential contribution to a legislative program for this session, I would emphasize that the Senate has a distinct mandate to assert its own concepts of priorities. The Constitution does not require us to await proposals from the Executive Branch. In this connection, two categories of "carry-over" legislation from the 92d Congress warrant immediate attention. The first consists of those measures passed by Congress in the last session but vetoed by the President. In many cases, the same measures can be reported promptly by the appropriate committees largely on the basis of comprehensive hearings held in the past. Within this group, of even more urgent concern are the following bills which were vetoed after Congress adjourned without opportunity to override:

1. Mineral, and Related Environmental Research Centers.
2. Airport Development.
2. Airport Development Acceleration Act.
3. Public Works and Flood Control.
4. Environmental Data System.
5. Vocational Rehabilitation.
6. Veterans' Health Care Reform.
7. National Veterans' Cemetery System.
8. Deputy U.S. Marshals.
9. National Institute of Aging.
10. Older Americans Act Revision.
11. Public Works-Economic Development Act.
12. Appropriations for the Departments of Labor and Health, Education, and Welfare for Fiscal Year 1973.

A second category of priority bills including those which were reported out and considered in either the House or the Senate during the 92d Congress but not enacted. They include pioneering measures of great relevance to the quality of the nation's life and the welfare of its citizens. These measures should be reported by the Committees early in the current sessions so that the Congress may consider them carefully. The list includes:

1. Comprehensive Housing.
2. Consumer Protection Agency.
3. No-fault Insurance.
4. Minimum Wage.
5. Pension Reform.
6. Comprehensive Health Insurance.
7. Health Maintenance.
7. Health Maintenance Organizations.
8. Strict Strip Mining Controls.
9. Omnibus Crime Victims Bill.

I would note, in particular, legislation involving health insurance. Senators have introduced various measures dealing with this subject. The Administration has advanced other proposals. The Congressional approach tends to offer more comprehensive health coverage to the people of the nation. The Administration is more concerned with costs. It would be my hope that a compromise can be brought about between what Senators have suggested and what the Administration has recommended. In that fashion, we might at least begin to move in the direction of meeting the medical and hospital needs of all of our citizens.

In a closely related area, we will have to come to grips with the question of welfare reform. Over the past ten years, the costs of welfare have increased from $5 billion to approximately $15 billion. The trend continues upward. The states and localities are overwhelmed by a growing demand for assistance. They plead for greater federal assistance in shouldering this load.

It is inconceivable to me that this Nation will ever turn its back on those among us whose lives have been crippled by physical or mental handicaps, by unemployment, by poverty and disease. For years, we have assisted such people, by the millions, abroad as well as at home.

Nevertheless, we must find a better way of dealing with this problem. We must find a more effective system not only of training but of placement to put the able-bodied to work. It is more than a matter of getting people off welfare rolls. It is a matter of the right to personal dignity for every American who is prepared to assert it. It is a right which is interwoven with supporting oneself and family and with making a constructive contribution to the Nation.

To date, the administration has failed to meet this situation. So, too, has the Congress. Hopefully, together, in the 93d Congress we can make a new beginning.

Once, again, in the last election the flaws in the electoral system were paraded before the Nation. In my judgment, both Congressional and Presidential campaigns are too repetitive, too dull and too hard on candidates and electorate. Most serious, the factor of finance begins to overshadow all other considerations in determining who runs for public office and who does not, in determining who gets adequate exposure and who does not. It is not healthy for free government when vast wealth becomes the principal arbiter of questions of this kind. It is not healthy for the Nation, for politics to become a sporting game of the rich.

This Congress must look and look deeply at where the Nation's politics are headed. In my judgment, ways must be found to hold campaign expenditures within reasonable limits. Moreover, to insure open access to politics. I can think of no better application of public funds than, as necessary, to use them for the financing of elections so that public office will remain open to all, on an unfettered and impartial basis, for the better service of the Nation. With this principle forming the objective, it would be desirable to consider limiting campaigns to three weeks or four weeks, later scheduling of conventions and possibly, replacing the present haphazard, expensive, time-consuming state primaries with national primaries. Once again, too, consideration might be given to abolishing the electoral college and to adjustments in the Constitutional provision involving the Presidential term of office, and, perhaps, that of the Members of the House.

The Federal Election Campaign Contributions Act, which we enacted in the 92d Congress and which was put into effect this past year, may also need refinement and modification to reduce undue paper-shuffling and other burdens without compromising the principle of

full disclosure. There are also some specific matters relating to the past elections which warrant investigatory attention. One is the so-called Watergate Affair which appears to have been nothing less than a callous attempt to subvert the political processes of the Nation, in blatant disregard of the law. Another is the circulation by mail of false allegations against our colleagues, Senator Muskie, Senator Jackson and Senator Humphrey, during the Florida primary campaign, with the clear intent, to say the least, of sowing political confusion.

Still another is the disconcerting news that dossiers on Congressional candidates have been kept by the FBI for the last 22 years. This practice has reportedly been stopped. It would be well for the appropriate committees to see to it that appointed employees in the agencies of this government are not placed again in the position of surreptitious meddling in the free operation of the electoral process. The FBI has, properly, sought to avoid that role in other situations. We must do whatever is necessary to see to it that neither the FBI, the military intelligence agencies or any other appointive office of the government is turned by its temporary occupants into a secret intruder into the free operation of the system of representative government in the United States.

On November 17, 1972, I addressed letters to Chairman Eastland of the Judiciary Committee and Chairman Ervin of the Government Operations Committee. I requested that these two Chairmen get together and make a recommendation to the Leadership on how to proceed to investigate these and related matters, to the end that the Senate's effort may be concentrated. I renew that request today.

While I am on this subject, I would like to suggest, too, that attention be given to the appearance in the Courts and Executive Agencies of what may be a tendency to cloud by disconcerting interpretations the safeguards of the First Amendment as they apply to practitioners in the press and other media of communications. If this tendency does exist, the Congress has a responsibility to try to check it. The press, radio and TV are prime sources of light in the otherwise hidden recesses of our government and society. They are as essential to the fulfillment of our legislative responsibilities as they are to the general enlightenment of the public. At the very least therefore, it seems, too, that a Senate inquiry is called for into the implications of recent court decisions and such official pronouncements as that of the Director of the Office of Telecommunications Policy regarding the "Fairness Doctrine." We share with the President and the Courts a Constitutional responsibility to protect the freedom of the press to operate as a free press.

I would like next to present a few thoughts about the internal procedures of the Senate. In recent weeks, much has been said about the evils of the seniority system. I can understand the intent of those who make these assertions. Yet, I would observe that, in general, the Senate has been well served in the years of my personal recollection, by the Chairmen of its various committees.

For the benefit of the new Members, however, I would point out that the system which is followed in the Senate by the Democratic Conference in nominating Members to Senate committees is not one of automatic deference to seniority. In the first place, nominees for each are designated by the Conference's Steering Committee and by secret ballot. During the 92d Congress, for the first time, the Leadership submitted in block to the Democratic Conference for concurrence the names of any new members of the several committees. The Steering Committee's selections were endorsed unanimously by the Conference.

Beginning in the 92d Congress, moreover, the Conference adopted a ratification procedure calling for separate Conference concurrence in the case of each of the Steering Committee's designees for Committee Chairman. That process will be followed this year and a Democratic Conference will be called for that purpose when the Steering Committee completes its work. Finally, I should note that what I have just discussed is the procedure only for designation of Democratic Members to Senate committees. The actual election of committees and chairmen occurs on the floor of the Senate where, once again, they are subject to challenge. The safeguards seem to me to be substantial. Nevertheless, the Chair will entertain any request for further discussion of this matter.

On another question, I have received from Senator Moss, a letter which states, in part:

"It is my hope that the Democratic Conference will adopt a resolution directing the Policy Committee to set forth the legislative objectives of the Democratic Party. It follows of course, that all Democrats would be expected to support to the maximum degree possible these objectives."

Let me note, in this connection, that in early 1969, the Leadership did raise with the Policy Committee the question of who was to speak for the Democratic Party in the Federal government in view of the election of a Republican President. The Committee agreed unanimously that a need existed for such a spokesman. Thereupon, it adopted unanimously certain new rules of procedure which were proposed by the Leadership to deal with this need. In general, these rules provided for regular meetings of the Policy Committee to consider issues which might be identified as suitable for the assumption of a party position. Those issues were to be considered which came to the Policy Committee—quoting from the Committee's rules—"by reference . . . from any Member of the Policy Committee, by staff study of legislative proposals, statements or other actions of the Administration and by reference to the (Policy) Committee from any legislative Committee."

The Committee further agreed to consider "the issues which are thus brought to its attention for the purpose of determining whether they are of a significance *and* are likely to evoke sufficient agreement as to warrant adoption by the Majority Party of a Policy position."

Finally, the Committee agreed to seek "to secure the widest degree of party acceptance of a position on any significant issue (and) . . . to be guided by a minimum of a two-thirds vote in determining the issues on which a party position should be taken."

In short, basic machinery in line with Senator Moss' suggestion has been available and in operation in the Policy Committee for four years. The rules of procedure which govern in this connection were approved in full and unanimously by the Democratic Conference on May 20, 1969, as well as by the Legislative Committee Chairmen. They have been used to identify and to disseminate more than a dozen party positions in the Senate and, in general, these positions have had substantial Democratic support.

It is conceivable that the Conference would wish to make changes in the functions of the Majority Policy Committee with a view to strengthening its role along the lines of Senator Moss' letter. It would be helpful, however, if the Public Committee itself might consider this matter before it is discussed in the Conference. If there are to be modifications in the present procedures or the Committee, as approved unanimously by the Conference in the past, we ought to be as specific as possible in presenting them. The Policy Committee will be meeting soon and the Leadership will undertake to raise the matter at that time. The results of the discussion will be brought back to the Conference thereafter if changes are to be proposed.

I will now close these remarks with a final reference to the last election. I suppose each of us interprets the national sentiment which is reflected in the outcome in terms of his own predilections. Certainly, I have done so. Therefore, "the state of the Senate," as seen from the viewpoint of the Democratic Majority might not necessarily dovetail with the mandate which the administration delineates from President Nixon's reelection or that which is seen by the Republican Minority in the Congress.

Nevertheless, it does seem that the election tells all of us—President, Democratic Majority and Republican Minority—what the people of the Nation do not want.

(1) They do not want one party or one branch government during the next 2 years.

(2) They do not want to turn back the clock on the national effort to improve the human climate and the physical environment in which the people of this Nation must live.

(3) They do not want a rate of change which whether too slow or too rapid produces major internal chaos and disruption.

(4) Most of all, they do not want the President to persist nor the Congress to acquiesce in the indefinite continuance of the senseless bloodshed in Viet Nam and, with it, accept the indefinite postponement of the return of the POW's and the recoverable MIA's.

These negatives point the way to the positive path which the Senate Majority Leadership intends to pursue during

the next two years. We will not abandon the effort to end the U.S. involvement in Viet Nam and to bring back the POW's and the recoverable MIA's, period. We will work to preserve and to enhance the faithfulness of this nation to its Constitutional principles and its highest ideals and, in so doing, we will not shut the door on essential hearings.

The Leadership needs your cooperation; your understanding and your support. Ideas are welcomed, equally, from every Member of this Conference, the oldest no less than the youngest, the most junior no less than the most senior. Together, we are here, in the last analysis, with only one mandate—to serve the people of the several states and the nation. With your help, the Leadership will strive to carry out that mandate in full.

APPENDIX I

REMARKS OF SENATOR MIKE MANSFIELD TO THE POLICY COMMITTEE

At this first meeting, I would like to express my hopes for an effective new Congress and for a significant contribution from the Majority Policy Committee to that end. Since 1946, the Policy Committee has met and adopted its own procedures and functioned in accordance with its own rules. Until 1969, it functioned primarily as a traffic director for the floor consideration of legislation. With the advent of a Republican President for the first time in eight years, the Committee at that time sensed the need for a source of unified Democratic Party expression in the Senate. We agreed that the Policy Committee was a feasible place to define Democratic positions, on issues since there was no Democratic President as a readily identifiable spokesman for the Party and source of Democratic leadership. To this end, certain new procedures were adopted by the Committee.

In general, these procedures provided for regular and more frequent meetings, for continuing liaison with the Committee Chairman, and for preparation of special agendas for the Committee's consideration, based on referral and analysis of policy issues and, for the determination of Democratic policy positions by not less than a two-thirds vote of the Committee. This approach and the procedures were subsequently approved by unanimous votes of the Caucus and of the Chairmen of Legislative Committees.

Before I ask for comment on the continued applicability of this approach I would like to mention a letter I received from Senator Moss, dated November 17, 1972. Senator Moss feels that the Committee can be used more effectively than it has been in the past as a party-planning and policy-making body. In this letter Senator Moss makes the following specific proposals:

1. The Policy Committee with a substantially augmented staff, should develop legislative programs and priorities in keeping with our basic Democratic Party principles.

2. The Majority Leader, in consultation with the Policy Committee and such other Senators as he chooses, should prepare and deliver for the Senate our own "State of the Union" message to the people.

3. Each Senator should make such input to the Policy Committee, directly or through its staff, as he believes will achieve development toward a forward-looking Democratic program to solve the problems and provide opportunities for a united, peaceful, and vigorous citizenry of our country.

It appears to me that Senator Moss' proposals, in general, coincide with what the Committee has been trying to accomplish, although I would be most reluctant to presume to deliver a "State of the Union" message. His proposals are also in general accord with the spirit of the Democratic Conference as expressed last week.

I especially concur with Senator Moss that the Democratic Policy Committee can be a source of policy initiative both in the Senate and in the nation to try to counterbalance, to some extent, the growing power of the Executive Branch which has been veering in the direction of one branch government for many years. I would appreciate any specific guidance on how this counterbalancing can be achieved.

As I noted in my remarks to the Caucus of January 3, a crucial aspect of the Senate's assertion of its Constitutional prerogatives revolves around the question of coordinating and controlling Federal expenditures right here in Congress, without interference from the Executive Branch. It is my intention to lay before this Committee some thoughts with regard to temporary Congressional controls of expenditures in the near future, a problem which I hope will be resolved on a permanent basis by the Joint House-Senate Committee that has been established for this purpose. It is quite possible that these thoughts may have direct bearing on the first of Senator Moss' proposals, namely augmentation of the Policy Committee staff, and so I would like to defer that question pending discussion of the Central issue of budget control at a later meeting.

In the meantime, and for active consideration today, we must first determine whether we want to continue or to modify the procedures under which this Committee has been operating during the past two Congresses. If the Committee wishes I will restate them verbatim later.

Next, we should, if possible, try to express by resolution a Democratic position on legislative priorities for the early weeks of the session as endorsed in general terms by the Conference last week.

In due course, I will also set before you as Item 3 of the agenda a draft resolution relating to the refusal of appointees of the President to appear before appropriate Committees of the Senate in fulfillment of the requirements of the Constitution and statutory law.

And finally, if time permits, the final item of the agenda is still another draft resolution dealing with the question of public access to proceedings of the Senate and its Committees, the so-called "Open Hearings" question.

APPENDIX II, JAN. 11, 1973

SENATOR MANSFIELD'S STATEMENT TO DEMOCRATIC CAUCUS

At its first meeting of the year, the Majority Policy Committee heard from Senator Stevenson who suggested very strongly the need for the Senate to look to the whole range of its inner practices and procedures if it is really to be expected to assert the kind of independent co-equal role in the government of which we have heard a great deal lately. There was much in what he had to say. The Policy Committee agreed, if the Conference concurs, that a five-man ad hoc committee of the Conference would be appointed to make a preliminary study of the various proposals and suggestions for the improvement of Senate procedures with a view, later, hopefully within 4–6 weeks, to making recommendations to the Conference. Any recommendations that required legislative action would, of course, be referred to the Rules Committee or other appropriate legislative committees. Unless there are objections, I will designate the following Members to institute an ad hoc Committee of the Caucus on Senate Procedures and Practices: Senators Stevenson, Chairman; Stennis, Metcalf, Inouye, and Hathaway.

In addition, Senator Moss raised the matter before the Policy Committee of expanding the capacity of the Committee in providing initiatives for the Senate Democrats. Senator Moss recommended structuring a liaison with the Governors and the National Committee, and this recommendation has already been implemented. At this time, I would like to insert in the Record of the Conference letters addressed to Governor Bumpers, Chairman of the Democratic Governors, Carl Albert, and Bob Strauss, seeking their cooperation and advice along these lines.

Hon. DALE BUMPERS,
Governor of Arkansas
Little Rock, Arkansas

DEAR DALE: I am writing to convey to you a copy of my statement at the first Conference of the Democratic Caucus in the Senate. The meeting took place on January 3, just before the opening of the Senate and was attended by almost all Democratic Senators.

You will note that the stress of the statement is on the need for a Democratic-controlled Congress to take an independent course during the next two years, in reinforcement of the Constitution's system of checks and balances. In pursuit thereof I suggest on Page 3 of the statement the possibility of a contribution from the Democratic Governors and the Democratic National Committee. It seems to me that the Congressional Leadership can secure from both those sources an input of ideas and policy formulations relative to the nation's needs which will strengthen the legislative program of the 93d Congress and contribute, incidentally, to maintaining a closer unity in the Democratic Party. The statement, as made, was adopted by unanimous voice vote of the Caucus, and it was further suggested that the text be given circulation among Democrats throughout the nation.

It is on that basis that I am communicating with you at this time, and I look forward to your reactions. As circumstances permit, I am hopeful that we can meet for an informal discussion

of how to bring about a closer liaison between the Democratic leadership in the Congress and the Democratic Governors. If you plan to be in Washington at any time in the near future, I hope that we will have an opportunity to get together.

With warm regards and best wishes, I am

MIKE MANSFIELD.

The HONORABLE CARL ALBERT,
Speaker of the House, House of Representatives, Washington, D.C.

DEAR CARL: I have read with great interest the news reports regarding the Democratic Caucus early this week in the House and, in particular, the references to the determination on the part of House members to reassert the prerogatives of the Congress. The tone in the Democratic Caucus of the Senate which met for the first time in this Congress on January 3, was very similar. The Caucus endorsed by voice vote a statement made by me at that time, a copy of which is enclosed, as a policy guide for the coming Congress.

I call your attention, in particular, to the section on page 3 which suggests close liaison between the Democratic leaderships of the two Houses. You might also wish to note the paragraph on page 5 which refers to the problem of convening Congress in emergencies on its own authority in the absence of a call by the President.

If you agree that these and related matters suggest the desirability of an early meeting of the two Leaderships, I should be delighted to come to see you at your convenience for a preliminary discussion of how we might proceed or, alternatively, if you prefer, I would be pleased if you could join me for lunch one day in the next week or so. I await your wishes.

With warm personal regards and high esteem, I am

Sincerely yours,

MIKE MANSFIELD.

Mr. ROBERT STRAUSS,
Chairman, Democratic National Committee, Washington, D.C.

DEAR BOB: I am writing to convey a copy of my statement of January 3 to the Democratic Caucus of the Senate. I hope you will find it of interest.

You will note that I emphasized the point that the electorate has given a clear mandate to the Democratic Party in Congress to proceed in its own way as a co-equal branch of the government during the next two years. I also stressed the need for the fullest possible coordination between the leaderships of the two Houses of Congress. You may wish to take special note, moreover, of the references to the relationship which is suggested between the Democratic National Committee and the Democratic Governors. It appears on page 3 of the attached speech. It seems to me that the Congressional leadership can secure from both of these sources an input of ideas and formulations which will strengthen the legislative program and contribute, at the same time, to the unity of the party.

The statement, as made, was adopted by voice vote as the policy of the Democratic Majority for this Congress, and it was suggested that the text be given the widest possible circulation among Democrats throughout the nation.

I look forward to hearing from you, as soon as circumstances here permit, I am hopeful that we can meet and discuss the matter in detail.

With best personal wishes, I am

Sincerely yours,

MIKE MANSFIELD.

Hopefully, the first meeting could take place later this month when the Governors are in town for their meeting. Additional recommendations of Senator Moss with respect to ad hoc advisory committees of the Policy Committee and other possible areas of further initiative will be discussed further at the next meeting of the Policy Committee.

The final item of business before the meeting is opened to any general discussion involves certain resolutions which were adopted Tuesday at the first meeting of the Democratic Policy Committee. Before they are read, let me say that in endorsing the policy statement which was made at the first meeting last week, the Conference resolved, in general terms, to support the proposition seeking the reinforcement of the system of checks and balances and the independent role of the Congress as a primary objective for the Democratic Majority of the Senate in the 93rd Congress. The resolutions which will be read to you by the Secretary are designed to begin to translate that resolve into action. Of themselves, they are without force, just as any other action of this Conference is without force. But adhered to by Members of this Conference in the Senate itself, understood by Members of the Senate Minority for what they are, not an act of partisanship, but of a renewal of the Senates' Constitutional role, they can contribute to the restraint of the tendency to one-branch government in the United States.

I now lay before the Conference three resolutions which were adopted unanimously by the Democratic Policy Committee on Tuesday. You have copies of these resolutions before you. The Secretary will read each slowly, and I will ask for a vote of approval or disapproval at the conclusion of each resolution. (See items 1–3 of Appendix III.)

In addition, the Policy Committee unanimously adopted the following proposals:

(1) Urging Senator Ervin to conduct a thorough investigation of the so-called Watergate Affair and other related matters of political sabotage, and

(2) Endorsing the procedure to report out a new Labor-HEW Appropriations Act for 1972 rather than a continuing resolution for Labor-HEW for the remainder of this fiscal year.

APPENDIX II

SENATOR MANSFIELD'S STATEMENT FOR DEMOCRATIC POLICY COMMITTEE MEETING, JANUARY 16, 1973

We have a full agenda but, first, I ask you to give a moment's thought to the role of this Committee, at this time in the Senates' and the nation's history.

By direction of the Majority Conference, we are trying to identify and formulate main elements of a Democratic Party policy in the Senate. In view of the unusual results of the election, the expression of our collective policy determinations can be of particular significance in this Congress, all the more so because the Constitutional prerogatives of the Senate are under assault and challenge.

It behooves us, therefore, to approach the policy making process with a sense of common responsibility, regardless of our individual inclinations. It ought not be necessary to remind ourselves that the task of formulating acceptable positions for Democrats in the Senate is not a simple one. The Senate Majority is a composite of 57 strong-minded and strong-willed individuals each of whom possesses a unique viewpoint. That is as it should be and, in the end, how it must be in the Senate. From the point of view of formulating party policy, however, it does not make it any easier to establish a common approach, sometimes even on matters of small significance. The experience of the Democratic Conference last week in considering a resolution on the basic question of utilizing the Senate's power to confirm Presidential appointees underscores the point.

I believe we must, therefore, intensify our efforts to develop a great deal of self restraint and forebearance among Democrats in the Senate on approaches to issues, to the end that we may work more in concert. We must do so in the interests not just of party unity, but in the larger interest of the institution of the Senate and the preservation of its Constitutional function in the government. I would hope, therefore, that we will be able to restrain impulses to do battle with one another over legalisms, bearing in mind, always, that we are not writing law but party positions. As Democrats we must work for agreement among ourselves and wherever possible state as strongly as possible, our unified view on the central points at issue. Above all, I hope we will be able to take a given issue a step at a time and avoid, thereby, making ourselves look foolish by presuming to be doing with powerful words what we cannot do, in fact, either as a Policy Committee or as a Democratic Majority.

The process of promoting party unity on the issues begins right here. This Committee constitutes a cross-section of the Senate majority. Our membership is a microcosm of the collective mandate which the electorate has given the Democratic Party in the Senate. The Committee is, by design, a meeting point of different philosophical approaches and varied regional attitudes. Our responsibility here is not to intensify our differences but to reduce them on behalf of the Democrats in the Senate. Our responsibility is to refine the specific issues in a manner which unites us beyond the generalities to which the Party agreed virtually unanimously by endorsing my opening statement at the first Conference.

The resolutions which the Committee reports to the Conference and announces to the nation should be designed to re-

move major points of friction and disagreement among ourselves and our Democratic colleagues. In doing so, this Committee can act for the Party in the Senate in much the same way as various standing committees of the Senate are expected to operate with respect to legislation.

Each Member of the Policy Committee has the obligation and the right to present and advocate his viewpoint in the Committee as well as that of other Senators outside the Committee with whom he may counsel. Thereafter, however, I would hope that each of us will be prepared to join in hammering out a common position, which can then be reported back to the Democratic Conference as a considered, unified view of at least two-thirds of the membership of the Policy Committee. Unless a Member so states to the contrary in advance, moreover, I would hope that each Member of the Committee would see his way clear either to support and defend the position of the Committee or to abstain from the debate in the caucus of the Majority. To do otherwise is to make it even more difficult than it naturally is, in any event, to enhance Party unity on the issues. There is an obvious necessity for a procedure of this kind if we are to achieve any common action at all as Democrats and I would hope that we can all subscribe to it without reservation. All of this, may I say again, does not interfere in any way with what we see fit to do as individual Senators on the floor. That is an entirely different matter. All I am talking about is what we must do if we are to give greater substance to the words "Senate Democrats."

This brings me to the subjects on our agenda today. First we need to review and re-ratify the Committee's rules of procedures for determining policy positions which were first adopted four years ago. Copies of these are in front of you and I will have the staff read them at the appropriate time. We then need to give further consideration to the proposals of Senator Moss in the light of these rules. We need them to return to the issue of accountability to Congress of Cabinet officers and other appointees in the Executive Branch.

To review the latter question briefly, you will recall that this Committee adopted unanimously a resolution which linked the readiness of Presidential appointees to appear before committees to their suitability for confirmation by the Senate. The resolution was adopted unanimously by the Committee and then by the Democratic Conference after a somewhat protracted debate. I have every reason to hope that the adoption of this resolution by overwhelming vote will not be without impact in appropriate quarters.

The debate in the Conference on this matter was protracted largely because of the addition of the issue of Executive Privilege to the discussion. That was a separate but related matter which we had not touched on in Committee discussion. We will take up this question of Executive Privilege, today, on the basis of the resolution proposed by Senator Stennis and Senator Nelson. In doing so, I would urge the Committee to keep in mind an essential point which, in my judgment, was largely obscured in last week's proceedings in the Conference. That is the great difference between an officer of the Executive Branch coming before a Senate Committee and pleading that he cannot answer a specific question because of the confidentiality of his relationship with the President, as opposed to an officer of the Executive Branch, subject to confirmation by the Senate, *refusing* even to come before a Committee, regardless of what he may or may not say thereafter. The question of Executive Privilege as raised in an appearance of a witness before a Committee in response to a specific question seems to me to be in an uncertain Constitutional area and each situation may well have to be judged on its own merits on the basis of some general Senate criteria if they can be established. A refusal even to come before a Committee, however, seems to me to be not only contemptuous of the Senate by an officer who owes his office in part at least to confirmation by the Senate and a negation of the Constitution's concept of co-equal branches. The resolution of this Committee which was finally approved by the Conference was directed solely to insisting that Executive Branch officers have a Constitutional obligation "to appear and testify" to the Senate through its committees growing out of the Senate's confirming power under the Constitution. The resolution did not involve the right of a witness to refuse to answer after he had appeared before the Committee on the grounds of Executive Privilege.

The question of Executive Privilege will be taken up today, pursuant to the assurances which I gave the Conference last week. I have requested Senator Ervin to participate in the consideration of this issue because of his extensive study of the Constitutional aspects of Executive Privilege. Once Again, I hope the Committee and the Conference will not confuse this question of Executive Privilege with *still another related issue* on which studies are now being made at my request—that is, the question of the growth in numbers of significant Presidential appointees which are not even subject to confirmation by the Senate.

The draft resolution which will be laid before the Committee follows closely the proposal set forth by Senators Stennis and Nelson in the Conference last week. I have had it prepared in this faction in order that the Committee may consider fully what the Senator from Mississippi proposed but which, I had to oppose at the time because I felt that it should be treated as a separate issue.

APPENDIX II

STATEMENT OF MIKE MANSFIELD BEFORE THE DEMOCRATIC CONFERENCE, JANUARY 18, 1973

(By Senator MIKE MANSFIELD)

It is the intention of the Chair to take up a resolution offered by Senator TUNNEY on the Budget and a draft resolution dealing with Executive Privilege which was reported on Tuesday by the Policy Committee. The latter is substantially the same as an amendment proposed by Senators STENNIS and NELSON at the last meeting of the Conference except that it is recast as an independent resolution and takes into consideration the views of Senator ERVIN and members of the Policy Committee. Beyond these two items of business, any other matters Senators wish to raise will be in order.

Before proceeding to the agenda, I ask you to bear with me for a brief comment on the role of the Majority Policy Committee and the Majority Conference at this moment in the Senate's and the Nation's history. Both the Committee and the Conference are concerned with designing unified approaches to policy issues for the Senate Democrats. The achievement of a higher degree of party unity on the issues can be of particular significance at a time of divided political control of the government, all the more so when the Constitutional prerogatives of the Senate are under challenge.

It ought not be necessary, however, to remind ourselves, that the task of formulating mutually acceptable positions is not a simple one. The Senate Majority is a composite of 57 individuals each with his own viewpoint. That is as it should be and, in the end, how it must be in the Senate.

But we are not in the Senate when we seek to develop positions in the Policy Committee and in the caucus. We are intra-party and in that setting the premium is on unity. Our effort should be directed not to insisting that our separate viewpoints prevail but on reconciling our separate viewpoints. To do so is going to take a great deal of forebearance in restraining personal inclinations to do battle over legalisms or phraseology. It should help if we bear in mind that we are not writing law but attempting to arrive at party positions to which at least two-thirds of the membership will find it possible to subscribe. Insofar as I am concerned, to win close vote victories in caucus is without value to any of us or to our role as the Majority in the Senate. The objective is not to beat each each other but to enhance our unity to the end that we may win where it counts—on the Senate floor and, as necessary, in the defense of the Senate against the encroachments of the Executive Branch.

The Policy Committee is an arm of the Conference and operates under procedures approved unanimously by the Conference. By design, the Committee is a meeting place of the different ideological approaches and varied regional attitudes which prevail among Senate Democrats. The resolutions which the Committee brings before the Conference represent strenuous efforts to reduce the inevitable conflicts which derive from these sources and to state, as strongly as possible, a unified view on any given issue. Each of these resolutions has received at least a two-thirds vote in the Comimttee and anything less than that

here in conference tends to be meaningless in terms of a "party position."

I would hope, therefore, that members of the Conference will think carefully about undoing in any substantial way, by the amending process, what the Committee has so laborously tried to put together as a common Democratic statement. Bear in mind that few of our procedures here are written; they are purposely free of that rigidity. They are designed not for defense or attack against one another but for accommodation with each other, as democrats, we must go as far as we possibly can, in the same direction and on the same road.

Senators who are dissatisfied with a Committee draft are always free to introduce a resolution of their own which can be considered immediately or can be referred to the Policy Committee. As far as possible, however, I would urge the Conference to permit policy committee resolution to stand or fall on thier own merit. I am fully aware that the Committee's positions do not always go as far as some would like and too far for others. It is the only way I know, however, that we can put any teeth at all into the generalities of party policy on which almost all of us agreed so readily in our first meeting.

So I put the accent on restraint and forebearance and I ask you to give any possible benefit of the doubt to the Policy Committee. All of this, may I say, does not interfere in any way with what each of us sees fit to do as an individual Senator on the floor. That is an entirely different matter. All I am talking about is what we must do, as a group, if we are to give greater substance and significance to the words, "Senate Democrats," or "Senate Majority." May I say that I think we are off to a good start on the question of confirming appointees and I hope that we can keep moving ahead.

APPENDIX II

STATEMENT OF SENATOR MANSFIELD BEFORE DEMOCRATIC POLICY COMMITTEE, JANUARY 2, 1973

GENTLEMEN: At lunch last Friday, Senator Byrd and I joined Speaker Albert and Majority Leader O'Neill in meeting with the Democratic Governors and Bob Strauss.

In reporting to you on that meeting I would say that Chairman Strauss launched the proposal that an Advisory Council (and he emphasized the word "advisory") be established, to be composed of elected officials of the Party at all levels of government. Likewise, it would presumably include representatives from the full spectrum of the Party, philosophically, geographically, minority-wise and otherwise.

Of further significance, the Governors attending the luncheon stressed the need for attention to the energy crisis at the Congressional level. Nearly to a man, they spoke of the adverse consequences already being suffered because of fuel shortages, citing as examples the closing of schools and other public institutions in their States. While the appropriate Committees are addressing this issue, the Policy Committee might also study the matter and I have asked the staff to look into the problem.

Beyond this, I would say it was a helpful meeting, a constructive meeting and we look forward to pursuing further exchanges of this nature hereafter.

It is the wish of the Committee to continue and extend this type of communication with this group on a regular basis.

APPENDIX II

STATEMENT OF SENATOR MIKE MANSFIELD BEFORE THE DEMOCRATIC CONFERENCE, JANUARY 31, 1973

We have been meeting, as Senate democrats very regularly both in the Policy Committee and in these Conferences since the beginning of the year. We have been trying to give substance to our unity in Democrats and to give form and direction to a Democratic program for the Senate.

In addition, the Senate Leadership has met several times with the House Leadership. Together with the Speaker and his associates, we are seeking ways to promote effective unity between the democrats in the two Houses of Congress. In turn, the joint Congressional leadership is establishing regular contact with the Democratic governors of the nation and with the Chairman of the Democratic National Committee. All of these initiatives represent follow-throughs on the keynote statement which was delivered to this Conference on January 3 and adopted unanimously as the guide for the Senate Leadership in the 93rd Congress.

We have been making our way carefully in an effort to rediscover the territory of democratic unity. It is not easy to discern the route. The problems of coordination and adjustment and reconciliation of viewpoints are very great.

I want to report to you, today, however, that in my judgment, we are on the right road. We are headed towards an effective and constructive role for the democratic-controlled Senate in the 93rd Congress and, I believe, we will also make a major contribution to the role of the Democratic Party in the political life of the nation.

It is not yet a month since we set out on this path but we have already established the basis for better coordination between the House and Senate Democratic Majorities. We are also in good rapport with the democratic governors' caucus under the Chairmanship of Dale Bumpers and we have every expectation of developing an active relationship which can lead to a contribution to the work of the government and the Senate from that source.

Here in the Senate, we have already established by resolution or other action a number of identifiable and widely supported democratic positions with regard to the following:

1. The establishment of the initial legislation priorities of the 93d Congress.

2. The termination of the participation of the United States in the war, a position which has been sustained by the recently negotiated settlement in Paris;

3. The acceptance of the Constitutional responsibility of Cabinet and other executive officials to appear and testify before Congressional Committees as a condition of Senate confirmation of their appointments;

4. The limiting of the use of the doctrine of Executive Privilege by officials of the Executive Branch for avoiding their Constitutional accountability to the Congress;

5. The reinforcement of the principle of "Open Hearings" as regards the procedures of all Senate Committees;

6. The curtailment of tendencies of the Executive Branch to interfere in media programming, planning and news reporting:

7. The Senate's responsibility to inquire into the Watergate affair and other insidious tamperings with the integrity of the electoral process.

I want to note, too, that, under the new doctrine of "juniority," the Policy Committee has had the participation at each of the last two meetings, of new Senators, in reverse order of seniority, beginning with Senators Biden and Haskell. This practice will be continued until all members have had an opportunity to participate in a meeting of the Policy Committee and to give the Committee the benefit of their insights and observations.

Finally, two ad hoc committees of the Conference are now functioning, the first on the improvement of Senate procedures and practices which is under Senator Stevenson's chairmanship and the other on Executive Privilege, chaired by Senator Ervin.

Before proceedings to the regular items of business for today's meeting, I want to express my deep gratitude to the members of the Policy Committee and to those Senators who have made exceptional contributions to the articulation of unified democratic positions on certain potentially divisive issues. In particular, I want to thank Senator Stennis and Senator Nelson for their help on the question of Executive Privilege and Senator Ervin for his work on that issue and others. He will be carrying in his Committee a great deal of the load of investigatory work for this session.

In closing, let me repeat that we are off on the right track. Whether or not we stay on it depends on every Democratic Senator, on our readiness to restrain our individual inclinations sufficiently to permit common meaningful action. In this respect, the leadership has had the help, the forbearance and the understanding of the entire Conference in this first month of the new session. That alone explains the progress which has been recorded. If we can continue in this fashion throughout the 93rd, I believe we shall make, as democrats, a substantial contribution to the vitality of the Senate's role in the government and to the strengthening of the national political process.

APPENDIX III

RESOLUTIONS PASSED BY SENATE DEMOCRATIC POLICY COMMITTEE, 1973

1. Resolution on Priorities in Consideration of Legislation by Legislative Committees

(Passed Policy Committee on January 9, 1973)
(Passed Caucus on January 11, 1973)
2. Resolution on Refusal of Cabinet and Other Officials to Testify before Committees
(Passed Policy Committee on January 9, 1973)
(Passed Caucus on January 11, 1973)
3. Resolution on the Principle of Open Hearings by Committees
(Passed Policy Committee on January 9, 1973)
(Passed Caucus on January 11, 1973)
4. Resolution on Executive Privilege
(Passed Policy Committee on January 16, 1973)
(Passed Caucus on January 18, 1973)
5. Resolution on Media Progamming, Planning and News Reporting
(Passed Policy Committee on January 23, 1973)
(Not taken up in Caucus)
6. Resolution on a Spending Ceiling
(Passed Policy Committee on January 30, 1973)
(Passed Caucus on January 31, 1973)
7. Resolution on Freedom of the Press and Revealing Sources
(Passed Policy Committee on January 30, 1973)
(Passed Caucus on January 31, 1973)
8. Resolution on the Energy Crisis
(Passed Policy Committee on January 30, 1973)
(Passed Caucus on January 31, 1973)

RESOLUTION ON PRIORITIES IN COMMITTEE CONSIDERATION OF LEGISLATION

RESOLUTION NO. 1

PRIORITIES IN CONSIDERING LEGISLATION

Whereas, several measures enacted by the 92nd Congress, 2nd Session, were vetoed by the President after adjournment, thus precluding an opportunity to override;

Whereas, other measures passed by one House were not considered by the other;

Whereas, the Senate has responsibility to assert its concept of priority in the conduct of the continuing legislative business of the government:

Therefore, the Democratic Majority in the Senate resolves:

(1) That Senate Committees should consider initial legislative business, wherever feasible in the following order of priority:

(a) legislation vetoed in last session, notably legislation vetoed after adjournment;

(b) legislation held in Conference or passed by the Senate but not disposed of by the House;

(c) legislation passed by the House but not disposed of by the Senate;

(2) That the Leadership, in scheduling measures for consideration by the Senate, should be guided by the same concept of priorities as is proposed by this resolution to the Committees.

Resolved, further, that the Majority Leader is requested to communicate the text of this resolution together with lists of specific bills intended to be considered on this basis to the Chairmen of the Committees and to the Leadership of the Minority.

RESOLUTION ON REFUSAL OF CABINET AND OTHER OFFICIALS TO TESTIFY BEFORE COMMITTEES

RESOLUTION NO. 2

REFUSAL OF CABINET AND OTHER OFFICIALS TO TESTIFY BEFORE SENATE COMMITTEES

Whereas, the Constitution of the United States, Article II, Section 2, vests the President with the power of appointment "by and with the Advice and Consent" of the Senate;

Whereas, on behalf of the Senate, Committees of the Senate are authorized to summon witnesses to appear and testify on the business of the Senate;

Whereas, appointed officials, subsequent to Senate confirmation, have refused on occasion to appear and testify before duly constituted Committees of the Senate:

Resolved by the Democratic Majority of the Senate:

(1) That a prerequisite to confirmation is the commitment of Presidential appointees to appear and testify before duly constituted Committees of the Senate in response to Committee requests.

(2) That all Senate Committees bear a responsibility to determine, prior to confirmation, the commitment of Presidential appointees to comply with committee requests to appear and testify before Committees of the Senate.

(3) That Committee reports to the Senate on all cabinet designees and such other appointees as deemed appropriate should contain an evaluation of their commitment to respond to committee requests to appear and testify before duly constituted Senate Committees.

Resolved, further, that the Majority Leader is requested to report the adoption of this resolution to the Majority Conference and to communicate its contents to the Leadership of the Minority, to the Chairman of the standing Committees and to the President of the United States and otherwise to seek cooperation in its executive.

RESOLUTION ON THE PRINCIPLES OF OPEN HEARINGS BY COMMITTEES

RESOLUTION NO. 3

RESOLUTION ON OPEN HEARINGS

Whereas, the people of the nation have a right to be informed on the conduct of their government;

Whereas, the proceedings of the Senate and of Senate Committees are the business of the people of the nation; and

Whereas, the Legislative Reorganization Act of 1970 amended the Committee procedures to provide additional public disclosure of Committee hearings and Committee actions.

Resolved by the Democratic Majority in the Senate:

(1) That the Senate Committees and the Senate should conduct their proceedings in open session in the absence of overriding reasons to the contrary;

(2) That whenever the doors of the Senate or of a Senate Committee are closed, a public explanation of the reasons therefor should be forthcoming, respectively, from the Joint Leadership or the Chairman of the Committee:

Resolved, further, that the Majority Leader is requested to communicate the text of this resolution to the Leadership of the Minority and to the Chairmen of all Committees.

RESOLUTION ON EXECUTIVE PRIVILEGE

RESOLUTION NO. 4

RESOLUTION OF SENATE DEMOCRATIC POLICY COMMITTEE—RE EXECUTIVE PRIVILEGE

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

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

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

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

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

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

RESOLUTION ON MEDIA PROGRAMING, PLANNING, AND NEWS REPORTING

RESOLUTION NO. 5

Whereas, intrusion by the Executive Branch into media programming, planning and news reporting is inimical to the First Amendment and, hence, to the best interests of a free society; and

Whereas, recent policy statements, pronouncements and actions of officials of the Executive Branch may lead to unwarranted harassment, intimidation, prior restraint and censorship with regard to media programming, planning and news reporting;

Whereas, all branches of government have a responsibility to safeguard the First Amendment of the Constitution:

The Majority Policy Committee of the Senate requests:

1. That the appropriate Subcommittee of the Committee on Commerce undertake an investigation of policy statements, pronouncements and actions of officials of the Executive Branch which are in any way indicative of government encroachment on the independence of media programming, planning and news reporting;

2. That such investigation include matters related to harassment, intimidation, prior restraint and censorship which may arise from such policy statements, pronouncements or actions; and

3. That at the earliest practicable date during the 93rd Congress the Committee on Commerce report to the Senate the findings and conclusions of its Subcommittee with regard to government intrusion into media programming, planning and news reporting, together with recommendations, if any, for Senate initiative to combat any such intrusion.

The Majority Leader is directed to submit this resolution to the Majority Conference for Concurrence and, thereafter, to transmit a copy to the Chairman of the appropriate Subcommittee of the Committee on Commerce and to the Chairman of the Federal Communications Commission, urging on behalf of the Senate Majority his full cooperation with any inquiry which may be undertaken by the Committee.

RESOLUTION ON A SPENDING CEILING

RESOLUTION NO. 6

Whereas, The Constitution grants two great fiscal powers to Congress: the power to raise revenue and the power to spend; and

Whereas, The President has seized by means of impoundment, unilateral budget cuts, and fiscal manipulations outside the knowledge or control of Congress the power over the determination of priorities and expenditure levels; and

Whereas, Congress must recapture its rightful constitutional place in the fiscal process; and

Whereas, The Congress in the past four years has cut $20 billion from the President's appropriation requests in an effort significantly to limit federal expenditures; and

Whereas, In spite of these cuts by the Democratic Congress more than $100 billion has been added to the national debt by this present Administration over the past four years; and

Whereas, The Congress is deeply concerned about the impact of runaway inflation upon the American people and the plight of 5 million unemployed; and

Whereas, the Democratic Caucus has unanimously adopted the remarks of Senator Mansfield, the distinguished Majority Leader, that "unless and until specific means are recommended by the Joint Committee. . . . (he) would hope that the (Caucus) will give the Leadership some guidance on how an over-all expenditures ceiling may be set as a goal for the first session of the 93rd Congress."

Therefore, Be it resolved that it is the sense of the Caucus that the Senate members of the Joint Committee to Review the Operation of the Budget be urged to conduct studies and investigations for the purpose of recommending to the Congress by February 15, 1973, (1) procedures for establishing a ceiling on budget outlays and new obligational authority, (2) procedures for relating individual appropriations and other spending actions to the expenditures ceiling, (3) revisions in the Federal budget and appropriations process to assure the proper relationship between expenditures and revenues.

RESOLUTION ON FREEDOM OF THE PRESS AND AND REVEALING SOURCES

RESOLUTION NO. 7

POLICY COMMITTEE RESOLUTION ON FREEDOM OF NEWS GATHERING

Whereas, the First Amendment of the Constitution of the United States safeguards the freedom of the press;

Whereas, reporters have been imprisoned for carrying out what they deem to be their professional obligations under the First Amendment;

Whereas, judicial interpretations of the rights and obligations of the press appear to cast the shadow of encroachment on practices basic to a free press;

Whereas, the Senate Democratic Conference on January 3, 1973, endorsed the principle that the Congress shares "with the President and the Courts a Constitutional responsibility to protect *the freedom of the press to operate as a free press,*"

The Majority Policy Committee of the Senate resolves:

1. That the Senate Committee on the Judiciary undertake during the 93d Congress, an inquiry into the adequacy of the legal privileges and immunities related to newsgathering;

2. That such investigation include but not necessarily be limited to pertinent recent judicial interpretations which relate to the rights and responsibilities of a free press;

3. That the Committee on the Judiciary report its findings and conclusions, together with whatever recommendations it deems appropriate to safeguard the freedom of the press to operate as a free press.

The Majority Leader is directed to place this resolution before the Senate Democratic Conference and, if concurred in, to communicate a copy to the Chairman of the Committee on the Judiciary. He is directed, further, to discuss the resolution with the Minority Leader of the Senate with a view to obtaining bipartisan endorsement of the proposed inquiry.

RESOLUTION ON THE ENERGY CRISIS

RESOLUTION NO. 8

RESOLUTION ON THE OIL SHORTAGE

Whereas, The supply of energy for heating purposes has reached a critical stage in many parts of this country; and

Whereas, Governors have expressed grave concern that the fuel oil shortage for industry, agriculture and home heating has reached a critical stage in some States; and

Whereas, An Intergovernmental Task Force appointed by President Nixon recommended in 1970 the phasing out of the import quotas for oil;

The Majority Policy Committee of the Senate recommends:

1. That the President set in motion all necessary emergency procedures, including the release of military stockpile supplies, to meet the essential requirements for oil and other fuels in regions of critical shortage;

2. That the President of the United States and appropriate Committees of the Senate under S. Res. 45, review the matter of the crude oil shortage and home heating oil shortage and the quota system to assure to the American consumer an adequate supply at reasonable prices and also protection to the domestic industry and national security;

3. That the appropriate Senate Committees examine further into the critical situation to determine if additional legislation is required to provide assurances of a continuing supply of crude oil and other essential petroleum products from any and all sources.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the distinguished Senator from West Virginia (Mr. ROBERT C. BYRD) is now recognized for not to exceed 15 minutes.

(The remarks Senator ROBERT C. BYRD made at this point on the introduction of S. 743, dealing with penalties involving the commission of a felony with a firearm, are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

TRANSACTION OF ROUTINE MORNING BUSINESS

The ACTING PRESIDENT pro tempore. 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 therein limited to 3 minutes.

PAKISTANI PRISONERS OF WAR IN INDIA

Mr. THURMOND. Mr. President, in the aftermath of the 1971 armed conflict between India and Pakistan over Bangladesh, approximately 92,000 Pakistani prisoners of war were held in India.

According to reports from the press and the International Red Cross, those prisoners—including approximately 17,000 women and children—remain in Indian detention camps. All rules of international relations provide that prisoners of war be exchanged at the end of armed conflict, whether or not the belligerents had declared a state of war.

The continued imprisonment of these 92,00 people as apparent hostages should raise questions around the world. Why are these Pakistanis still being held in India more than 13 months after the cessation of armed conflict? While politi-

cal questions involving India, Pakistan, and Bangladesh remain to be settled, the imprisonment of people as a means of gaining bargaining advantages is contrary to the tenets of international law.

Mr. President, it is also noteworthy that India continues to hold these 92,000 prisoners at a time when food and other provisions are short in that country. By holding the Pakistani prisoners, India is either denying food to some of her own people or it stands to reason that these prisoners are not receiving an adequate diet. It has also been reported that a number of them have been killed in prison camp incidents. The further holding of these people pending political settlements is surely aggravating the tensions that persist in the subcontinent of Asia.

As our prisoners of war are returned from Vietnam following the January 27 cease-fire agreement, I believe the Pakistani prisoners of war held in India will be the only such people in the world still held by another nation. Questions of the recognition of sovereignity for Bangladesh and other disputes between India and Pakistan should not be a justification for either nation holding human beings in prison. In fact, both India and Pakistan are signatories to the Geneva Convention of 1949, which requires the release of prisoners of war as soon as active hostilities cease.

The conflict which produced the Pakistani prisoners ended in December 1971. Therefore, the continued holding of these people is a matter that should be questioned by the United Nations and other nations of the world.

Mr. President, two recent articles in the Washington Post and an editorial in the Chicago Tribune gave important details of this situation. I ask unanimous consent that these articles, entitled "Pakistani POW's: 'The New Forgotten People'," "Tension Rising in Indian POW Camps," and "India Should Free POW's," be printed in the RECORD.

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

[From the Washington Post, Jan. 18, 1973]

PAKISTANI POW'S: "THE NEW FORGOTTEN PEOPLE"

(By Tad Szulc)

North Vietnam's determination to hold American prisoners of war, now close to 600, as hostages against a truce or peace settlement has all along been a grim but accepted reality of the Vietnamese conflict and the parallel Paris negotiations. Yet, the assumption always was that these Americans would be released the moment the hostilities involving United States forces in Vietnam have ceased.

Elsewhere in Asia, however, the precept of international law that prisoners must be freed with the cessation of hostilities does not seem to apply: Pakistani military and civilian personnel are still interned by India in POW camps. They remain there today although the latest subcontinent war ended in mid-December 1971, more than 13 months ago.

For all practical purposes, the estimated 92,000 Pakistanis, including approximately 16,000 civilians, captured in the fighting over the emergence of the new state of Bangladesh (formerly East Pakistan), are hostages to the complex and angry politics of the subcontinent and the ever-deep distrust between India and Pakistan.

This indefinite condition of hostage for the largest number of people in foreign captivity since World War II is tacitly recognized by Indian officials for reasons they privately admit to be overwhelmingly political. Pakistan, of course, has repeatedly charged that its defeated soldiers are India's hostages. But, incredibly, only the International Committee of the Red Cross, which periodically inspects the 53 POW camps under the provisions of the two Geneva Conventions on war prisoners has openly and insistently demanded the release of the Pakistanis.

Most of the world appears to be conveniently looking the other way, including the United States which, to say the least, was supportive of Pakistan in the 1971 war. The 92,000 Pakistanis are, then, Asia's new forgotten people: the officers and soldiers, the civilian officials and professionals, the women, the children and the babies born in the camps. This general indifference is, presumably, a reflection of the underlying political stalemate in the subcontinent engaging India and Pakistan on one level and the related interests of each of the superpowers on the other.

At this stage, when New Delhi and Washington actively seek to improve their frayed relations and the Nixon administration hopes to expand the detente with Moscow, nobody in this town is prepared to rock the precarious status quo in South Asia by raising the fate of the Pakistan POWs as a major international issue.

In fact, the United States nowadays seems to feel cooler toward Pakistan as it edges toward better ties with India. Pakistani President Zulfikar Ali Bhutto, for one thing, has publicly condemned the United States Christmas bombings in North Vietnam while India kept mum. Even China, an ally of Pakistan, is singularly quiet on the subject of the POWs. Moscow is India's treaty partner and, therefore, uncritical of her. Only Romania, the Communist maverick, has expressed support for Pakistan over the prisoners.

But beyond all these power considerations there remains an array of moral, legal and political questions concerning the 92,000 captive Pakistanis.

The moral question has two aspects. One is the matter of mass atrocities committed by the West Pakistani forces in Bangladesh before and during the independence war. This is perhaps what the outside world remembers the best: The atrocities set off a wave of indignation here and elsewhere. Thus it may be understandable that Bangladesh wishes to punish through trials those responsible for the murders. But it has indicated that at most 1,500 of the Pakistanis now held in India, less than two per cent of the total, may be wanted for such trials.

This raises the obverse moral question: Is it justifiable to hold 92,000 persons indefinitely in prisoner camps (quite aside from the current controversy between India and the Red Cross over proper treatment of the prisoners, the shooting of escapees, the overcrowding of camps and so on) because a tiny minority may be guilty of war crimes? One wonders—at least for the sake of consistency—about the absence of major international outrage concerning the 92,000 captives.

The legal situation seems to be crystal clear, but this is no solace to the POWs. Article 118 of the 1949 Geneva Convention, to which both India and Pakistan are signatories (Bangladesh acceded to it last August), provides that "prisoners of war shall be released and repatriated without delay after the cessation of active hostilities." When the Pakistanti forces capitulated on Dec. 15, 1971, the Indian Chief of Staff, Lt. Gen. Jagjit Singh Aurora, formally assured the Pakistani commander that "I shall abide by the provisions of the Geneva Conventions."

On Dec. 21, the United Nations Security Council noted that "a cessation of hostilities prevails." In the Simla Agreement, signed on July 3, 1972, India's Prime Minister, Mrs. Indira Gandhi, and President Bhutto pledged themselves to the "establishment of durable peace in the subcontinent" and instructed their representatives to discuss outstanding problems, "including the questions of repatriation of prisoners of war and civilian internees," before the next summit meeting.

All of the requirements for the release were thus met, but India (which 20 years ago handled the repatriation of the Korean War POWs) now invokes a host of political and security reasons for refusing to free the Pakistanis.

The first reason cited by India is that she cannot release the prisoners without consent of Bangladesh on whose territory most of them surrendered to the joint Indian-Bangladesh command. But the catch in the intricate subcontinental political game is that the Bangladesh Prime Minister, Sheikh Mujibur Rahman, refuses his consent until Pakistan recognizes his new state and until he has made up his mind about the war trials.

The vicious circle in which the POWs are caught extends to Islamabad where Bhutto, fighting hard to convince his rightwing opposition that ultimately Bangladesh must be recognized, insists for his own political reasons that this must be preceded by a personal meeting between him and Mujibur. Bhutto, who released Mujibur from prison late in 1971 and probably saved his life, argues that such problems as Pakistan's responsibility for prewar external debts for projects in Bangladesh should be settled prior to recognition. But Mujibur refuses to meet Bhutto before recognition.

Late last year, Pakistani diplomats at the United Nations privately asked the Indians whether New Delhi would guarantee in writing that the Bangladesh recognition would bring the POWs' release. Diplomatic reports say that the Indian reply was at best noncommittal. Bhutto's letter to Mrs. Gandhi last Dec. 21, proposing a new summit, has not yet been answered and Indian diplomats here are vague as to when such a meeting might be possible.

Finally, Indian officials have begun talking about Pakistan allegedly preparing a "new round" and rearming with "massive" weapons shipments from China. Significantly, they now speak of the POWs in terms of "four-and-a-half divisions of trained troops." A senior Indian official remarked recently: "How can we let such an army go free when Pakistan is again preparing for war?"

Thirteen months after the cessation of active hostilities, the Geneva Conventions and all the precedents notwithstanding, the deadlock seems unbreakable and the 92,000 Pakistani prisoners may be fated to remain India's hostages for an unpredictable period of time. Internatioanl morality, it would appear, has seen better days.

[From the Washington Post, Dec. 23, 1972]

TENSION RISING IN INDIAN POW CAMPS

(By Milton Benjamin)

As 90,000 Pakistani soldiers and civilians begin their second year in crowded Indian prisoner-of-war camps, secret reports by observers of the International Committee of the Red Cross indicate that tension is rising.

During October, the latest month for which full reports could be obtained, at least 15

Pakistanis were shot dead and more than 20 wounded by Indian guards in POW camp incidents. Red Cross observers said at least two of the killings seemed to be cases of "cold-blooded murder."

New incidents have occurred in the weeks since, according to informed sources, resulting in the deaths of additional POWs.

The Red Cross reports also indicate that escape attempts have been increasing—bringing, in response, mass punishments, frequent searches and a continued toughening of security measures by Indian prison-camp officials.

The Red Cross said that "on several occasions" it has pointed out to the Indian government "the problem, where the Geneva conventions are concerned, regarding the continued lengthy detention" of the POWs.

The war between India and Pakistan in which the 90,000 were taken prisoner ended last Dec. 16, but there appears little prospect of their early release. India has made diplomatic recognition by Pakistan of Bangladesh, the new nation born of the war, a precondition to release of the POWs. And Bangladesh continues to insist on its right to try some of the POWs as war criminals.

LONG INTERROGATION

POWs told Red Cross observes that they were still being interrogated in September by Indian intelligence officers about the behavior of Pakistani officers in what was then East Pakistan.

The reports on the POW situation cover a number of visits to the camps—at approximately six-week intervals—by delegates of the all-Swiss International Committee of the Red Cross.

ICRC spokesman Francoise Bory, contacted by telephone in Geneva, said the findings are submitted only to the governments concerned and would not be released by the Red Cross to the press. The Washington Post obtained access to the reports through another channel.

The Red Cross reports on inspection visits made from March through October indicate a major effort by the Indian government to provide adequate food, clothing and medical care for the 75,000 soldiers and 15,000 civilians taken prisoner in the fall of East Pakistan.

During visits to the camps in the spring, when many of the POWs apparently expected that they would soon be repatriated to Pakistan, Red Cross observers reported receiving few complaints even during interviews without Indian officers present.

PRISONERS RESTIVE

But as the hope of early release dimmed, reports indicate that the prisoners became more restive; escape attempts and attacks on guards brought mass reprisals and extraordinary punishments in return.

Following an escape attempt by seven junior officers from POW camp 99 at Allahabad on May 17, all of the officers in the camp were denied water all one day and forced to lie for two hours in the midday sun the following day.

During interrogation following an escape attempt, the POWs reported, they were beaten and eight were bitten by army dogs. The Red Cross report said the camp commander did not deny the collective punishment, but termed the dog bites "an accident due to the fact that the prisoners' behavior provoked the dogs' reaction."

In another incident at Allahabad, a POW who hit an Indian guard was sentenced to 28 days in jail and then spread-eagled in the sun for several days. The camp commander, the Red Cross said, termed this "a light punishment for what the POW had done."

In July, Shafgat Hussain, a POW recaptured after trying to escape, told a Red Cross doctor that during interrogation at Amber Sir headquarters, the nails of both his index fingers had been pulled out. He also said that he had been burned with cigarettes on both feet and hung by his feet for an hour and a half, and that a rope had been bound around his body and wetted, "causing a terrible contraction."

SCARES FOUND

The Red Cross doctor said that on checking Hussain, "the nail on his left index finger was totally missing, while the nail of his right index finger was partly pulled out. On both his ankles were found scars of the same size as the end of a cigarette."

Several other escape attempts during the summer were followed by mass punishments, the report said.

After two attempted escapes from the camps at Ramgarh, where 9,906 POWs are held, the Red Cross said a series of collective punishments were applied even to "officers in enclosures not directly involved."

Prison-camp authorities said the POWs were deprived of beds, fans, soap, radio and newspapers for one month. The POWs told the Red Cross that they had also been deprived of food for two days and put on half rations for 45 days. They said not only beds, but sheets, pajamas and ground cloths had been taken away.

In September, following several apparently successful escapes, the Red Cross reported that "new security measures were introduced in all the camps in India."

CONFINED TO BARRACKS

The new measures included confining all POWs to their barracks from sunset to sunrise, no longer allowing them to visit the latrine at night. Later, the reports indicate, annexes were built onto the barracks to serve as night urinals. But reporting on the situation in September at the camps at Allahabad, the Red Cross said:

"Buckets had been placed inside the barracks. The prisoners had to use these to relieve themselves in front of all the other prisoners. In view of the fact that the barracks were overcrowded, men had to sleep right next to the buckets. The fact that there were some cases of dysentery made matters worse. The electric fans in the barracks were switched off. All windows and doors had to be kept closed."

In interviews with Pakistani noncommissioned officers at Allahabad following introduction of these measures, the Red Cross delegates were told "that tension was rising among the prisoners and that the day might soon come when Pakistani officers would no longer be able to control them or to impose proper military discipline."

Then in the camps at Dhanna, where the Red Cross reported a general atmosphere of tension following introduction of the stricter security measures, eight POWs were killed and 20 wounded in an incident on Oct. 3.

TWO VERSIONS

Indian authorities claim that during an inspection by the area commandant a sentry was attacked by a POW who seized his bayonet and wounded two Indian officers and two Indian soldiers.

The POW's claimed that their comrade was only moving to one side a sentry's rifle that was pointed at him.

On Oct. 13, in Camp 35 at Allahabad, another incident took place. The Red Cross later reported: "Of the six prisoners killed during this incident, two at least if not three seemed to be cases rather of cold-blooded murder than of self-defense." On Oct 28, one POW was killed and another wounded in an incident at Agra.

In addition to the tension generated by the mounting number of incidents and the punishments that follow, the supply situation in the camps appears to be deteriorating.

Whereas many of the Pakistani soldiers had two full uniforms when taken prisoner, many of the uniforms now are completely worn out.

In reporting on a visit to the camps at Meerut in September, the Red Cross observers said: "The Indian authorities seemed to be having difficulty in replacing the worn-out uniforms. The POWs were anxious about the approaching winter."

The Red Cross delegates also called attention to the "very special system" which prevails at Meerut, where more than half the 7,881 POWs are civilians—including 64 babies born in the camp, 363 other infants and 1,006 children between the ages of 2 and 12.

"Inside the blocks, each barrack is closely fenced in by barbed wire," the Red Cross delegates said, "leaving very little space for playgrounds or even for walking. Never has the term 'cage' been used more accurately than in describing the Meerut maze of barbed wire."

[From the Chicago Tribune, Jan. 17, 1973]

INDIA SHOULD FREE POW'S

India, the great hair splitter, should release forthwith the 93,000 Pakistani soldiers still held as prisoners of war a year after the two nations stopped fighting each other. The Geneva Convention of 1949 states that prisoners shall be released and repatriated after the cessation of active hostilities.

India itself proclaimed a cease-fire after the fighting a year ago. A resolution voted by the United Nations Security Council stated that not only a cease-fire but "a cessation of hostilities" prevailed.

In the face of both this record and the Geneva Convention, how can India justify holding Pakistani soldiers at all—let alone under the deplorable conditions existing?

The reason, an Indian spokesman told The Tribune's Joseph Zullo at the U.N., is that a cease-fire is "not the same as a cessation of hostilities." With respect to the new nation of Bangladesh, Pakistan is "in an attitude of hostilities in suspension."

To find a semantic difference between a "cease-fire" and "cessation of hostilities" requires hair splitting of a high order of skill. To go a step farther and find a difference between a "cessation of hostilities" and a "suspension of hostilities" calls for a virtuosity in word twisting that borders on the dazzling.

It is obvious that India is holding the 93,000—along with 16,000 civilians—as diplomatic hostages. A spokesman for the New Delhi delegation told Mr. Zullo that the Pakistani forces surrendered to the "joint command" of Indian and Bangladesh forces and that their release depends on the acquiescence of Bangladesh. In other words, Pakistan must recognize this breakaway state which has proclaimed independence with India's backing—or it can't have the POWs.

The Geneva Convention says nothing about the recognition of anyone by anyone; it says that prisoners shall be released after the shooting stops. Its intention is clear. Send the soldiers home as quickly as possible.

India is not in compliance with this convention. The stalling would be wrong no matter who engaged in it. It seems especially deplorable when a rule of international conduct is flouted by this self-appointed moral adviser to the world, which has pointed accusing fingers at so many other nations for many fancied wrongs. Here is a real wrong, and the perpetrator has turned strangely blind to the outrage of it.

ORDER FOR RECOGNITION OF SENATOR BEALL ON MONDAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that following the orders previously entered for the recognition of Senators on Monday of next week—or on the first day in which the Senate is in session, should it not be in session on Monday—the distinguished Senator from Maryland (Mr. BEALL) be recognized for not to exceed 15 minutes.

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

ORDER OF BUSINESS

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

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

The second assistant legislative clerk proceeded to call the roll.

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

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

(The remarks Senator JAVITS made at this point on the introduction of S. 746, to repeal certain penalties relating to possession and use of marihuana in private, are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

THE MORATORIUM ON HOUSING STARTS FOR LOW- AND MODERATE-INCOME HOUSING

Mr. JAVITS. Mr. President, the moratorium on Federal housing programs has created great problems in New York State and throughout the country. I continue to believe it is ill advised completely to discontinue entire programs approved by the Congress without any substitutes.

This housing policy has been particularly hard on the great urban areas around the country and particularly New York City which depends so heavily on the section 236 program and the public housing program to help the low- and moderate-income family.

I ask unanimous consent that an article in yesterday's New York Times discussing a 10-year low in housing starts in New York City be printed in the RECORD.

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

[From the New York Times, Feb. 1, 1973]

TEN-YEAR LOW IN HOUSING STARTS IS FORECAST FOR CITY THIS YEAR

(By Will Lissner)

City-assisted housing starts set a record in 1972, but they are likely to hit a ten-year low in 1973, the new city Housing and Development Administrator, Andrew P. Kerr, said yesterday.

Mr. Kerr said the bleak outlook resulted from President Nixon's moratorium on applications for new low- and moderate-income projects, which provide housing for families with income below $14,000 a year.

Last Saturday it was disclosed that 52 city projects had been halted or changed by the President's freeze on subsidies for housing for the working poor and for moderate-income families.

Mr. Kerr said the effects of the President's action went much further. He called the Nixon Administration "insensitive to the housing needs of moderate and low-income families" and said that in the face of the housing shortage for such families Mr. Nixon's action was "outrageous."

There will be enough funds to finance about 4,000 starts this year. In 1964, the lowest year for starts during the last 10, there were 4,745 starts under city-assisted programs.

There was a record total of starts last year of 35,122 apartment units, an increase of 56 per cent over 1971.

Mr. Kerr said the partial tax-exemption program was responsible for the largest part of the record total, 20,031 units, even though it was this program's first year.

Construction starts in public housing in the city dropped from 7,913 dwelling units in 1971, to 1,029 in 1972. The city's Mitchell-Lama projects continued to increase, rising from 4,474 units to 6,428. The balance of the 35,122 includes 1,815 FHA-insured units, 4,339 units also aided by the state and 1,980 reconstructions.

Of the 35,122 units, moderate income starts totaled 10,647, compared with 14,465 in 1971.

"We think the partial tax exemption program is a good one, and we'll push it this coming year to try to mitigate the effects of the freeze and the moratorium," Mr. Kerr said.

"But the Federal officials must face the fact that this does nothing for the low- and moderate-income families. When someone moves into a middle-income project, the apartment is decontrolled and the landlord charges all that the traffic will bear. That puts the apartment as well as the apartment of the ultimate occupier, out of the reach of moderate- and low-income families."

JOBS, TRADE AND THE MULTINATIONAL CORPORATIONS

Mr. JAVITS. Mr. President, the American multinational corporations will come under searching inquiry by various committees of the 93d Congress. The Senate Foreign Relations Committee has established a multinational corporation subcommittee which is looking into the foreign policy aspects of the overseas operations of the multinational corporation. In turn, the International Trade and Investment Subcommittee of the Senate Finance Committee will soon open public hearings on the multinational corporation and the Foreign Economic Policy Subcommittee of the House Foreign Affairs Committee is scheduled to hold oversight hearings on the OPIC.

These activities will go forward in a year when tax reform legislation and trade legislation will be before the Congress.

I would like to call the attention of my colleagues to the most recent of a wide number of studies which has now been conducted on the effects of the multinational corporation on American trade, American jobs, and the American economy. It would be my hope and expectation that as these review and legislative activities go forward that they will provide a complete picture of the role of the multinational corporation in our society and focus sufficient attention on the creative and innovative influence these corporations may have on American economic life as well as on the excesses.

Today, I would like to draw the attention of my colleagues to a study which has just been published in the highly respected Department of Commerce magazine Survey of Current Business entitled "U.S. Foreign Trade Associated With U.S. Multinational Companies."

I found the following conclusions particularly interesting:

1. In 1970 the exports and the imports associated with the 298 MNCs in the sample were a sizable proportion of total U.S. merchandise exports and imports—51 percent and 34 percent, respectively.

2. The trade surplus associated with the sample MNCs increased significantly from 1966 to 1970, while the total U.S. trade declined.

Regarding the first conclusion the study points out that in 1970 MNC-associated exports were $21.2 billion or 51 percent of total U.S. exports and MNC-associated imports were $13.6 billion or 34 percent of total U.S. imports.

I think that these figures effectively relate to the widely held myth that the activities of the U.S. multinational corporation weaken the trade position of the United States. I could add that in terms of the current account, these figures make it clear that the activities of the MNC not only strengthen the trade account but also provide a major and growing plus item on the investment account.

Conclusion 2 makes clear that the trade surplus associated with the MNC activities has been growing. Again we know that a jobs issue is at stake in our trade balance and that a trade surplus leads to net job creation in the United States. Again, this conclusion raises certain serious questions about the second widely held myth regarding the multinational corporation—that is, that on balance that the activities of the MNC lead to a net job loss in the United States.

If one uses the rough yardstick that every billion in trade causes a job swing of some 50,000, the surplus on the trade account of MNC activities clearly will have created many more jobs in the United States than jobs that have been lost.

This point is reinforced by the findings of the study that "by industry, trade associated with MNC's in manufacturing accounted for an overwhelming share of all MNC trade in both 1966 and 1970. Clearly, manufacturing is where the industrial jobs are and where the unions are significantly represented."

In this connection I would also like to draw the attention of my colleagues to the finding of this study that the trade account surplus would have been even greater except for the "substantial increase in petroleum imports from the foreign affiliates of U.S. oil companies." Again, as we all know, the United States is increasingly dependent on these oil imports which are not displacing any domestic production or displacing domestic U.S. jobs.

I ask unanimous consent that this article which appeared in the December 1972 issue of the Survey of Current Business be placed in the RECORD at this point.

And since it is closely related to the points made in this article I ask unanimous consent that Donald Kendall's interview which appeared in the U.S. News & World Report entitled "In Trade: We Have To Be Much Tougher, as a Nation" be placed in the RECORD.

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

U.S. FOREIGN TRADE ASSOCIATED WITH U.S. MULTINATIONAL COMPANIES

(By Betty L. Barker)

This article analyzes data for 1966 and 1970 on the U.S. merchandise trade associated with 298 U.S. multinational companies (MNCs) that responded to a special survey taken by the Bureau of Economic Analysis. U.S. trade associated with the multinational companies is defined to consist of export and import transactions between the U.S. parent companies and their majority-owned foreign affiliates, between other U.S. residents and these same foreign affiliates, and between the U.S. parent companies and unaffiliated foreign residents.[1]

The primary purpose of the article is to present the facts about MNC trade in an organized way. The magnitude of, and the changes in, MNC trade over the 1966–70 period are discussed and some of the more obvious factors which may have influenced that trade are pointed out. The article is not addressed to the fundamental question of whether foreign direct investment was beneficial or detrimental to U.S. trade during this period.

In particular, the data on total U.S. trade and on U.S. trade associated with the multinational companies in 1966 and 1970, were collected, *given the existence of U.S. foreign direct investment abroad* and all the other developments that affected trade. These data, by themselves, do not permit us to determine whether, *in the absence of U.S. direct investment abroad*, total U.S. exports and/or imports would have been greater or less than they actually were. Identification of the actual magnitudes involved in MNC trade is only the first step in that determination.

The special survey was conducted in order to obtain current information on the domestic and international operation of U.S. multinational companies. It covers 298 U.S. direct investors and their 5,237 majority-owned foreign affiliates. The basic data obtained from the special survey, supplemented by information from BEA's 1966 benchmark survey of direct investments abroad,[2] are given in a publication recently released by the Bureau of Economic Analysis, entitled *Special Survey of U.S. Multinational Companies, 1970*.[3] The data on MNC trade used in the text and tables of the present article are drawn from this primary source.

Some major findings based on the MNC trade data from the special survey are:

1. In 1970, the exports and the imports associated with the 298 MNCs in the sample were a sizable proportion of total U.S. merchandise exports and imports—51 percent and 34 percent, respectively.

2. The trade surplus associated with the sample MNCs increased significantly from 1966 to 1970, while the surplus on total U.S. trade declined.

3. Most of the strength in the MNC-associated surplus was in trade between U.S. parent companies and unaffiliated foreign residents. U.S. reporters' exports to unaffiliated foreigners rose 48 percent while their imports from unaffiliated foreigners rose 46 percent from 1966 to 1970. The increase in the surplus on U.S. trade with majority-owned foreign affiliates was relatively small, as exports to the affiliates increased at a slower pace than imports from them. The rapid rise in imports from majority-owned foreign affiliates at least partly reflected the impact of the U.S.-Canadian automotive trade agreement and the exceptional growth in U.S. demand for petroleum.

4. By industry, trade associated with MNCs in manufacturing accounted for an overwhelming share of all MNC trade in both 1966 and 1970. Exports associated with manufacturing MNCs rose more slowly from 1960 to 1970, but by a larger dollar amount, than imports associated with them. The surplus on trade of the manufacturing MNCs in 1970 was about equal to the total trade surplus of all MNCs in the sample.

5. By area, MNC-associated exports grew faster than total U.S. exports to the developed areas, but slower than total U.S. exports to other areas.

Previous articles in the SURVEY OF CURRENT BUSINESS have presented data on all MNC-associated exports (May 1969 issue) but on only a portion of MNC-associated imports, i.e., only sales by foreign affiliates to the United States (October 1970 issue). The present article gives data on all identifiable MNC-associated imports, as well as exports, for a sample of large multinational companies. It also integrates the data on both MNC-associated exports and imports into a single discussion. The methodology used and the statistical problems encountered in compiling the data on MNC trade are summarized in the Technical Note at the end of this article.

COMPARISON OF MNC TRADE WITH TOTAL U.S. TRADE

Companies in the sample

Trade associated with the 298 multinational companies in the sample accounted for a sizable proportion of total U.S. trade in 1966 and 1970. In 1970, MNC-associated exports were $21.2 billion, or 51 percent of total U.S. exports, and MNC-associated imports were $13.6 billion, or 34 percent of total U.S. imports (table 1). In 1966, the corresponding percentage for MNC-associated exports was somewhat lower—47 percent of the U.S. total—but the percentage for MNC-associated imports was 33 percent, about the same as in 1970.

[1] Minority-owned foreign affiliates are treated in the text of this article as though they were unaffiliated foreign residents. U.S. trade associated with the multinational companies, as defined here, is often referred to in this article simply as "MNC trade" or "MNC-associated trade."

[2] See Bureau of Economic Analysis, *U.S. Direct Investments Abroad, 1966, Part II, Group 1, 2, and 3*, available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151, at $3 for each of the three volumes. Accesssion numbers are COM 72–10097, 72–10096, 72–10441, respectively.

[3] *Special Survey of U.S. Multinational Companies, 1970* can be purchased from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151. Price $3. Quote accession number COM–72–11392 when ordering.

TABLE 1.—TOTAL U.S. TRADE AND TRADE ASSOCIATED WITH U.S. MULTINATIONAL COMPANIES

[Dollars in millions]

Line		1966			1970			Change, 1966–70				
		Exports	Imports	Trade balance	Exports	Imports	Trade balance	Exports	Imports	Trade balance	Exports (percent)	Imports (percent)
1	Total U.S. trade	$29,287	$25,463	$3,824	$41,963	$39,799	$2,164	$12,676	$14,336	−$1,660	43.3	56.3
2	U.S. trade associated with multinationals in sample [2]	13,726	8,435	5,291	21,228	13,609	7,619	7,502	5,174	2,328	54.7	61.3
3	Other U.S. trade (residual)	15,561	17,028	−1,467	20,735	26,190	−5,455	5,174	9,162	−3,988	33.2	53.8
4	U.S. trade associated with multinationals not in sample [3]	5,460	[4] 3,273	[4] 2,187	NA	NA	NA	NA	NA	NA	NA	NA
5	U.S. trade not associated with any multinational	10,101	[4] 13,755	[4] −3,654	NA	NA	NA	NA	NA	NA	NA	NA
	Addendum:											
6	U.S. trade associated with all multinationals (line 2+ line 4) [3]	19,186	[4] 11,708	7,478	NA	NA	NA	NA	NA	NA	NA	NA

[1] Adjusted to balance-of-payments basis; excludes exports under U.S. military agency sales contracts and imports by U.S. military agencies. See "Survey of Current Business," June 1972, p. 30.

[2] Data are from Bureau of Economic Analysis, "Special Survey of U.S. Multinational Companies, 1970," table 5.

[3] Data for all 3,300 U.S. reporters are from Bureau of Economic Analysis, "U.S. Direct Investments Abroad, 1966, pt. II, group 1, 2, and 3."

[4] Imports of U.S. reporters not in sample from unaffiliated foreign residents were estimated.

NA, not available.

Source: U.S. Department of Commerce, Bureau of Economic Analysis.

The data on total U.S. trade in this article have been adjusted to a balance of payments basis, excluding military transactions. This basis is the one most conceptually comparable, although not identical, to that used in collecting the MNC trade data. Problems of comparability may still exist because of differences in the timing, valuation, and definition of the transactions covered in the two sets of data (see Technical Note).

Total U.S. trade and U.S. trade associated with the sample MNCs were undoubtedly affected by cyclical developments here and abroad. However, cyclical factors probably affected total and MNC trade in the same direction at least, so that the influence of these factors on comparisons of total trade with MNC trade is probably not great.

The increase in the share of MNC-associated exports in total U.S. exports from 1966 to 1970 reflected the fact that MNC-associated exports rose significantly faster than total U.S. exports. U.S. exports associated with the MNCs in the sample increased by $7.5 billion or 55 percent, compared with a 43 percent rise in total U.S. exports. At the same time, MNC-associated imports rose $5.2 billion or 61 percent, somewhat faster than the 56 percent increase in total U.S. imports. In dollar terms, the MNCs in the sample accounted for nearly 60 percent of the increase in total U.S. exports and for about 35 percent of the increase in total U.S. imports over this period.

Since the dollar increase in MNC-associated exports was greater than that in MNC-associated imports, the surplus on trade of the MNCs in the sample rose $2.3 billion, from $5.3 billion in 1966 to $7.6 billion in 1970. The

surplus on all U.S. trade, on the other hand, deteriorated by $1.7 billion over the same period. Thus, the surplus on "residual U.S. trade," that is, trade not associated with the sample MNCs, deteriorated by nearly $4.0 billion.

The better-than-average trade performance of the MNCs during the 1966–70 period may reflect the competitive strength of the MNCs in U.S. and foreign markets, irrespective of any effects their foreign direct investments per se may have had on U.S. trade. Many of the 298 U.S. firms that reported in the survey are among the largest and most technologically advanced U.S. firms. As a result, their domestic production is probably highly competitive with the production of other U.S. and foreign firms. They may very well have a competitive advantage in international trade for this reason, irrespective of the impact on trade of their foreign direct investments.

It should also be noted that the data on MNC-associated exports and imports from the special survey are affected by the prevailing processing and distribution channels through which exported or imported goods pass, and any shifts in these channels would have influenced the reported changes in MNC-associated trade from 1966 to 1970. For example, trade of U.S. reporters in the MNC data cover those goods which were exported or imported directly by the reporters, regardless of whether the goods were originally produced or ultimately used by them. Goods exported or imported by other U.S. residents but which, at some point, entered into the production or distribution processes of the reporter are not included in exports or imports of the U.S. reporters.

In particular, exports of U.S. reporters, as defined in the MNC data, include goods produced by other U.S. residents which were subsequently purchased and exported by the reporters, with or without further processing. They exclude goods produced by the reporters which were subsequently purchased and exported by other U.S. residents. (A good part of the latter type of exports consists of goods charged to the Department of Defense, which is considered a U.S. resident; for greater comparability with the data on MNC-associated exports, such goods have also been excluded from the data on total U.S. exports.) Likewise, imports of the U.S. reporters in the MNC data include goods imported by the reporters which were later sold to other U.S. residents with or without further processing, but exclude (possibly large amounts of) goods imported by other U.S. residents which were later purchased by the reporters.

Trade associated with the reporters' majority-owned foreign affiliates is defined similarly to consist of those goods which were exported to the United States or imported from the United States directly by the affiliates; goods exported or imported by other foreigners but which entered into the production or distribution processes of the affiliates are not included in trade associated with the affiliates.

The direct investment universe

The sample data on MNC trade cited above cover only the 298 respondents to the BEA special survey. For 1966, however, data on the trade associated with the universe of all MNCs were collected in the BEA benchmark survey of U.S. direct investments abroad, to which response was mandatory. Trade associated with the full benchmark universe of MNCs accounted for 66 percent of total U.S. exports and 46 percent of total U.S. imports in 1966, with an estimated surplus in that year of $7.5 billion (table 1, line 6). In contrast, a deficit of $3.7 billion was recorded in 1966 on other U.S. trade, i.e., trade not identifiably associated with any MNC.

The 298 U.S. reporters in the special survey and their 5,237 majority-owned foreign affiliates represent a very small proportion of the 3,300 U.S. foreign direct investors and the 23,000 foreign affiliates in the benchmark universe. However, the sample MNCs accounted for a substantial part of the U.S. exports and imports—somewhat over 70 percent of each—associated with all MNCs in the benchmark universe in 1966.

The trade associated with the sample MNCs in 1966, moreover, seems fairly representative of the MNC universe in terms of composition by industry of the U.S. reporter and by geographical area. However, it is quite possible that the sample is less representative of the universe in terms of growth patterns from 1966 to 1970; the sample is composed primarily of large companies and it is possible that trends over time in the trade of these large companies differ considerably from those of the smaller companies in the universe. Generalizations about the growth in trade of the MNC universe, based on the growth in trade of the MNC sample, may thus be misleading.

The remainder of this article focuses on the U.S. trade associated with the 298 MNCs in the sample.

MNC TRADE, BY TRANSACTORS, BY INDUSTRY OF U.S. REPORTER, AND BY AREA

Trade by transactors

Of all U.S. exports associated with the sample MNCs in 1970, 54 percent were exports by U.S. reporters to unaffiliated foreigners, 41 percent were exports by U.S. reporters to their own majority-owned foreign affiliates (MOFAs), and only a small percentage were exports by other U.S. residents to those same MOFAs. Imports by U.S. reporters from unaffiliated foreigners, and from their own MOFAs, each accounted for roughly 45 percent of all imports associated with the sample MNCs in 1970; the remaining 10-percent were imports of other U.S. residents from majority-owned foreign affiliates. The relatively small size of imports by other U.S. residents from the MOFAs may result from the affiliates' tendency to sell their goods to their U.S. parents for subsequent distribution in the United States rather than acting themselves as distributors of these goods.

The surplus on trade between the 298 U.S. reporters and unaffiliated foreign residents increased $1.8 billion from 1966 to 1970, accounting for roughly three-fourths of the $2.3 billion total increase in the trade surplus of the sample (table 2). U.S. reporters' exports to unaffiliated foreigners rose 48 percent, while their imports from unaffiliated foreigners rose 46 percent. In contrast, exports to the MOFAs by both U.S. reporters and other U.S. residents increased more slowly than imports from the MOFAs. Thus, the surplus on trade between the U.S. reporters and their own MOFAs rose only $0.8 billion and the balance on trade of other U.S. residents with these same MOFAs deteriorated by $0.3 billion to a small deficit in 1970.

Impact of the United States-Canadian automotive agreement

One major factor that was partly responsible for the relatively weak showing on U.S. reporters' trade with majority-owned foreign affiliates was the 1965 United States-Canadian automotive agreement. This had a large adverse impact on the U.S. trade balance with majority-owned Canadian affiliates of U.S. auto companies.

The agreement has resulted in the increased specialization of automobile production in both the United States and Canada which, in turn, has led to an accelerated flow of automotive trade across the border in both directions. Exports by U.S. reporters in the transportation equipment industry to their majority-owned affiliates in Canada rose $1.0 billion, or 94 percent, from 1966 to 1970. However, imports by U.S. reporters from their Canadian MOFAs in the transportation equipment industry increased even faster—by $1.5 billion or 183 percent—so that the balance on this trade moved adversely by over $0.5 billion.

The balance on total U.S. automotive trade with Canada also was affected by the agreement. This balance deteriorated by $1.1 billion from 1966 to 1970, compared to the $0.5 billion deterioration on trade between U.S. reporters and their Canadian MOFAs in the transportation equipment industry. However, these two figures are not strictly comparable for a number of reasons: (1) The total trade data are broken down by commodity, whereas the MNC data are broken down by industry of the transactors involved—regardless of the actual types of goods being traded; (2) the MNC data are for the transportation equipment industry as a whole; this could include more than just the automotive industry, although transportation equipment MNCs with MOFAs in Canada appear to be predominantly automotive; (3) the data on total U.S. automotive trade themselves may be incomplete relative to the MNC data; recent evidence indicates that U.S. automotive exports in the total U.S. trade figures have been underreported, thus exaggerating the unfavorable shift in the overall trade balance; and (4) there may be other statistical or reporting differences between the MNC and total U.S. trade figures (see Technical Note). The remaining unexplained deterioration in the total U.S. automotive trade balance with Canada may reflect transactions other than between U.S. reporters and their Canadian MOFAs, including transactions between the U.S. reporters and unaffiliated foreigners.

Impact of U.S. demand for oil

Another major factor bearing on the weaker showing of the U.S. reporters' trade with majority-owned foreign affiliates relative to their trade with unaffiliated foreigners in 1966–70 was the exceptional growth in U.S. demand for oil. This prompted substantial increases in petroleum imports from the foreign affiliates of U.S. oil companies.

TABLE 2.—U.S. TRADE ASSOCIATED WITH U.S. MULTINATIONAL COMPANIES IN SAMPLE,[1] BY TRANSACTORS AND BY DOMESTIC INDUSTRY OF U.S. REPORTER

[Dollars in millions]

Line		1966			1970			Change, 1966–70				
		Exports	Imports	Trade balance	Exports	Imports	Trade balance	Exports	Imports	Trade balance	Exports (percent)	Imports (percent)
1	Total U.S. trade associated with multinationals in sample	$13,726	$8,435	$5,291	$21,228	$13,609	$7,619	$7,502	$5,174	$2,328	54.7	61.3
	By transactors:											
2	U.S. reporters with own majority-owned foreign affiliates (MOFAs).	5,038	3,433	1,605	8,623	6,244	2,379	3,585	2,811	774	71.2	81.9
3	Other U.S. residents with MOFAs[2]	1,002	822	180	1,200	1,279	—79	198	457	—259	19.8	55.6
4	U.S. reporters with other foreigners[3]	7,687	4,180	3,507	11,405	6,087	5,318	3,718	1,907	1,811	48.4	45.6

Footnotes at end of table.

TABLE 2.—U.S. TRADE ASSOCIATED WITH U.S. MULTINATIONAL COMPANIES IN SAMPLE,[1] BY TRANSACTORS AND BY DOMESTIC INDUSTRY OF U.S. REPORTER—Continued

[Dollars in millions]

Line		1966			1970			Change, 1966–70				
		Exports	Imports	Trade balance	Exports	Imports	Trade balance	Exports	Imports	Trade balance	Exports (percent)	Imports (percent)
	By industry of U.S. reporter:											
5	Associated with U.S. manufacturing multinationals	$10,736	$5,707	$5,029	$17,050	$9,393	$7,657	$6,314	$3,686	$2,628	58.8	64.6
6	U.S. reporters with own MOFAs	4,208	2,161	2,047	7,079	4,153	2,926	2,871	1,992	879	68.2	92.2
7	Other U.S. residents with MOFAs[2]	760	425	335	903	635	268	143	210	−67	18.8	49.4
8	U.S. reporters with other foreigners[3]	5,768	3,121	2,647	9,068	4,605	4,463	3,300	1,484	1,816	57.2	47.5
9	Associated with U.S. petroleum multinationals	957	2,007	−1,050	1,339	3,274	−1,935	382	1,267	−885	39.9	63.1
10	U.S. reporters with own MOFAs	378	1,074	−696	553	1,976	−1,423	175	902	−727	46.3	84.0
11	Other U.S. residents with MOFAs[2]	157	296	−139	191	393	−202	34	97	−63	21.7	32.8
12	U.S. reporters with other foreigners[3]	423	637	−214	595	905	−310	172	268	−96	40.7	42.1
13	Associated with U.S. multinationals in other industries	2,033	721	1,312	2,839	942	1,897	806	221	585	39.6	30.7
14	U.S. reporters with own MOFAs	451	198	253	991	115	876	540	−83	623	119.7	−41.9
15	Other U.S. residents with MOFAs[2]	85	101	−16	107	252	−145	22	151	−129	25.9	149.5
16	U.S. reporters with other foreigners[3]	1,498	422	1,076	1,741	576	1,165	243	154	89	16.2	36.5

[1] Data are from Bureau of Economic Analysis, "Special Survey of U.S. Multinational Companies, 1970" table 5.

[2] Also may include trade of a U.S. reporter with the majority-owned foreign affiliates of other U.S. reporters. Excludes U.S. goods charged or billed to a majority-owned foreign affiliate but shipped to other foreigners.

[3] Exports to other foreigners include exports charged (billed) by U.S. reporters and other U.S. residents to the covered majority-owned foreign affiliates, but shipped to other foreigners.

Note: Details may not add to totals because of rounding.

Source: U.S. Department of Commerce, Bureau of Economic Analysis.

Imports by petroleum reporters from their MOFAs rose 84 percent from 1966 to 1970, as the amount of petroleum imports allowed into the United States under quota was increased in response to the rise in domestic demand and as imports of certain petroleum products not subject to quotas were expanded. The balance on trade between U.S. petroleum reporters and their MOFAs deteriorated by $0.7 billion, while the balance on other trade associated with petroleum MNCs deteriorated by $0.2 billion.

In view of the rapid growth in domestic demand for petroleum, the large increases in petroleum imports in this period would probably have occurred even in the absence of U.S. direct investments in petroleum-producing affiliates abroad. Thus, if such direct investments had been smaller, U.S. petroleum imports from MOFAs would also have been smaller, but U.S. petroleum imports by the reporters from unaffiliated foreigners might well have been larger than they actually were. Given the increase in domestic demand for petroleum and the liberalization of oil import quotas, all MNC-trade and total U.S. trade might not have been much different with or without the foreign direct investments.

Trade by industry of U.S. reporter

When MNC trade is classified by the domestic industry of the U.S. reporter, all trade associated with the reporter or its MOFAs is assigned to the major industry of that reporter's fully consolidated domestic operations. This industry may differ from that of the products actually being traded, from that of the reporter's foreign affiliates and—in trade between the U.S. reporter and unaffiliated foreigners or between other U.S. residents and the reporter's MOFAs—from that of the unaffiliated foreign or U.S. residents involved.

In terms of the domestic industry of the U.S. reporter, MNCs in manufacturing dominate MNC trade. In 1970, manufacturing MNCs accounted for 80 percent of all MNC-associated exports reported by the sample companies and for 69 percent of all MNC-associated imports. Exports associated with the manufacturing MNCs rose more slowly but by a larger dollar amount, than imports associated with them from 1966 to 1970. The surplus on trade of the manufacturing MNCs was $7.7 billion in 1970, an improvement of $2.6 billion from 1966 (table 2). Most of this improvement was in trade between U.S. manufacturing reporters and unaffiliated foreign residents; the improvement in trade with majority-owned foreign affiliates was relatively small, partly because of the negative impact of the United States-Canadian automotive pact.

MNCs in the petroleum industry accounted for only 6 percent of MNC-associated exports in 1970, but for 24 percent of MNC-associated imports. The trade deficit associated with the petroleum MNCs worsened from $1.0 billion in 1966 to $1.9 billion in 1970, as exports associated with the petroleum MNCs rose only $0.4 billion or 40 percent while imports associated with them rose $1.3 billion or 63 percent. The rise in imports was largely from majority-owned foreign affiliates.

The deficit on trade associated with the petroleum MNCs was about equal in 1970 to the net surplus on trade associated with MNCs in "other industries," which include mining, smelting, trade, and other services. Exports associated with the "other industries" group rose 40 percent from 1966 to 1970, compared with the 31 percent rise in the imports associated with them. In 1970, MNCs in these other industries together accounted for 13 percent of MNC-associated exports and 7 percent of MNC-associated imports.

TABLE 3.—COMPARISON OF GROWTH IN TOTAL U.S. EXPORTS WITH GROWTH IN U.S. EXPORTS ASSOCIATED WITH MULTINATIONAL COMPANIES (MNCs) IN SAMPLE, BY AREA OF ULTIMATE DESTINATION

[Dollars in millions]

Line	Area of ultimate destination	1966		1970		Change, 1966–70			
		Total U.S. exports[1]	MNC-associated exports[2]	Total U.S. exports[1]	MNC-associated exports[2]	Total U.S. exports	MNC-associated exports	Total U.S. exports (percent)	MNC-associated exports (percent)
1	All areas	$29,287	$13,726	$41,963	$21,228	$12,676	$7,502	43.3	54.7
2	Developed areas	19,960	8,839	29,804	15,251	9,844	6,412	49.3	72.5
3	Canada	6,736	3,234	9,040	4,942	2,304	1,708	34.2	52.8
4	Europe	9,745	4,213	14,535	7,461	4,790	3,248	49.2	77.1
5	United Kingdom	1,758	791	2,519	1,355	761	564	43.3	71.3
6	European Economic Community	5,374	2,400	8,361	3,731	2,987	1,331	55.6	55.5
7	Other Europe[3]	2,613	1,023	3,655	2,375	1,042	1,352	39.9	132.2
8	Japan	2,345	792	4,648	1,908	2,303	1,116	98.2	140.9
9	Australia, New Zealand, and South Africa	1,134	600	1,581	941	447	341	39.4	56.8
10	Other areas	9,327	4,888	12,159	5,977	2,832	1,089	30.4	22.3
11	Latin America	4,718	2,156	6,501	3,181	1,783	1,025	37.8	47.5
12	Other Africa, Middle East, and other Far East	4,609	(4)	5,658	2,090	1,049	(4)	22.8	(4)
13	International and unallocated		(4)		706		(4)		(4)

[1] Adjusted to balance of payments basis; excludes exports under U.S. military agency sales contracts and imports of U.S. military agencies. Total for all areas in 1966 and all 1970 data are as published in the "Survey of Current Business," June 1972, table 9, p. 46–51. Area detail for 1966 has been revised by the Bureau of Economic Analysis since it was last published in the "Survey of Current Business," June 1970, table 9, p. 54–59.

[2] Area detail for MNC-associated exports is from Bureau of Economic Analysis, "Special Survey of U.S. Multinational Companies, 1970," tables 2 and 4.

[3] Includes Eastern Europe.

[4] Suppressed to avoid disclosure of data for individual reporters.

Note: Details may not add to totals because of rounding.

Source: U.S. Department of Commerce, Bureau of Economic Analysis.

Exports by area

A geographic breakdown of all U.S. imports associated with the MNCs in the sample cannot be made because data on the U.S. reporters' imports from unaffiliated foreigners, which were collected for the first time in the special survey, were reported only in aggregate, not for individual areas. However, area detail is available for all U.S. exports associated with the sample MNCs (table 3).

Of the total $21.2 billion of MNC-associated U.S. exports in 1970, $15.3 billion or 72 percent went to the developed areas and $6.0 billion or 28 percent went to other areas. The corresponding percentages in 1966 were 64 percent and 36 percent, respectively. The rise in the share of developed areas and the decline in the share of other areas from 1966 to 1970 reflected the fact that, during this period, MNC-associated exports to the developed areas increased 72 percent, while those to other areas increased only 22 percent.

The distribution of total U.S. exports between developed and other areas was about the same as that of the MNC sample in 1970. However, the 1966–70 growth pattern, by area, of MNC-associated exports differed considerably from that of total U.S. exports. In general, MNC-associated exports grew significantly faster than total U.S. exports to the developed areas, but somewhat slower than total U.S. exports to other areas.

U.S. TRADE WITH MAJORITY-OWNED FOREIGN AFFILIATES

Trade by area and by industry of U.S. reporter

Although area detail for all MNC-associated imports is not available from the special survey, breakdowns are available by area and by industry of the U.S. reporter for both exports to, and imports from, majority-owned foreign affiliates (table 4). Trade with majority-owned foreign affiliates consists of transactions between U.S. reporters and their own MOFAs and transactions between other U.S. residents and these same MOFAs.

U.S. exports to MOFAs in the sample totaled $9.8 billion in 1970, of which 82 percent was to developed areas. U.S. imports from MOFAs totaled $7.5 billion, of which 67 percent was from developed areas. From 1966 to 1970, imports from MOFAs in developed areas increased faster, although by a smaller dollar amount, than exports to them; for trade with MOFAs in other areas, the reverse was true.

TABLE 4.—U.S. TRADE WITH MAJORITY-OWNED FOREIGN AFFILIATES (MOFAs) IN SAMPLE,[1] BY AREA AND DOMESTIC INDUSTRY OF U.S. REPORTER

[Dollars in millions]

Line	Area, and domestic industry of U.S. reporter	1966			1970			Change, 1966–70				
		Exports	Imports	Trade balance	Exports	Imports	Trade balance	Exports	Imports	Trade balance	Exports (percent)	Imports (percent)
1	All areas	$6,040	$4,256	$1,785	$9,823	$7,523	$2,300	$3,783	$3,267	$515	62.6	76.8
	By domestic industry of U.S. reporter:											
2	Associated with MOFAs of U.S. manufacturing multinationals (MNCs)	4,968	2,586	2,382	7,982	4,787	3,194	3,014	2,201	812	60.7	85.1
3	Associated with MOFAs of U.S. MNCs in petroleum and other industries	1,071	1,669	−598	1,842	2,735	−894	771	1,066	−296	72.0	63.9
	By area:											
4	Developed areas	4,858	2,444	2,414	8,057	5,045	3,012	3,199	2,601	598	65.9	106.4
5	Associated with MOFAs of U.S. manufacturing MNCs	4,165	2,024	2,141	6,775	4,200	2,575	2,610	2,176	434	62.7	107.5
6	Associated with MOFAs of U.S. MNCs in petroleum and other industries	694	421	273	1,282	847	435	588	426	162	84.7	101.2
7	Of which, Canada	2,543	1,867	676	3,891	4,185	−294	1,348	2,318	−970	53.0	124.1
8	Associated with MOFAs of U.S. manufacturing MNCs	2,427	1,645	782	3,748	3,506	242	1,321	1,861	−540	54.4	113.1
9	Associated with MOFAs of U.S. MNCs in petroleum and other industries	117	223	−106	143	679	−536	26	456	−430	22.2	204.5
10	Of which, Europe[2]	1,793	504	1,289	3,359	767	2,592	1,566	263	1,303	87.3	52.2
11	Associated with MOFAs of U.S. manufacturing MNCs	1,375	341	1,034	2,398	601	1,797	1,023	260	763	74.4	76.2
12	Associated with MOFAs of U.S. MNCs in petroleum and other industries	418	163	255	962	166	796	544	3	541	130.1	1.8
13	Other areas	1,182	1,814	−632	1,766	2,479	−713	584	665	−81	49.4	36.7
14	Associated with MOFAs of U.S. manufacturing MNCs	804	564	240	1,208	590	618	404	26	378	50.2	4.6
15	Associated with MOFAs of U.S. MNCs in petroleum and other industries	379	1,250	−871	560	1,889	−1,329	181	639	−458	47.8	51.1
16	Of which, Latin America	853	1,280	−427	1,165	1,380	−215	312	100	212	36.6	7.8
17	Associated with MOFAs of U.S. manufacturing MNCs	683	440	243	918	402	516	235	−38	273	34.4	−8.6
18	Associated with MOFAs of U.S. MNCs in petroleum and other industries	170	839	−669	248	978	−730	78	139	−61	45.9	16.6

[1] Exports are from Bureau of Economic Analysis, "Special Survey of U.S. Multinational Companies, 1970," table 2, and unpublished data; imports are from unpublished data only.
[2] Includes Eastern Europe.

Note: Details may not add to totals because of rounding.
Source: U.S. Department of Commerce, Bureau of Economic Analysis.

U.S. trade with majority-owned foreign affiliates in all areas showed a surplus of $2.3 billion in 1970, up $0.5 billion from 1966. The surplus on trade with MOFAs in developed areas improved by $0.6 billion from 1966 to 1970, as a large increase in the surplus with Europe was partly offset by a deterioration in the balance with Canada. Over half of that deterioration was associated with manufacturing MNCs, partially reflecting the impact of the United States-Canadian automotive agreement. The deficit on trade with MOFAs in other areas worsened slightly from 1966 to 1970, as a decrease in the trade deficit with Latin America was more than offset by an increase in the deficit with other nondeveloped areas. The later increase was wholly in trade associated with MNCs in the "petroleum and other industries" group.

Exports by intended use

Total exports to the majority-owned foreign affiliates in the sample were $9.8 billion in 1970, of which $5.1 billion, or slightly more than half, were for resale without further manufacture or for lease or rental abroad. Less than 5 percent was capital equipment exported for use by the foreign affiliates. The remainder consisted of exports of materials and parts for further processing or assembly by the foreign affiliates, and all other exports, such as repair parts and operating supplies for use by the affiliates (table 5).

The $5.1 billion of exports to MOFAs for resale, lease, or rental abroad were probably for the most part distributed by the affiliates to unaffiliated foreign customers. In addition, the U.S. reporters exported $11.4 billion of goods directly to unaffiliated foreign residents in 1970 (table 2, line 4). Thus, the total amount of MNC-associated exports that reached unaffiliated foreign customers with little or no further processing by the affiliates was about $16.5 billion. Majority-owned foreign affiliates were the distribution channel for 31 percent of this total; in 1966, the corresponding figure was 27 percent.

The $5.1 billion of exports to MOFAs reported as being for resale, lease, or rental abroad are valued at the selling prices charged by the U.S. parent companies to their affiliates, not the prices charged by the affiliates to foreign customers. Thus, profit and commission on sales are excluded. In contrast, the $11.4 billion of exports by U.S. reporters to unaffiliated foreigners probably include profit and commission. As a consequence, the importance of the MOFAs as distributors of U.S. exports may be understated.

Exports of capital equipment for use by foreign affiliates were only $430 million in 1970, a decline of nearly $100 million from 1966. However, both the 1966 and 1970 data may be incomplete. The data on U.S. trade with foreign affiliates were generally reported by the U.S. parent companies which may have been unaware of some goods purchased by their affiliates from other U.S. suppliers. The understatement in the case of U.S. capital equipment exports for use by the affiliates may be especially serious since the proportion of such exports which is shipped by U.S. suppliers other than the reporters is relatively large.

Other exports to MOFAs, mainly for further processing or assembly abroad, totaled $4.3 billion in 1970, compared with $2.6 billion in 1966. The proportion of such exports which went to affiliates in the transportation equipment industry in Canada rose from 34 percent in 1966 to 39 percent in 1970, in part reflecting the impetus given by the United States-Canadian automotive pact.

In both 1966 and 1970, over 85 percent of the exports to MOFAs for resale, lease, or rental abroad, and about 80 percent of the exports for further processing or assembly abroad, were shipped to developed areas. Exports of capital equipment for use by the MOFAs were about evenly divided between developed areas and other areas in both years.

TABLE 5.—U.S. EXPORTS TO MAJORITY-OWNED FOREIGN AFFILIATES IN SAMPLE, BY AREA AND BY INTENDED USE[1]

[Dollars in millions]

Line	Intended use	1966			1970			Change, 1966–70					
		All areas	Developed areas	Other areas	All areas	Developed areas	Other areas	All areas	Developed areas	Other areas	All areas (percent)	Developed areas (percent)	Other areas (percent)
1	Total exports to majority-owned foreign affiliates[2]	$6,040	$4,858	$1,182	$9,823	$8,057	$1,766	$3,783	$3,199	$584	62.6	65.9	49.4
2	Shipped by U.S. reporters[3]	5,038	4,098	940	8,623	7,118	1,505	3,585	3,020	565	71.2	73.7	60.1
3	Shipped by other U.S. suppliers	1,002	760	242	1,200	939	261	198	179	19	19.8	23.6	7.9
4	For resale without further manufacture or for lease or rental abroad.	2,841	2,446	395	5,057	4,421	636	2,216	1,975	241	78.0	80.7	61.0
5	Shipped by U.S. reporters[3]	2,677	2,317	359	4,908	4,287	620	2,231	1,970	261	83.3	85.0	72.7
6	Shipped by other U.S. suppliers	163	127	36	149	134	14	−14	7	−22	−8.6	5.5	−61.1
7	Capital equipment for use by foreign affiliates	523	282	241	430	207	223	−93	−75	−18	−17.8	−26.6	−7.5
8	Shipped by U.S. reporters[3]	230	106	124	230	91	139	0	−15	15	0	−14.2	12.1
9	Shipped by other U.S. suppliers	292	176	116	199	116	84	−93	−60	−32	−31.8	−34.1	−27.6
10	For further processing or assembly, and other	2,620	2,075	545	4,318	3,455	862	1,698	1,380	317	64.8	66.5	58.2
11	Shipped by U.S. reporters[3]	2,074	1,619	456	3,466	2,766	609	1,392	1,147	243	67.1	70.8	53.3
12	Shipped by other U.S. suppliers	546	456	90	852	689	163	306	233	73	56.0	51.1	81.1

[1] Data for total exports to majority-owned foreign affiliates, and for all areas by intended use, are from Bureau of Economic Analysis, "Special Survey of U.S. Multinational Companies, 1970," tables 2 and 6; area detail by intended use is from unpublished data.

[2] The details by intended use do not add to total exports to majority-owned foreign affiliates because of statistical discrepancies. The detail data are as reported on the books of the foreign affiliates while the totals are as reported on the books of the U.S. parent. For all areas combined, the sum of the details by intended use is $56,000,000 less in 1966, and $19,000,000 less in 1970 than the total shown in line 1. Details may also not add to totals because of rounding.

[3] Includes goods charged on the books of U.S. reporters and shipped to their own majority-owned foreign affiliates, whether such goods were actually produced by the U.S. reporters or by other U.S. suppliers.

Source: U.S. Department of Commerce, Bureau of Economic Analysis.

TECHNICAL NOTE

General sources

All 1970 data on U.S. imports and exports associated with the 298 multi-national companies in the sample were obtained from Forms BE–11A and 11B "Confidential Special Survey of Multi-national Companies, 1970," of the Bureau of Economic Analysis. The survey, which was voluntary, was conducted in late 1971.

Data on the U.S. reporters' imports from unaffiliated foreign residents in 1966 were also obtained from the special survey. However, data on other MNC-associated imports and all data on MNC-associated exports in 1966 were obtained from the 1966 mandatory benchmark survey of U.S. direct investments abroad. The data drawn from the 1966 benchmark survey are for the same group of enterprises that were included in the 1970 special survey, but are as reported by them in the benchmark survey.[4] No attempt was made to expand the sample survey data to universe totals.

All data on total U.S. exports and imports for 1966 and 1970 are as published in the June 1972 issue of the SURVEY (pages 30, 46–51), except for the area breakdown of total U.S. exports. This breakdown has been revised by BEA since it was last published in the June 1970 issue of the SURVEY. Total U.S. exports and imports are on a balance of payments basis, excluding military; total U.S. exports exclude exports under military agency sales contracts and under military grant-aid programs, and total U.S. imports exclude imports of U.S. military agencies.

Definition of MNC-associated trade

MNC-associated trade is defined to consist of three components (table 2):

1. *Trade between U.S. reporters and their own majority-owned foreign affiliates:* Exports from U.S. reporters to their own MOFAs include goods charged (billed) on the books of U.S. reporters which were shipped to the reporters' own MOFAs, whether the goods were actually produced by the U.S. reporters or by other U.S. residents. Imports by U.S. reporters from their own MOFAs are derived from data on sales by the affiliates to U.S. reporters and include both goods and services; the service component, however, is believed to be quite small. It was assumed that all goods (or services) sold to U.S. reporters by the affiliates were in fact shipped to (or performed for) these reporters although a small amount of such goods (or services) may have been charged to the reporters but actually shipped (or performed) elsewhere.

2. *Trade between other U.S. residents and the U.S. reporters' majority-owned foreign affiliates:* This component of MNC-associated trade consists primarily of transactions between U.S. residents that were not in the sample and the MOFAs of the U.S. reporters. However, it also includes any transactions that may have occurred between one U.S. reporter and the majority-owned foreign affiliates of another U.S. reporter, since these transactions could not be separately identified in the survey data. Exports of other U.S. residents to the U.S. reporters' MOFAs do not include exports which were charged to the reporters' MOFAs on the books of other U.S. suppliers but which were in fact shipped to other foreign residents; such exports are included in the third component of MNC trade, below. Imports by other U.S. residents from the MOFAs are derived from affiliate sales data and include what is believed to be a small amount of services. It was assumed that all goods (or services) sold to other U.S. residents by the affiliates were actually shipped to (or performed for) these residents.

3. *Trade between U.S. reporters and other foreign residents:* This component of MNC-associated trade consists of the U.S. reporters' export and import transactions with foreigners other than their own majority-owned foreign affiliates, including transactions with unaffiliated foreigners and with minority-owned foreign affiliates of U.S. reporters. (In the text of this article, foreigners other than MOFAs were, for convenience, referred to as "unaffiliated foreigners," i.e., minority-owned foreign affiliates were treated as though they were unaffiliated foreign residents.) This component may also include a small amount of trade of U.S. reporters with majority-owned foreign affiliates of other U.S. reporters, duplicating some of the data included in component 2, above. Exports by U.S. reporters to other foreign residents include a very small amount of exports ($6 million in 1966 and $19 million in 1970) charged to MOFAs on the books of other U.S. suppliers but which were in fact shipped to other foreign residents.

Statistical and reporting problems

A number of statistical and reporting problems were encountered in compiling the data for this article. These problems may cause some distortion in comparisons between total U.S. trade and U.S. trade associated with the MNCs, although it appears unlikely that they would invalidate such comparisons.

The data on MNC-associated trade were reported by U.S. parent companies on the basis of entries made on their company records or on the records of their foreign affiliates. Total U.S. trade statistics, on the other hand, are derived from individual shippers' export declarations and from individual import documents, which are tabulated by the Census Bureau, on each foreign trade transaction. Because of such differences in data collection methods, differences between the two sets of data in the valuation, timing, and definition of the U.S. export and import transactions included are inevitable.

In the MNC data, for example, two different methods of valuation for imports were used. The value of U.S. imports from MOFAs reflects actual transactions prices as recorded on the books of the U.S. reporters and their foreign affiliates; the value of MNC-associated imports from unaffiliated foreigners reflects the value reported on the import entry form filed with the Bureau of Customs (usually an armslength market price, f.o.b. country of origin). All data on total U.S. imports, with one exception, represent the statutory valuations required by U.S. Customs law. The one exception is in the case of U.S. automotive trade with Canada: imports of automotive products from Canada, adjusted to a balance of payments basis, represent actual transactions values. In general, actual transactions values probably tend to be less than the Customs values. As a result, MNC-associated imports may be understated relative to total U.S. imports in this article.

The timing of transactions included in the MNC data depends upon when a given transaction is entered on the books of the U.S. reporter or its foreign affiliate. In the total U.S. trade data, the timing depends upon when the individual export document or import declaration on that transaction is collected. In addition, the total U.S. trade data are compiled on a calendar year basis, whereas the MNC data are reported by companies for either the calendar year or the closest fiscal year.

On the export side, the MNC data exclude goods which are charged to U.S. residents but shipped to foreign residents, such as military exports charged to the Department of Defense. Total U.S. exports as shown in this article have been adjusted to exclude

[4] See Bureau of Economic Analysis, *Special Survey of U.S. Multinational Companies, 1970*, for a more detailed explanation of how this enterprise match was done.

transfers of goods under U.S. military grant programs and under U.S. military agency sales contracts but may include other exports charged to U.S. persons.

As noted earlier, the MNC data may reflect some doublecounting in cases where one U.S. reporter deals with a majority-owned foreign affiliate of another reporter included in the sample. For example, an export transaction may be reported by one U.S. reporter as an export by it to a foreigner other than its own MOFA and by a second U.S. reporter as an export to its MOFA by another U.S. supplier (i.e., by the first reporter in this example). The amount of such duplication is unknown but is probably not large.

Data on U.S. imports from majority-owned foreign affiliates, as already indicated, were obtained from affiliate sales data and include sales of both goods and services to U.S. residents. While the size of the service component in the affiliate sales data is not known, it is believed to be small.

Data on imports by U.S. reporters from foreigners other than majority-owned affiliates should include imports of goods only. However, data on such imports—for both 1966 and 1970—were requested for the first time in the 1970 special survey and may reflect some "first-time" reporting defects.

Furthermore, the 1966 benchmark survey, from which most of the 1966 data on MNC-associated trade were drawn, was mandatory whereas the 1970 special survey was voluntary. This may have caused reporting biases, but their magnitude is not known.

Data on 1966 imports by U.S. reporters from foreigners other than MOFAs were not available from the 1966 benchmark survey. They were available from the 1970 special survey for the 298 U.S. reporters in the sample only; for U.S. reporters who were *not* in the sample but who were in the 1966 universe, they had to be estimated. They were estimated by assuming that the proportion these imports were of all MNC-associated imports in 1966 was the same for those MNCs *not* in the sample as for all MNCs in the benchmark universe. The resulting figure was $1,620 million out of total imports associated with MNCs *not* in the sample of $3,273 million (table 1). Alternative calculations give a range for estimated 1966 imports from unaffiliated foreigners associated with MNCs *not* in the sample of between $1 billion and $2 billion.

[From U.S. News & World Report, June 22, 1973]

IN TRADES "WE HAVE TO BE MUCH TOUGHER, AS A NATION"

(Interview with Donald M. Kendall, chairman and chief executive officer, PepsiCo., Inc.)

Q. Mr. Kendall, what would you like to see discussed in our next round of trade negotiations with Japan and other nations?

A. I would like to see some of the barriers against us lowered. Let's look at the problem we're faced with on trade, and you can see some of the things we have got to solve.

In 1972, by the latest estimates I have heard, we're going to end up with a trade deficit of more than 6 billion dollars. We bought that much more than we sold in foreign markets. That includes a deficit of about 4 billion with Japan, 2 billion with Canada, and about 1 billion with Germany. For the first time, we're going to have a deficit with the European Economic Community [Common Market].

Now, let's look where we're going to be by 1980—and I only take 1980 because I want to cite our energy needs in the future as a problem which fits into this whole package:

On the merchandise account—our trade in goods other than oil and gas—we probably can balance out; that is, our exports will offset our imports in 1980. Hopefully, we can even improve that.

If you look at tourism, there is going to be a deficit in 1980. Shipping and insurance is another deficit area in our trade balance.

On Government expenditures, you have to count on aid to allies and our own military costs, including those involved in the North Atlantic Treaty Organization. So you have a deficit there.

Q. Did the U.S. have any surpluses anywhere?

A. The only place where you have any true surplus is the flowback from our foreign direct investments—what we're getting back in royalties and earnings from investments abroad. That now amounts to about 9 billion a year. But this is offset by what we are plowing into additional investments abroad. The real surplus nets out to around 4 billion dollars a year.

Now, the energy experts have pretty much agreed that by 1980 we're going to be importing about 15 billion dollars' worth of energy each year in the form of oil and gas.

So we have quite a gap to fill in our balance of payments. And the biggest opportunity we have to fill it is through the surplus we earn on foreign direct investments.

Even if you expand that surplus—maybe you can get it up from 4 to about 12 billion a year—you're still not going to be able to cover the cost of energy imports. We're just going to have to do more on the trade side to cover the gap. This means we must have a better climate in which to sell our merchandise abroad.

Q. What about those barriers—

A. There are barriers in Europe that we can argue about with the Europeans.

There's the value-added tax that they impose on imports. We say it disadvantages us because we don't have that kind of tax. They say it doesn't—that it applies to domestic production as well as imports. Well, what do we do about that problem? Do we join them and put on a value-added tax of our own? Something has to be done.

There are barriers to our agricultural products. The one sector in our economy where we have a higher rate of productivity than any other country in the world is in agriculture. Yet there are barriers all around the world against our farm products. We have some barriers ouselves on agricultural imports. In fact, there are a lot of countries who have dirty hands in agriculture. We have to have some of those barriers taken down.

The farm products are a political problem. In Europe, everybody talks about the farmer's need for protection. In this country, there has been much more movement of people off the farms and into cities, so they are no longer such a big political factor.

But that's not true in Europe, nor in Japan.

Q. What kinds of barriers do the Japanese have?

A. Out of our 6-billion-dollar deficit in 1972, about 4 billion was with Japan. It has reached the point where the problem can't be solved just by Japan changing the barriers they have against us. And there are many barriers.

They have restrictions on the sale of U.S. computers and peripheral equipment, for example, and on agricultural products, and on distribution—they won't permit us to have, for instance, more than a handful of Sears, Roebuck-type stores in Japan. The oil companies can't go into the Japanese market with their service stations, and so on, the way we allow the Japanese to work over here.

Even if you changed all that, you would not crack the problem today. There is going to have to be currency realignment in Japan.

Q. When you talk about a net inflow of 4 billion dollars a year from investments abroad, does that include the investments that foreigners make in this country?

A. It takes into account the fact that remittances abroad from earnings of foreign investments in the U.S. exceeded new investments by 800 million dollars in 1971.

Another thing to remember about our direct foreign investments is that few of the dollars involved are an outflow from the United States, because the bulk of such investment now comes from the reinvestment of foreign earnings, and borrowings in the countries where the investments are located.

Our direct foreign investments are making a big contribution to the U.S. trade balance, without taking a lot out of the country. That's one of the reasons it seems so ridiculous to try to put restrictive legislation on those investments.

Q. What is your reply to the charge that multinational companies export American jobs?

A. It's a case of mistaken identity. We can give you a survey going back to 1960 that shows the multinational companies ECAT [Emergency Committee for American Trade] represents have increased their employment inside the U.S. at a substantially higher rate than the rest of the economy. So we can prove we are not exporters of jobs.

Last November, the Department of Commerce issued a thorough survey of its own, showing multinational companies increased domestic employment during the period 1966 to 1970 at a rate of 2.7 per cent annually, while the over-all rate for industry was only 1.8 per cent.

Some people would have you believe that a "whiz kid" sits in a tower with a group of computers and looks all around the world to find out where is the cheapest place to have a plant and the cheapest source of labor. And he works out a computer model on this. Then a guy pushes a button and he packs up a plant and moves it from Keokuk, Ia., over to some place in Africa, and then the costs rise there, so he picks the plant up and moves it to some place in South America or out to Asia.

Now, you just don't pick up plants and move around the world because of labor costs. There are some exceptions. But let's look at the total picture.

Q. To what extent does foreign production in your plants displace exports from the United States?

A. As I recall, our survey showed only 2 per cent of the production of those facilities came back into the United States. That's not counting Canada, where the Canadian auto agreement creates a separate situation.

Q. But aren't some of the things produced abroad things we could have exported from this country?

A. In most cases, you located a plant over there because you wouldn't be selling anything in that market if you didn't have the plant there.

Q. How do you actually explain that to a worker who lost his job in an electrical-equipment plant that used to make radios, but was put out of business by Japanese or German imports?

A. The question really is: Did he or did he not get another job? If he is still without a job, you have got a heck of a problem explaining to him what happened to his lost job. That is why you need an adjustment-assistance program to help in such cases.

You know, technology is the key to so much of this, and it is constantly changing, creating new jobs that replace the old ones. But before I get into that, let me make this point:

We sold our technology in the Space Administration to everyone for the same price that an American company would have paid for it. We have to be much tougher, as a nation, in such deals, and have a foreign policy based on our own economic needs.

We have to do a lot of other things, of course. We need to work hard on productivity—and I'm not just talking about labor unions, because I don't think the unions are

the sole cause of our problem. They're not that big a sector of our employment force. Sure, they're a factor, and so are high wages, but that's just one of several problems.

We have to bring Government spending under control. That's why I hated to see the President lose his spending ceiling. [A Nixon ceiling proposal in 1972 was not approved by Congress.] Government spending is an inflationary factor, and we must keep inflation under control to stay competitive abroad.

Finally, we have to be tough in our trade negotiations. The day of the Marshall Plan approach is over. We could afford the Marshall Plan. We were in a position like the Japanese are now, with big surpluses. But we can't afford that kind of program today.

We need negotiators who know what they're talking about, and who are tough. I don't mean unfair.

If we do all those things, I believe the United States can still compete in this world. I don't think we need protection from our neighbors and trading partners—just fair conditions.

Q. Back to that radio—

A. There will still be U.S. industries where you are going to have shifts, but they sometimes work for you and not against you. The head of one large American company tells me that out of the space program they came up with technical improvements that are enabling them to become competitive on radios once again, and he told me they are making radios for cars.

Q. In this country?

A. Yes. Here's another example: Look at this watch on my wrist. It tells time by a computer printout. It was one of the original experimental models, and very expensive to make.

The first one, as I understand it, cost something like $2,000 to make. The manufacturers lost money on the first batch of 500 they sold. They're now selling them for $250, and they expect to get it down to $35 some day.

This watch is one of the most accurate watches you can get—plus or minus 60 seconds over a year's time. And it's going to bring the watch industry back to the United States.

So you have these shifts. Where they occur, we should have programs that take the worker who was making radios and retrain him and, most importantly, make sure he doesn't lose his seniority so he doesn't have to start all over again at a beginner's pay in a new job. We should also pay to move him wherever he has to go for that training or job.

Q. Isn't some of that already provided, at least in theory, except for the seniority angle?

A. The seniority angle is one of the most important parts of it.

Q. Would that mean the Government, in effect, would have to pay part of his salary for an indefinite period, even after he got a new job?

A. That's right. This is much better than putting up import barriers in a vain effort to save some jobs, because when you put up import barriers everybody suffers.

Q. What is happening to the flow of direct foreign investment by U.S. companies now? Is it speeding up or slowing down?

A. I don't think there has been any real change. There were problems for a while. Some restrictions went into effect but most people have found ways to live with them, particularly with local borrowings of capital.

Q. Does anyone know the total amount of American investments overseas?

A. The book value—the original cost of factories and other facilities minus depreciation—at the end of 1971, as reported by the Department of Commerce, was 86 billion dollars, of which investments in manufacturing facilities was 35.5 billion dollars.

Q. How much is now being invested each year?

A. In 1971, overseas expenditures for what is called plant and equipment were 14.8 billion dollars, and in 1972 they were 15.4 billion dollars. Of these amounts, 6.8 billion dollars in 1971 and 6.9 billion dollars in 1972 were investments in manufacturing. The remainder was invested in such things as mining.

ADVANTAGES OF INVESTING ABROAD

Q. Should the U.S. Government actively encourage, or discourage, this continued flow of investment abroad?

A. I think they should encourage it.

Q. Why?

A. Because of the results.

Most American companies do not go overseas and invest there because they want to get into a lower wage market.

There are examples of that, of course, which somebody could recite. You can look at some plants along the Mexican borders and there is no question that somebody has gone there to get a lower labor rate. You can go to Taiwan and Hong Kong and find the same thing in electronics.

But let's look at the bulk of cases, not the exceptions. The majority of companies have gone overseas because they wouldn't be able to get into those markets if they didn't go overseas and invest in a plant.

My company has Pepsi Cola plants all around the world. From our standpoint, I would love to have one big, efficient, automated plant in the United States making Pepsi Cola concentrate and shipping it all over the world. Unfortunately, we can't do that. You have to put up concentrate plants in some countries, or you're not going to be in their markets.

I think the case is well proved on the value that we're getting from those investments. And if the United States didn't have the foreign investments of their multinational companies, we would really be in bad shape.

Q. To what extent is this advantageous situation on return from those investments due to features of the tax law which permit the earnings of a foreign subsidiary not to be counted in a multinational company's earnings unless those earnings are remitted to the parent company?

A. It would be a disaster if you didn't have that, because you shouldn't pay taxes on earnings until you bring them back to the U.S.

Q. How does that work?

A. Bear in mind that the U.S. Tax Code provides that all income earned anywhere by a U.S. corporation is subject to U.S. taxation. The Internal Revenue Code even provides that profits earned abroad shall be taxed at either the U.S. rate or the foreign rate—whichever one is higher.

Say you have a plant in x country overseas and you earn a dollar and the local tax rate imposed by x country is 48 percent. You pay that tax to x country and, since it is as high as the U.S. rate, it is fully credited against the 48 percent owed at home in the U.S. Now, if the tax rate is 38 percent in x country, then you would have to pay 10 percent more to the U.S. This is so that differences in national tax rates will not provide artificial incentives to investment and also so that you don't end up with double taxation on the same income. You're not required to pay your U.S. taxes until you bring your earnings back to the U.S., that is, until they are available to the corporation being taxed.

Q. Isn't that different from the way a subsidiary of a U.S. corporation operating in this country is treated?

A. Of course.

Q. Why should there be a difference?

A. Because one subsidiary is operating inside this country and one is a foreign company operating according to the laws of the host country. You cannot compare a plant in New Jersey with one in Germany or Mexico. We're operating under different laws over there. If American-owned companies had to pay taxes on those plants on the same basis as on the plant in New Jersey while our foreign competitors did not have to do so, we couldn't operate overseas. You wouldn't get a return on your foreign investment. There wouldn't be much investment.

"BRINGING THE MONEY HOME"

Q. What generally happens to the earnings that are made in overseas plants? If they are not remitted to the United States, what's done with them?

A. Obviously, much of those earnings are remitted. A current Department of Commerce survey says that more than 80 percent of overseas earnings are remitted in the year they are earned. After all, we had a 4-billion-dollar surplus inflow in 1972. The situation varies, depending on the area. In some of the countries where PepsiCo operates, we still haven't taken earnings out because we are reinvesting in that market to try to get a certain share of it. Once we reach the point where we are not in a reinvestment cycle, we start bringing the money home.

You do the same thing if you are investing here in the United States. Say you had a Pepsi Cola plant in Indianapolis that you owned yourself. You would pour all the money back into that plant and that market for a time to try to get a certain market share, so that it would have a value if you planned to pass it on to your children or sell it to someone eventually. You would reinvest the earnings.

Q. But isn't the difference that if it is a plant you had in Indianapolis, you would only be able to reinvest what was left after you had paid federal tax on the net earnings of that plant? Whereas in the case of a plant in Germany—

A. The overseas plant must first pay local taxes which, on the average, are as high as in the United States. They are higher in Germany than in the United States. If you changed these tax rules on companies operating abroad, a lot of U.S. companies would have a big decrease in their earnings right now, which I don't think would be good.

You asked earlier whether our direct foreign investments were going up or down. If earnings fell, investments would go down at a very rapid rate.

Q. What changes are being suggested in the tax rules for companies with operations abroad?

A. The suggestion is, first, that earnings in foreign operations should be taxed even before they are distributed to the parent company, and second, that taxes paid to foreign governments would no longer be allowed as a credit against American taxes. Since taxes are high in most foreign countries, this would mean overseas earnings would often be taxed at a much higher rate than domestic earnings.

Q. Is that change embodied in the Burke-Hartke legislation [bills introduced by Representative James A. Burke (Dem.), of Massachusetts, and Senator Vance Hartke (Dem.), of Indiana]?

A. Yes.

Q. Is that the worst feature of Burke-Hartke, in your view?

A. The tax aspect is the worst feature.

Q. Doesn't Burke-Hartke also include restrictions on imports that take jobs away from the U.S.?

A. Yes. And I don't think you could pass the Burke-Hartke bill without other countries taking reprisals against us. We don't live in the kind of world where people are going to let us restrict them without restricting back.

At the moment, we have to operate under the GATT [General Agreement on Tariffs and Trade] regulations. These may have to be changed so that countries can react against one that has a persistent trade surplus and refuses to adjust its currency value,

without having to take similar measures against all other countries around the world.

Our main problem today is Japan. Sure, we have a problem with Canada and Germany, but our big problem is Japan. There should be some mechanism under which—if Japan doesn't revalue its currency, or do something else to correct its imbalance of trade with the U.S.—then we should be able to take action against Japan.

Under the Burke-Hartke proposal, we would just take action against everybody, and I don't think that's right.

"A VERY DISTURBING TREND"

Q. Do you find increasing evidence that foreign countries are restricting operations of U.S. multinational companies and those of other nations as well?

A. There is growing nationalism all over the world, without exception. To me it's a very disturbing trend. Trade not only benefits man, by giving him more and better things to enjoy—clothes and cars and a whole way of life—but trade also is the principal way to get people together and bring barriers down around the world.

I think trade is going to be one of the main means of solving the problems between the United States and the Soviet Union. If I have ever seen a country where personal relationships are important, it's the Soviet Union.

People react there as they would if you went out to some place in Ohio or Iowa and met somebody and became his friend. That is has an impact in that community. It's the same way in the Soviet Union.

The more American businessmen go over there and tell them about our country the better, because if there was ever a place where there is a lack of understanding about the United States, it's the Soviet Union. And I think this is also true on our side.

When American businessmen go to the Soviet Union they're going to develop personal relationships and it's going to make, I believe, a tremendous impact. Because the biggest thing that's lacking is confidence and trust between both sides.

Q. Do you think multinational companies can have an important roie in this East-West trade development?

A. They not only can, they already have. One of our greatest opportunities is in the Eastern European countries, and particularly the Soviet Union.

In terms of trade, that is one place where we're likely to have good surpluses for the next five or six years. If the oil and gas arrangements are worked out for the U.S. to import vast quantities of Siberian gas, that balance will change. But we have to get that energy somewhere, and certainly during this period of "crunch" that we're in, our trade with Eastern Europe can be very important. The Soviets believe in our technology, in our managerial ability, and there's no question in my opinion that they want to do business with us.

Q. How about the Red Chinese? Have you been over there?

A. No.

I think you have to put things in perspective. Our first United States exhibition in a trade fair in the Soviet Union was in 1959. It was 1972 before we finally had a trade agreement. Trade was very small until 1972. Then look what happened. It really took off.

Q. Coming back to the multinational companies in your committee: What part of their sales and earnings comes from overseas operations?

A. I couldn't give you an average. For my own company it's about 30 percent.

Q. Does it follow that legislation which was inimical to overseas operations would have a severe effect upon the earnings and status of many leading American companies?

A. It certainly would.

Q. What are the chances of such legislation going through Congress in 1973?

A. It's too early to tell.

Q. Who are the main backers of Burke-Hartke?

A. Labor unions.

Q. This is a big shift for most unions, isn't it? Generally, unions backed reciprocal-trade agreements—

A. They were in the forefront—one of the leaders—for freer trade. Some unions are still on that side. Some unions have been sold by their staff people on the mistaken idea that you raised earlier—that multinational companies are exporting jobs. They've gotten themselves into very rigid positions, and we have to do everything we can to show that their claims are inaccurate.

"WE FACE A VERY LARGE PROBLEM"

Q. If you look down the road, say, 10 or 15 years, how can the United States hope to do anything but run a big trade deficit, over all, if we are importing more and more raw materials and energy?

A. I have asked the same question, and there is no doubt that we face a very large problem.

Let's go back and once again look at the various accounts in our balance-of-payments picture:

In merchandise, let's assume we can improve our situation and sell more than we buy—getting it up to, say, a 4-billion surplus by 1980.

On shipping and insurance, we're unlikely to make any real gain. We'll still be in deficit there.

The tourism deficit we might change from 3 billion a year now to 2 billion. I don't think Americans are going to stop traveling and I'll be surprised if we get a big influx of people from the rest of the world into our country. We can improve our balance a little in tourist spending, but not much.

And let's assume on direct foreign investments we can move our surplus up from 4 billion a year now to the area of 10 or 12 billion by 1980.

With these improvements, maybe we can solve our balance-of-payments situation up to 1980, but after that, if you're going to have the energy-import requirements the experts see now, I just don't know. But I've seen projections where the experts said the world was going to starve in 1983, too. That was back in 1950, when people didn't realize what technology was going to accomplish in food production. I am afraid to rely very much on these long, straight-line projections.

Yet there is no question that we are confronted with a most difficult balance-of-payments outlook.

KILLING THE GOOSE

Q. Would it help the balance of payments to bring more of these multinational-company earning back faster by increased taxes?

A. Somebody once said something about "killing the goose that laid the golden egg." That's the best answer to that question.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

REPORT OF FEDERAL TRADE COMMISSION

A letter from the Chairman, Federal Trade Commission, transmitting, pursuant to law, a report of that Commission, for the year 1972 (with an accompanying report); to the Committee on Commerce.

REPORT OF RAILROAD PASSENGER CORPORATION

A letter from the Vice President of Public Affairs, National Railroad Passenger Corporation (Amtrak), transmitting, pursuant to law, a report of that Corporation, for the month of October 1972 (with an accompanying report); to the Committee on Commerce.

REPORT OF PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA

A letter from the Chairman, Board of Trustees, Public Defender Service for the District of Columbia, transmitting, pursuant to law, a report of that organization, for the fiscal year 1971 (with an accompanying report); to the Committee on the District of Columbia.

REPORT OF WASHINGTON GAS LIGHT CO.

A letter from the comptroller, Washington Gas Light Co., Washington, D.C., transmitting, pursuant to law, a report of that company, as of December 31, 1972 (with an accompanying report); to the Committee on the District of Columbia.

REPORT OF PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

A letter from the Executive Secretary, Public Service Commission of the District of Columbia, Washington, D.C., transmitting, pursuant to law, a report of that Commission, for the calendar year 1971 (with an accompanying report); to the Committee on the District of Columbia.

REPORT OF ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

A letter from the Chairman, Advisory Commission on Intergovernmental Relations, Washington, D.C., transmitting, pursuant to law, a report of that Commission, dated January 30, 1973 (with an accompanying report); to the Committee on Government Operations.

REPORT ON CERTAIN SERVICES PROVIDED TO STATE OR LOCAL GOVERNMENTS BY THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

A letter from the Administrator, National Aeronautics and Space Administration, that that Administration has provided no special ized or technical services to State or local governments during calendar year 1972; to the Committee on Government Operations.

REPORT OF FOREIGN EXCESS PROPERTY DISPOSED OF BY THE DEPARTMENT OF COMMERCE

A letter from the Acting Assistant Secretary for Administration, Department of Commerce, reporting, pursuant to law, on foreign excess property disposed of by that Department, during the calendar year 1972; to the Committee on Government Operations.

REPORT ON DISPOSAL OF FOREIGN EXCESS PROPERTY BY THE ATOMIC ENERGY COMMISSION

A letter from the General Manager, U.S. Atomic Energy Commisson, reporting, pursuant to law, on the disposal of foreign excess property by that Commission, for the fiscal year 1972; to the Committee on Government Operations.

REPORT OF COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Logistic Aspects of Vietnamization—1969–72," Department of Defense, dated January 31, 1973 (with an accompanying report); to the Committee on Government Operations.

PROPOSED LEGISLATION TO AMEND THE PRESIDENTIAL TRANSITION ACT OF 1963

A letter from the Acting Administrator, General Services Administration, transmitting a draft of proposed legislation to amend the Act of August 25, 1958, as amended, and the Presidential Transition Act of 1963 (with an accompanying paper); to the Committee on Government Operations.

REPORT ON QUALITY OF WATER OF THE COLORADO RIVER BASIN

A letter from the Assistant Secretary of the Interior, transmitting, pursuant to law, a

report on quality of water of the Colorado River Basin, dated January, 1973 (with an accompanying report); to the Committee on Interior and Insular Affairs.

REPORT OF COMMUNITY RELATIONS SERVICE

A letter from the Director, Community Relations Service, Department of Justice, transmitting pursuant to law, a report of that Service, for the fiscal year 1972 (with an accompanying report); to the Committee on the Judiciary.

PROPOSED APPROPRIATION AUTHORIZATION LEGISLATION, NATIONAL SCIENCE FOUNDATION

A letter from the Director, National Science Foundation, transmitting a draft of proposed legislation to authorize appropriations for that Foundation, for the fiscal year 1974 (with accompanying papers); to the Committee on Labor and Public Welfare.

REPORT ON POSITIONS IN GRADES GS–16, GS–17, AND GS–18, GENERAL ACCOUNTING OFFICE

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on positions in grades GS–16, GS–17, and GS–18, in that Office, for the calendar year 1972 (with an accompanying report); to the Committee on Post Office and Civil Service.

REPORT ON POSITION IN GRADES GS–16, GS–17, AND GS–18, DEPARTMENT OF DEFENSE

A letter from the Assistant Secretary of Defense, transmitting, pursuant to law, a report on civilian positions in grades GS–16, GS–17, and GS–18, for the calender year 1972 (with an accompanying report); to the Committee on Post Office and Civil Service.

REPORT OF UPPER GREAT LAKES REGIONAL COMMISSION

A letter from the Federal Cochairman, and the State Cochairman, Upper Great Lakes Regional Commission, Washington, D.C., transmitting, pursuant to law, a report of that Commission, for the period July 1, 1971, to June 30, 1972 (with an accompanying report); to the Committee on Public Works.

REPORT OF COASTAL PLAINS REGIONAL COMMISSION

A letter from the Federal Cochairman, Coastal Plains Regional Commission, Washington, D.C., transmitting, pursuant to law, a report of that Commission, for the period July 1, 1971, to June 30, 1972 (with an accompanying report); to the Committee on Public Works.

REPORT OF THE OZARKS REGIONAL COMMISSION

A letter from the State Cochairman, and the Federal Cochairman of the Ozarks Regional Commission, Little Rock, Arkansas, transmitting, pursuant to law, a report of that Commission, for the year 1972 (with an accompanying report); to the Committee on Public Works.

REPORTS OF COMMITTEES

The following report of a committee was submitted:

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

S. 39. A bill to amend the Federal Aviation Act of 1958 to provide a more effective program to prevent aircraft piracy, and for other purposes (Rept. No. 93–13).

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. ROBERT C. BYRD:

S. 743. A bill to increase the penalty with respect to certain offenses involving the commission of a felony while armed with a firearm. Referred to the Committee on the Judiciary.

By Mr. RANDOLPH (for himself, Mr. GRAVEL, Mr. TOWER, Mr. BIBLE, Mr. MCGOVERN, Mr. DOMINICK, Mr. BURDICK, Mr. YOUNG, Mr. ABOUREZK, Mr. ROBERT C. BYRD, Mr. MUSKIE, Mr. MONDALE, Mr. INOUYE, and Mr. HOLLINGS):

S. 744. A bill to provide a mechanism to improve health care in rural areas through the establishment of the Office of Rural Health Care in the Department of Health, Education, and Welfare and a National Council on Rural Health, and for other purposes. Referred to the Committee on Labor and Public Welfare.

By Mr. MOSS:

S. 745. A bill to designate certain lands in the Bryce Canyon National Park and the Cedar Breaks National Monument, Utah, as wilderness, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

By Mr. JAVITS (for himself and Mr. HUGHES):

S. 746. A bill to amend certain provisions of the Controlled Substances Act relating to marihuana. Referred to the Committee on the Judiciary.

By Mr. HART:

S. 747. A bill to amend the Handgun Control Act of 1965. Referred to the Committee on the Judiciary.

By Mr. ROBERT C. BYRD:

S. 748. A bill for the relief of Dr. Tanios (Tony) J. Ma'luf. Referred to the Committee on the Judiciary.

By Mr. GURNEY:

S. 749. A bill to provide for increases in certain civil service retirement annuities. Referred to the Committee on Post Office and Civil Service.

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

S. 750. A bill to provide for a privilege against disclosure of information or the sources of information obtained by persons in the news media. Referred to the Committee on the Judiciary.

By Mr. FANNIN:

S. 751. A bill for the relief of Victor Manuel Heredia-Sanchez. Referred to the Committee on the Judiciary.

By Mr. RANDOLPH (for himself, Mr. CHURCH, Mr. WILLIAMS, Mr. BIBLE, Mr. MUSKIE, Mr. MOSS, Mr. KENNEDY, Mr. HARTKE, Mr. MONDALE, Mr. EAGLETON, Mr. CHILES, Mr. TUNNEY, Mr. FONG, Mr. GURNEY, Mr. SAXBE, Mr. PERCY, Mr. HANSEN, Mr. BROOKE, Mr. STAFFORD, Mr. BEALL, Mr. DOMENICI, Mr. PELL, and Mr. CLARK):

S.J. Res. 49. A joint resolution to provide for the designation of the second full calendar week in March, 1973, as "National Employ the Older Worker Week." Referred to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ROBERT C. BYRD:

S. 743. A bill to increase the penalty with respect to certain offenses involving the commission of a felony while armed with a firearm. Referred to the Committee on the Judiciary.

Mr. ROBERT C. BYRD. Mr. President, I am introducing today a bill to strengthen the Federal penalties for the use of a firearm in the commission of a felony which may be prosecuted in a court of the United States. The bill will also strengthen the penalties for the transportation in interstate commerce of a firearm with the intent to commit therewith a felony.

Section 924(b) of title 18, United States Code, presently makes it a Federal offense for an individual to ship, transport, or receive a firearm or ammunition in interstate or foreign commerce with intent to commit therewith an offense and is punishable by imprisonment for a term exceeding 1 year.

My bill would strengthen that provision by providing a mandatory 5-year and no more than 20-year sentence which shall not be suspended for such a crime. The strengthening of this section may help deter a criminal who goes into a State knowing that he is going to commit a crime, in that he knows he will be faced with a mandatory 5-year sentence with no hope of probation or parole, even if he is caught by the authorities before the commission of the intended crime within the State. The very nature of the crime of carrying a weapon in interstate commerce with the intent to use it to commit a crime indicates that this is exactly the type of crime for which stronger and mandatory penalties would have a deterrent effect before such crime was committed.

My bill also amends section 924(c) of title 18, United States Code, by strengthening the penalties for the use of a firearm in the commission of a felony for which an individual may be prosecuted in a court of the United States. The section now provides for punishment by a sentence of not less than 1 year nor more than 10 years for a first offense, and in the case of a second or subsequent offense has a sentence of not less than 2, nor more than 25 years, with no probation or parole.

This penalty is an "add-on" penalty to be applied beyond the penalty imposed by the court for the crime committed. My bill would provide a sentence of not less than 20 years nor more than 40 years for a felony involving the use of a firearm except that, if, in connection with or as a result of the commission of such a felony with a firearm, death results, such individual perpetrating the crime will be subject to a mandatory death penalty.

I feel that the Supreme Court decision regarding the death penalty does not preclude the use of a mandatory death penalty under such Federal statutes as my bill would amend. The penalty would be certain and would be applied evenly across the board to all criminals who have caused death by the use of a firearm while committing a felony which is prosecutable in a court of the United States. I believe such a provision is constitutional under the eighth amendment.

My bill exempts, for the purposes of this act, manslaughter, as defined in title 18, United States Code, section 1112, as an applicable felony.

My bill would include any court of the District of Columbia as a court of the United States for purposes of section 924(c). Since the District of Columbia has a separate statute for added punishment for a commission of a crime while armed with a dangerous weapon, I would amend the District of Columbia code, section 22–3202, to make the Federal punish-

ment for the use of a firearm applicable to the District of Columbia statutes. My bill will leave intact that part of the District of Columbia statute which has an "addon" penalty for the commission of a crime when armed with any other type of dangerous or deadly weapon than a firearm. Further, since the District of Columbia Code, section 22–3201, defines "crimes of violence" which would have the added penalty imposed on them under section 22–3202, and in that definition the term manslaughter is used, my bill would exempt the Federal provisions relating to the "add-on" punishment in the case of manslaughter. This would leave firearms in the case of manslaughter, as defined by title 18, United States Code, section 1112, still punishable by the "add-on" penalty imposed by District of Columbia Code, section 22–3202.

I feel that the severity of these penalties for crimes committed with a firearm under Federal jurisdiction will significantly deter the criminal element in our society. The knowledge—that if they commit a felony involving the use of a firearm, it will bring with it a mandatory penalty of not less than 20 years and a mandatory death penalty if death should result from such an armed felonious attack—will give cause for greater reflection before the perpetration of such a crime.

The jurisdiction of the amendment to section 924(c) of title 18 would, of course, cover only those felonies punishable in the Federal courts, including all felonies in the District of Columbia. However, it would be hoped that the several States, seeing the strong feeling of the Congress of the United States in the manner of dealing with criminals who would use firearms in the perpetration of felonies, would similarly enact such strengthening legislation so that the criminal element could be reached across the Nation as a whole.

Section 924(b) of title 18 will give some aid to the States in that it strengthens the penalties for the transportation of firearms into a State for the purpose of committing a crime.

This legislation, if enacted, would significantly strengthen the Federal provisions relating to the illegal use of firearms in the commission of felonies within Federal jurisdiction and their use in interstate commerce by criminals.

Mr. President, I send my bill to the desk. I ask for its appropriate referral, and I ask unanimous consent that the text of the bill be printed in full at this point in the RECORD.

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

S. 743

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 924(c) of title 18, United States Code, is amended to read as follows:

"(c) (1) Whoever—

"(A) uses a firearm to commit any felony (other than manslaughter under the provisions of section 1112 of this title) for which he may be prosecuted in a court of the United States, or

"(B) carries a firearm unlawfully during the commission of any felony (other than manslaughter under the provisions of section 1112 of this title) for which he may be prosecuted in a court of the United States,

shall, in addition to the punishment provided for the commission of such felony, be sentenced to a term of imprisonment for not less than twenty years or more than forty years; except that, if, in connection with, or as a result of, the commission of such felony death results to any person (other than an individual participating in the commission of such felony), such individual convicted of such felony shall be sentenced to death. With respect to such additional sentence of imprisonment, the Court, notwithstanding any other provision of law, shall not suspend such sentence or impose a probationary sentence, and the provisions of section 4202 and chapter 309 of this title and the provisions of the Act of July 15, 1932 (D.C. Code, sec. 24–203–24–207), shall not apply. Such additional sentence so imposed shall not run concurrently with any term of imprisonment imposed for the commission of such felony.

"(2) As used in this subsection, the term 'court of the United States' shall include any court of the District of Columbia."

SEC. 2. Section 2 of the Act of July 8, 1932, as amended (D.C. Code, sec. 22–3202), is amended by striking out "pistol or other firearm (or imitation thereof) or other dangerous or deadly weapon (including a sawed-off shotgun, shotgun, machine gun, rifle, dirk, bowie knife, butcher knife, switchblade knife, razor, blackjack, billy, or metallic or other false knuckles)—" and inserting in lieu thereof "dangerous or deadly weapon, including a dirk, bowie knife, butcher knife, switchblade knife, razor, blackjack, billy, or metallic or other false knuckles, but not including (except in the case of manslaughter), for purposes of this section, any firearm as defined in section 921(a)(3) of title 18, United States Code—".

SEC. 3. Section 924(b) of title 18, United States Code, is amended by deleting "or imprisoned not more than ten years, or both." and inserting in lieu thereof the following: "and imprisoned not less than five years or more than twenty years. The court, notwithstanding any other provision of law, shall not suspend any such sentence imposed pursuant to this subsection or impose a probationary sentence, and the provisions of section 4202 and chapter 309 of this title and the provisions of the Act of July 15, 1932 (D.C. Code, sec. 24–203–24–207), shall not apply."

By Mr. RANDOLPH (for himself, Mr. GRAVEL, Mr. TOWER, Mr. BIBLE, Mr. MCGOVERN, Mr. DOMINICK, Mr. BURDICK, Mr. YOUNG, Mr. ABOUREZK, Mr. ROBERT C. BYRD, Mr. MUSKIE, Mr. MONDALE, Mr. INOUYE, and Mr. HOLLINGS):

S. 744. A bill to provide a mechanism to improve health care in rural areas through the establishment of the Office of Rural Health Care in the Department of Health, Education, and Welfare and a National Council on Rural Health, and for other purposes. Referred to the Committee on Labor and Public Welfare.

THE RURAL HEALTH ACT OF 1973

Mr. RANDOLPH. Mr. President, on October 17, 1972, 1 day before the close of the 92d Congress, I introduced S. 4129, the Rural Health Act of 1972. I am introducing the same measure today as the Rural Health Act of 1973, and I hope that hearings can be held on this legislation without delay.

There is a pressing need for improved health care delivery throughout the country. Nowhere is this need more acute than in rural America. The health of our rural citizens is not statistically as good as the health of those in metropolitan urban and suburban areas.

One major factor in the inadequacy of rural health is the shortage of health care personnel and services in rural areas. Rural people in the more sparsely populated areas have access to health care which is half the amount of care received by the Nation as a whole.

Health care in many rural areas is nonexistent. At least 132 counties in the United States have no resident physician. I proposed two amendments to the Comprehensive Health Manpower Training Act of 1971 in an attempt to deal with this problem. Both were included in the legislation signed by the President. One of these requires the Secretary of Health, Education, and Welfare to use his best efforts to provide a Public Health Service physician in each county which does not have a resident physician. The other amendment establishes within the Department of Health, Education, and Welfare a national health manpower shortage area clearinghouse for the purpose of providing a central depository of information on health professionals seeking employment, and on communities in need of health professionals.

Poverty also is a factor in the disparity of health care in rural and urban areas. One person in eight in the cities is poor, while one in 15 persons living in the suburbs is poor. But in rural districts, the ratio is one to four—fully 25 percent of rural people live in poverty. Even if health care is available, these people do not have the financial ability to pay for it.

Isolation, of course, is another major factor in poor rural health. Many rural poor live miles from any kind of health care service, with no means of transportation to get them to such service.

A publication of the American Medical Association entitled, "Health Care Delivery in Rural Areas" makes the point succinctly. It says:

Faced by low income, the rural poor struggle to feed, clothe and house their families. Preventive medical and dental care have no priority. General ill health is accepted as a burden to be borne.

Mr. President, the bill I introduce today would accomplish three major goals: First, the coordination of Federal programs for health care delivery to rural areas of the United States; second, a full assessment of the health of rural Americans and the care they receive; and finally, assurance, to the extent feasible, that rural areas receive their fair share of Federal funds for health care delivery.

In two ways these goals would be accomplished by the establishment of an Office of Rural Health Care within the Department of Health, Education, and Welfare, to be headed by a Deputy Assistant Secretary under the Assistant Secretary for Health and Scientific Affairs; and by the establishment of a National Council on Rural Health.

The Office of Rural Health Care would be the focal point in the Federal system for: first, administering all Federal pro-

grams in the Department which relate to health care in rural areas; second, coordination with other Federal agencies whose activities relate to rural health care; third, coordination of rural health care personnel training; and fourth, evaluation of departmental programs relating to rural health care. The Office would also provide technical assistance to rural communities, organizations, and individuals interested in improvement of rural health care.

My bill would also establish a National Council on Rural Health, the purpose of which is to study the health of persons living in rural areas, the adequacy of rural health care delivery, and the effect of Federal programs on the improvement of the health of persons living in rural areas. The Council would be required to submit its study, along with its recommendations for additional legislation and administrative action, to the Secretary and the Congress within 2 years after its appointment.

Mr. President, it is my belief that this is a good and worthwhile measure which will result in improvement of health care for rural Americans who too frequently live their lives without care or with care that is woefully inadequate. The measure is similar to that introduced late last year by Representative ROY, a physician who is a member of the House Committee on Interstate and Foreign Commerce.

I welcome the support and cosponsorship of this legislation by my Senate colleagues, and ask unanimous consent that the full text of the Rural Health Act of 1973 be inserted at this point in the RECORD.

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

S. 744

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Rural Health Act of 1973".

OFFICE OF RURAL HEALTH CARE

SEC. 2. (a) There is established within the Department of Health, Education, and Welfare an Office of Rural Health Care to be directed by a Deputy Assistant Secretary for Rural Health Care who shall be appointed by the Secretary of Health, Education, and Welfare (hereinafter referred to as the "Secretary").

(b) The Secretary is authorized to provide the Office of Rural Health Care with such full-time professional and clerical staff and with the services of such consultants as may be necessary for it to carry out its duties and functions.

(c) The Secretary shall, through the Deputy Assistant Secretary for Rural Health Care—

(1) administer all Federal laws for which the Secretary has administrative responsibility and which provide for, or authorize the making of grants or contracts related to, health care programs in rural areas;

(2) provide a liaison with the activities carried on by other agencies and instrumentalities of the Federal Government (including but not limited to, the Department of Agriculture, Department of Transportation, and the Office of Economic Opportunity) relating to health care programs in rural areas;

(3) coordinate training for necessary manpower for health care programs in rural areas;

(4) be responsible for the evaluation of the other Department of Health, Education, and Welfare programs related to health care in rural areas and to make periodic recommendations to the Secretary; and

(5) insure, to the maximum extent feasible, that a fair share of the funds appropriated purusant to titles III, VI, VII, VIII, IX, and X of the Public Health Service Act are expended for projects in, or which primarily benefit, rural areas.

For the purposes of paragraph (5), the term "fair share" means that percent of the total amount of funds expended in a State that is equal to the percentage of the total population of such State who reside in rural areas.

(d) For the purpose of providing technical assistance to rural communities and to persons interested in the improvement of health care in rural areas, the Secretary shall designate within each regional office of the Department of Health, Education, and Welfare one or more individuals to be representatives of the Office of Rural Health Care. Such technical assistance may include—

(1) assistance in making preliminary surveys of (A) the health of individuals residing in rural areas and (B) the delivery of health care to such individuals and assistance in developing a statement of the needs of such area for improvement in the health care delivery provided such individuals; and

(2) providing information (A) on the characteristics and comparative advantages of each health care delivery system which could be utilized in a rural area, and (B) on public and private sources of information and technical and financial assistance for improving health care delivery systems in rural areas.

In providing such assistance the Deputy Assistant Secretary for Rural Health Care shall utilize the information and resources of the National Health Manpower Shortage Area Clearinghouse established pursuant to the Comprehensive Health Manpower Training Act of 1971.

NATIONAL COUNCIL ON RURAL HEALTH

SEC. 3. (a) The Secretary of Health, Education, and Welfare shall appoint a National Council on Rural Health (hereinafter in this section referred to as the "Council") which shall be composed of 10 individuals who are recognized authorities in the fields of rural development, rural health care delivery, and health professions education.

(b)(1) The Secretary shall designate one member of the Council to be Chairman. The Chairman may employ such staff personnel as the Council determines are required to assist in carrying out its duties under this section.

(2) The provisions of title 5, United States Code, relating to appointments in the competitive service and to classification and rates of compensation shall not apply to members of the Council or to staff personnel employed under the first paragraph of this subsection. Members of the Council (other than members who are full-time officers or employees of the United States) shall, while serving on business of the Council, be entitled to receive a per diem allowance at rates not to exceed the daily equivalent of the rate authorized for grade GS-18 of the General Schedule. Each member of the Council, while so serving away from his home or regular place of business, may be allowed actual travel expenses and per diem in lieu of subsistence as authorized by section 5703 of title 5 of the United States Code for persons in the Government service employed intermittently.

(c)(1) The Council shall conduct a study and shall within twenty-four months after its appointment submit to the Secretary and to the Congress a complete report on—

(A) the health of individuals residing in rural areas of the United States,

(B) the adequacy of health care delivery to such individuals, including an analysis of the delivery systems utilized in providing such health care, and

(C) the extent to which Federal participation in health care programs and health care delivery provides effective assistance in improving the health of such individuals.

(2) The Council shall recommend to the Secretary and to the Congress such legislative and administrative action as it determines appropriate, including the manner in which problems identified under the first paragraph of this subsection may be resolved and the role the Federal Government should play in resolving such problems.

TECHNICAL AMENDMENT

SEC. 4. Section 5316 of title 5, United States Code, is amended by adding at the end thereof the following:

"(132) Deputy Assistant Secretary for Rural Health Care, Department of Health, Education, and Welfare.".

AUTHORIZATION OF APPROPRIATIONS

SEC. 5. (a) For the purpose of operating and maintaining the Office of Rural Health Care established pursuant to section 2 of this Act, there is authorized to be appropriated $2,000,000 for the fiscal year ending June 30, 1974; $4,000,000 for the fiscal year ending June 30, 1975; and $6,000,000 for the fiscal year ending June 30, 1976.

(b) For the purpose of operating and maintaining the National Council on Rural Health established pursuant to section 3 of this Act, there is authorized to be appropriated $50,000 for the fiscal year ending June 30, 1974; $100,000 for the fiscal year ending June 30, 1975, and $150,000 for the fiscal year ending June 30, 1976.

By Mr. MOSS:

S. 745. A bill to designate certain lands in the Bryce Canyon National Park and the Cedar Breaks National Monument, Utah, as wilderness, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

WILDERNESS AREA IN BRYCE CANYON NATIONAL PARK AND CEDAR BREAKS NATIONAL MONUMENT

Mr. MOSS. Mr. President, I am today introducing a bill to designate certain lands in Bryce Canyon National Park and Cedar Breaks National Monument, both in Utah, as wilderness.

The Bryce Canyon Wilderness Area comprises about 16,303 acres, out of a total 36,010 acres in the national park, and contains many examples of the eroded, colorful, and rugged natural geologic formations found in the area. Other important resources include plants and animals of three distinct life zones including excellent specimens of the Bristlecone Pine.

The Cedar Breaks Wilderness Area comprises about 4,370 acres out of 6,154 acres in the national monument. Nearly all the area within Cedar Breaks Wilderness is a large natural ampitheater with numerous ridges, cliffs, spires, canyons, and eroded formations. This compact land mass has retained its primeval character and contains outstanding geological features of scientific and scenic value.

In both instances the boundaries follow the recommendations made by the National Park Service, as required by the Wilderness Act. The recommendations were finalized only after extensive study, and after consideration of the comments made in hearings held in Utah on preliminary wilderness proposals. The hearing on the Bryce Canyon wilderness proposal was held at Panguitch,

Utah, on December 11, 1967, and the hearing on Cedar Breaks was held in Cedar City, Utah, on the same date.

Careful study was made of both the oral and written statements received at the hearings, and after further consideration of the management needs, a number of revisions were made. It is my understanding that the proposals as sent to the Congress by the National Park Service are not controversial, but, of course, hearings will be held on them by the Senate and House Interior Committees to allow further testimony if anyone wishes to be heard.

By Mr. JAVITS (for himself and Mr. HUGHES):

S. 746. A bill to amend certain provisions of the Controlled Substances Act relating to marihuana. Referred to the Committee on the Judiciary.

FEDERAL LAW ON PRIVATE USE OF MARIHUANA

Mr. JAVITS. Mr. President, I send to the desk for appropriate reference a bill on behalf of myself and the Senator from Iowa (Mr. HUGHES) respecting the decriminalization for the personal, private use of marihuana.

The ACTING PRESIDENT pro tempore. The bill will be received and appropriately referred.

Mr. JAVITS. Mr. President, 40 years ago, marihuana was dubbed the "killer weed." Folk wisdom and old wives tales vigorously promoted the idea across America that marihuana did indeed cause "murder, insanity, and death." It was said that marihuana was not only harmful to one's personal health, but that its use would lead inevitably to criminal conduct and hard drug use.

Last year the President's Commission on Marihuana and Drug Abuse—of which I and the distinguished Senator from Iowa (Mr. HUGHES) are members—reported that the clear weight of the evidence was to the contrary. In its lengthy and thoroughly documented report to the Nation, it demolished almost everyone of the popular myths about marihuana and found as follows:

> Not a single death has been recorded resulting from the use of marihuana; the drug does not cause "addiction" and does not "lead to" hard drug use; it does not cause violent behavior or criminality; long term use does not in and of itself cause significant psychological or physiological damage to the user; and use of the drug inhibits rather than causes violent behavior.

As the Commission has made abundantly clear, however, national public policy in the area of drug abuse ought not to encourage the use of any drug, no matter how mild, for purposes which are recreational rather than medical. As both I and Senator HUGHES have repeatedly stated, we advocate neither the use of marihuana, nor its legalization.

Of particular urgency and concern both to the Commission and to Senator HUGHES and myself is the need to end criminal penalties for the simple possession and use of marihuana in private. The Commission so recommended, as has the National Institute of Mental Health.

Mr. President, last year Senator HUGHES and I introduced legislation in the Senate to accomplish this objective at the Federal level. On behalf of myself and the Senator from Iowa (Mr. HUGHES), who is the distinguished chairman of the Subcommittee on Alcoholism and Narcotics, I reintroduce our bill which would repeal certain penalties relating to the possession and use of marihuana in private.

The bill would not change the Federal law regarding criminal penalties which apply to the sale of the drug for profit.

This proposal makes sense for the following four reasons:

First. It recognizes that criminal penalties for its use and possession in private are so disproportionate to the degree of mental and physical risk involved that there can no longer be any justification for their imposition in view of the Commission's findings. To equate the risk of using marihuana—which the Commission found to be a relatively benign drug—with the risk inherent in the use of hard narcotics is in my view totally indefensible. Yet in many jurisdictions throughout the country, this equation is written into the criminal law.

Second. It recognizes that casual marihuana usage is so common—the Commission found that 24 million Americans have tried marihuana at least once, and that 8.3 million are current users—that fair and impartial enforcement and prosecution are impossible. In some States, a first offender can be jailed for 10 or 20 years. In others, he may be placed on probation. In most, he will not enter the criminal justice system at all.

Third. It recognizes that use of the drug has reached such proportions that the present law is clearly ineffective as a deterrent.

Fourth. It recognizes that the "rhetoric and emotion" generated by the use of the criminal sanction in cases of personal marihuana consumption is severely impairing the fight against more dangerous drug abuse.

Mr. President, since the Commission made its report and our bill was introduced last year, there has been a growing expression of support for marihuana decriminalization from many quarters. Only last week the New York State Bar Association indorsed this policy. Many newspapers and periodicals throughout the United States supported our position.

National Review, the Nation's leading journal of conservative opinion, devoted a major portion of its December issue to this subject with a cover story: "The Time Has Come: Abolish the Pot Laws," including an article, "American Conservatives Should Revise Their Position on Marihuana," by Richard C. Cowan, and a commentary by Jeffrey Hart, James Burnham and William F. Buckley. Strong arguments are made in support of the proposition that criminal penalties for marihuana possession and use should be stricken from the books.

Mr. Cowan, arguing on the side of decriminalization writes:

> How do conservatives justify the hard data: over 250,000 young people arrested every year (seventy thousand in California alone), tens of thousands put in jail or prison for long periods, lives disrupted and even ruined, families divided, records besmirched, a life of ostracism?
>
> This is being done in our name?
>
> I, for one, bitterly resent this; but, more, I fear its consequences. If the effect on individuals is tragic, the effect on society is disastrous—disastrous for our institutions, the rule of law, political stability, even public health. This is not being done by the enemy without, but by those to whom we have delegated the power and the authority to defend us. They have been a party to superstitions that are false in content as they are in tone, but we cannot just blame them.
>
> If now that we know that we have been deceived, now that the evidence is there for all to see, our jails full, our youth increasingly alienated and confused, if in the face of all this we do not take the lead, how are we conservatives going to speak to America, and how is our America going to speak to the world—of freedom and charity?

Mr. Buckley, while supporting the retention of penalties for sale, writes:

> Mr. Cowan insists quite simply that there are no arguments, of any force or gravity, by which to justify the treatment routinely given to people who use marihuana here and there in the United States. I flatly agree with him.

Mr. President, I ask unanimous consent that the articles by Mr. Cowan and Mr. Buckley, together with an article entitled, "A Conservative Approach to the Pot Question," supporting decriminalization by Mr. James J. Kilpatrick, the well-known national columnist of the Washington Evening Star-News be printed in the RECORD at the conclusion of my remarks.

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

(See exhibits 1 and 2.)

Mr. JAVITS. Mr. President, I am pleased to advise my colleagues that the Consumers Union, the nonprofit publisher of the nationally respected Consumer Reports, has recommended that possession and use of marihuana be decriminalized. While I strongly disagree with its further recommendation that marihuana be marketed commercially, its 5-year study, entitled "Licit and Illicit Drugs," is a most enlightening and valuable treatment of the marihuana problem.

The Los Angeles County grand jury has voted to support the conclusions and recommendations of the National Commission including the decriminalization of personal possession and use of marihuana.

Mr. President, I ask unanimons consent that the text of the conclusions of the grand jury study, entitled "Position Paper on Marihuana Recommendation" and released on June 28, 1972, be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 3.)

Mr. JAVITS. Mr. President, John K. Finlator, formerly Deputy Director of the Federal Bureau of Narcotics and Dangerous Drugs, a respected and well-known law enforcement officer who has spent his life in the field of narcotics enforcement has supported the recommendations of the Commission and the enactment of our bill.

The 10th staff report of the National Commission on the Causes and Prevention of Violence, a Presidential study group, came to this conclusion:

Until and unless evidence is forthcoming of harmful or addictive effects of marijuana—and to date the evidence is all to the contrary—no rational basis exists upon which to resist arguments in favor of modifying the Draconian statutes penalizing possession of marijuana.

The National Council on Crime and Delinquency, a 65-year-old national service agency incorporated to promote the rehabilitation of juvenile and adult offenders, stated:

The present policy of the federal and state governments toward marijuana should be amended. Existing research on its effects and acknowledged consequences of prohibition should be utilized to provide a more enlightened, rational and humane approach to the problem. Insistence on proscription, the criminally severe penalties, and the harassment of marijuana users by law enforcement are out of proportion to the issue's importance. Marijuana laws cruelly and needlessly burden hundreds of thousands of young people wtih a criminal record, a lifelong handicap. They compound and aggravate the crime problem.

The National Commission on the Reform of Federal Criminal Laws, recently concluded that current laws relating to marihuana render laws relating to more dangerous drugs less effective:

. . . (The recommendation to eliminate any criminal penalty for simple possession of marijuana) is based on the view that available evidence does not demonstrate significant deleterious effects of marijuana in quantities ordinarily consumed; that any risks appear to be significantly lower than those attributable to alcoholic beverages; that the social cost of criminalizing a substantial segment of otherwise law-abiding citizenry is not justified by the, as yet, undemonstrated harm of marihuana use; and that the jail penalties for the use of marijuana jeopardize the credibility and therefore the deterrent value of our drug laws with respect to other, demonstrably harmful drugs.

Mr. President, one cannot review the progress which has been made on this issue in the last year without noting the fine work which has been done throughout the country on this issue by a nonprofit organization located in Washington called NORML, the National Organization for the Reform of the Marihuana Laws. Its executive director, Mr. Keith Stroup, has won many supporters to the cause of decriminalization while working for more rational ways to discourage marihuana use.

Mr. President, our bill would change existing Federal law in that it would no longer be unlawful for a person to possess within a private dwelling marihuana for his own use, or for the use of others, so long as it is not possessed with the intent to sell it for profit.

It would also no longer be unlawful to possess in public an amount not to exceed 3 ounces of marihuana, if such possession is incident to a private use and is not with the intent to sell it for profit. Also, marihuana which is lawfully possessed by any person would no longer be considered to be contraband and would not be subject to seizure or forfeiture.

Lastly, in the prosecution of any person charged with a violation of Federal law, the fact that such person was under the influence of marihuana would not be a defense to that charge.

Every provision in the bill specifically relates only to personal use of marihuana in private. The bill does not provide decriminalization for activities of any kind involving commercial and nonpersonal possession and sale.

Although we go further than the majority of the Commission in terms of our decriminalization approach, we believe that the bill reflects the general policy recommendation of the Commission to concentrate the weight of the criminal sanction upon significant supply and distribution activities, rather than upon casual consumption.

While the enforcement of laws against possession and use of marihuana is principally a matter for State and local governments, we hope that the State legislatures throughout the country will follow the policy approach which we are today proposing for the Federal law.

Mr. President, it has become obvious that to look upon the people who use marihuana as all alike would be as unfounded as thinking of all those who use alcohol as being the same.

Marihuana is used for a wide variety of reasons. Some people have tried it out of curiosity and quit. Some continue to use it sporadically on the urging of friends or because of a wish to belong. Some use it occasionally for relaxation, some for stimulation, and some for simple socializing.

Concern about any form of drug abuse cannot be used to justify the perpetuation of false information or the imposition of the criminal sanction. Such deception is self-defeating.

If such deception is practiced when factual information is presented concerning the entire array of more dangerous drugs in our society which are used so widely by adults—alcohol, barbiturates, amphetamines, and tobacco—these warnings will fall on deaf ears.

And the abuses of these other drugs must be our main concern.

The legitimate complaint of American youth must be answered that those in our society who drink alcohol—some 80 million—discriminate against those 24 million Americans who may engage in the casual use of marihuana in private.

The legitimate complaint must be answered that respect for the law has been undermined and that thousands of young lives have been damaged—and in some cases wrecked—because of the present state of Federal and local criminal laws on this subject.

It is time to recognize that our attitudes on this drug have been uninformed and ill-advised, and that the punitive approaches have aggravated rather than solved the marihuana problem.

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. 746

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Controlled Substances Act is amended by inserting immediately after section 404 thereof, the following new section:

"SEC. 404A. (a) Notwithstanding the provisions of section 308, 401(a)(1), 404, or any other provision of this title or any other Federal law, it shall not be unlawful for any person—

"(1)(A) to possess, within a private dwelling or other residence, marihuana for his own use or for the use of others, within any such residence or dwelling, if such marihuana is not possessed with the intent to distribute, transfer, or sell such marihuana in violation of this title or any other Federal law; or

"(B) to possess, in a public area, marihuana in a reasonable amount, if the possession of such marihuana is incident to a private use within the purview of subparagraph (A) of this paragraph, and is not with the intent to distribute, transfer, or sell such marihuana in violation of this title or any other Federal law; or

"(2) to distribute, transfer, or sell, in public or private, any marihuana, lawfully possessed, to any person for a private use within the purview of subparagraph (A) of the first paragraph of this subsection, if such distribution, transfer, or sale is not made for profit.

"(b) Notwithstanding the provisions of section 511 or any other provision of this title or any other Federal law, marihuana in the lawful possession of any person shall not be considered contraband and shall not be subject to seizure or forfeiture by the United States.

"(c) In the possession of any person charged with an offense in violation of any Federal law, the fact that such person was suffering from marihuana intoxication at the time of the commission of that offense shall not be a defense to that charge or any element thereof.

"(d) For purposes of subparagraph (B) of paragraph (1) of subsection (a) of this section, the possession of marihuana in an amount not to exceed three ounces shall be deemed to be a reasonable amount, if such possession is incident to a private use within the purview of subparagraph (A) of paragraph (1) of subsection (a) of this section, and is not with the intent to distribute, transfer or sell such marihuana in violation of this title or any other Federal law.".

(EXHIBIT 1)

AMERICAN CONSERVATIVES SHOULD REVISE THEIR POSITION ON MARIJUANA

(By Richard C. Cowan)

I am going to start with a few assertions of facts that, for all I know that they will be challenged, I consider to have been established by responsible scientific inquiry:

1. Marijuana is non-addictive—I use the word technically.

2. The use of marijuana does not in itself lead to the use of heroin.

3. No one has ever died from an overdose of marijuana.

4. Marijuana *used in moderation* causes no identified physical or mental problems for individuals who are otherwise healthy.

5. Marijuana does not induce criminal behavior or sexual aberration. In fact, it tends in most users to inhibit violence.

6. Marijuana *in moderate use* has little effect on the driving ability of experienced users of it—the contrast with socially equivalent alcohol consumption is to the disadvantage of alcohol.

7. Long-term abuse (gross overuse) should be assumed to be harmful but in fact there is as yet no conclusive evidence to that effect.

8. The moderate use of marijuana does not lead to changes in social behavior or to a loss of motivation. It may correspond with an observable change in people's lives but it is not the cause of that change.

9. Twenty-five million people use or have used marijuana. Marijuana is readily available today to anyone of minimum ingenuity who looks for it.

These assertions are of course contrary to what most agencies of the government have been telling us for the past forty years. (NATIONAL REVIEW has frequently ventilated the official line on marijuana.) Whether you doubt my assertions or not, please read *Marihuana Reconsidered* by Dr. Lester Grinspoon and *Marijuana, The New Prohibition* by John Kaplan. Both authors begin their research, by their own admission, disposed in favor of the current legal proscriptions. Both came to the conclusion that our present laws are doing no good and a great deal of harm.

If you read those books and disagree, fine. But if you do not read them and you continue to support (or even if you fail to oppose) sending thousands of young people to prison, you are acquiescing in their punishment out of ignorance. A harsh statement, but true, I think.

It is my thesis that:

1. *Conservatives should support enlightened drug education.* Existing marijuana laws are destroying the credibility of drug education.

The key to education is credibility. Contrast the statements above with the postulates of the conventional government position. In deference to conventional notions about public enlightenment, I wish I could say that "recent discoveries" are responsible for such facts as are more commonly acknowledged nowadays concerning marijuana, In fact, many of them were available to anyone who cared to look into the matter even when the present laws were promulgated in the 1930s.

Accordingly, I ask you: If you are a young person who has found by experience—yours and your friends—that virtually everything you have been told about marijuana is totally untrue—wouldn't you question what they tell you about LSD, heroin, speed?

Drug abuse in our schools is a serious problem. Barbiturates and amphetamines and a variety of badly made, dangerously contaminated psychedelics are taking a fearful toll, even as parents and teachers rave along about marijuana. The point is not that the kids should be encouraged to use pot—certainly not; but that they should be told the truth about it.

The reasons why human beings should refrain from consuming drugs (including alcohol) during adolescence are undeniable. But the fact of it is that adolescents are going to drink the contraband beer, and smoke the contraband grass, and social reform should concern itself with the discrepancy between the law and the social usefulness of that law. The present laws, I maintain, not only have not worked, they are counterproductive.

2. *Conservatives should encourage a uniform respect for the law.* At present, 25 million people have, by common estimate, smoked marijuana at least once. Among college students—especially at the prestigious liberal-arts universities—a majority have smoked marijuana, according to the relevant polls, at least once. A significant minority of these take marijuana with some regularity, especially on weekends.

What is it that American conservatives favor? Search-and-destroy young Americans—one-eighth of the entire population—who experiment with the forbidden drug? Inasmuch as no one in sight appears to be in favor of busting the University of Illinois—or Yale—or Ole Miss—and sending all the malefactors to jail, just what do we conservatives propose?

We are, by the current standards, raising a generation of presumptive criminals—because we have so defined them. The situation is aggravated by the necessary use of undercover agents who regularly practice entrapment. How else does one enforce laws against victimless crimes, concerning which no one files a complaint?

But the story gets worse when the harshness of the penalties is considered. In general, the sale and possession of small quantities of marijuana have been punished more severely than crimes against person and property.

In my native Texas, for example, the average sentence for possession is nine years. At least one man is serving life for possession of a matchbox-full.

Long sentences are *still* being handed out in many states.

Arrests for possession of marijuana rose tenfold from 1965 to 1970; to more than 188 thousand. The FBI recorded a continued increase in drug crimes last year, and unless there is a (most unlikely) decline it is likely that as many as 250,000 young people will be arrested on possession charges this year.

The laws are themselves scientifically indefensible insofar as they proscribe marijuana as a "narcotic stimulant to the central nervous system." Marijuana is in fact not a narcotic, and narcotics are not in fact stimulants. They are depressants. For many years, under the Uniform Narcotic Drug Act, marijuana was legally classified as a narcotic; *not* because it had ever been supposed that such a classification was scientific, but because, as one legislator put it in 1932, "there is a universal antipathy to the use of narcotics"; and it was "antipathy," rather than understanding, that the law was intended to create. The distinction between marijuana and narcotics was restored by the Controlled Substances Act of 1970, but several states still persist in lumping them together, as do many citizens.

Would you respect a law that defined yogurt as a "vegetarian meat product"?

Laws should make sense, they should be uniformly enforced, they should carry a punishment in proportion to the damage done by the offender, and they should have the effect desired (in this case the discouragement of the use of marijuana). Our marijuana laws meet none of the above specifications, and while there are those who obey them, only fools respect them.

3. *Conservatives should recognize bureaucratic incompetence in whatever guise.*

Most government programs start when a politician discovers a "national disgrace." A new department is set up, billions are appropriated—and sure enough, the problem gets worse.

Marijuana was little known in the Thirties, until it was "discovered" by Harry Jacob Anslinger, the longtime head of the Narcotics Bureau. At that time there were perhaps as few as fifty thousand users, mostly blacks and Latin Americans, plus a few bohemians and hippies.

After 35 years of propaganda and repression, the drug has been introduced to 25 million people. As bureaucratic fiascos go, not bad.

It is incredible that conservatives should continue to support the bureaucratic mess that comprises the marijuana laws.

It is even more incredible that at a time when the crime rate soars, the hard-pressed police, courts and prisons, should be burdened with 25 million putative marijuana criminals.

Finally, it is puzzling—and frightening—to suppose that American conservatives sanction a tissue of laws the effect of which is to cast lackadaisical marijuana users—if they are so unlucky as to be a) caught, by b) the wrong people—into prisons which they share with men of tempered felonious disposition. The law defines them as criminals; the enforcement of the law makes them such.

4. *Conservative leadership is essential to an effective reform of the laws.*

If the present trend continues, the use of marijuana will soon approach market saturation and the use of it will level off. However, as more and more of the population become users—and users grow older—it will be increasingly rare for a jury to convict or a judge to sentence a defendant for possession or even sale of marijuana. While this may be an improvement from a humanitarian point of view, it leaves thousands of Americans rotting in jail for what millions on the outside are routinely doing.

For society as a whole it means widespread use of the drug without any objectively sanctioned controls on strength (how strong before it becomes hash?), quality (adulteration with opiates is routine), or distribution to minors. Continued outlawing will mean the growth of a large criminal industry analogous to the fabled bootleggers, and all the social ills that result from such a situation.

It will mean that it will not be possible to discourage by taxation the use of hashish (which is to marijuana roughly what 100 proof rum is to wine). And—worst of all—it will leave marijuana distribution in the same hands as methadone, LSD, barbiturates, amphetamines, and even heroin.

Finally, when legalization does come—say ten or fifteen years from now at the latest (assuming conservative opposition), or in five years (with conservative acquiescence)—patterns of use and distribution will have been set, and control will be increasingly difficult to enforce.

If on the other hand conservatives support the fight for legalization, we can have effective and humane laws that will succeed where the present system has so dismally failed—in keeping the drug from children; in making the vital distinctions. A prudent relaxation of the law will make possible some realistic restraints. Those substances which are now promiscuously forbidden will cease to be promiscuously consumed; as society distinguishes between pot and heroin, its children will be encouraged to learn the difference too. Moreover, gentler laws would soften the impact of their own violation: Under present laws, as has been pointed out, hard and soft drugs tend to circulate through the same channels; but under new laws, designed to regulate rather than to prohibit, even the younger teen-ager whose pot-smoking is still illicit will tend to get it from an older brother or friend who has legal access (much as he now gets beer), instead of from the specialist in illegal drugs.

5. *Conservatives should take the lead in urging the decriminalization of individual use of marijuana.*

The marijuana laws have encouraged a disrespect for the laws; they have destroyed the credibility of government; and they have estranged the young.

The importance of marijuana to its youthful users is less the pleasure it gives the individual than the tribal value of it. The drug's use in the counterculture is analogous to the use of alcohol in the Establishment, as a social lubricant. Any attempt at interference with so fundamental a part of the new social life is doomed to failure in a free society.

6. *The notion that marijuana can, in and of itself, undermine the moral fabric of society is contrary to basic conservative philosophy.*

The notion that the use of marijuana is, or leads to, moral degeneracy is not sustained by any scientific investigation of the drug.

However, a moral society, like a moral individual (or a healthy individual for that matter) will use a drug: for recreation (alcohol); to alleviate pain (aspirin); to help him face and fulfill his obligations through crises (tranquilizers); but so long as the individual loves his family, his country and himself, he is going to use drugs to further his objectives, not to undermine them.

The superstition that cannabis is responsible for the muddlement of the student generation goes contrary to established conservative premises.

The hysterical myths about marijuana that have led conservatives to condone massive

programs of social engineering, interference in the affairs of individuals, monstrous bureaucratic waste, the alienation of youth whom we struggle to attract to our institutions—are a great and current social menace.

7. *How do conservatives justify the hard data:* over 250,000 young people arrested every year (seventy thousand in California alone), tens of thousands put in jail or prison for long periods, lives disrupted and even ruined, families divided, records besmirched, a life of obstracism?

This is being done in our name?

I, for one, bitterly resent this; but, more, I fear its consequences. If the effect on individuals is tragic, the effect on society is disastrous—disastrous for our institutions, the rule of law, political stability, even public health. This is not being done by the enemy without, but by those to whom *we* have delegated the power and the authority to defend us. They have been a party to superstitions that are as false in content as they are in tone, but we cannot just blame them.

If now that we know that we have been deceived, now that the evidence is there for all to see, our jails full, our youth increasingly alienated and confused, if in the face of all this we do not *take the lead*, how are we conservatives going to speak to America, and how is our America going to speak to the world—of freedom and charity?

[From the National Review, Dec. 8, 1972]

THE SPIRIT OF THE LAW

(By William F. Buckley, Jr.)

It is easy to denigrate any cause by the technique of putting it alongside other, nobler, causes. Thus a decade or so back Mr. John Roche elegantly dismissed the fear of guilt by association as ranking, by his hierarchy of fears, between Fear No. 25 and Fear No. 27, the former being Mr. Roche's fear of college presidents, the latter his fear of being bitten to death by piranhas. The trouble with the technique is that it does not allow for latitudinarian preoccupation: with individuated preoccupation. Somewhere, somebody is being eaten by piranhas, or is in danger of being eaten by piranhas. I know Professor Hart both as a friend and as a craftsman, and he is altogether capable of spending a week trying to understand a single Canto of Ezra Pound, or perfecting a paragraph in one of his own books. I would never think to say to him that there are greater concerns in the world than the penetration of poetic marginalia, or graver causes than belletristic purity.

I do not see why we cannot proceed on the assumption that although the fear of marijuana, the need for marijuana, and the ignorance of marijuana, are neither a) the central concern of a balanced society; nor b) the most urgently needed social indulgence; nor c) the area of legislative concern about which there is the greatest ignorance—still I say: Cowan is entitled to his preoccupation, and I for one find his arguments not merely plausible, but overwhelming.

It is true, as Mr. Burnham points out, that the situation is in flux. But it is in flux because there is pressure brought to bear. It was in 1969 that Senator Barry Goldwater came out for the legalization, or more precisely, the decriminalization of pot. Senator Goldwater! Three years after he did so, a young man was raided in an upstate college in New York State, and was found to be in possession of marijuana. He resides now at Attica. Attica! Even if none of us were to bestir ourselves by a written paragraph or a spoken word in behalf of a reform in the draconian laws that govern the use of marijuana, probably common sense would assert itself, in due course, and the laws would be modified. But that kind of resignation is hardly consistent with the imperatives of a journal of opinion. Our responsibility is to move ahead of public opinion: indeed to influence public opinion. Mr. Cowan insists quite simply that there *are* no arguments, of any force or gravity, by which to justify the treatment routinely given to people who use marijuana here and there in the United States. I flatly agree with him.

While agreeing with Messrs. Burnham and Hart on the point that science is not only hubristic but childish when it says that the case for the innocence of pot is largely established. It is like the scientific law that declares a man to be under the influence of alcohol and therefore unfit to drive a car when his alcoholic content is .002—or whatever. This even though everybody knows—even Einstein must have known—the man who if he has .0000002 alcohol is a menace, vehicular and social; whereas there are those whose alcoholic content is usually .2, or whatever, and manage world wars and great speeches—if not quite adequate peace terms—altogether competently. Pot is a psychic poison to some people, and the hell with those who think otherwise: they are wrong.

Do we therefore legalize pot? Not, I should say, in the sense Mr. Burnham caricatures. But the President's Commission did not advocate a distinction that is purely idle when it recommended that pushers should be illegal, but consumers not so. Thus it was, mostly, under prohibition. Thus it is, by and large, with prostitution; and even with gambling. The gentle animadversions of the law are not useless. They do become, however, a great menace rather than a benefaction when they are taken too literally, and I understand this to be what Mr. Cowan is fighting to free us from, and I am on his side.

EXHIBIT 2

A CONSERVATIVE APPROACH TO THE POT QUESTION

(By James J. Kilpatrick)

In their current issue, the editors of National Review grapple with the matter of marijuana, but with deference to my conservative colleagues, I think they let the main conservative questions slip away.

The principal article, urging that marijuana be legalized, comes from Richard C. Cowan. Editors James Burnham and Jeffrey Hart take a generally opposing view. William F. Buckley, Jr., editor-in-chief, flatly supports Cowan. "I for one find his arguments not merely plausible, but overwhelming."

On the face of it, this is an astonishing position to be taken by the nation's leading journal of conservative opinion. Yet if we are prepared to accept the validity of certain assumptions advanced by the proponents of pot, the position is not astonishing at all.

The question is deeply troubling, but it is not unusual. The same issues are involved in such matters as homosexuality and pornography. And if the problem is turned upside down, one finds the same principles, applied in reverse, in such diverse matters as the automobile air bag and the fluoridation of public water supplies. The problem is to define the proper role of government in a free society.

The conservative philosophy holds, if I understand it correctly, that within certain limitations, a free people should be just that: Free. What are these limitations? They are the limitations fixed by the impact of my conduct on your rights. As a general proposition, conservatives hold that no human conduct should be prohibited by law unless that conduct causes positive harm to the innocent bystander or to society as a whole.

We see this proposition at work in a thousand ways. In theory, a man is free to build a glue factory; but he is not free to build it where it causes offense to his neighbors. The citizen is free to play his stereo; but he is not free to play it at full volume at 2 o'clock in the morning. A motorist is free to travel where he pleases, but he has to stop at the stop signs. An activist is free to harangue a crowd, but he cannot provoke a riot. And so on. In every instance, the test is simply the harm that is done.

When homosexuality was held in nearly universal abhorrence, a valid case could be made against the employment of homosexuals in sensitive government positions: They were subject to blackmail. The argument is of doubtful validity now. The justification for laws against pornography lies in the belief (a belief not susceptible to easy proof) that pornography corrupts society as a whole.

The other side of the proposition, as I say, lies in conservatives' hostility to laws that do not undertake to prohibit evil, but seek to compel good: The requirement for air bags, the fluoridation of public water supplies. But put those aside.

Getting back to the matter of marijuana: If criminal laws against the smoking of pot are to be justified, they have to be justified in terms of the harm that marijuana causes, not to the individual, but to society. There is some evidence, I understand, that marijuana tends to slow certain physical reactions, so that a driver under the influence of marijuana becomes a danger on the highway. Cowan flatly denies this. In any event, this is an argument against smoking-and-driving, not against smoking.

A second line of argument holds that the marijuana habit leads to heroin addiction; heroin is universally regarded as a serious social evil, imposing heavy burdens upon society as a whole. If this causative theory is true, this argument would suffice. Cowan and other serious students of the subject deny it absolutely.

These are the questions conservatives ought to be asking. Most persons of my generation are doubtless against marijuana. We equate it vaguely with sin and immorality. But I keep coming back to Mencken's law, that in the absence of provable social harm, when A undertakes by law to impose his moral values on B, A is a scoundrel. If conservatives are to be consistent in their philosophy, they probably should join Cowan and Buckley in urging that criminal sanctions against mere possessions and use of marijuana be repealed.

EXHIBIT 3

[County of Los Angeles, 1972 Grand Jury, Los Angeles, Calif.]

POSITION PAPER ON MARIJUANA RECOMMENDATION

The Los Angeles County Grand Jury has voted to concur with the position of the National Commission on Marijuana and Dangerous Drugs in its recommendation that private possession of marijuana for personal use no longer be a criminal offense.

The conclusions of the Grand Jury, arrived at after some weeks of study and hearings on the subject, were as follows:

(1) That marijuana for personal use should not be considered a crime.

(2) That the use of marijuana in public should not be allowed.

(3) That the Grand Jury agrees with efforts to discourage the use of marijuana and does not recommend legalization.

(4) That the recommendation in no way suggests changes in present laws with regard to cultivation or sale.

(5) That a plea of marijuana intoxification should not be used as a defense in any criminal proceedings.

(6) That state legislatures which have improperly classified marijuana as a narcotic immediately redefine it according to the standards of the recently adopted (Federal) Uniform Controlled Substances Law.

The Jury considered several factors to be extremely significant in arriving at the final decision and would like to elucidate these for your benefit in better understanding our final position.

HEALTH FACTORS

There is overwhelming medical evidence to the effect that casual users suffer no harm or physical dependency and that aggressive behavior does not result from the use of marijuana. Less than 2% of the estimated 24,000,000 Americans who have ever used marijuana use it more than once a day. Therefore, its use does not constitute a major threat to public health.

In its final decision, the American Medical Association House of Delegates disregarded the recommendations of its own Council on Mental Health and its Committee on Alcoholism and Drug Abuse which had adopted the same position the Grand Jury has just taken. Even though their final recommendation was slightly more restrictive than ours, there was no debate over those parts of the report which stated that the use of small amounts of marijuana has no known harmful effects.

Similar positions to ours have been taken by the American Public Health Association, in the report on "Marijuana and Health" issued by the National Institute of Mental Health, and by Dr. John H. Finlator, ex-deputy director of the Bureau of Narcotics and Dangerous Drugs.

COSTS

The millions of dollars spent annually to arrest, prosecute, try, incarcerate and "rehabilitate" marijuana users could, and should, be better spent on more serious offenses, particularly crimes of violence.

DISCRIMINATORY ENFORCEMENT

Research has shown that the present laws are not uniformly enforced, resulting in heavier fines and longer sentences in certain areas of the state, the country and in certain communities. In California 41.3% of those convicted are incarcerated, versus only 6% nationally. There is considerable variation in the handling of cases depending on the leniency (or lack thereof) of the judge. This entire problem breeds disrespect for the law in general which we feel is harmful to the public good, particularly when this is compounded by the general feeling that the personal conduct is harmless. Such resentment is furthered by the law's lenient attitude toward known harmful drugs such as alcohol and tobacco.

Along these same lines, we are extremely concerned about the apparent discrepancy between the statements made by law enforcement and the actual statistics in regard to arrests. The law enforcement agencies have stated that they are interested in apprehending the seller and not the user. Yet nationally, of 200,000 arrests, 93% were for possession, 88% arrested were under 25 years old and had no prior record and 66% possessed less than one ounce. In the State of California in 1970, of 11,117 arrests, 83% were for possession. It appears that the cure may be worse than the disease in terms of human suffering imposed on otherwise law-abiding citizens. We feel we should learn the bitter lesson which prohibition taught us before further damage is done. Since it is not possible to achieve the elimination of marijuana, it would appear that the drug's relative potential for harm to individuals and society does not justify a social policy designed to seek out and punish those who use it.

CONCLUSION

Notwithstanding all the above statements, we feel that by refusing to actually legalize marijuana, it will still be possible to discourage its use. Further we have concluded that if law enforcement personnel can concentrate on major suppliers, the quantity of marijuana actually available on the market can be sharply curtailed.

We recognize that our opinion is not a popular one among all groups and feel that many legislators will wish to withhold their support of our recommendation until after the election this year, but we urge you to carefully consider our position and give your thoughtful attention to the conclusions of the Grand Jury.

Mr. HUGHES. Mr. President, I am pleased once again to join the distinguished senior Senator from New York (Mr. JAVITS) in reintroducing a bill designed to carry out the basic recommendations of the National Commission on Marihuana and Drug Abuse.

Over the past few years exhaustive studies of marihuana have been conducted under the auspices of the National Institute of Mental Health and of the National Commission on Marihuana and Drug Abuse. These studies have covered the medical, social, and legal aspects of the subject. Thus far we have no persuasive evidence that marihuana is seriously harmful to either the physical or the mental health of the individual or to society, when taken in the moderate amounts customary among all but about 2 percent of those who use it. For that small minority who do develop a psychological dependency, it appears that marihuana is a symptom rather than a cause of their difficulty.

The National Commission carefully weighed these medical and social facts and concluded that our criminal laws should be adjusted to take them into account. It then recommended changes in the law to remove the criminal penalties for the possession of marihuana for personal use and for the distribution of small amounts in private for little or no remuneration. Our bill reflects this position with some additional adjustments intended to eliminate inconsistencies that could lead on the one hand to a flouting of the law, or on the other to harassment by law enforcement personnel.

Members of the Senate will recall that the Commission's report was somewhat controversial and widely misunderstood. We were accused of recommending the legalization of marihuana even though we did not suggest eliminating criminal penalties for cultivation, possession with intent to sell for a profit, or sale or distribution for a profit. We were also criticized for what appeared to some to be a contradiction in that we proposed to hold the possessor of small amounts innocent while penalizing the seller.

This apparent contradiction was the result of our efforts to serve several distinct and vital public interests while recognizing the social and historical contexts in which public policy toward marihuana has developed.

First, we sought to move the law more closely into accord with the current body of knowledge about marihuana. We believed that severe criminal penalties could not be justified for the mere possession for private use of a substance not known to present substantial danger to the individual or to society.

Second, we hoped to eliminate the very damaging impact we know these criminal penalties are having on millions of young Americans. They believe with justification that the discrepancy between the facts and the law is unfair and hypocritical. Moreover, thousands of them are being arrested and convicted, with resulting criminal records which will haunt them throughout their lives.

Third, by retaining penalties for those who sell marihuana for a profit, we were preserving the governmental policy of discouraging the use of marihuana. We believe that Government should not encourage the use of any drug or psychotropic substance for recreational rather than medical purposes. On this point some of our critics assert that legalization with appropriate controls is not necessarily encouragement by Government. They cite alcohol and nicotine as examples.

We did not ignore this argument. However, we concluded that historical and social factors justified treating marihuana differently. Since it is now illegal, we felt that a change to legalization would inevitably be construed as a policy of Government encouragement. Alcoholic beverages and nicotine, on the other hand, were legal and their usage became imbedded in our society long before their serious dangers to health were generally recognized. The fact that they are legal does not, therefore, necessarily indicate a governmental policy of encouraging their use. Nor does the legality of these substances, which are known to be dangerous, justify the legalizing of yet another drug for recreational purposes.

Weighing all of these interests, we decided on balance that the national interest would best be served by a policy of "decriminalization" rather than "legalization." This course, will, we hope, alleviate the injustices resulting from the criminal penalties against the individual user of marihuana. At the same time it will continue to discourage the use of marihuana by retaining penalties against those who sell for a profit. This position seems to me to be reasonable, and I believe it is expressed fairly in our bill.

By Mr. HART:

S. 747. A bill to amend the Handgun Control Act of 1965. Referred to the Committee on the Judiciary.

Mr. HART. Mr. President, as I did in 1971 today I arise to introduce my bill to limit handgun ownership in America.

Once again tragedy has reminded us of the desperate need for gun control. There is little chance of curbing violent crime until handguns are no longer easily available to all comers.

In years past I have supported the measures to control handguns offered by my colleagues who have worked so courageously in this area: Senator BAYH, Senator KENNEDY, and Senator STEVENSON. I will continue to support their proposals.

However, my bill is different, for I have concluded that privately owned handguns simply have no place in today's society. This bill bans possession of handguns by anyone, except police, the military, and security guards. Limited exceptions are made for federally licensed target pistol clubs which securely store their weapons, and for inoperable collectors items. For 1 year following enactment, persons delivering handguns to depository agencies would be paid the value of their weapon, and handguns may be voluntarily surrendered at any time thereafter without penalty.

The bill does not affect shotguns and rifles in any way. I must admit that my bill, first introduced in 1971, has had slow going in Congress. It was called up on the

Senate floor as an amendment to a more modest gun control measure last summer and received only seven votes. Nevertheless, I continue to believe that private handgun abolition, or something close to it, is necessary and inevitable.

Our attention is caught by the shooting of policemen and others by street criminals. Only by drying up the vast reservoir of guns can we attempt to keep them out of the hands of these lawless persons.

But we must also understand the most important point: Even if some criminals could still obtain handguns, the rest of us would be safer if we did not possess them.

The fact is that the bulk of homicides committed each year—not to mention serious injury—do not involve criminals attacking strangers, but rather involve acquaintances. Handguns are rarely used successfully by law-abiding citizens for protection. They are far more likely to be used in a quarrel between friends or relatives with tragic results.

After all, if we establish that the readily available handgun is the most serious threat to the safety of ordinary Americans, then is it not the duty of American Government to make the weapon less available?

Even if this bill were enacted, it would not immediately dry up the Nation's supply of handguns. That would depend on citizen willingness to accept the fact that handguns are a totally unacceptable element in our society, and that could take a long time.

Passage of this bill surely would be accompanied by widespread discussion and media coverage which would acquaint the public with the dangers of handgun ownership. And in the year following enactment, the voluntary surrender of many weapons, as well as leadership by public officials, would continue this educational effort.

Last fall when I offered this bill as an amendment to the Saturday night special bill, I explained at some length the facts which I feel support this approach. I also put in the RECORD at that time several endorsements of the approach.

The remarks also included a copy of the text of the bill and a memorandum of law on the constitutionality of the bill under the second amendment. It may be useful to those who wish to take another look at the problem to have this material again available. Accordingly, I ask unanimous consent that my speech of last year be printed in the RECORD, along with the other items at the conclusion of my remarks today.

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

S. 747

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Handgun Control Act of 1972".

SECTION 1. The Congress hereby finds and declares—

(a) that annual sales of handguns in the United States have risen sharply in the last decade, bringing the total number of handguns in private hands to approximately twenty-four million by the end of 1968; and

(b) that handguns play a major role, and a role disproportionate to their number in comparison with long guns, in the commission of homicide, aggravated assault, and armed robbery, and that the percentage of violent crimes in which handguns are used is increasing; and

(c) that most homicides are committed in altercations between relatives, neighbors, or other acquaintances, rather than in a confrontation between strangers; and

(d) that handguns in the home are of less value than is commonly thought in defending against intruders, and are more likely to increase the danger of a firearm fatality to the inhabitants than to enhance their personal safety; and

(e) that with few exceptions, handguns are not used for sporting or recreational purposes and that such purposes do not require keeping handguns in private homes; and

(f) that more than one-half of all handguns are acquired secondhand and that licensing and restrictions on sale of new handguns will not significantly reduce handgun crime and handgun violence; and

(g) that violent crimes perpetrated with handguns constitute a burden upon and interfere with interstate and foreign commerce and threaten the internal security and domestic tranquility of the Nation; and

(h) that fear of firearms crimes discourages citizens from traveling between the States to conduct business or to visit the Nation's Capital; and

(i) that crimes committed with guns have disrupted our national political processes, and threaten the republican form of government within the States as guaranteed by article IV of the Constitution; and

(j) that a national firearms policy which restricts the availability of handguns for non-law-enforcement and non-military purposes will significantly reduce violent crime, reduce deaths from handguns, and reduce other handgun violence in the United States.

SEC. 2. Title 18, United States Code, is amended by inserting immediately after chapter 50 thereof the following new chapter:

"Chapter 50A—HANDGUNS

"Sec.
"1091. Unlawful acts.
"1092. Licensing.
"1093. Penalties.
"1094. Exceptions.
"1095. Voluntary delivery to law enforcement agency; reimbursement.
"1096. Rules and regulations.
"1097. Effect on State law.
"1098. Separability clause.
"1099. Appropriations.
"1100. Definitions.

"§ 1091. Unlawful acts

"(a) Except as provided in section 1094 of this chapter and in subsection (c) of this section, it shall be unlawful for any person to import, manufacture, sell, buy, transfer, receive, or transport any handgun and handgun ammunition.

"(b) Except as provided in section 1094 of this chapter and in subsection (c) of this section, it shall be unlawful after one hundred and eighty days from the effective date of this chapter, for any person to own or possess any handgun or handgun ammunition.

"(c) The Secretary may, consistent with public safety and necessity, exempt from the operation of subsection (a) and subsection (b) of this section such importation, manufacture, sale, purchase, transfer, receipt, possession, ownership, or transportation of handguns and handgun ammunition by importers, manufacturers, or dealers, licensed under chapter 44 of this title, and by pistol clubs licensed under this chapter, as may in his judgment be required for the operation of such pistol clubs or for purposes in section 1094 of this chapter.

"(d) It shall be unlawful for any licensed importer, manufacturer, or dealer to sell or otherwise transfer any handgun or handgun ammunition to any person, except another licensed importer, manufacturer, or dealer, without presentation by the purchaser or recipient of written verification that the receipt or purchase is being made by or on behalf of a person or government agency eligible to obtain and possess handguns under section 1094 of this chapter or a pistol club licensed under this chapter.

"(e) Every manufacturer, importer, and dealer who sells or otherwise transfers handguns or handgun ammunition shall maintain records of sale or transfer of handguns and handgun ammunition in such form as the Secretary may by regulations provide and shall permit the Secretary to enter the premises at reasonable times for the purpose of inspecting such records.

"§ 1092. Licensing

"(a) A pistol club desiring to be licensed under this chapter shall file an application for such license with the Secretary. The application shall be in such form and contain such information as the Secretary shall by regulation prescribe. The fee for such license shall be $25 per year.

"(b) Any importer, manufacturer, or dealer desiring to be licensed under this chapter shall apply as provided in chapter 44 of this title.

"(c) Any application submitted under subsection (a) shall be approved if—

"(1) no member of the pistol club is a person whose membership and participation in the club is in violation of any applicable State laws;

"(2) no member of the pistol club is prohibited from transporting, shipping, or receiving firearms or ammunition in interstate or foreign commerce under section 922(g) or (h) of this title;

"(3) no member of the pistol club has willfully violated any of the provisions of this chapter or of chapter 44 of this title or any regulations issued thereunder;

"(4) the pistol club has not willfully failed to disclose any material information required, or has not made any false statement as to any material fact in connection with its application;

"(5) the club has been founded and operated for bona fide target or sport shooting and other legitimate recreational purposes; and

"(6) the pistol club has premises from which it operates and—

"(A) maintains possession and control of the handguns used by its members, and

"(B)(i) has procedures and facilities for keeping such handguns in a secure place, under the control of the club's chief officer, at all times when they are not being used for target shooting or other sporting or recreational purposes, or

"(ii) has effected arrangements for the storage of the members' handguns in a facility of the local police department or other nearby law enforcement agency.

"(d)(1) The Secretary must approve or deny an application for a license with the sixty-day period beginning on the date it is received. If the Secretary fails to act within such period, the applicant may file an action under section 1361 of title 28 to compel the Secretary to act. If the Secretary approves an applicant's application, such applicant shall be issued a license upon payment of the prescribed fee.

"(2) The Secretary may, after notice and opportunity for hearing, revoke any license issued under this section if the holder of such license has violated any provision of this chapter or of chapter 44 of this title or any rule or regulations prescribed by the Secretary under such chapters. The Secretary's action under this paragraph may be reviewed only as provided in subsection (e) of this section.

"(e)(1) Any person whose application for a license is denied and any holder of a license which is revoked shall receive a written

notice from the Secretary stating specifically the grounds upon which the application was denied or upon which the license was revoked. Any notice of revocation of a license shall be given to the holder of such license before the effective date of the revocation.

"(2) If the Secretary denies an application for, or revokes, a license, he shall, upon request by the aggrieved party, promptly hold a hearing to review his denial or revocation. In the case of of a revocation of a license, the Secretary shall upon the request of the holder of the license stay the effective date of the revocation. A hearing held under this paragraph shall be held at a location convenient to the aggrieved party.

"(3) If after a hearing held under paragraph (2) the Secretary decides not to reverse his decision to deny an application or revoke a license, the Secretary shall give notice of his decision to the aggrieved party. The aggrieved party may at any time within sixty days after the date notice was given under this paragraph file a petition with the United States district court for the district in which he resides or has his principal place of business for a judicial review of such denial or revocation. In a proceeding conducted under this subsection, the court may consider any evidence submitted by the parties to the proceeding. If the court decides that the Secretary was not authorized to deny the application or to revoke the license, the court shall order the Secretary to take such action as may be necessary to comply with the judgment of the court.

"(f) Each licensed pistol club shall maintain such records of receipt, sale, or other disposition, of handguns at such place, for such period, and in such form as the Secretary may by regulations prescribe. Such pistol clubs shall make such records available for inspection at all reasonable times, and shall submit to the Secretary such reports and information with respect to such records and the contents thereof as he shall by regulations prescribe. The Secretary may enter at reasonable times the premises (including places of storage) of any pistol club for the purpose of inspecting or examining (1) any records of documents required to be kept by such pistol club under the provisions of this chapter or chapter 44 of this title and regulations issued under such chapters, and (2) any handguns or ammunition kept or stored by such pistol club at such premises.

"(g) Licenses issued under the provisions of subsection (c) of this section shall be kept posted and kept available for inspection on the premises covered by the license.

"(h) The loss or theft of any firearms shall be reported by the person from whose possession it was lost or stolen, within thirty days after such loss or theft is discovered, to the Secretary. Such report shall include such information as the Secretary by regulation shall prescribe, including, without limitation, the date and place of theft or loss.

"§ 1093. Penalties

"(a) Whoever violates any provision of section 1091 of this chapter shall be fined not more than $5,000, or imprisoned not more than five years, or both, and shall become eligible for parole as the Board of Parole shall determine.

"(b) Whoever knowingly makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of an importer, manufacturer, dealer, or pistol club, licensed under this chapter, or in applying for a pistol club license under the provisions of this chapter, shall be fined not more than $5,000, or imprisoned not more than five years, or both, and shall become eligible for parole as the Board of Parole shall determine.

"(c) Any handgun or handgun ammunition involved or used in, or intended to be used in, any violation of the provisions of this chapter or chapter 44 of this title or any rule or regulation promulgated thereunder, or any violation of any other criminal law of the United States, shall be subject to seizure and forfeiture and all provisions of the Internal Revenue Code of 1954 relating to the seizure, forfeiture, and disposition of firearms shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter.

"(d) Except as provided in subsection (b), no information or evidence obtained from an application or certificate of registration required to be submitted or retained by a natural person in order to comply with any provision of this chapter or regulations issued by the Secretary shall be used, directly or indirectly, as evidence against that person in a criminal proceeding with respect to a violation of law occurring prior to or concurrently with the filing of the application for registration containing the information or evidence.

"§ 1094. Exceptions

"(a) The provisions of this chapter shall not apply with respect to the importation, manufacture, sale, purchase, transfer, receipt, or transportation of any handgun or handgun ammunition which the Secretary determines is being imported or manufactured for, sold, or transferred to, purchased, received, owned, possessed, or transported by, or issued for the use of—

"(1) a professional security guard service which is licensed by the State in which the handgun is to be used, and which is authorized to provide armed security guards for hire; or

"(2) the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof.

"(b) Every security guard service purchasing, receiving, owning, possessing, or transporting handguns under subsection (a) shall maintain records of receipt, sale, ownership, and possession of handguns in such form as the Secretary may provide and permit the Secretary to enter the premises at reasonable times for the purpose of inspecting such records.

"(c) The provisions of this chapter shall not apply with respect to the importation, sale, purchase, transfer, receipt, or transportation of a handgun manufactured before 1890, or any other handgun which the Secretary determines is unserviceable, not restorable to firing condition, and intended for use as a curio, museum piece, or collectors' item.

"§ 1095. Voluntary delivery to law enforcement agency; reimbursement

"(a) A person may at any time deliver to any Federal, State, or local law enforcement agency designated by the Secretary a handgun owned or possessed by such person. The Secretary shall arrange with each agency designated to receive handguns for the transfer, destruction, or other disposition of all handguns delivered under this section.

"(b) Upon proof of lawful acquisition and ownership by a person delivering a handgun to a law enforcement agency under this section, within one hundred and eighty days of the effective date of this chapter, the owner of the handgun shall be entitled to receive from the United States a payment equal to the fair market value of the handgun or $25, whichever is more. The Secretary shall provide for the payment, directly or indirectly, through Federal, State, and local law enforcement agencies, of the amounts to which owners of handguns delivered under this section are entitled.

"(c) The amounts authorized in subsection (b) of this section shall be paid out of the fees collected under section 1092(a) of this chapter to the extent that such fees are sufficient for this purpose. The remainder of amounts authorized in subsection (b) of this section shall be paid out of general revenues.

"§ 1096. Rules and regulations

"(a) The Secretary may prescribe such rules and regulations as he deems necessary to carry out the provisions of this chapter.

"§ 1097. Effect on State law

"No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.

"§ 1098. Separability

"If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of the chapter and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

"§ 1099. Assistance to the Secretary

"When requested by the Secretary, Federal departments and agencies shall assist the Secretary in the administration of this title.

"§ 1100. Appropriations

"There are authorized to be appropriated such sums as are necessary to carry out the purposes of this chapter.

"§ 1101. Definitions

"As used in this chapter—

"(1) The term 'person' and the term 'whoever' include any individual, corporation, company, association, firm partnership, club, society, or joint-stock company.

"(2) The term 'importer' means any person engaged in the business of importing or bringing handguns into the United States for purposes of sale or distribution; and the term 'licensed importer' means any such person licensed under the provisions of chapter 44 of this title.

"(3) The term 'manufacturer' means any person engaged in the manufacture or assembly of handguns for the purposes of sale or distribution; and the term 'licensed manufacturer' means any such person licensed under the provisions of chapter 44 of this title.

"(4) The term 'dealer' means (A) any person engaged in the business of selling handguns at wholesale or retail, (B) any person engaged in the business of repairing handguns or of making or fitting special barrels, or trigger mechanisms to handguns, or (C) any person who is a pawnbroker. The term 'licensed dealer' means any dealer who is licensed under the provisions of chapter 44 of this title.

"(5) The term 'fair market value' means the prevailing price on the open market for such weapons immediately prior to enactment or at the time of voluntary transfer under section 1095 of this chapter, whichever is higher, the method of establishing such prices to be prescribed by the Secretary in accordance with his authority under section 1096.

"(6) The term 'Secretary' or 'Secretary of the Treasury' means the Secretary of the Treasury or his delegate.

"(7) The term 'handgun' means any weapon—

"(A) designed or redesigned, or made or remade, and intended to be fired while held in one hand;

"(B) having a barrel less than ten inches in length; and

"(C) designed or redesigned, or made or remade, to use the energy of an explosive to expel a projectile or projectiles through a smooth or rifled bore.

"(8) The term 'handgun ammunition' means ammunition or cartridge cases, or bullets designed for use primarily in handguns.

"(9) The term 'pistol club' means a club organized for target shooting with handguns or to use handguns for sporting or other recreational purposes.

"(10) The term 'licensed pistol club' means a pistol club which is licensed under this chapter."

SEC. 3. The enforcement and administration of the amendment made by this Act shall be vested in the Secretary of the Treasury.

SEC. 4. Nothing in this Act or the amendment made thereby shall be construed as modifying or affecting any provision of—

(a) the National Firearms Act (chapter 53 of the Internal Revenue Code of 1954);

(b) section 414 of the Mutual Security Act of 1954 (22 U.S.C. 1934), as amended, relating to munitions control; or

(c) section 1715 of title 18, United States Code, relating to nonmailable firearms.

SEC. 5. The provisions of this Act shall take effect one hundred and eighty days following the date of enactment.

[From the CONGRESSIONAL RECORD]
Aug. 7, 1972]

HANDGUN CONTROL ACT OF 1972

The Senate continued with the consideration of the bill (S. 2507) to amend the Gun Control Act of 1968.

AMENDMENT NO. 1335

Mr. HART. Mr. President, I send to the desk an amendment and ask that it be stated.

The PRESIDING OFFICER. The clerk will state the amendment.

The assistant legislative clerk proceeded to read the amendment.

Mr. HART. Mr. President, the Saturday night special bill, S. 2507, reported by the Judiciary Committee closes a serious loophole in existing law. Its passage is an important step in the struggle for adequate handgun controls. The easily concealed pistols it bans are a particularly dangerous threat to public safety, and the able Senator from Indiana and his subcommittee staff deserve our thanks for their long labors on this bill. I voted for it in committee and will support it now.

But all handguns have one primary purpose, Mr. President, to kill or seriously wound other human beings. Broader controls on every type of handgun are needed if we would diminish the tragic frequency of violence in America. For me, the evidence is compelling and leads to one conclusion: privately owned handguns—of any kind—simply have no place in today's society.

Therefore, last fall I introduced a bill to prohibit possession of handguns by anyone except the military, the police, and approved security guards. Limited exemptions would be made for federally licensed target pistol clubs, if they securely stored their weapons, and for inoperable collectors' items.

My proposal, S. 2815, has been reprinted as an amendment, in the nature of a substitute, to the pending bill.

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

There being no objection, the amendment, as modified, is as follows:

AMENDMENT NO. 13335

(In the nature of a substitute)

Strike out all after the enacting clause, and insert in lieu thereof the following:

That this Act may be cited as the "Handgun Control Act of 1972".

SECTION 1. The Congress hereby finds and declares—

(a) that annual sales of handguns in the United States have risen sharply in the last decade, bringing the total number of handguns in private hands to approxmiately twenty-four million by the end of 1968; and

(b) more handguns play a major role, and a role disproportionate to their number in comparison with long guns, in the commission of homicide, aggravated assault, and armed robbery, and that the percentage of violent crimes in which handguns are used is increasing; and

(c) that most homicides are committed in altercations between relatives, neighbors, or other acquaintances, rather than in a confrontation between strangers; and

(d) that handguns in the home are of less value than is commonly thought in defending against intruders, and are more likely to increase the danger of a firearm fatality to the inhabitants than to enhance their personal safety; and

(e) that with few exceptions, handguns are not used for sporting or recreational purposes and that such purposes do not require keeping handguns in private homes; and

(f) that more than one-half of all handguns are acquired secondhand and that licensing and restrictions on sale of new handguns will not significantly reduce handgun crime and handgun violence; and

(g) that violent crimes perpetrated with handguns constitute a burden upon and interfere with interstate and foreign commerce and threaten the internal security and domestic tranquillity of the Nation; and

(h) that fear of firearms crimes discourages citizens from traveling between the States to conduct business or to visit the Nation's Capital; and

(i) that crimes committed with guns have disrupted our national political processes, and threaten the republican form of government within the States as guaranteed by article IV of the Constitution; and

(j) that a national firearms policy which restricts the availability of handguns for non-law enforcement and non-military purposes will significantly reduce violent crime, reduce deaths from handguns, and reduce other handgun violence in the United States.

SEC. 2. Title 18, United States Code, is amended by inserting immediately after chapter 50 thereof the following new chapter:

"CHAPTER 50A—HANDGUNS

"Sec.
"1091. Unlawful acts.
"1092. Licensing.
"1093. Penalties.
"1094. Exceptions.
"1095. Voluntary delivery to law enforcement agency; reimbursement.
"1096. Rules and regulations.
"1097. Effect on State law.
"1098. Separability clause.
"1099. Appropriations.
"1100. Definitions.

"§ 1091. Unlawful acts

"(a) Except as provided in section 1094 of this chapter and in subsection (c) of this section, it shall be unlawful for any person to import, manufacture, sell, buy, transfer, receive, or transport any handgun and handgun ammunition.

"(b) Except as provided in section 1094 of this chapter and in subsection (c) of this section, it shall be unlawful after one hundred and eighty days from the effective date of this chapter, for any person to own or possess any handgun or handgun ammunition.

"(c) The Secretary may, consistent with public safety and necessity, exempt from the operation of subsection (a) and subsection (b) of this section such importation, manufacture, sale, purchase, transfer, receipt, possession, ownership, or transportation of handguns and handgun ammunition by importers, manufacturers, or dealers, licensed under chapter 44 of this title, and by pistol clubs licensed under this chapter, as may in his judgment be required for the operation of such pistol clubs or for purposes in section 1094 of this chapter.

"(d) It shall be unlawful for any licensed importer, manufacturer, or dealer to sell or otherwise transfer any handgun or handgun ammunition to any person, except another licensed importer, manufacturer, or dealer, without presentation by the purchaser or recipient of written verification that the receipt or purchase is being made by or on behalf of a person or government agency eligible to obtain and possess handguns under section 1094 of this chapter or a pistol club licensed under this chapter.

"(e) Every manufacturer, importer, and dealer who sells or otherwise transfers handguns or handgun ammunition shall maintain records of sale or transfer of handguns and handgun ammunition in such form as the Secretary may by regulations provide and shall permit the Secretary to enter the premises at reasonable times for the purpose of inspecting such records.

"§ 1092. Licensing.

"(a) A pistol club desiring to be licensed under this chapter shall file an application for such license with the Secretary. The application shall be in such form and contain such information as the Secretary shall by regulation prescribe. The fee for such license shall be $25 per year.

"(b) Any importer, manufacturer, or dealer desiring to be licensed under this chapter shall apply as provided in chapter 44 of this title.

"(c) Any application submitted under subsection (a) shall be approved if—

"(1) no member of the pistol club is a person whose membership and participation in the club is in violation of any applicable State laws;

"(2) no member of the pistol club is prohibited from transporting, shipping, or receiving firearms or ammunition in interstate or foreign commerce under section 922 (g) or (h) of this title;

"(3) no member of the pistol club has willfully violated any of the provisions of this chapter or of chapter 44 of this title or any regulations issued thereunder:

"(4) the pistol club has not willfully failed to disclose any material information required, or has not made any false statement as to any material fact in connection with its application.

"(5) the club has been founded and operated for bona fide target or sport shooting and other legitimate recreational purposes; and

"(6) the pistol club has premises from which it operates and—

"(A) maintains possession and control of the handguns used by its members, and

"(B) (i) has procedures and facilities for keeping such handguns in a secure place, under the control of the club's chief officer, at all times when they are not being used for target shooting or other sporting or recreational purposes, or

"(ii) has effected arrangements for the storage of the members' handguns in a facility of the local police department or other nearby law enforcement agency.

"(d) (1) The Secretary must approve or deny an application for a license with the sixty-day period beginning on the date it is received. If the Secretary fails to act within such period, the applicant may file an action under section 1361 of title 28 to compel the Secretary to act. If the Secretary approves an applicant's application, such applicant shall be issued a license upon payment of the prescribed fee.

"(2) The Secretary may, after notice and opportunity for hearing, revoke any license issued under this section if the holder of such license has violated any provision of this chapter or of chapter 44 of this title or any rule or regulations prescribed by the Secretary under such chapters. The Secretary's action under this paragraph may be reviewed only as provided in subsection (e) of this section.

"(e) (1) Any person whose application for a license is denied and any holder of a license which is revoked shall receive a written notice from the Secretary stating specifically the grounds upon which the application was denied or upon which the license was revoked. Any notice of revocation of a license shall be given to the holder of such

license before the effective date of the revocation.

"(2) If the Secretary denies an application for, or revokes, a license, he shall, upon request by the aggrieved party, promptly hold a hearing to review his denial or revocation. In the case of a revocation of a license, the Secretary shall upon the request of the holders of the license stay the effective date of the revocation. A hearing held under this paragraph shall be held at a location convenient to the aggrieved party.

"(3) If after a hearing held under paragraph (2) the Secretary decides not to reverse his decision to deny an application or revoke a license, the Secretary shall give notice of his decision to the aggrieved party. The aggrieved party may at any time within sixty days after the date notice was given under this paragraph file a petition with the United States district court for the district in which he resides or has his principal place of business for a judicial review of such denial or revocation. In a proceeding conducted under this subsection, the court may consider any evidence submitted by the parties to the proceeding. If the court decides that the Secretary was not authorized to deny the application or to revoke the license, the court shall order the Secretary to take such action as may be necessary to comply with the judgment of the court.

"(f) Each licensed pistol club shall maintain such records of receipt, sale, or other disposition, of handguns at such place, for such period, and in such form as the Secretary may by regulations prescribe. Such pistol clubs shall make such records available for inspection at all reasonable times, and shall submit to the Secretary such reports and information with respect to such records and the contents thereof as he shall by regulations prescribe. The Secretary may enter at reasonable times the premises (including places of storage) of any pistol club for the purpose of inspecting or examining (1) any records of documents required to be kept by such pistol club under the provisions of this chapter or chapter 44 of this title and regulations issued under such chapters, and (2) any handguns or ammunition kept or stored by such pistol club at such premises.

"(g) Licenses issued under the provisions of subsection (c) of this section shall be kept posted and kept available for inspection on the premises covered by the license.

"(h) The loss or theft of any firearms shall be reported by the person from whose possession it was lost or stolen, within thirty days after such loss or theft is discovered, to the Secretary. Such report shall include such information as the Secretary by regulation shall prescribe, including, without limitation, the date and place of theft or loss.

"§ 1093. Penalties

"(a) Whoever violates any provision of section 1091 of this chapter shall be fined not more than $5,000, or imprisoned not more than five years, or both, and shall become eligible for parole as the Board of Parole shall determine.

"(b) Whoever knowingly makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of an importer, manufacturer, dealer, or pistol club, licensed under this chapter, or in applying for a pistol club license under the provisions of this chapter shall be fined not more than $5,000, or imprisoned not more than five years, or both, and shall, become eligible for parole as the Board of Parole shall determine.

"(c) Any handgun or handgun ammunition involved or used in, or intended to be used in, any violation of the provisions of this chapter or chapter 44 of this title or any rule or regulation promulgated thereunder, or any violation of any other criminal law of the United States, shall be subject to seizure and forfeiture and all provisions of the Internal Revenue Code of 1954 relating to the seizure, forfeiture, and disposition of firearms shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter.

"(d) Except as provided in subsection (b), no information or evidence obtained from an application or certificate of registration required to be submitted or retained by a natural person in order to comply with any provision of this chapter or regulations issued by the Secretary shall be used, directly or indirectly, as evidence against that person in a criminal proceeding with respect to a violation of law occurring prior to or concurrently with the filing of the application for registration containing the information or evidence.

"§ 1094. Exceptions

"(a) The provisions of this chapter shall not apply with respect to the importation, manufacture, sale, purchase, transfer, receipt, or transportation of any handgun or handgun ammunition which the Secretary determines is being imported or manufactured for, sold, or transferred to, purchased, received, owned, possessed, or transported by, or issued for the use of—

"(1) a professional security guard service which is licensed by the State in which the handgun is to be used and which is authorized to provide armed security guards for hire; or

"(2) the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof.

"(b) Every security guard service purchasing, receiving, owning, possessing, or transporting handguns under subsection (a) shall maintain records of receipt, sale, ownership, and possession of handguns in such form as the Secretary may provide and permit the Secretary to enter the premises at reasonable times for the purpose of inspecting such records.

"(c) The provisions of this chapter shall not apply with respect to the importation, sale, purchase, transfer, receipt, or transportation of a handgun manufactured before 1890, or any other handgun which the Secretary determines is unserviceable, not restorable to firing condition, and intended for use as a curio, museum piece, or collectors' item.

"§ 1095. Voluntary delivery to law enforcement agency; reimbursement

"(a) A person may at any time deliver to any Federal, State, or local law enforcement agency designated by the Secretary a handgun owned or possessed by such person. The Secretary shall arrange with each agency designated to receive handguns for the transfer, destruction, or other disposition of all handguns delivered under this section.

"(b) Upon proof of lawful acquisition and ownership by a person delivering a handgun to a law enforcement agency under this section, within one hundred and eighty days of the effective date of this chapter, the owner of the handgun shall be entitled to receive from the United States a payment equal to the fair market value of the handgun or $25, whichever is more. The Secretary shall provide for the payment, directly or indirectly, through Federal, State, and local law enforcement agencies, of the amounts to which owners of handguns delivered under this section are entitled.

"(c) The amounts authorized in subsection (b) of this section shall be paid out of the fees collected under section 1092(a) of this chapter to the extent that such fees are sufficient for this purpose. The remainder of amounts authorized in subsection (b) of this section shall be paid out of general revenues.

"§ 1096. Rules and regulations

"(a) The Secretary may prescribe such rules and regulations as he deems necessary to carry out the provisions of this chapter.

"§ 1097. Effect on State law

"No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.

"§ 1098. Separability

"If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of the chapter and the application of such provision to other persons not similarily situated or to other circumstances shall not be affected thereby.

§ 1099. Assistance to the Secretary

"When requested by the Secretary, Federal departments and agencies shall assist the Secretary in the administration of this title.

"§ 1100. Appropriations

"There are authorized to be appropriated such sums as are necessary to carry out the purposes of this chapter.

"§ 1101. Definitions

"As used in this chapter—

"(1) The term 'person' and the term 'whoever' include any individual, corporation, company, association, firm partnership, club, society, or joint-stock company.

"(2) The term 'importer' means any person engaged in the business of importing or bringing handguns into the United States for purposes of sale or distribution; and the term 'licensed importer' means any such person licensed under the provisions of chapter 44 of this title.

"(3) The term 'manufacturer' means any person engaged in the manufacture or assembly of handguns for the purposes of sale or distribution; and the term 'licensed manufacturer' means any such person licensed under the provisions of chapter 44 of this title.

"(4) The term 'dealer' means (A) any person engaged in the business of selling handguns at wholesale or retail, (B) any person engaged in the business of repairing handguns or of making or fitting special barrels, or trigger mechanisms to handguns, or (C) any person who is a pawnbroker. The term 'licensed dealer' means any dealer who is licensed under the provisions of chapter 44 of this title.

"(5) The term 'fair market value' means the prevailing price on the open market for such weapons immediately prior to enactment or at the time of voluntary transfer under section 1095 of this chapter, whichever is higher, the method of establishing such prices to be prescribed by the Secretary in accordance with his authority under section 1096.

"(6) The term 'Secretary' or 'Secretary of the Treasury' means the Secretary of the Treasury or his delegate.

"(7) The term 'handgun' means any weapon—

"(A) designed or redesigned, or made or remade, and intended to be fired while held in one hand;

"(B) having a barrel less than ten inches in length; and

"(C) designed or redesigned, or made or remade, to use the energy of an explosive to expel a projectile or projectiles through a smooth or rifled bore.

"(8) The term 'handgun ammunition' means ammunition or cartridge cases, or bullets designed for use primarily in handguns.

"(9) The term 'pistol club' means a club organized for target shooting with hand-

guns or to use handguns for sporting or other recreation purposes.

"(10) The term 'licensed pistol club' means a pistol club which is licensed under this chapter."

SEC. 3. The enforcement and administration of the amendment made by this Act shall be vested in the Secretary of the Treasury.

SEC. 4 Nothing in this Act or the amendment made thereby shall be construed as modifying or affecting any provision of—

(a) the National Firearms Act (chapter 53 of the Internal Revenue Code of 1954);

(b) section 414 of the Mutual Security Act of 1954 (22 U.S.C. 1934), as amended, relating to munitions control; or

(c) section 1715 of title 18, United States Code, relating to nonmailable firearms.

SEC. 5. The provisions of this Act shall take effect one hundred and eighty days following the date of enactment.

Mr. HART. Mr. President, it is unnecessary for me to speak at length on behalf of this amendment. Its purpose is well known to my colleagues and it has been the subject of considerable discussion since last year, both pro and con. In the Judiciary Committee deliberations on S. 2507, which were complex and protracted, I indicated that in order to expedite action on gun control legislation this year, I would offer my proposal on the floor. It was circulated again to each of my colleagues in the Senate several weeks ago with a summary of my position. At this point, I would also request insertion in the RECORD of my statement upon the bill's introduction last November, which explains the background of this measure in more detail.

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

LIMITATION OF HANDGUNS OWNERSHIP

Mr. HART. Mr. President, today, I am introducing a bill that would limit handgun ownership to law enforcement officers and security guards.

Other handguns, with a few exceptions, would be bought at fair value by the Government and destroyed. Fair value can be generally interpreted to mean the price that a handgun would bring in the open market on the day before the bill is enacted. The measure would not affect rifles and shotguns.

The bill reflects my conclusion—and the conclusion of the National Commission on the Causes and Prevention of Violence—the Eisenhower commission—of which I was a member, that the Nation has little chance of curbing violent crime until handguns are no longer readily available to all comers.

First of all, I should candidly acknowledge that this handgun program will require a very extensive education program to achieve enactment and successful implementation.

Many Americans will be reluctant to turn in their pistols until they have all the facts. And the facts present overwhelming evidence that the safety of a household is diminished—not increased—by the presence of a pistol in the house.

Handgun control is difficult to institute here simply because we are one of the few nations in the world with a great many handguns in circulation among people accustomed to having them.

One-hundred years ago, handgun control would have been relatively easy. Few people owned them, even—despite what the cowboy movies tell us—in the wild West.

Fifty-years ago, it would have been relatively easy to ban cigarets. Few, if any, people smoked them. But by 1970, too many in the Nation were hooked. And, in the same sense, we are hooked on handguns.

There are now about 25 million of them in the country and sales have quadrupled in the past decade.

They account for three-quarters of all firearms homicides and woundings although they comprise only one-quarter of all the guns in the Nation. Whenever a living creature is killed by a handgun, it is almost always a human being.

DO THEY OFFER SOUND PROTECTION?

Most citizens owning handguns imagine these weapons to be sound home protection devices. But no serious study of handgun employment—and there have been many—has concurred in this notion.

Only in a very, very tiny percentage of cases are they ever successfully used against burglars or home robbers—simply because burglars seldom enter an occupied house and bandits can easily get the drop on any householder who does not walk around the house with a gun in his hand.

If you open the door to a bandit's knock, then he will have you covered when he enters. If he sneaks in through an open door or window, the householder still has no chance to go for his weapon.

Conceivably, a householder might have time to arm himself if bandits take minutes to force their way in. But even in that unlikely circumstance, would not the householder be as well off with a shotgun in his hands as a pistol?

Studies in Detroit and Los Angeles show that only 2 percent of home robberies and 1 percent of home burglaries result in the intruder being shot by the householder—These studies are detailed in "Firearms and Violence in American Life," volume 7 of the staff reports to the National Commission on the Causes and Prevention of Violence, available for $1.25 at the U.S. Government Printing Office, Washington, D.C. 20402.

For this minimal protection against intruders, Americans are paying a high price in the killing and wounding—both accidental and deliberate—of family members, friends, and acquaintances.

Most American homicides do occur in the home and the handgun is the usual instrument because it is handy and is most often kept loaded.

Another study described in the Violence Commission staff report demonstrated that 71 percent of all killings in Chicago involved relatives, friends, and neighbors. Almost always, the attacks were generated by spontaneous rage and the attacker was not necessarily determined to kill.

It seems abundantly clear to me that although a handgun ban might result in more bloody noses and black eyes, there would also certainly be fewer funerals.

WHERE DO THE CRIMINALS GET THEIR GUNS?

My mail, perhaps not surprisingly, runs heavily against the proposed measure. Since I announced my intentions to submit a handgun control bill October 8, I have received 607 letters in opposition and only 99 in favor.

Many of them, I should state in fairness, are more pitying than outraged. A common theme among opponents, if I may paraphrase, goes like this:

"How can you be so feebleminded as not to realize that only honest citizens will turn in their guns, leaving themselves at the mercy of criminals who do not?"

Well, let us take a look at the common street criminal. He has been studied as much as handguns have been. And the obvious fact is that the street criminal is almost invariably young and impulsive. He is most likely to be in his teens or early twenties and robbery is not a career he has planned far in advance.

The second fact is that practically every handgun ever used in a criminal act was at one time owned by an honest citizen.

Inescapably, we learn that those millions of "honest" handguns provide the reservoir that keeps the criminal arsenals full. The reason handguns are so easily available to criminals is simply because handguns are everywhere.

Handguns in honest hands get into the streets through burglaries, thefts, pawns, loans, and sometimes, sales.

Contrary to popular belief, it is not the usual practice for a criminal to contemplate a crime and then go looking for a gun.

Far more often, offenders commit crimes only after they find themselves with the capacity to intimidate a victim. In other words, there is solid evidence that firearms generate violent crime.

The great pool of "honest" handguns is constantly leaking into the hands of those who have criminal tendencies, but lack the weapons to intimidate.

The last catch basin for these guns is the police, who are constantly confiscating and destroying criminal weapons but never fast enough to catch up with the new supply. Meanwhile, the new supply is inspiring new violence.

WHY JUST HANDGUNS?

Handguns represent the major threat to our society's safety.

The handgun is the favorite criminal weapon for the most obvious of reasons. It is light, cheap, readily concealable and can be easily whipped out of a coat pocket.

Long guns, on the other hand, met none of these tests. True, they can represent a threat to safety but they have a great many wholesome purposes. And they are certainly not designed primarily for the killing and wounding of humans.

Since most long gun killings and woundings are accidental, probably the most effective way of making them more harmless would be State-sponsored safety training programs for young hunters similar to safety training programs we have for young drivers.

Because of their handy design, handguns account for three-quarters of all firearms homicides and woundings even though they comprise only one-quarter of all the guns in the Nation.

HOW LONG WOULD IT TAKE TO DRY UP HANDGUNS?

Even if the bill were to pass tomorrow, it would doubtless take many years to achieve the desired results.

Let us face it—success would depend heavily on citizen appreciation of the fact that handguns are an unacceptable element in our society.

The bill provides a moratorium period of 180 days for citizens to sell handguns to the Government. After that, any unauthorized person with a handgun in his possession would be subject to a jail term of 5 years and/or a maximum fine of $5,000.

But how quickly handguns can be collected will certainly depend heavily on whether citizens study all the facts and willingly reach the same conclusions that I have.

Having reviewed the studies of experts for a number of years I have concluded that this is the best course, although I know that many will be in disagreement.

WHAT ABOUT THE "RIGHT TO BEAR ARMS"?

My correspondence in opposition to gun control laws often cite the second amendment to the Constitution, which reads in full:

"A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed."

The right of the people to keep and bear arms has always been closely tied to the right of each State to maintain and arm a militia, now called the National Guard.

When the second amendment was drafted, the militia was made up of all our able-bodied men. When called for service, they

were expected to provide their own weapons, something no longer required.

The Founding Fathers remembered that the British had stopped the colonial militias from arming themselves and wanted to make sure the Federal Government would not do the same thing.

The Supreme Court has held that firearms regulation is not unconstitutional unless it impairs the effectiveness of the militia.

In 1939, the Court found that the amendment was enacted with the:

"Obvious purpose to assure the continuation and render possible the effectiveness of the militia. It must be interpreted and applied with that end in mind."

Now that is a strict interpretation of the Constitution. A "loose" interpretation of the second amendment, on the other hand, would prevent Congress from regulating even weapons such as machine guns, bazookas, and grenades.

And if the "right to bear arms" were construed as an absolute individual right, then Congress would be unable to protect society by disarming insane persons and convicted mobsters.

So we might argue about how much "infringement" there should be, but I do not believe it is valid to claim that any infringement is unconstitutional.

WOULD AN EFFECTIVE HANDGUN BAN STOP KILLINGS?

My correspondents commonly make the point that guns are harmless in themselves, that they are only harmless pieces of machinery until picked up by a hostile hand.

Very often, I see the phrase: "Guns do not kill people, people kill people."

This is occasionally followed by the statement, "If a man wants to kill someone, he will find a way to do it whether he has a gun or not. So why bother to take away guns?"

It is true that people kill people but I would have to add that handguns make the job a great deal easier—and possibly more tempting. And does not Government have some responsibility to make it as difficult as possible for people to kill each other?

Indeed, the fact remains that a handgun makes it easy to approach a victim without immediately alarming him and they allow deadly attacks to be made by persons who are unable physically or psychologically to overpower their victims through violent physical contact.

It is certainly not surprising that handguns are presently the favorite weapons for attacks on police.

The policeman himself is capable of defending against many forms of attack. He is trained and equipped to ward off attacks with blunt instruments, knives or fists. And if surprised at close range, his firearm is usually enough to overcome an attacker.

Therefore, clearly it is the handgun's capacity to deal instant death from a distance that threatens police lives. And a handgun provides the attacker with the additional element of surprise.

HANDGUNS; USEFUL POLITICAL WEAPONS?

Since I announced my intention to introduce a strong handgun bill, I have had occasion to speak to many who oppose the notion.

In these conversations, I have been surprised at one recurring theme: That widespread ownership of handguns is somehow necessary to forestall a national takeover by Communists or some other sinister political force.

Here are a few typical remarks, extracted from conversations and letters:

"The first thing Hitler did when he came into power was pick up all the guns . . .

"How about all those extremist groups? They're not going to turn in their handguns . . .

"But isn't a disarmed nation ready prey for those who believe in political violence?"

Well, I do not know if Hitler picked up private weapons or not but even if he did, I am sure it did not make one whit of difference in Germany's political course. That regime, as I recall had strong popular support in the thirties and no minority, however well supplied with handguns, would have had much of a chance to overthrow it.

Furthermore, there is no evidence in modern history that an abundant handgun supply has contributed to the stability or instability of government.

Handguns, true, are a favorite weapon of terrorists but they are very little use against terrorists. If handgun possession is outlawed, then it seems to me that the authorities have one more legal weapon against political extremists.

Frankly, at this moment in history I see no internal conspiracies against America of great threat. But even if there were, free availability and possession of handguns would be more to the benefit of violent rebels than of peaceful loyalists.

WHO WOULD GET EXEMPTIONS?

Handguns would be allowed to police and licensed security guards. Target shooting clubs would be allowed to own handguns if they were stored in a secure place or at a police station.

Antique guns—those manufactured before 1890—would be exempted along with some more modern weapons judged to be collectors' items.

CONCLUSION

It is for these many reasons that I have decided to press for a ban on handguns. I would guess that it will not be a totally popular undertaking.

Historian Richard Harris once cogently noted that success in politics depends not so much on making friends as on avoiding enemies.

There is, I think, a great reservoir of potential support for stricter gun legislation, but there is also an awaiting cauldron of angry and emotional opposition. The temper of the mail makes that clear.

But nothing in these letters, telegrams and phone calls convinces me, based on the evidence, that the handgun is a wholesome element in our society. It is of hardly any use in home defense.

And all the studies, all the facts, indicate clearly that it is a device that is of primary use to the criminal class. And why should we go on helping them out?

Mr. HART. There are two premises upon which this amendment is based:

First. We must eventually dry up the vast reservoir of handguns easily accessible to criminals through thefts, burglary, and cheap, secondhand commercial traffic.

Second. Even to the extent that criminals would still have weapons, the hard facts indicate, contrary to common belief, that the rest of us are safer if we do not have handguns. The bulk of homicides committed each year—not to mention serious woundings or fatal accidents—do not involve criminals attacking strangers, but rather involve altercations between acquaintances.

We have all seen a headline about the homeowner or storekeeper who shoots a robber. But, in fact, handguns are rarely used successfully by law-abiding citizens. They are far more likely to be used in a quarrel among friends or relatives—with tragic results.

On July 25, the Washington Post editorially summed up this overriding concern in this way:

'Any deterrent effect [of crime] that private weapons have is more than offset, in our view, by the danger that careless accidental or passionate use of private weapons poses to the lives and health of innocent citizens."

And that summary omits the toll taken when risky resort to a handgun to thwart a robbery results in the tragic death of the innocent victim which might not otherwise have occurred.

I am aware of the intensity of the opposition to further handgun control. I know that some pistol owners may now believe that those who take my view are part of a secret conspiracy against their freedom. Nonetheless, we in Congress, the President, and State and local officials can and must emphasize to the American people that this measure would enhance their own safety and that of their loved ones—and that we would have no other motive to pass it.

There are encouraging signs that the need for leadership will be met. The support for full handgun control is growing at a surprising pace. Public officials and private voices have recognized that such legislation is overdue.

Last month, the United States Conference of Mayors resolved to:

"Take a position of leadership and urge national legislation against the manufacture, importation, sale and private possession of handguns except for use by law enforcement personnel, military and sportsmen clubs."

A majority of the National Commission on Reform of Federal Criminal Laws recommended that handguns be limited by act of Congress to the military, law enforcement and related personnel.

The Chicago City Council has unanimously endorsed the bill now before us in the form of this amendment by name, and called for its enactment. Last month, in strong testimony to the House Committee on the Judiciary, Mayor Richard Daley of Chicago said:

"The evidence is overwhelming that guns are dangerous to possess even by law-abiding people."

A widely respected law enforcement officer, Sheriff Peter P. Pitchess of Los Angeles, who served for 8 years as an FBI firearms instructor and is an honorary life member of the NRA, has come to the conclusion reflected in this amendment. He testified before the House Judiciary Committee that, despite initial skepticism, and only after much soul-searching and studying all the available data, he has "reached an inescapable conclusion: All handguns must be banned except for law enforcement and military." That is what the amendment would do. In his testimony, Sheriff Pitchess also questioned the argument that criminals would be deterred by their uncertainty about whether a particular home had a handgun in it or not. From his own experience, he argued that the possibility of finding a firearm in a house makes it a much more attractive target for burglars because a handgun is easily resold.

Mr. President, I ask unanimous consent to have printed at the conclusion of my remarks resolutions of the United States Conference of Mayors and the Chicago City Council; an excerpt from the recommendations of the Commission to Reform the Federal Criminal Laws; and the prepared testimony of Sheriff Pitchess. I also include in that request editorials from the Cleveland Plain Dealer and WBZ-TV in Boston, supporting my bill and from the Washington Post endorsing the general approach of banning private handguns; also supporting letters from the United Methodist Church and the American Civil Liberties Union.

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

(See exhibit 1.)

Mr. HART. Next to the claim that the bill will leave guns in the hands of criminals and disarm honest citizens, perhaps the most

frequent attacks made on my proposal are based on the second amendment. It is said that my amendment would infringe the constitutional right "to keep and bear Arms" in violation of this amendment.

I doubt very much whether this debate will change many persons' view of what that amendment means. And since the Supreme Court has not yet ruled on a bill as broad as this amendment, it cannot be claimed that no uncertainty exists. But I have had a memorandum prepared by able staff summarizing the available legal and historical materials which we have reviewed, and I am convinced that the amendment I offer would be found by the courts to be constitutional.

Let me summarize it briefly:

First. Even the common law right to possess firearms was never deemed an absolute privilege. It was subject to laws regulating that right;

Second. Based on the historical antecedents of the second amendment and the debate by its framers, the courts have held that the right "of the people to keep and bear arms" is a collective right of the citizenry to preserve a militia, not an individual right of self defense vis-a-vis one's neighbor.

Third. Whether viewed as a collective or an individual right, the amendment has been interpreted by the courts to stand for the following proposition—and this, I believe, is the determining principle for testing this amendment—firearms legislation does not contravene the amendment unless it obstructs or interferes with the preservation of an effective militia, which today is our National Guard.

My proposal meets this test. As the legal memorandum notes, National Guardsmen draw prescribed weapons from State arsenals, including their sidearms. Even if we assume that target practice with civilian handguns facilitates Guard training, such practice by duly organized clubs would be permitted under the amendment. One must strain to suggest that a pistol stored in a dresser drawer is essential to the preservation of a well regulated militia—that its prohibition would significantly impair or obstruct the Guard.

Because of their well known scrupulous concern for the constitutional rights of every American, regardless of the issue involved, I am pleased that the American Civil Liberties Union letter endorsing my bill indicates a similar reading of its constitutionality under the second amendment. I ask unanimous consent that the staff legal memorandum prepared in my office which I have just summarized also be printed in the RECORD at the conclusion of these remarks.

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

(See exhibit 2.)

Mr. HART. How would this bill work? Briefly, it would make possession of handguns and handgun ammunition illegal, except for exempt categories, 6 months after the effective date of the legislation. Since the law would become effective 6 months from its enactment, there will be a full year within which people could realize the purpose of this measure, its requirements, its restrictions, and and its true effect upon their safety. Persons delivering a handgun to a law enforcement agency within the period, would be entitled to receive the fair market value at the time of enactment or of the transfer—or a minimum of $25. Thereafter handguns could still be surrendered voluntarily without penalty, but also without compensation.

Traffic in handguns—as opposed to mere possession—would cease immediately upon the effective date of the legislation. Thereafter, any import, manufacture, transfers, or sales of handguns not permitted by the Secretary of the Treasury for one of the exempt purposes would be illegal.

As the congressional findings stated in selection 1 indicate, my amendment is based on the aggregate effect which privately owned handguns have on commerce, on interstate travel, and on the internal security and domestic tranquility of the Nation. It is the intent of this legislation to reach any handgun not possessed under any of the permitted exemptions, whether or not the prosecution can demonstrate that the particular weapon has been in interstate commerce.

The bill is designed to exercise the full powers of Congress under the Commerce Clause and other provisions of the Constitution which authorize it to deal systematically and comprehensively with this national problem. This is the same position as that taken in the committee bill with respect to sales of Saturday Night Specials, according to the committee report at page 22.

The proposal raises important issues which I realize are unlikely to be resolved to everyone's satisfaction. But contrary to suggestions which may be made in opposition to its adoption, I believe that the hearings in the Judiciary Committee in this and earlier Congresses, along with the substantial study by national commissions which witnesses have called to the committee's attention, provide an adequate basis for the full Senate to act upon the proposal.

In the hearings on the pending Saturday night special bill, several witnesses who supported it explained why they thought Congress should go further and move against the entire handgun problem. They explained why local laws could never be fully effective because of the leakage from less stringent jurisdictions. They cited repeatedly the evidence compiled by the Violence Commission that provide possession of handguns diminishes, rather than increases, one's safety and that the tremendous number of handguns presently in circulation must be reduced drastically if criminal and other violence in America is to be controlled.

In this hearing, and in earlier ones, members of the committee and various witnesses have explored the arguments advanced against banning private possession of handguns and the so-called confiscation issue.

It is true, Mr. President, that the members of the Violence Commission were unable to agree upon the proposal I offer today. The Commission's official recommendation stopped short of that. But the compilation of data, the research and the analysis done by the very able Commission staff experts, has been available to Congress and to others studying this problem for several years. It was the basis for the majority recommendation of the Commission on Reform of Federal Criminal Laws. The statistics and analyses available since then have not rebutted any of the major conclusions of the staff report to the Violence Commission which report has led me to offer this proposal.

Mr. President, I suppose it will be very easy for opponents of this bill, and headline writers, to make "confiscation" an emotional codeword that diverts us from urgent threat to our citizens' safety. Let us remember that the important "confiscation" that goes on right now is the 15,000 lives "confiscated" by homicides each year in America—half of them by handguns.

That is the confiscation which should concern all of us and which concerns me in offering this amendment. The time has come to take the steps we know are necessary to make a real dent in those figures. In the editorial to which I referred earlier, the Washington Post put the issue before us:

"What it all boils down to is a recognition that the United States is no longer a frontier society and that pistols as playtoys are not tolerable in crowded urban communities. Getting handguns out of circulation will not be accomplished quickly or easily. But it is high time to begin."

Mr. President, that is what this amendment would set us on the road to doing. It would set us on the road to reducing and beginning the removal of the vast reservoir of handguns, the source of most of the criminal armament of this country, and the source of much anguish through accident and mistaken killings and woundings.

People have asked me when I think it likely that Congress will say that handguns are "no-no's" for everybody but the businessman, the security guard, and—if the Secretary licenses it—for sporting clubs to maintain premises on which the guns can be safeguarded. The answer is that I do not know how long it will be. But it will be much sooner if men and women in this country can be persuaded to look at the statistics and recognize that the law-abiding citizen is safer if he does not have a pistol in the bureau drawer. His children are safer; his neighbors are safer.

The statistics are overwhelming. Once those figures penetrate the understanding of the people of this country, we will have arrived at the time when we will legislate to prohibit the handgun in private hands. Of course, that day will come sooner in almost direct relationship to the willingness of those of us who have these figures and interpret them as I do to stand up and say so.

Of course, the criminal will have a weapon. It will be a long time before these 30 million pistols are turned in and destroyed. So long as that reservoir is there, that is where the criminal will get his weapon. But the fact that the criminal will always be armed is a "so what" argument. So what? I am infinitely safer if I do not have one—if, as one would put it, it is taken away from me. I am safer and my neighbor is safer and the community is safer. That is the point to which we should address ourselves.

I hope very much that the amendment will be agreed to.

EXHIBIT 1

RESOLUTION ON GUN CONTROL ADOPTED BY THE U.S. CONFERENCE OF MAYORS, JUNE 21, 1972

Whereas, over 8,000 Americans were felled by handguns in 1970 and nationally 80% of all homicide victims knew their killers as a relative or friend; and

Whereas, 95% of policemen killed in the line of duty between 1961 and 1970 were felled by handguns; and

Whereas, gun dealers today sell to the mentally ill, criminals, dope addicts, convicted felons, juveniles, as well as good citizens who killed each other; and

Whereas, those who possess handguns cannot be divided into criminals and qualified gun owners; and

Whereas, handguns or not generally used for sporting or recreational purposes, and such purposes do not require keeping handguns in private homes; and

Whereas, the United States Supreme Court ruled in 1939 that firearms regulation is not unconstitutional unless it impairs the effectiveness of the State militia.

Now therefore, be it resolved that the United States Conference of Mayors takes a position of leadership and urges national legislation against the manufacture, importation, sale and private possession of handguns, except for use by law enforcement personnel, military and sportsmen clubs.

Be it further resolved that the United States Conference of Mayors urges its members to extend every effort to educate the American public to the dangerous and appalling realties resulting from the private possession of handguns, and that we urge the Congress to adopt a national handgun registration law.

Be it further resolved that (1) effective legislation be introduced and approved by the

States not having adequate legislation to that effect; (ii) the proposed legislation shall provide for the registration of all firearms; (iii) State legislation shall require all citizens interested in carrying a weapon to obtain a license after showing of just cause and good conduct; (iv) federal legislation shall provide, in addition to existing restrictions, that any person not having a state license to carry a firearm shall commit an offense for transporting such in interstate commerce.

RESOLUTION MEMORIALIZING CONGRESS TO OUTLAW HANDGUNS BY ENACTING S. 2815

Whereas: Chicago's patience is exhausted by the endless sickening and lethal shots from hand guns in its streets and buildings. The only use of hand guns is to kill and maim people. So long as hand guns can be privately owned, no one is safe. Outlawry of hand guns by a single city cannot solve the problem; hand guns should be outlawed nationally as other nations have outlawed them.

The destruction in Chicago from hand guns is beyond belief. In the last few days, for example, a Chicago police commander was shot and hurt by a hand gun when he commanded a robber to surrender in the loop; two boys, 17 and 18, were shot and killed by a hand gun in an alley on the west side; and a father of three young children was killed by a hand gun which discharged accidentally as he fell down the stairs of his home on the south side.

Chicago knows the problem. Chicago knows that hand guns must be outlawed. Chicago knows that the hand gun lobby must be overcome in the interest of protecting life and safety.

AMENDED IN COMMITTEE ON FEDERAL AND STATE LEGISLATION

Be it resolved by the city council of the city of Chicago: The City of Chicago urgently memorializes the Congress of the United States to meet a national emergency by enacting S. 2815, which prohibits the ownership and manufacture of hand guns by all persons (except the Armed Forces, law enforcement officials, and, as authorized by the Secretary of the Treasury, licensed importers, licensed manufacturers, dealers, antique collectors, and pistol clubs.)

Be it further resolved by the city council of the city of Chicago: The City of Chicago urgently memorializes the Congress of the United States to draft legislation or amend S. 2815 to establish strict requirements for the use and ownership of long guns, as well as hand guns.

FINAL REPORT OF THE NATIONAL COMMISSION ON REFORM OF FEDERAL CRIMINAL LAWS

(Proposed New Federal Criminal Code)

FIREARMS AND EXPLOSIVES

Introductory note

Two of the sections in this group, §§ 1812 and 1813, are intended to cover the felonious aspects of conduct prohibited under federal regulation of firearms and explosives. The regulatory legislation is not set forth in the Code. In this connection a majority of Commissioners recommended that Congress:

(1) Ban the production and possession of, and trafficking in, handguns, with exceptions only for military, police and similar official activities; and

(2) Require registration of all firearms.

A substantial body of opinion in the Commission: Opposes any Federal involvement in firearms control beyond that embodied in existing legislation.

A CASE FOR CONTROL OF HANDGUNS

(A statement by Peter J. Pitchess, sheriff, Los Angeles County, to the House Committee on the Judiciary, Congress of the United States, on June 28, 1972)

Let me begin by telling you my position regarding the handgun. It is made for killing people, and I challenge anyone to disprove that statement.

For many years, my colleagues and I have steadfastly resisted any attempt to regulate or outlaw the possession of firearms. But, times are changing.

Stricter gun laws obviously will not eliminate violence, any more than existing punitive laws have wiped out criminality. In my opinion, the legislation you are considering relative to gun registration and control is simply inadequate. The enormous expense and lack of enforceability make it somewhat impractical. But restricting the sale or possession of handguns will have a dramatically dissuasive influence.

The problems besetting us on all sides are great. Our society is experiencing catastrophic upheaval. Our attitudes must change to conform to the demands of contemporary culture. I have done much soul-searching on the issue of gun control. After having carefully studied all available data, it became increasingly apparent that there is only one course left for men of good will—no longer can we afford the luxury of endorsing what has lately become a dangerous and untimely position—the fallacy that the safety of our populace is dependent upon an inalienable and largely indiscriminate right to bear arms.

We have reached an inescapable conclusion: All handguns must be banned except for law enforcement and the military. I ask you and the American people to review some of the factors that have precipitated my decision.

First, in the United States in 1971, 10,000 murders were committed with firearms, and guns accounted for 21,000 deaths. Tragically—incredibly—someone in America is killed or injured by gunfire every two minutes. Second, as a law enforcement officer, I have become increasingly alarmed over the astounding number of policemen who are killed or wounded in the performance of their duty. From 1961 to 1970, 604 fellow peace officers were killed by firearms; 466 of these were by handguns! During that same period, only 29 officers were killed by other weapons.

We live in an age when statistics such as these have lost much of their impact. Understandably, a concerned public becomes shocked, then apathetic and, finally, anesthetized. During the past few years, the collective conscience of our people has been numbed by the assassinations of John F. Kennedy, Martin Luther King, and Robert F. Kennedy. The attempted assassination of Governor Wallace has again refocused our attention on the issue of violence. As shocking and deplorable as these incidents are, they are but a few of the traumatic dramatizations occurring hourly within our cities.

Gun control laws can retard the increase in criminal activity. In New York City, for example, where strict control of handguns exists, the murder rate of 10.5 per 100,000 inhabitants is well below that of most other cities with weak gun control, such as Dallas (18.4), Houston (16.9), and Atlanta (20.4). And this has been accomplished in spite of the fact that guns enter New York from other areas with lax gun control laws.

What our country must recommend is legislation controlling handguns on a nation-wide basis and accompanying enabling legislation to make the enforcement of those controls possible. Existing search and seizure laws need to be modified to allow greater latitude to the police in the search for weapons. There are more than 20,000 state and local firearms laws, many of which are conflicting, obsolete and unenforceable. The necessary coordination, leadership and solution must come at the federal level. Law enforcement needs the right to seize illegally possessed handguns, use them in evidence in criminal cases, then destroy them, eventually eliminating handguns except for police and the military.

Hopefully, few of you have had the experience of finding yourself at the end of a gun, but for all too many of our citizens, this is not the case. Last year alone, 80,000 Americans were injured in assaults by gun-wielding assailants, and 220,000 others were robbed at gunpoint.

In all, guns were used in 65% of all homicides, 63% of all robberies and 24% of all aggravated assaults. If we are ever to reverse, or even lessen, this almost casual use of violent force, we must be willing to re-examine our position, and commit ourselves to seeking a solution. Objective reasoning permits no other beginning than the elimination of the handgun.

Many good Amercans will argue that we should take the guns from the criminal, but not prohibit their possession by the law-abiding citizen. Perhaps there may be some validity to this argument if the destruction caused were *exclusively* due to criminal activity; but it only takes a cursory glance at the facts to recognize the fallacy inherent to this position. In Washington, D.C., 81% of all homicide cases involve a suspect and a victim who were either friends, relatives, acquaintances, or husband and wife—86% of the murders stemmed directly from an argument, a fight, an altercation or a lover's quarrel. The bloodshed, then, is not due to just the premeditated killer who methodically calculates a murder, but is the result in all too many instances of frustration and passion which are grasping for an available means of release.

It is needless to remind ourselves of the tragic spectrum of accidental killings caused by the availability of a firearm.

It may be argued that a person intent on murder will find a way to do so, if not with a handgun, then with some other weapon. This has not been the case, and it becomes most evident upon serious reflection. Consider the countless psychiatric patients who have stated at one time or another they were glad they did not have a gun available to use on themselves or others. It is not difficult to envision an angry spouse in a moment of irrationality, rather than hurling an invective, resorting to the use of a gun.

This is not conjecture . . . it is not fantasy . . . it happens with almost predictable regularity.

Organizations of sportsmen and hobbyists maintain that handgun controls would interfere with the activities in which they engage. Certainly handguns can be used for these pursuits, but let me paraphrase what I stated earlier . . . it is difficult to deny that their primary purpose and the job they were designed for is killing people. We are not suggesting the outlawing of all firearms, but rather the elimination through legislation of the deadliest of all—the handgun.

I am aware there are gun collectors throughout the country who possess handguns that are both rare and valuable, and I would not presume that these collections should in any way be diminished. What I do advocate is that these handguns be rendered inoperable as instruments of death and destruction. I might add that I too am a gun collector.

While the United States Constitution guarantees citizens the right to possess arms, few thinking persons would argue that this right should be extended to include machine guns, flame throwers, or similar weapons. Such an argument would surely not be in keeping with the spirit of the Second Amendment. Neither should this right be construed to extend to handguns, for the same reason.

The primary justification for the Second Amendment's inclusion in the Constitution centered around self-defense, national defense, and food acquisition. In today's complex, urbanized American society, these rea-

sons are, at the least, extraneous when applied to handguns:

We have the Armed Forces to protect our shores and borders, and the police to perform a like function with regard to domestic threats to our security.

For those who find it necessary to keep firearms in the home for further protection of their persons and property, or for use in hunting or similar pursuits, rifles and shotguns will not only suffice but are preferable to the handgun for almost every conceivable purpose:

For every robber stopped by a homeowner with a handgun, four homeowners or members of their family are killed in handgun accidents. The fact is, the only viable advantage pistols offer over long-guns are their portability and ease of concealment. The former renders them useful to peace officers, while the latter makes them ideal for criminals as "means" to their "end."

Moreover, from a constitutional point of view, the federal courts have consistently interpreted the Second Amendment as referring to a collective right rather than an individual privilege.

All of the arguments directed against legislation for control of handguns pale into insignificance when juxaposed with the mortality and grief which result, in the absence of such control.

On an average day in the United States, there are as many as 57 deaths resulting from the use of firearms and yet the tragedy and grief continue to mount.

The support for gun control laws is strong, and growing stronger daily. Public officials and concerned citizens in many fields are recognizing that the time for legislation is now.

When I first proposed the banning of handguns in May at a press conference held during the annual conference of the California Peace Officers' Association, I was aware of the consequences, and that it would generate a significant amount of opposition. What I was not prepared for was the overwhelming support from the citizens who learned of my position through the news media.

In 1972, the United States Mayors Conference recommended that handgun ownership be banned for all but law enforcement officials, military and sportsmen clubs. I oppose including the latter.

The National Commission on the Causes and Prevention of Violence has recommended that there be a licensing system for all handguns, with possession restricted to those who can indicate they have a special need for such guns. In supporting this recommendation, the Commission reported that there are 90 million firearms in the United States. Half of the nation's 60 million households reportedly possess at least one gun, and the number of guns owned by private citizens is still rising rapidly. They further reported that more personal injury and death resulting from crime occurs in the United States than in any comparable nation in the world . . and the primary tool of this injury and death is the firearm.

Statistics have shown that those States with some sort of gun control laws have proportionately fewer deaths as a result of firearms, than do those States without such controls. And the relationship between America's "pacesetting" among all other nations in the number of murders perpetrated—and the fact that we are one of the few countries on earth without gun control laws—can no longer be ignored.

Nearly all the civilized nations of the world require firearms licensing or registration, or both; and many of them prohibit the private possession of any handguns whatsoever. Nowhere in the world is the private ownership of handguns, on a per capita basis, as high as in the United States. The United States has 135 handguns per 1,000 people, while Canada has only 30 per 1,000. Israel, referred to by many as an "armed camp," has only 10 handguns per 1,000 people. Finland, the Netherlands, Greece, Great Britain and Switzerland have fewer than five handguns per 1,000 residents. It is not at all difficult to see the correlation between these figures and homicide. For example, the rate of homicide in the United States is far greater than that of any other industrial nation in the world. It is almost three times as high as Japan and eight times as high as Great Britain.

In the United States there are 5.7 gun murders per 100,000 persons each year, but in Japan where it is illegal to own, manufacture or carry a handgun the ratio is only 1.9 per 100,000 persons. In Great Britain where handgun laws are almost as restrictive as Japan, the gun murder ratio is only 1.25 per 100,000 persons, resulting in 29 handgun homicides in 1970 among a populace of 50 million persons, while Los Angeles County with a population just over 7 million, had 308 handgun homicides. And while we are on the subject of Great Britain, we might take a look at her record of assassinations . . . Prime Minister Perceval was mortally wounded at the hand of a disgruntled pistol-wielding taxpayer in the Waiting Room of the House of Commons. The year of this murder was 1812—160 years ago—and that was England's first and last political assassination.

Statistically, historically, philosophically—guns, especially handguns, have been and will always continue to be a most proficient means of killing people, whether wantonly or accidentally. As long as the populace continues to own handguns, the danger and opportunity to use them for violent ends will remain. Remember, the primary purpose of the handgun is killing people.

[From the Cleveland Plain Dealer, June 27, 1971]

TOUGH HANDGUN LAW NEEDED

It is good to note in the House Judiciary Committee a strong tide of feeling favorable to proposals for federal law to control handguns.

It would be better, however, if the feeling were for law to outlaw those weapons which account for more than half the homicides in the United States.

Judiciary Committee hearings today, tomorrow and Thursday should focus more attention on the nation's handgun problem. Hopefully, some good will come of that—but it remains that the bills the House committee will be discussing provide only a start toward dealing with the problem.

One bill would prohibit the manufacture and sale of handguns, except for law enforcement, military or pistol club use. It would not apply to unserviceable weapons or to curios or collectors' items. Private ownership of existing weapons would not be prohibited, but citizens would be compensated for weapons they voluntarily surrender to the government.

Another bill would at first require nationwide registration of all firearms and permits for purchase of any gun. A year later it would make manufacture and sale of handguns unlawful, except for law enforcement, sports club or collectors' use. Sale or delivery of "Saturday night specials," those cheap handguns not suited to sporting use, would be banned within 60 days.

The two proposals are good so far as they go. But they do not go far enough.

They do not provide for firm control over an estimated 24 million handguns already scattered about the country. Those are the weapons that cause accidental or intentional deaths in homes, that are a source of arms for thieves and others who commit crimes. They are, in short, the weapons most in need of control.

A bill introduced in the Senate by Philip A. Hart, D-Mich., hits that target. It would deny handguns to all but law enforcement officials, security guards, gun collectors and members of shooting clubs. It would require sale to the federal government of all other privately owned handguns within six months.

The proposals now before the House Judiciary Committee are not unwelcome. They call fresh attention to the handgun menace. But whatever they promise or accomplish should be recognized only as a start toward real control of handguns.

[From the CONGRESSIONAL RECORD, June 22, 1972]

GUN CONTROL

Mr. O'NEILL. Mr. Speaker, gun control remains a topic of heated controversy as interest in more meaningful and stringent gun control is expressed by many Americans. Dialog concerning the issue of gun control has been, for the most part, highly emotional and filled with rhetoric. However, WBZ-TV-4 in Boston has maintained a constant dialog of varying opinion on the issue of Federal gun control legislation. While WBZ is in favor of stricter measures, it is not for this reason alone that I call attention to a series of editorials aired by WBZ. More importantly, these editorials represent a balanced and responsible approach to the problem. For this reason I am submitting for the record several of this series of editorials aired by Station WBZ in Boston. I would also like to call attention to the work of Congressman ABNER MIKVA and his efforts to secure passage of a more effective handgun control statute which is mentioned in the No. 12 editorial.

DISARMAMENT BEGINS AT HOME—No. 2

A senseless shooting incident in Dorchester earlier this month got us started on a new drive to disarm America—at least of its handguns. A lot of our thinking on the subject has been shaped by a staff report done for the Eisenhower Commission on the Causes and Prevention of Violence in the late 1960s, for the Eisenhower Commission on the Causes and Prevention of Violence in the late 1960s. And today's editorial is lifted directly from the recommendations section of that firearms report.

As of 1968 there were some 24 million handguns in the United States. That's an average of 40 handguns for every 100 homes. And the rate is increasing all the time. Civil disorders, racial tensions, and the fear of crime have been turning America into an armed camp. But ironically the handgun in the house generally creates more danger than safety.

Though handguns make up only about a fourth of all the firearms in civilian hands, they're the principle weapon of gun misuse. The handgun accounts for three fourths of all criminal gun violence. And the rates of gun violence vary directly with the rates of handgun ownership. When the number of handguns increases, gun violence increases. Where there are fewer guns, there is less gun violence.

Our paragraph from the report sums up our feeling on the subject exactly:

"We have concluded that the only sure way to reduce gun violence is to reduce sharply the number of handguns in civilian hands in this country. We recognize this will be a massive and expensive task. But this is a price we should be prepared to pay."

DISARMAMENT BEGINS AT HOME, No. 5

Two years ago the staff of a Presidential Commission took a long hard look at the problem of firearms and violence in American life. It concluded that the only sure way to reduce the growing wave of gun violence is

to reduce sharply the number of handguns in circulation.

That conclusion has special significance in the Boston area now in the wake of last week's senseless murder of a campaign aide of Mayor Kevin White. And the overall commission report has been made the base of legislation filed earlier this month by Sen. Philip Hart of Michigan.

Sen. Hart's bill would ban just about all private ownership of handguns. The only exceptions would be for police, the military, antique gun collectors and target shooting clubs. Even the target shooters would have to keep their pistols and revolvers stored at their clubs or police stations. Under the proposal there would be a six-month period for gun owners to sell their weapons to the government for a fair price. After that period any unauthorized person with a handgun in his possession would be subject to either a jail term, a stiff fine or both. Let's emphasize the fact this ban wouldn't apply to riffes or shotguns. The target is the handgun, the principal weapon of gun misuse. As Sen. Hart noted, possessing a handgun in the house doesn't increase your security, it diminishes it. And he pointed to what he called the incredible overkill in the bedrooms and living rooms of our country.

It takes real guts for a Senator to take this kind of stand with the strength of the gun lobby around the country. So we take our hat off to Sen. Hart. And we urge the usually silent majority which favors gun control legislation to sound off for action to other members of Congress.

DISARMAMENT BEGINS AT HOME—No. 8

We continue under heavy bombardment for advocating federal legislation to sharply reduce the number of handguns in circulation in America. A lot of the opposition fire centers on the argument that disarming the ordinary citizen will leave guns only in the hands of criminals. And obviously there is some logic to that concern. But it overlooks some important facts. And one of them is the nature of most murders.

The greatest number of killings occur within the family and among friends in moments of rage. Because the gun is there, it's used. And it's far more accurate and deadly than other weapons.

A staff report for the National Commission on Violence had the figures on this for a recent year in Chicago—where you'd expect the hoodlum and holdup-type murder would be about as high as anywhere in the country. But even there 82 per cent of the murders stemmed from altercations over matters such as love, money and other domestic problems. Only 12 per cent stemmed from robberies. Another three per cent were from teen gang disputes.

Across the country the Commission found that from 1963 to 1968, the number of murders involving firearms rose almost 50 per cent. The number of killings with other weapons rose only 10 per cent.

We've never pretended the gun itself is the only factor in the murder rate. The basic problem of violence runs deep into our national heritage. But the killing has soared in recent years as more and more normally law abiding Americans have armed themselves. Too many disputes that a few years back would have ended up with a bloody nose now wind up at the cemetery. The handgun is a major factor in that, and it's time we at least tried to bring it under control.

DISARMAMENT BEGINS AT HOME—No. 9

Owning a gun for self defense and home protection is deeply rooted in American tradition. And in recent years more and more people have been buying handguns for that purpose. So, in some quarters, our campaign for a general ban on this type of weapon has gone over like a lead balloon.

But this self-defense issue is another area where it's worth noting the evidence from that staff report for the National Violence Commission two years ago. The report cites ample evidence that the gun generally isn't an effective means of protecting the home against either the burglar or the robber. The robber usually strikes too suddenly for the home gun to be effective unless it's out where it will be a general menace, especially to children. The Commission report noted that in 1967 more lives were lost in home firearms accidents in the city of Detroit than had been lost to criminals in home robberies and burglaries in the previous four and a half years.

Quinn Tamm, the executive director of the International Police Chiefs Association, put it another way in recent testimony before a Senate committee in Washington. He noted that most people don't know how to handle a weapon. So for defense purposes he felt the average person would be better off if he equipped himself with a brick rather than a sidearm.

But unfortunately the home defense boom has not been in bricks but in guns. Over 10 million handguns have been sold in the past decade. There are now over 25 million of them in circulation in America. They account for three-fourths of all gun violence—much of it by the very people who originally bought the gun for protection. Again we say disarmament of handguns should be a top priority item right here at home.

[From the Washington Post, Jan. 9, 1971]

HANDGUNS AND HOUSEHOLDERS

Like so many other committees and commissions which have looked at the crime problem in America objectively and realistically, the National Committee on Reform of Federal Criminal Laws has recommended, in its report to Congress published Thursday, that all firearms be registered and that private ownership of handguns be outlawed. This is not a sentimental or idealistic recommendation and it entails no limitation of essential liberty. It is designed simply to protect liberty, and indeed life, by restricting possession of the weapon most frequently used for crime and for killing.

One can say with confidence right now, at the very beginning of 1971, that before the next New Year's Eve rolls around at least 9,000 persons will be murdered by gunfire in the United States; at least 12,000 will use a bullet to put an end to their own lives; and at least 100,000 robberies will be committed with the aid of a gun. These are the stark facts that prompted the commission's recommendation that handguns be made contraband and restricted to police officers and the military.

It is true, of course, as the gun lobbyists are so quick to assert, that the mere passage of a law forbidding private possession of pistols would not in itself induce every criminal to surrender his crime tools. The law, like every other law, would be more faithfuly observed by the law-abiding than by the lawless. Such a law would, however, begin the process of curbing the spread of pistols would not in itself induce every discovery; second, by making mere possession punishable; third by diminishing the easy availability of pistols in bureau drawers and bedside tables where children, drunks, angry spouses and other irresponsibles can get at them; fourth, by forbidding the sale of such weapons by gun merchants.

Would this diminish killing in the United States? We think it undoubtedly would. It would make it more difficult—and increasingly so as time went on—for criminals to obtain handguns; and it would make pistols less accessible for the kind of killing so carelessly called "accidental." One ought always to remember that most gun fatalities in the United States occur within families or in a relationship where the killer and his victim are known to each other, and where, presumably, the killer is sorry after he has done his killing.

Would the recommended outlawing of handguns entail a major deprivation or injustice to law-abiding Americans? We think not. It would, admittedly, entail an inconvenience for persons who like to shoot pistols at targets. Their sport is an entirely legitimate one and could be carried out by keeping their pistols safely locked up at an NRA gun club or some licensed shooting range. Responsible citizens ought to be willing to undergo that much inconvenience for the sake of the general welfare.

But what about the people who think themselves as armed protectors of their homes. These would be, perhaps, the principal beneficiaries of the proposed law. They might well be saved by it from gunning down a member of the family or a neighbor mistaken for a prowler in the dark; and their own lives might be saved from the fatal consequence of a gun duel with some vicious gunman.

What it all boils down to is a recognition that the United States is no longer a frontier society and that pistols as playtoys are not tolerable in crowded urban comunities. Getting handguns out of circulation will certainly not be accomplished quickly or easily. But it is high time to begin.

BOARD OF CHRISTIAN SOCIAL CONCERNS OF THE UNITED METHODIST CHURCH,
Washington, D.C., July 26, 1972.

Hon. PHILIP A. HART,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HART: In view of the official position of The United Methodist Church, we can give hearty endorsement to the provisions of your handgun control bill, S. 2813.

Your bill bans the private possession of handguns making reasonable exceptions. The position of our church, as set forth by United Methodism's General Conference in April of 1972, declares "we endorse the elimination of private ownership and use of handguns, except in extremely limited instances."

Therefore, we support the Hart handgun bill and encourage the Senate, in its good judgment, to enact this legislation when it comes up for a vote on the Senate floor in the near future.

Yours sincerely,

J. ELLIOTT CORBETT,
Director, Dept. of Church/Government Relations.

AMERICAN CIVIL LIBERTIES UNION,
Washington, D.C., July 26, 1972.

Hon. PHILIP HART,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: As you may know, the American Civil Liberties Union firmly agrees with the Supreme Court's long-standing intepretation of the Second Amendment that an individual's right to bear arms applies only to the preservation of "a well-regulated militia."

Except for lawful police and military purposes, the possession of weapons by individuals is not constitutionally protected.

For this reason, and for the obvious reason that handguns are a menace to the lives, safety and rights of American citizens, we were very pleased to note the introduction of your bill, S. 2815, which would prohibit the private ownership of handguns and handgun ammunititon, limiting handgun possession to law enforcement officers and licensed security guards.

We believe your bill is a solid first step in the long overdue need for effective national gun controls, and we strongly support you

and your colleagues in your efforts to enact this legislation.

Sincerely,

CHARLES MORGAN, Jr.,
Director.

EXHIBIT 2

MEMORANDUM

Subject: *Constitutionality of S. 2815, the Hart Handgun Bill.*
Date: November 9, 1971.

SUMMARY

An analysis of the historical origins of the Second Amendment, its judicial intepretation, and its purpose viewed in the context of America today strongly suggests that S. 2815 would be held contsitutional under the Second Amendment. Subsidiary constitutional questions also seem to be met by the provisions in the bill.

This conclusion is based on the following points:

1. The common law right of individuals to possess firearms was never deemed an absolute privilege, but rather one subject to laws regulating that right.

2. Both the direct historical antecedents of the Amendment and the debate by its framers indicate concern for the right of "the people to bear arms" as a collective right sought to be preserved for the citizenry vis-a-vis the central Government, not an individual right of self-defense against one's neighbor.

3. Whether the right to bear arms is viewed as a collective or individual one, judicial construction of the Amendment can be said to stand for the following proposition: gun control laws do not contravene the Amendment unless they curtail private possession of arms necessary to the conduct maintenance of an adequate militia or otherwise obstruct its maintenance. S. 2815 meets this test.

4. The rights secured by the Second Amendment is presumably no more absolute than other provisions of the Bill of Rights, such as the First Amendment, have been held to be. Even if the Court found that the operation of S. 2815 in some conceivable way might impair the maintenance of an effective militia, it's effect would be marginal and subject to a balancing test which would vindicate the statute.

5. Apart from the Second amendment, S. 2815 would withstand challenges on the grounds of: (A) self-incrimination, in regard to registration; (B) taking of property without due process, in regard to the repurchase of handguns; and (C) lack of jurisdictional base for Congressional action, in regard to prosecution for possession of a particular firearm.

DISCUSSION

1. Common law right

It is sometimes suggested that the Second Amendment does not create a right to bear arms, but protects that pre-existing right from Congressional transgression. Such a pre-existing right is, presumably, derived from common law. Therefore, it is noteworthy that weapon bearing was never treated as anything like an absolute right by the common law. It was regulated by statute as to time and place as far back as the Statute of Northampton in 1328 and on many occasions since. The Statute of Northampton, 2 Edw. III, c. 3 (1328) declared that no man should "go nor ride armed by night or by day in fairs, markets, nor in the presence of the justices or other ministers" etc. See Emery, 28 Harv.L.Rev. at 473; see also Knight's Case, 3 Mod.Rep. 117, 87 Eng. Rep. 75 (K. B. 1686). This condition upon regulation was continued, for example, in the English Bill of Rights, *infra*. Feller and Gotting note that "for all practical purposes the average citizen cannot lawfully obtain firearms in Great Britain at the present time."[1] Thus, absent the effect of the Second Amendment, little more can be said than that the common law right to carry arms, whatever its vestigal remnant in modern society, is subject to the police power and comparable Federal regulatory authority.

2. Historical antecedents of the second amendment

The Amendment usually is tracked back to the English Bill of Rights (1688) which guaranteed:

"That the subjects which are protestants, may have arms for their defence suitable to their conditions, and as allowed by law." 1 W.&M. Sess. 2, C.2.

As pointed out by Feller and Gotting, the historical context indicates that this right was granted to protect collectively the Protestants, who had been at the mercy of the armed Catholics under James II—in short, it concerned group security rather than individual self-protection against one's neighbors. And even that right was in terms, subject to legal restrictions.

In the American colonies, the focus of concern was the fear of standing armies and the importance of retaining a militia. In 1789, five state constitutions provided for the maintenance of a militia but made no reference to a right to bear arms. Three did refer to such a right to bear arms "for the defence of the State." Two states, Vermont and Pennsylvania, referred to the right of the people to bear arms for "the defence of themselves and the State." But the history of this concern suggests that the word "themselves," too, referred to a collective right of the people to defend themselves against tyranny by their own State Government as well as to defend the State against outside enemies. In any event, if those words were intended to suggest a right of individual self-defence vis-a-vis other individuals, there is no evidence that this concern was a basis for adding the Second Amendment to the original Constitution.[3]

In the Constitutional Convention, the debates make clear the concerns of the anti-Federalists which led to the drafting of the Second Amendment: the fear that in the absence of Congressional action, the States would be left without militias to protect themselves against encroachment by the central Government (Feller and Gotting). The development of the final language in the Amendment underlines the concern with a collective right.

James Madison introduced the Bill of Rights at the First Session of Congress. In his proposal, the language of what ultimately became the Second Amendment was that:

"The right of the people to keep and bear arms shall not be infringed; a well armed and regulated militia being the best security of a free country; but no person religiously scrupulous of bearing arms shall be compelled to render military service in person."

As reported by a special committee that language became:

"A well regulated militia, *composed of the body of the people*, being the best security of a free state, the right of the people to keep and bear arms shall not be infringed; but no person religiously scrupulous shall be compelled to bear arms." [3]

Senate debates in 1789 were not reported so it is impossible to tell what considerations led to the evolution of the language of the proposal into that of the Second Amendment:

"A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed."

The changes made by the Senate, however, do not seem to alter the general intent to prevent the Federal Government from disarming the States' militia. The contrary view of this history taken by Sprecher, for example, is unpersuasive.[4]

3. Judicial construction

Federal Court [5] decisions under the Second Amendment in this Century have emphasized the collective nature of the right to bear arms guaranteed by the Amendment, e.g. *United States* v. *Adams*, 11 F. Supp. 216, 219 (S.D. Fla. 1935) (Amendment refers to the collective body and not individual rights."); *United States* v. *Tot*, 131 F. 2d 261 (3rd Cir. 1942), reversed on other grounds 319 U.S. 463 (the Amendment "was not adopted with individual rights in mind. . . ."); *Stevens* v. *United States*, 440 F. 2d 144 (6th Cir. 1971, *Edwards, Phillips and Celebreeze*, JJ.) (the Second Amendment applies only to the right of the State to maintain a militia, and not to the individual right to bear arms. . . .").

In the final analysis, whether right secured by the amendment is to be viewed as a collective or an individual one may be more a matter of theoretical interest than of determinative significance. However, the right is conceptualized, the Supreme Court and lower Federal Court decisions make clear that it is to be measured in the context of preserving an adequate militia, not in terms of a citizen's other felt needs of self-defense.

The leading case, *United States* v. *Miller*, 307 U.S. 174 (1939). In its narrow aspect, *Miller* held that prohibition of unregistered sawed off shotguns did not violate the Amendment because the evidence did not establish that the weapon had "a reasonable relationship to the preservation of efficiency of a well regulated militia. . . ." Id. at 178.

More broadly, the Court in *Miller* went on to state:

"With obvious purpose to assure the continuation and render possible the effectiveness of such forces the declaration and guarantee of the Second Amendment were made. It must be interpreted and applied with that end in mind." (*Ibid*)

Subsequent decisions by Courts of Appeal have read the specific holding in *Miller* as limited to the minimum needed to reverse on the facts before the Court. They have rejected the notion that the Supreme Court in *Miller* intended to give blanket protection under the Amendment to any weapon shown to be used, or usable by the modern militia [6] *Cases* v. *United States*, 131 F 2d 916 (1st Cir. 1942), cert. denied sub. nom. *Velazquez* v. *United States*, 319 U.S. 70 (1943); *United States* v. *Tot*, *supra*. These cases involved prosecutions of felons for receiving weapons in commerce, which they were not permitted to do under the Federal Firearms Act. However, the opinion in *Cases*, and by implication in *Tot*, was also limited to a question or proof, namely, the absence of any showing that the defendant intended to use the weapon in connection with this potential service in the militia. (Justice Memo.) [7]

Subsequent decisions have read from these three cases a broader rule for testing statutes against the amendment: a statute does not violate the Second Amendment, absent a showing that in some way it impairs or obstructs the preservation of an efficient well regulated militia. *United States* v. *Synnes*, 438 F 2d 764 (7 Cir. 1971); *United States* v. *Gross*, 313 F. Supp. 1330 (D. Ind. 1970); *Burton* v. *Sills*, 53 N.J. 86, 243 A. 2d 521 (1968).[8]

The militia of the States referred to in Article I of the Constitution is now organized as the National Guard. *Maryland* v. *United States*, 381 U.S. 41 (1965), Guardsmen draw prescribed weapons from the State or Federal Government both for active duty and training requirements. Sidearms are prescribed, as well as the more basic rifles and automatic weapons. Moreover, even assuming that target practice with handguns facilitates training of Guardsmen or potential guardsmen, such practice by organized clubs is permitted under S. 2815.

One must strain to suggest that at the present time a pistol stored in a dresser drawer substantially facilitates the preservation of a well-regulated militia—let alone

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Footnotes at end of article.

that its prohibition substantially impairs or obstructs it.

4. Any marginal "impairment" of second amendment rights is outweighed by legitimate exercise of Congress' constitutional powers

Even if a law resulted in some slight interference with the conduct of a well regulated militia, it would not necessarily be unconstitutional. Despite the First Amendment prohibition against any law abridging the freedom of speech or the right of the people peaceably to assemble, the Guard has upheld the validity of laws punishing speech, intended to obstruct recruitment for the armed services[9] as well as laws prohibiting picketing and parading in specified locations in or near a courthouse.[10]

There would seem to be no reason to suppose that in assessing Second Amendment challenges to the validity of a federal law which dealt with both weapons and persons necessary to the conduct of a well regulated militia the Court would not use something like the "clear and present danger" test or a "balancing of interests" test, just as it has in assessing alleged infringements of the rights protected by the First and other Amendments.

At least one Federal-Court of Appeals has indicated that the offsetting interest need not be as urgent as that required to impinge upon the right to vote and the right to racially equal treatment under laws. *United States* v. *Synnes, supra,* at 771, n. 9. Mr. Justice Black did take an absolute view of the rights secured by the Amendment, see footnote on page 8, *supra,* but his similar view of other rights has not been accepted by the Court.

Thus, even if the elimination of private handgun ownership, excluding target shooting clubs, could be said in some conceivable way to diminish the potential effectiveness of the militia (National Guard), it seems doubtful that the Supreme Court would find that impairment an impermissible infringement of Second Amendment rights.

FOOTNOTES

[1] Feller and Gotting, "The Second Amendment: A Second Look," (hereinafter "Feller and Gotting"), 61 NW.U.L. Rev. 46, 49 (1966).

[2] Legal Memorandum of the Department of Justice Appendix, 1967, submitted in the Hearings before Subcommittee No. 5 of the House Committee on the Judiciary, 90th Cong., 1st sess., Anti-Crime Program, pp. 242–49 (1967) (hereinafter "Justice Memo").

[3] Annals of Con. 434 and 749 (1789) (emphasis added).

[4] *The Lost Amendments* (51 ABAJ Nos. 6 and 7 (1965) (hereinafter "Sprecher"), concludes that the parallel history of concern for the militia and for the right to bear arms makes it understandable the two should be linked. But he argues that this does not necessarily mean the right to bear arms is based on one's function as a militia member. This reading ignores the plain grammatical construction of the Amendment's language. To be sure, having a weapon on the Revolutionary frontier was an important source of food, protection from Indians, and so forth. And since the militia required men to bring weapons with them at the call to arms, little concern may have been given to the need for maintaining a weapon in the frontier home, or the right to do so. But the only question of Constitutional dimension is whether the Framers intended the Amendment to protect any right other than the preservation of a militia.

[5] State Court decisions—some alluding to the Second Amendment, others solely construing similar provisions in State Constitutions—run the gamut from observations that an individual right is secured to opinions that the constitutional right is a collective one. There appears to be a growing recognition in later cases, however, that it is the rights of "the people" as group vis-a-vis the State or National authorities which is secured. (Feller and Gotting; McKenna, *The Right to Bear Arms,* 12 Marq. L. Rev. 138, 145 (1928).

[6] Taken to its logical conclusion this reading of *Miller* would permit private ownership of anything but useless curios, since not only shotguns, but rockets, grenades and machine guns are useful weapons of organized armed forces and are employed by the Guard for training as a federal reserve force. Few have suggested this reading of the Amendment.

[7] In a Memorandum Decision, Synnes was vacated and remanded to the Court of Appeals for "further consideration in light of Bass." *United States* v. *Bass.* This vacating was based on the Commerce Clause reach intended in the statute, not the Second Amendment issue. The Court of Appeals conclusions on that point were not disturbed by the Supreme Court. The Court of Appeals in *Synnes* had said: "Although Section 1202(a) is the broadest federal gun legislation to date, we see no conflict between it and the Second Amendment since there is no showing that prohibiting possession of firearms by felons obstructs the maintenance of a "well-regulated militia."

[8] Even Mr. Justice Black, who rejected a "balancing test" approach to the rights guaranteed by the Amendment, has written, "Although the Supreme Court has held this amendment to include *only arms necessary to a well-regulated militia,* as so construed, its prohibition is absolute (emphasis added). Black, *The Bill of Rights,* 35 N.Y.U.L. Rev. 865, 873 (1960).

[9] *Schenck* v. *United States,* 249 U.S. 47 (1919).

[10] *Cox* v. *Louisiana,* 37 U.S. 559 (1965).

By Mr. GURNEY:

S. 749. A bill to provide for increases in certain civil service retirement annuities. Referred to the Committee on Post Office and Civil Service.

CIVIL SERVICE RECOMPUTATION

Mr. GURNEY. Mr. President, today I am introducing legislation which should correct a problem faced by a large number of Federal retirees—the problem of inflation in relation to fixed income.

Mr. President, my mail is full of comments like the one from a Fort Lauderdale constituent who wrote:

I was truly disappointed in the lack of Congressional action on legislative benefits for Federal Government retirees . . . I feel that anybody who has spent thirty years in the service of his country deserves the dignity of retirement years out of the poverty or welfare category.

I could not agree more.

Last year, as we all know, social security benefits were increased by 20 percent. All of us can agree that, for those on social security, this was a welcome supplement to the family income. This year, I would like to do something along these lines for Federal retirees. Accordingly, the first provision of my bill would raise pensions 11 percent to 20 percent, with the 20-percent increase going to those with annuities of $3,600 per year or less. For those with higher incomes, the increase will be proportionately smaller, scaling down to 11 percent for those earning $6,500 or more.

Under the social security system, benefits are weighted in favor of the low-income worker. This means that dollar for dollar, a low-income contributor to the social security system gets more for his money than his higher income counterpart. Under the civil service system, there is none of this weighting, meaning that those who retired at far lower salaries than they would receive today, continue to receive lower benefits throughout their retired lives. My bill would, then, give the highest percentage increase to these people, most of whom went into retirement before the recent Federal pay hikes.

The second provision of my bill would prevent a recurrence of this situation by providing for automatic recomputation of civil service retirement pay in order to bring it more into line with the retirement pay currently being earned by civil servants. For each percentage increase received by current civil service employees, current civil service retirees would receive a comparable increase in retirement pay. This is the same proposal I have favored for years for military retirees, and I think that many of the arguments made by retired servicemen are just as applicable to civil service retirees.

Mr. President, our Federal retirees seem to be a forgotten lot. We hear most frequently about social security because about 90 percent of our retirees receive social security. We hear a great deal about military retirement pay because we have changed over to a volunteer military and need a good retirement program to provide incentive for reenlistment. But, while these two federally operated retirement programs have moved ahead, our civilian Government retirees have not kept pace. Although we have upgraded the method of figuring civil service pensions by moving from the high 5 years to the high 3 years computation, we still have not brought these retirees up to a par with private and military retirees.

Mr. President, I know that in the State of Florida a rather peculiar phenomena occurs every time there is an increase in benefits in this—or that—retirement program. All over the State, in the vicinity of our retirement communities, as soon as word of the raise filters down from Washington, prices go up—eggs, medicines, rent—everything—a penny here and a penny there. All too often, the prices go up even before retirees get their hands on the first check. It is bad enough for those getting the raise, but it is terribly difficult for those not getting a raise. We have a lot of Federal retirees in Florida, and they have noticed a sharp decrease in buying power since that last social security raise.

This is hardly an equitable situation, so I ask my colleagues to take a careful look at this bill, and to give it their full support. It is important that we remember our Federal retirees—and not let them become the forgotten segment of our retired population.

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

S. 750. A bill to provide for a privilege against disclosure of information or the sources of information obtained by persons in the news media. Referred to the Committee on the Judiciary.

Mr. ROBERT C. BYRD. Mr. President, on behalf of the distinguished Senator from Texas (Mr. BENTSEN), I introduce a bill, and I ask unanimous consent that

a statement prepared by him together with the text of the bill be printed at this point in the RECORD.

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

STATEMENT BY SENATOR BENTSEN

Mr. President, I am introducing today legislation to permit newsmen to protect their sources of information from government investigation.

The bill I am introducing will guarantee the right of newsmen to freely gather and publish the news without fear of government intimidation or prosecution. The men who framed our Constitution understood clearly the function of a free press in safeguarding democratic institutions by informing the public about their government's activities without fear of reprisal.

I am sorry to say that not all politicians, and not all government officials, see that as clearly.

We are witnessing today a wave of incidents that threatens the freedom of the press to collect information and disseminate it to the public.

Not long ago, a reporter in Los Angeles, William T. Farr, was jailed for refusing to reveal confidential sources of information. In New Jersey, Peter Bridge suffered the same fate. And there have been others.

These men have accepted jail sentences rather than disclose the identity of informers to whom they had pledged secrecy.

They know that disclosure would have the effect of drying up the sources of information that a reporter depends on in order to be able to tell the people what they need to know.

Their courage serves as a standard for their profession.

And their incarceration serves as a warning to the people that one of our vital freedoms is at stake.

These reporters were jailed by state judges, relying on state—not federal laws. But this is an issue that transcends state lines, and I am convinced that the Congress should act in this session to protect the imperiled right of newsmen to pursue investigative reporting. My bill, therefore, will cover both federal and state proceedings where newsmen might be questioned.

The legislation I am proposing is designed to permit newsmen to protect their sources of confidential information—just as a lawyer protects his clients, or a doctor protects his patients—excepting in cases that involve our national security and national defense.

This is a complex and controversial issue—but I believe Congress should act promptly to study the problem, in all its complexities, and develop fair guidelines that will serve the public interest.

Most of us, on occasion, take exception to some of the reporting that is done.

We expect reporting to be fair—and it is not always fair.

We expect it to be objective—and it is not always objective.

We expect it to be accurate—and it is sometimes far from accurate.

But even when it lacks all three elements, we must insist that the press be free. We cannot overestimate the importance of a free press to a free society. The two are inseparable.

Recognizing the integrity of the vast majority of the Fourth Estate, and the good judgment of the public to evaluate what they read, I feel that we have nothing to fear.

Mr. President, the late President Johnson, who certainly had his troubles with the press, spoke eloquently near the end of his term in office about the relationship between the President and the press when he said:

"The relationship began when the country was founded, and now for nearly two centuries the press has held the President and his family and his administration in the fixed and the constant light of publicity. And through nearly two centuries the Presidents have felt, in one degree or another, uncomfortable in that steady glare. That relationship between the President and the press has always had the nature though, I think, of a lovers' quarrel. And I am not sure it is ever going to be much different. That doesn't bother me as long as both sides concern themselves with the basic fundamentals, and as long as Presidents and each member of the press base their acts upon the respect for the other's purposes. I think most of the time that has been true."

Those words, I feel, can serve as a model for us all in respecting the rights of government and the press and by insuring that the public's right to know is protected.

The text of the bill is as follows:

S. 750

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Public's Right to Know Act of 1973".

SEC. 2. Congress declares that—

(1) professional newsmen must not be inhibited restrained, or otherwise impeded by governmental process and ought to be encouraged to gather, write, edit and disseminate vigorously news and other information in order that the public can fully be informed;

(2) compelling such persons to disclose a source of information or disclose unpublished information is, except under very limited circumstances, contrary to the public interest and inhibits the free flow of information to the public;

(3) there is an urgent need at both the Federal and State levels of government to provide effective measures to halt and prevent this inhibition; and

(4) it is therefore the purpose of this Act to insure the free flow of news to the public.

Sec. 3. Part V of title 18, United States Code, is amended—

(1) by striking out the section analysis at the beginning thereof and inserting in lieu thereof the following:

"Chap.	Sec.
"501. General provisions	6001
"503. Witness immunity	6002
"505. Communications media privilege	6111

"Chapter 501.—GENERAL PROVISIONS

"Sec.

"6001. Definitions."; and

(2) by inserting immediately below section 6001, the following:

"Chapter 503.—WITNESS IMMUNITY

"Sec.

"6002. Immunity generally.

"6003. Court and grand jury proceedings.

"6004. Certain administrative proceedings.

"6005. Congressional proceedings.".

SEC. 4. Section 6001 of title 18, United States Code, is amended by striking out the word "and" at the end of paragraph (3), by striking out the period at the end of paragraph (4) and inserting in lieu thereof a semicolon and the word "and", and by adding at the end thereof the following new paragraph:

"(5) 'Professional newsman' means any individual who is employed by or otherwise associated with the gathering, recording, photographing, processing, announcing, writing, editing, or analyzing of news material or information for publication or transmission through one of the following news media—

"(A) a newspaper, containing news and articles of opinion, that is printed and distributed ordinarily not less frequently than once a week, and has done so for at least 6 months, has a paid circulation, and has been entered at a United States post office as second-class matter;

"(B) a periodical containing news, advertising, or other matter regarded as a current interest which has been published and distributed at regular intervals for at least 6 months or has a paid general circulation and has been entered at a United States post office as second-class matter;

"(C) a news agency collecting and supplying news for subscribing newspapers, periodicals, or news broadcasting facilities or any combination of such news media;

"(D) a wire service sending out syndicated news copy by wire to subscribing newspapers;

"(E) a press association gathering and distributing news to its members as an association of newspapers, periodicals, or news broadcasting facilities, or any combination of such associations;

"(F) a radio or television station licensed under the Communications Act of 1934;

"(G) a community antenna television service; or

"(H) a motion picture news service regularly making news reels for paid general public showing."

SEC. 5. Part V of title 18, United States Code, is further amended by adding at the end thereof the following new chapter:

"Chapter 505.—COMMUNICATIONS MEDIA PRIVILEGE

"Sec.

"6111. Privilege from disclosure.

"6112. Qualifications.

"6113. Exemption.

"§ 6111. Privilege from disclosure

"Upon claiming the privilege provided in this section no professional newsman shall be required to disclose in a proceeding before or ancillary to a court, grand jury, or agency of the United States, or of any State or any political subdivision thereof, or by either House of Congress, any committee or subcommittee of either House, or any joint committee of the two Houses, or any legislature of any State or any committee thereof, or any legislative body of a political subdivision of a State or committee thereof, either—

"(1) the source of any information obtained in the gathering, receiving, or processing of information collected in the course of his employment or association; or

"(a) any unpublished information including but not limited to all notes, outtakes, photographs, and tapes obtained or prepared in gathering, receiving, or processing of information collected in the course of his employment or association.

"§ 6112. Qualifications

"Any person seeking information or the source thereof protected under this Act may apply to the United States District Court or the highest trial court of a State for an order requiring the disclosure of that information or source. Such application shall be made to the court in the district wherein the proceeding in which the information is sought is pending. The application shall be granted only after a hearing and upon a determination by the court that—

"(1) the person seeking the information has shown by a preponderance of the evidence that—

"(A) such person has demonstrated that the information sought cannot be obtained by any alternative means; and

"(B) such person has demonstrated a compelling and overriding public interest in the information; or

"(2) such person has shown by a preponderance of the evidence that the information sought involves a matter of national security.

"§ 6113. Exemption

"The provisions of this chapter shall not apply to the sources of any allegedly defamatory information, in any case in which the defendant in a civil action for defamation, asserts a defense based on the source of such information."

SEC. 6. Nothing in this Act shall be construed to effect any State law or local ordinance providing for greater protection of professional newsmen.

By Mr. RANDOLPH (for himself, Mr. CHURCH, Mr. WILLIAMS, Mr. BIBLE, Mr. MUSKIE, Mr. MOSS, Mr. KENNEDY, Mr. HARTKE, Mr. MONDALE, Mr. EAGLETON, Mr. CHILES, Mr. TUNNEY, Mr. FONG, Mr. GURNEY, Mr. SAXBE, Mr. PERCY, Mr. HANSEN, Mr. BROOKE, Mr. STAFFORD, Mr. BEALL, Mr. DOMENICI, Mr. PELL, and Mr. CLARK):

S.J. Res. 49. A joint resolution to provide for the designation of the second full calendar week in March 1973 as "National Employ the Older Worker Week." Referred to the Committee on the Judiciary.

NATIONAL EMPLOY THE OLDER WORKER WEEK

Mr. RANDOLPH. Mr. President, I introduce for appropriate reference a joint resolution to provide for the designation of the second full week in March as "National Employ the Older Worker Week."

Over the years the American Legion has taken an active role in promoting job opportunities for older workers.

To help implement this meritorious objective the American Legion has, since 1959, designated the first full week in May as "Employ the Older Worker Week."

At this time national attention is directed to the advantages of hiring middle-aged and older persons. Moreover, awards are presented to employers demonstrating active leadership in employing aged and aging Americans.

The American Legion deserves, in my judgment, special commendation for being in the forefront in advancing this most worthy cause. No nation can ever hope to achieve its full potential if some of its most productive performers are forced prematurely—and too often unnecessarily—to the sidelines. Much more can be gained, I strongly believe, through the development of sound national policies to maximize job opportunities for all workers, the old as well as the young.

The resolution that I introduce today is designed to build upon the solid achievements and continuing leadership of the American Legion in encouraging public and private employers to hire older workers.

This measure, I am pleased to say, received the enthusiastic endorsement of the American Legion's 1972 National Convention. At that conference, the members of the Legion approved Resolution No. 197 which recommended that the annual observance of "Employ the Older Worker Week" be changed from the first full week in May to the second full week in March. A major reason for this action is to guard against any possible interference with programs to promote employment of youth, which are also conducted extensively during the month of May.

Today, many false stereotypes still exist about the effectiveness of older Americans as workers.

However, educational efforts can help to inform the public about the true capabilities of persons in their forties, fifties, and above. These individuals have a wealth of talent and skills, which should not be overlooked.

Several studies have clearly demonstrated that older workers, as a group, have numerous outstanding employment attributes:

Their attendance is likely to be better than that of younger persons;

They are less likely to change jobs;

Their productivity compares very favorably with younger Americans; and

They are less likely to be absent from work for trivial reasons.

Moreover, they have many important characteristics, such as experience, stability, and dependability, to be top-flight jobholders.

With the added focus provided by this resolution, our Nation can now help to create a more favorable climate for the employment of middle-aged and older workers.

Mr. President, it is gratifying to note that all Members of the Senate Special Committee on Aging join me in sponsoring this measure: the Senator from Idaho (Mr. CHURCH); the Senator from New Jersey (Mr. WILLIAMS); the Senator from Nevada (Mr. BIBLE); the Senator from Maine (Mr. MUSKIE); the Senator from Utah (Mr. MOSS); the Senator from Massachusetts (Mr. KENNEDY); the Senator from Indiana (Mr. HARTKE); the Senator from Minnesota (Mr. MONDALE); the Senator from Missouri (Mr. EAGLETON); the Senator from Florida (Mr. CHILES); the Senator from California (Mr. TUNNEY); the Senator from Hawaii (Mr. FONG); the Senator from Florida (Mr. GURNEY); the Senator from Ohio (Mr. SAXBE); the Senator from Illinois (Mr. PERCY); the Senator from Wyoming (Mr. HANSEN); the Senator from Massachusetts (Mr. BROOKE); the Senator from Vermont (Mr. STAFFORD); the Senator from Maryland (Mr. BEALL); the Senator from New Mexico (Mr. DOMENICI); and the Senator from Rhode Island (Mr. PELL).

Mr. President, I urge the passage of this joint resolution and ask unanimous consent that it be printed at this point in the RECORD.

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

S.J. RES. 49

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized and requested to issue a proclamation designating the second full calendar week in March of 1973 as "National Employ the Older Worker Week" and calling upon employer and employee organizations, other organizations officially concerned with employment, and upon all the people of the United States to observe such week with appropriate ceremonies, activities, and programs designed to decrease employment discrimination in employment because of age.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 31

At the request of Mr. HOLLINGS, the Senator from Alabama (Mr. ALLEN), the Senator from Tennessee (Mr. BAKER), the Senator from Maryland (Mr. BEALL), the Senator from Utah (Mr. BENNETT), the Senators from Nevada (Mr. BIBLE and Mr. CANNON), the Senators from Florida (Mr. CHILES and Mr. GURNEY), the Senator from Idaho (Mr. CHURCH), the Senator from Mississippi (Mr. EASTLAND), the Senators from Arizona (Mr. FANNIN and Mr. GOLDWATER), the Senators from Wyoming (Mr. HANSEN and Mr. MCGEE), the Senator from Iowa (Mr. HUGHES), the Senator from Washington (Mr. JACKSON), the Senator from New York (Mr. JAVITS), the Senator from Rhode Island (Mr. PELL), the Senator from Pennsylvania (Mr. SCHWEIKER), the Senator from Alaska (Mr. STEVENS), the Senator from Illinois (Mr. STEVENSON), and the Senator from California (Mr. TUNNEY) were added as cosponsors of S. 31, authorizing the Secretary of Defense to utilize Department of Defense resources for the purpose of providing medical emergency transportation services to civilians.

S. 34

At the request of Mr. HOLLINGS, the Senator from Illinois (Mr. PERCY) was added as a cosponsor of S. 34, a bill to provide for accelerated research and development in the care and treatment of autistic children, and for other purposes.

S. 70

At the request of Mr. MANSFIELD (for Mr. MAGNUSON), the Senator from Rhode Island (Mr. PASTORE) was added as a cosponsor of S. 70, a bill to promote commerce and establish a Council on Energy Policy, and for other purposes.

S. 268

At the request of Mr. JACKSON, the Senator from New Jersey (Mr. CASE) was added as a cosponsor of S. 268, a bill to establish a national land use policy, to authorize the Secretary of the Interior to make grants to assist the States to develop and implement State land use programs, to coordinate Federal programs and policies which have a land use impact, to coordinate planning and management of Federal lands and planning and management of adjacent non-Federal lands, and to establish an Office of Land Use Policy Administration in the Department of the Interior.

S. 355

At the request of Mr. MANSFIELD (for Mr. MAGNUSON), the Senator from New Jersey (Mr. WILLIAMS) was added as a cosponsor of S. 355, a bill to amend the National Traffic and Motor Vehicle Safety Act of 1966 to provide for remedies of defects without charge, and for other purposes.

S. 357

At the request of Mr. MANSFIELD (for Mr. MAGNUSON), the Senator from South Dakota (Mr. MCGOVERN) was added as a cosponsor of S. 357, a bill to promote commerce and amend the Federal Power Act to establish a Federal power research and development program to increase efficiencies of electric energy production and utilization, reduce environmental impacts, develop new sources of clean energy, and for other purposes.

S. 514

At the request of Mr. Moss, the Senator from Wisconsin (Mr. NELSON), the

Senator from Tennessee (Mr. BROCK), the Senator from Michigan (Mr. HART), the Senator from Arizona (Mr. FANNIN), and the Senator from Hawaii (Mr. INOUYE) were added as cosponsors of S. 514, a bill to amend the act of June 27, 1960 (74 Stat. 220), relating to the preservation of historical and archeological data.

SENATE RESOLUTION 59—SUBMISSION OF A RESOLUTION RELATING TO FREIGHT CAR SHORTAGE

(Referred to the Committee on Agriculture and Forestry.)

Mr. HUDDLESTON. Mr. President, on Monday and Tuesday of this week the Subcommittee on Agricultural Production, Marketing, and Stabilization of Prices of the Senate Agriculture and Forestry Committee held hearings on the boxcar shortage which is seriously affecting the transportation of grains in our Nation.

While boxcar shortages at harvest time are not uncommon, an unusual number of special situations have this year resulted in what must be considered a transportation crisis.

This crisis evolved from a late but abundant harvest, the sale of some 400 million bushels of grain to the Soviet Union, the delay in movement of grains which occurred when the Soviet Union and the United States were unable to reach a shipping agreement, the policy of the Agriculture Department in announcing the disposal of wheat and corn owned by the Commodity Credit Corporation, the decision of the Department of Agriculture not to reseal loans on commodities from certain crops and crop years, freezing weather in parts of the Nation which halted barge traffic earlier than usual, the dependence of farmers in some areas upon grain from other areas as the result of extensive crop damage caused by Hurricane Agnes, the loss of workdays at seaports during the Christmas and New Year periods, the general shortage of railroad freight cars and the ineffective utilization of existing freight cars. These various situations combined to create what can only be termed a crisis.

In ordinary years, we might be able to look forward to alleviation of the situation as time passed. According to testimony before the subcommittee, however, the lack of adequate transportation for agricultural products is likely to continue—and perhaps intensify. Only about 25 percent of the Soviet and other grain export sales has been moved to ports, and we can expect grain shipments resulting from those sales to continue until some time in August. In the upcoming weeks some 44 million tons of fertilizer will have to be delivered. There is the possibility of a fuel shortage which would further complicate the situation. Sometime in May the harvest of winter wheat will begin. And, the failure to extend reseal loans could force additional grains on to the market through July.

The clear implication of these factors is that we must act and we must act now. Time will not solve the difficulties—as it has a number of times in the past. In fact, in this year, time could even work against us. Consequently, I am today introducing a sense of the Senate resolution which specifies action which I believe should be taken at this time to deal with the transportation shortage. It is a resolution which seeks to deal fairly with all parties involved.

First, the resolution specifies that there should be a moratorium on the disposal of commodities owned by the Commodity Credit Corporation. The Commodity Credit Corporation announced plans to offer for sale more than 110 million bushels of corn and wheat which it previously purchased. About half of this is expected to be sold. While the action in and of itself might be a prudent one, it was taken without consultation with the Interstate Commerce Commission or the American Association of Railroads and it came at a time when it could only contribute to a worsening situation in the agricultural transportation industry. Furthermore, it was taken at a time when grain is lying on the ground in some areas and a number of farmers in America are facing financial disaster because they are unable to move their crops to market.

In addition, the movement of CCC grains competes directly, and perhaps a bit unfairly, with movements of grain owned by farmers and warehousemen. For every freight car which is loaded with private stocks, one car must be loaded with CCC stocks. Thus, on a national basis, some 60 million bushels of CCC grains are competing with, perhaps, billions of bushels of privately owned grains on a car-for-car basis.

While recognizing the necessity of easing the current transportation situation and the importance of assisting America's grain farmers, it is only reasonable that we also recognize the desire—and the desirability—of the Government to dispose of grains it holds, especially if it can do so at a profit. The resolution would make provision for this—when—but only when—such disposal would not precipitate nor recreate a transportation crisis. The determination that such disposal would not result in transportation difficulties would be determined jointly by the Department of Agriculture, the Interstate Commerce Commission, and the American Association of Railroads, and certified to the Agriculture and Forestry Committee 72 hours before the lifting of the moratorium.

I would call special attention to this initial section of the resolution, first, because of the importance of implementing it immediately. CCC corn went on the market yesterday and wheat is scheduled for sale February 9. I would call attention to it, second, because it offers immediate relief, and, third, because it does allow for Government disposal in the future.

Second, the resolution specifies that reseal loans should be extended on 1970, 1971, and 1972 farm-stored grains. Under the CCC program, a farmer may put his grains under loan. He then takes the loan money for the grain and spends it on general operating expenses. He can, at any time, pay off the loan and sell the grain. When the loan matures he may either pay off the loans, with interest, and sell the grain, permit the CCC to take grains in lieu of the loan repayment, or seek extension of the loan. The Agriculture Department in December announced that it would not extend reseal on the following crops and crop years: Wheat—1968, 1969, 1970, 1971-crop—except 1971 crop durum—farm-stored; 1970, 1971 crop warehouse-stored; corn—1969, 1970 crop farm-stored; 1971 crop warehouse-stored; barley—1968, 1969, 1970, 1971 crop farm-stored; oats—1968, 1969, 1970 crop farm-stored; grain sorghum—1969, 1970, 1971 crop farm-stored; 1971 crop warehouse-stored; rye—1971 crop farm-stored. Most loans on these crops mature by May 31. During hearings before the subcommittee, the Department indicated that farmers who were unable to obtain transportation and move their grains would have 60 days beyond the maturity date before they would face penalties. This would advance the possible movement of grains up to June or July. While it is possible that the transportation situation may have eased by that time, it is not absolutely certain that it will have, and whatever the transportation situation, the reseal decision can have no effect but to force about 700 million bushels of grain on to the market. While farmers can sell grain and take it out of reseal at any time—even under the proposals made in this resolution, it seems only logical, in view of the transportation situation, that farmers and warehousemen at least have the option to reseal their grains—and thereby to keep grains off the market.

The resolution does propose the termination of reseal on 1968 and 1969 grains, pursuant to normal procedures and "good management practice" usually followed by the Department. Furthermore, it contemplates terminating reseal on warehouse-stored grains so that these can be moved to make room for additional farmer and warehouse-owned commodities. The resolution would, however, likely encourage reseal of some grains and thereby withhold some commodities from the market.

Third, the resolution proposes the appointment of a special committee to recommend solutions to two problems which are inseparable from the existing situation but which involve the jurisdiction and coordination of several departments and agencies. The first of these problems is to guarantee that domestic farmers and stockmen receive the needed feed grains. Much of the current transportation crisis is due to exports. But, I cannot see permitting our domestic farmers to suffer because of exports to foreign nations. The existing feed grain situation is not as much one of supply as one of transportation difficulties.

We should focus efforts on meeting the transportation demands and providing adequate feed grains to farmers in feed-deficit States and in States where Hurricane Agnes destroyed crops which would normally be used for feed grains. We must service these farmers. The committee to be appointed might consider a variety of special actions including securing the cooperation of the railroads in making a certain number of cars avail-

able specifically for the transportation of feed grains to these areas. In fact, the Department of Agriculture announced yesterday an action along these lines. A unit train of 71 cars will carry much-needed oats from Minnesota to New York State. The proposed committee would be expected to make similar recommendations and to seek their implementation.

Second, a bottleneck in the transportation tie-up is at the ports. There are reports of both railroad cars and ships waiting for unloading and loading. We must speed up this process so that railroad cars can be returned to other areas of the country and additional grain moved. I know that the Interstate Commerce Commission has already taken several actions designed to improve the situation. It has, for example, increased demurrage charges and it places embargoes on ports where the backlog of unloaded cars is substantial and where the sending of additional cars into the areas would only result in those cars being tied up at the ports for numerous days. With further regard to this aspect of the problem, however, the committee might consider several possibilities including additional work shifts at the port areas.

The recommendations contained in this resolution are simply that—recommendations. The resolution is being introduced, however, because the situation is critical. The current shortage of boxcars must be alleviated or we will wreak havoc on many segments of our farm economy. The resolution is also being introduced because immediate action is required. Relief next week or next month will not do. That is why I have recommended the immediate revision of actions announced by the Agriculture Department. Under other circumstances, those actions might be entirely appropriate and desirable. But they are not so now. And a change in them today would help relieve the transportation shortage. They are the easiest actions to take and they will have an immediate impact upon the situation.

This is not to say that there are not other actions which can and should be taken. As a matter of fact, I believe it it incumbent upon the parties most involved—the Department of Agriculture, the Interstate Commerce Commission, and the American Association of Railroads—to continue to search for means of dealing with the current situation. As a result, I will recommend to the subcommittee and the full committee that the committee continue to monitor the situation, requesting biweekly reports on the status of grain movements, any new methods employed to facilitate the movement of grain, and an evaluation of the effectveness of those methods.

In the long run, too, there is a need for the construction of additional freight cars, a matter which comes under the jurisdiction of the Commerce Committee rather than the Agriculture Committee. According to testimony by the American Association of Railroads, however, it would be from 4 to 5 years before the impact of legislation designed to increase the boxcar supply would have an effect on the transportation supply.

As I mentioned earlier, the current situation is a desperate one. We need to move at once—and we must move where we can. I have outlined various actions I believe will help alleviate the current situation. I am aware that there is controversy over several of the proposals. In this situation, we must balance the needs of many people and many interests—the grain producers, the warehousemen, the shippers, the farmers in feed deficit areas, the processors of grains and the consumers. The actions proposed in this resolution will not satisfy those who seek the ultimate benefit for any one of the above groups. It seeks instead to work with the needs and demands of each and to find a feasible solution which will be helpful and fair to all. I believe the recommendations which I have discussed can make an inroad into the current transportation shortage and they are offered with that hope in mind.

In closing, I would like to add that one of the witnesses noted that the hearings on Monday were the seventh or eighth hearings on the boxcar shortage he had attended, and that he would like to see some action. I, too, would like to see some action. I hope we will move rapidly in that direction.

So I urge the careful consideration by Members of the Senate of this resolution.

The resolution is as follows:

Whereas a railroad transportation crisis currently exists in the United States; and

Whereas such crisis has occurred as the result of a number of factors, including—

(1) a late and abundant harvest of agricultural commodities;

(2) favorable market conditions;

(3) the sale or large quantities of grain to the Soviet Union and the delay in concluding an agreement with the Soviet Union for the shipment of such grain;

(4) the policy of the Department of Agriculture regarding the disposal of commodities held in storage by the Commodity Credit Corporation;

(5) the decision of the Department of Agriculture not to extend the reseal loans on commodities of certain crop years;

(6) bad weather conditions in certain areas of the Nation;

(7) the dependence of farmers in certain areas upon grain from other areas as the result of extensive crop damage caused by Hurricane Agnes;

(8) the loss of workdays at seaports during the Christmas and New Year periods; and

(9) a shortage of railroad freight cars and the ineffective utilization of existing freight cars; and

Whereas immediate and appropriate action is required to alleviate such transportation crisis: Now, therefore, be it

Resolved, That it is hereby declared to be the sense of the Senate that—

(1) the Secretary of Agriculture should impose a moratorium on the disposal of grain owned by the Commodity Credit Corporation and that such moratorium should be continued until the Secretary of Agriculture, the Interstate Commerce Commission, and the American Association of Railroads jointly determine and notify the Committee on Agriculture and Forestry of the Senate that a termination of the moratorium would not worsen the transportation situation or precipitate a new transportation crisis;

(2) the option to reseal loans on farm-stored wheat and feed grains should be made available to farmers by the Commodity Credit Corporation with respect to the 1970, 1971, and 1972 crops; and

(3) the President should, and is hereby urged and requested to, immediately appoint a special committee composed of one representative from the Department of Agriculture, one from the Department of Labor, one from the Interstate Commerce Commission, one from the Office of Emergency Preparedness, and one from the American Association of Railroads to conduct a study of the railroad freight car shortage problem and to submit to the President and to the Congress, within thirty days after its appointment, the results of its study together with its recommendations for the most effective and practical means of (A) delivering adequate quantities of feed grains to farmers and stockmen in the United States dependent upon such grain for feeding their livestock, and (B) alleviating the backup at those ports where numerous ships and railroad cars are waiting to be unloaded.

SEC. 2. It is further declared to be the sense of the Senate that the Secretary of Agriculture should notify the Committee on Agriculture and Forestry of the Senate at least seventy-two hours prior to the termination of any moratorium imposed pursuant to the recommendation set forth in the first section of this resolution.

ADDITIONAL COSPONSORS OF AN AMENDMENT

AMENDMENT NO. 3

At the request of Mr. CASE, the Senator from New York (Mr. JAVITS) and the Senator from New Jersey (Mr. WILLIAMS) were added as cosponsors of Amendment No. 3, intended to be proposed to the bill (S. 398) to extend and amend the Economic Stabilization Act of 1970.

Mr. CASE. Mr. President, I have introduced an amendment to the Economic Stabilization Act to restore the Federal rent control program that was in operation until the end of the administration's phase II economic program.

In general, under my amendment, the Federal rent control program will be restored and two changes in the program will be made.

The first change will make the Federal rent control program operative only where it is most needed. Rental increases are often related to the rate of unit vacancy. When there is a high vacancy rate the marketplace is competitive and rent increases usually are within reason. But in places where the vacancy rate is low, rent can rise dramatically, as has happened in the metropolitan northeast. In my own State of New Jersey, as an example, rent increases as high as 69 percent have been reported even under the Federal rent control program. And, since the end of phase II, I have received many complaints reporting similar increases.

Such increases are hardest on the least mobile people. Especially affected are senior citizens who cannot pay the increased charge and who also cannot easily move to another place. And where there are no vacancies, there are few if any alternatives for those who need shelter.

Under my amendment the Federal rent

control program will operate in any State where the vacancy rate is lower than 6.5 percent. The President, or his delegate will specify which States are affected by the control program. My amendment also makes the Federal program on rents retroactive to the end of phase II and provides that landlords refund or credit any overcharges that may have been made since the elimination of the phase II program. This will act as a brake on those individuals who may desire to increase rents beyond the scope of the restraints imposed by the rent control program.

Moreover, all rental housing in a low vacancy State will fall under the purview of the Federal program except where local rent control statutes provide for rent increases smaller than those permitted by the Federal Government.

Unlike other aspects of the phase II economic program, the rent control program was exceedingly generous to the landlord. For example, on a 1 year lease it allowed the landlord to increase his base rent 2.5 percent. It permitted the landlord also to pass along any increased amount he paid for taxes or municipal services, as well as the cost of capital improvements.

My amendment retains this formula. However, it is important to point out that this formula took effect only after an earlier set of Federal regulations sanctioned very high rent increases. Ironically, setting "base rents" at high levels, allowed landlords to justify higher increases than they might otherwise have dared. Only in recent months can it be said that both landlord and tenant have been treated fairly under the Federal program.

Under the improved Federal program, the landlord was still able to make a profit and keep his property in good order. What was not allowed were exorbitant rent increases carried out to raise capital for other ventures.

Rent payers in low vacancy areas are understandably apprehensive about their future. Without the Federal protection previously afforded them, they are at the mercy of the landlord. Hundreds who complained of unfair or illegal rent increases under the phase II program, those who reported violations, are now being harassed. Many face eviction proceedings or unconscionable rent increases.

Many others who may have normally been protected by long term leases have found a clause in their lease that allows their landlord again to raise rents after the Federal controls expire. I am told there are many thousands with leases of this kind in New Jersey

The Federal rent control program was designed to stabilize rents and to protect tenants. Neither goal will be met by the total elimination of the rent control program. Indeed, the exact opposite will take place.

I am sure that hundreds of thousands of rent payers share my deep disappointment over the abrupt end of the Federal rent control program. Like all citizens, those who are rent payers are entitled to fair treatment by the Government. They are not getting it.

It is my hope that the Members of the Senate, understanding the consequences of the closedown of this Federal program, will act promptly to restore the Federal rent control program.

ADDITIONAL STATEMENTS

SUGGESTION FOR REDUCED FEDERAL SPENDING

Mr. METCALF. Mr. President, my friend David Rivenes, of Miles City, Mont., president of the Amateur Athletic Union, called me yesterday with a suggestion for President Nixon as he seeks to reduce Federal spending.

The suggestion is that Mr. Nixon replace the President's Council of Physical Fitness program with one now being supervised without cost either to the participants or the Federal Government by the AAU.

Mr. Rivenes told me that for 16 years Americans of all ages have had the opportunity to improve themselves physically by taking part in the AAU program in which millions are now involved.

Under the AAU physical fitness program, medically approved proficiency tests are given free of charge by teachers, coaches, and other volunteers through schools, clubs, and civic organizations. Certificates of achievement are also provided free of charge by the AAU, 3400 West 86th Street, Indianapolis, Ind. 46268.

I commend Mr. Rivenes' suggestion to the Senate with the hope that President Nixon will consider the offer of free help by this century-old national sports organization to help with the national physical fitness program.

EFFECTS OF SUPREME COURT'S CAPITAL PUNISHMENT DECISION ON SOUTH CAROLINA'S JUSTICE SYSTEM

Mr. THURMOND. Mr. President, the U.S. Supreme Court's unfortunate decision in Furman against Georgia, deciding that capital punishment was "cruel and unusual punishment" in violation of the eighth and 14th amendments, has created a loophole in South Carolina's justice system. Although admittedly the status of capital punishment is not clear, it remains that each State must take legislative action to protect its citizens.

In South Carolina, our legislature has commissioned its legislative committee with the task of plugging the loophole. That committee, recognizing the necessity for quick action, proposed a bill that would require a convict under life sentence to serve at least 20 years before he becomes eligible for parole.

Mr. President, an editorial in the Charleston Evening Post on January 26, 1973, more fully describes my State's predicament. I ask unanimous consent that it be printed in the RECORD.

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

CAPITAL PUNISHMENT

With capital punishment at least temporarily in limbo, a legislative committee created to study its restoration suggests a timely step to plug the loophole left in South Carolina's justice system.

The committee proposes a bill requiring a convict under life sentence to serve at least 20 years before he becomes eligible for parole. That would close a gap which allows persons convicted of the most savage murders to be turned loose upon society after only 10 years behind bars. Another section of the bill sets 10 years as the minimum for parole where criminals are under sentences of more than 30 years.

Sen. LaNue Floyd, D-Williamsburg, the study committee's chairman, introduced the measure after his panel had voted to include such a recommendation in its report to the 1973 General Assembly. While it is admittedly a stopgap pending resolution of the questions surrounding restoration of capital punishment, the bill should be quickly enacted.

While that is being done, the committee must also press on with recommendations that capital punishment be reinstituted and made mandatory upon conviction of truly heinous crimes. North Carolina's Supreme Court already has declared the death statute in its state constitutional so long as juries are stripped of discretion to decide who shall and shall not be executed.

Such interpretations of laws so far laid down by the U.S. Supreme Court may or may not stand up under further tests for constitutionality. There is enough reason to believe that they will, however—including the opinions of the national professional association of states attorneys general—to warrant every effort to do what can be done to restore protections the courts have struck down. A virtue of capital punishment is that it offers a way to dispose of a menace to society by putting him beyond hope of rescue through legal technicalities or misplaced sympathy. In the case of cold-blooded murderers, or those unstable types who have killed more than once in the heat of anger, there should be no public misgiving about ordering a trip to the electric chair or the gas chamber.

SENATOR TUNNEY SPEAKS TO AMERICAN ADVERTISING FEDERATION

Mr. MOSS. Mr. President, on Tuesday, the distinguished Senator from California (Mr. TUNNEY), one of the two junior Members of the Consumer Subcommittee, addressed the 15th Annual Public Affairs Conference of the American Advertising Federation. Needless to say, I was particularly interested in the Senator's remarks and his thinking on the legislative issues which face the advertising community this year.

In reading Senator TUNNEY's remarks, I was heartened by his incisive analysis of the nature of advertising, and the problems which arise from incomplete and deceptive advertising. Senator TUNNEY's endorsement of four legislative proposals which I have introduced is also most reassuring.

I ask unanimous consent that Senator TUNNEY's speech be printed in the RECORD.

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

REMARKS BY SENATOR JOHN V. TUNNEY TO THE AMERICAN ADVERTISING FEDERATION'S 15TH ANNUAL PUBLIC AFFAIRS CONFERENCE, JANUARY 30, 1973

With all the accumulated wisdom of two weeks as a junior member of the Consumer

seasoned advertising men and women with a certain humility.

I'm reminded of the intimidating tale of the good man whose sole significant experience throughout an otherwise uneventful life was living through the infamous Johnstown flood.

He was a good man. When he died he went directly to Heaven and was greeted personally at the gate by St. Peter, who said to him, "Welcome, not only does your good life entitle you to admittance here, but in addition, I am prepared to grant you, as a bonus, one reasonable request."

"Well," said the man, "you may think this slightly peculiar, but I would like to tell everybody here about the Johnstown flood."

"That does seem a little strange," admitted St. Peter, "But I think it can be arranged. And the next day, lo and behold, the whole host of heaven was asembled in bleachers of cloud banks, served by quadrophonic speakers. Just as our good man was prepared to ascend the podium to tell the tale, St. Peter motioned him aside, "There's just one thing, before you go out there I think you ought to know, 'Noah is in your audience.'"

Ever since I learned of my assignment to the consumer subcommittee I have been boning up on Advertising Age. Now, after a two-week cram course with Stan Cohen and E. B. Weiss, I am ready to give you the benefit of my instant wisdom.

In fact, I'd like to share with those of you who may have missed it, a small but profoundly significant work of social criticism which appeared in the pages of last week's Advertising Age. It is a letter to the editor and I read it to you in its entirety:

"To the editor: I am 12 years old and I wach a lot of TV. There are these dumb two comnercials one is where this guy says 'I think I've got a fevor,' but the thing is that the guy has thic gloves on. That guy must have a furnace for a head.

"The other commercial is that this guys wife won't let him have more than a little coffee because they say it is keeping him up at night, the thing is that its in the morning. How can that keep him up at night?"

My dad is in advertising and he told me to write this letter. I want you to know that I believe in selfregulation, especially when it's as pungent as this is.

I am told that since the consumer subcommittee is bound to be mucking about in your business, you'd like to know how I feel about advertising. The truth is—I love it.

When it tells me what I want to know.

When it tells me what I *don't* especially want to know, but does it with wit and style and imagination.

And I love advertising when it kids itself and not me. On the other hand, advertising drives me up the wall.

When it hammers incredible trivia at my kids and me.

When it trys to pry open my psyche with the intimation that a pill or a brew or vinyl upholstery will cure my angst.

And advertising drives me up the wall when it chisels on the truth.

I also hear that you'd like to know how I feel about more stringent regulation of advertising.

I'm dead set against it—

When it imposes mindless economic burdens on media already under ruthless assault from Whitehead in the White House.

When it reflects some bureaucrat's notion of reducing competition to the bloodless, cold, sober recitation of raw facts.

And I'm against it when it fails to increase the consumer's sum total of usable information.

But, I'm *for* it if it can transform the FTC from a sour joke whose feeble cease and desist orders can be mocked until the offending ad campaign has been safely enshrined in "best read ads of the last decade."

And, I'm for regulation when it looks to the real world of communications' psychology to devise remedies to rid the marketplace of the residual effects of deception and manipulation;

And when regulation looks realistically at the impact of market structure upon the advertiser's ability to employ massive ad budgets as instruments of monopolization;

And when regulation seeks a reasonable balance in the quality of product information which the consumer has before him;

And I'm for *more* regulation when it drives to the heart of manipulative techniques aimed at the soft, exposed psyches of children.

The Commerce Committee has some hard decisions to make this year affecting advertising.

First, the nomination scheduled for next Monday of Louis Engman as member and Chairman of the Federal Trade Commission.

With the possible exception of the secret life of Peter Flannigan, this post is the most significant in the administration for both consumers and business.

The nomination will be subject to intense scrutiny. There are natural and recurring concerns at yet one more appointment out of the White House staff. No matter how able the nominee, a White House nesting place tokens poorly for that statutory spirit of independence which the Trade Commission *must* have to be an honest and effective policeman.

At the same time, Mr. Engman's prior performance raises the expectation that he will continue the initiatives of his able predecessors, Chairmen Weinberger and Kirkpatrick, that he will continue to press for effective remedies, that he will maintain the independence of the Commission, and that he will be equally responsive to public concern about advertising abuses.

Fortunately, for the Commerce Committee, if not for Mr. Engman, he cannot take refuge—as so many recent administration nominees have—in ignorance. Since he came to Washington, he has been involved in questions of consumer policy and the committee will expect hard answers to straight answers.

Next, the committee is expected to turn to the unfinished business of last year. Chairman Magnuson expects to report out the Warranty-FTC Improvement Act which passed the Senate by an overwhelming vote last session, only to die stillborn for lack of time in the House committee at the close of the last session.

The most controversial issue involved in that legislation, the power of the Commission to issue binding trade regulation rules, may well be resolved by the courts before the committee has the opportunity to act. Ironically, most observers expect the courts to recognize that the commission has rulemaking powers broader even than those defined in the legislation.

With respect to advertising directly, the committee will have before it three pieces of legislation:

(1) The new version of last year's McGovern-Moss bill, to require that substantiation of advertising claims be supplied to interested parties upon request.

(2) The proposal to create a national institute of marketing and society to study the impact of advertising techniques upon the behavior and attitude particularly of young people, and

(3) The small cigar broadcast advertising ban.

As I understand it, the sponsors of the truth-in-advertising bill see the bill working to complement the FTC's ad substantiation programs. A typical case might work as follows:

Any consumer or consumer's group curious or concerned about an advertiser's claim would write the advertiser, asking for a summary of the claim substantiation data. If the summary appeared flimsy or evasive or otherwise raised questions as to the validity of the claims, the consumer or group would then be alerted to write to the commission, saying, "take a look at this ad and the substantiation summary; it looks phony to us; the commission ought to take a closer look at it."

It may well be that the legislation needs to be tightened in its drafting, but the basic principle that advertisers should be prepared to substantiate their claims, strikes me as being incontestable.

There have been serious proposals from concerned citizen's groups such as ACT (Action for Children's Television) and from congressional advocates such as Congressman Pepper for the elimination of whole categories of advertising, such as proprietary drugs, and of *all* advertising on programs predominantly directed toward children's audiences.

Before I lend my support to such draconian measures, however, I am certainly going to take a hard look at available scientific evidence supporting the thesis that these forms of advertising constitute a serious threat to the physical or mental health of their audiences.

Nevertheless, no legislator or concerned parent for that matter, can fail to be concerned with the apparent linkage between certain dominant advertising themes and campaigns and major medical and social problems.

Through hearings, Sentaor Moss developed disturbing evidence of the potential relationship between food marketing and advertising techniques and malnutrition stemming from nutritional illiteracy, particularly among teenagers.

There is concern, too, at the relationship between certain themes utilized in proprietary drug advertising and the growth of drug dependency, again among teenagers.

There is even legitimate concern, I believe, about the relationship between the constant pattern of advertising messages which promise far more than they can deliver and pervasive alienation and distrust among the young.

For these reasons I intend strongly to support efforts to establish within the National Science Foundation a new institute of marketing and society, *not* to regulate, but to probe deeply through the funding of new research and the collation of existing research so that we can guage the psychosocial impact of marketing and advertising techniques.

Finally, the committee will confront headon the television advertising of small cigars. Frankly, I consider the fabrication and TV promotion of small cigars carefully fabricated to be inhalable, an affront to Congress and the public, a textbook of corporate irresponsibility. Congress exempted cigars from the ban on television advertising based upon sound medical testimony that the incidence of death and disease among cigar smokers was substantially lower than that of cigarette smokers and that this difference was directly related to the inhalability of cigarette smoke.

This callous disregard of the public by a national advertiser brings shame and ill will upon the whole advertising community. I certainly will support efforts to amend the cigarette advertising law, if necessary, to terminate this practice.

Thank you again for inviting me to speak. I certainly want you to know that I consider the work of the consumer subcommittee a most serious responsibility. I want you also to know that I believe that Congress must

not tamper with free market mechanisms lightly, and that I consider advertising—good advertising—to be the essential lubricant of a strong and healthy economy.

THE BREAD TAX BILL

Mr. GURNEY. Mr. President, yesterday, I joined with the distinguished Senator from Connecticut (Mr. WEICKER) in cosponsoring legislation that, if enacted, will be of great benefit to every consumer who purchases a loaf of bread.

Our bill can serve to solve two problems, one of which is now at the crisis stage. First, we have the problem of the consumer. Today's consumer is forced to pay almost 2 cents more for each loaf of bread he purchases as a result of the "bread tax." However, that 2 cents is merely the beginning of what could very well be a dramatic escalation in the price of baked goods.

In 1972, over 60 major bakeries had to close their plants, because of escalating flour costs. The primary factor in these closings was a 75-cent-per-bushel certificate tax on wheat. If this tax is allowed to continue, the price of flour will continue to go up, the number of bakeries will continue to decline and, in the final analysis, the consumer will have to pay even more for bread and other baked items.

From the standpoint of the farmer, this tax is not necessary to provide the money for farm payment funds. Over 90 percent of those funds now come from general revenue and, if this legislation is passed, that figure should rise to 100 percent. Thus, this bill, while helping the consumer, will not hurt the American farmer. I therefore urge Senators to give it their full support.

LYNDON B. JOHNSON

Mr. METCALF. Mr. President, on January 24, during the period set aside for eulogies of the late President Johnson, I was unable to obtain recognition before the Senate adjourned to attend the ceremonies in the Rotunda of the Capitol.

I listened to the praise heaped upon President Johnson by his former colleagues, and since then I have read tributes to him by people from all over America. These have all been printed in the CONGRESSIONAL RECORD. I have decided to discard the brief remarks I would have made at that time and substitute the following personal statement.

Everyone who has tried to talk or write about Lyndon Johnson is immediately impressed with the breadth and complexity of his life, his personality, and his achievements. Many editorials have commented on this. It is apparent in many of the eulogies that here was a man impossible to label or categorize. A true representative of the great State he represented, his interests, his concerns, his temperament were spacious.

First of all he was a superb legislator. As a craftsman he had thoroughly mastered the art. He knew when to press forward—frequently—when to compromise—seldom—and when to courteously and considerately acquiesce to overwhelming odds—almost never. He was a formidable foe on the floor of the Senate, in committee, in negotiations. He knew the job of a Representative, of a Senator, of a majority leader of the Senate, and he did these jobs magnificently.

From this Senator's viewpoint, the issues he advocated and for which he used his skill and his power were correct. His instincts were for people, for their right to be free, to vote, to participate, to be educated. And these things were partially achieved under his leadership. They were, of course, implemented when he became President as they have not been implemented since.

So here was a man of tremendous competence. I came to Congress as a Member of the House of Representatives. I served an apprenticeship under another Texan, Sam Rayburn. These two great legislators are to me the epitome of legislative excellence.

When I was a small boy, one of my heroes was William Travis, the commander at the Alamo. Cool, calculating, and courageous, Travis estimated the odds and without bravado decided upon his course and kept upon it despite a realization of almost certain death. Lyndon Johnson was a true descendant of Travis. Johnson's great courage was one of the chief characteristics that is most often applauded. Johnson as a combination of Travis and Rayburn, was a man to be reckoned with.

Johnson was a westerner. He was sometimes brutal, sometimes more forthright than diplomacy would demand. But he was big, he was tolerant, and he was understanding. The critics who point out some personality traits that they deplore fail to understand the men and women who are born to the vastness of the West, who cope with blizzards and heat waves, who know mountains and prairies. Lyndon Johnson was a true representative of Americans—of all Americans.

As President, his legislative achievements were unsurpassed. Many have dwelt upon his accomplishments in civil rights, in education, and in housing, but there is not an aspect of American life that has not some Johnson imprint.

In the closing years of his administration, President Johnson was locked in by the war in Vietnam, an unfortunate captive of that unhappy time. Nevertheless, history will proclaim his essential goodness, his humanity, and greatness of soul.

Of course, Mrs. Johnson, a gracious lady and an affectionate mother, was an example to the women of America. Without Lady Bird our country would be uglier, and Washington would not be the city of blooming shrubs and flowered squares it is today. From the first daffodils and tulips to the last withered chrysanthemums she is responsible for making our Capital City one of the loveliest cities in the world.

Washington is a city with the shortest memory in the world. Most public figures are forgotten as soon as they lose power. Keats desired that his tombstone carry the inscription "Here lies one whose name was writ in water." In Washington, most men and women leave without that much of a ripple. Not Lyndon Johnson. He will be long remembered here for his courage, his competence, and his integrity. His achievements will affect the lives of Americans for many years to come and his life will be an inspiration to all men.

I am proud that I knew Lyndon Johnson.

OBJECTIONS TO CUT IN EDUCATION FUNDS FOR FEDERALLY IMPACTED AREAS

Mr. MOSS. Mr. President, 34 school districts in Utah stand to lose millions of dollars under the administration's proposals for the fiscal year 1974 budget which was unveiled Monday. These programs, known as the impact aid programs, have for many years provided needed funds for the operation, maintenance, and construction of schools where Federal activities bring students into the local school system without adequately sharing in the costs of that school system.

In fiscal year 1972, the last year for which we have solid figures available, the impact aid programs brought $612 million to schools in America. The State of Utah received $7 million. The President has now asked for a mere $60.5 million for the entire country in fiscal year 1974 under the regular appropriations bill. He has added to this the amount of $232 million, which is to be provided through his hoped-for special revenue-sharing proposal for education, which will be presented to the Congress at a later date.

The present administration proposal is by far the harshest handling of the impact aid program since its inception. Last year, the administration proposal called for a rapid phaseout. This year, we have a "meat ax" cutoff of most of the program.

The fiscal year 1974 budget recommends money for children of parents only if they work on Federal property and live on Federal property. The bulk of the money going to schools in Utah and throughout the country is for children from families with parents who either work on or live on Federal property. This will now be eliminated under the new proposal.

Utah received 83 percent of its money under the impact aid program in fiscal year 1972 from categories that are now slated for elimination in the present budget. Though the figures are not available on a State-by-State basis, it is safe to assume that Utah would probably lose at least 83 percent of its impact aid money if the present budget is allowed to proceed.

There is certainly a better approach available to those who are unhappy with some aspects of the impact aid program. The public laws authorizing funds for these programs expire this year. Congress has already slated a review of these programs, and the chairmen of the committees in Congress responsible for this legislation have indicated that they will revise and tighten the laws. I support the effort to reexamine these programs—every program that has been in existence

for a long period of time should be tightened and reviewed periodically.

Perhaps where the impact is small and the school district can absorb the cost, Federal payments are not needed. Perhaps a sliding scale could be developed. The answers to these suggestions should be developed in a careful review of the legislation, not an abrupt termination.

Congress has consistently overridden the President's attempt to kill these programs. In fiscal year 1973 the President requested $430.9 million for these programs. On August 10, the conference committee of the House and Senate Appropriation Committee approved legislation that would have provided $681.4 million for these programs, showing the unpopularity of the President's original request. That bill passed both Houses of Congress, but was vetoed by the President. A second bill was also vetoed by the President. A second bill was also vetoed by the President.

As a result of this turmoil, there is presently no appropriation available for the Department of Labor and HEW, and no agreed upon figures for fiscal year 1973 for the impact aid programs. This should be resolved in the near future by the passage of another appropriation bill—one that we hope the President will sign. Those who are likely to be most seriously harmed by such constant struggling are the children who benefit from these education programs.

Though figures are not available on a county-by-county basis, information from past years would indicate that while 34 of our school districts would suffer, 10 school districts in Utah would lose every penny of their impact aid money under the President's new budget. These are Ogden City, Logan City, Piute, Carbon, Cache, Tintic, Jordan, Iron, Granite, and Murray school districts. This proposal is a harsh device for dealing with the inequities that may exist in the program. We must approach the question in a more rational way.

As a Congress, we must work for a more equitable review of the impact aid programs and for restoration of adequate funds in the fiscal year 1973 and fiscal year 1974 budgets.

SOUTH CAROLINA PARACHUTIST BREAKS WORLD'S RECORD

Mr. THURMOND. Mr. President, on Saturday, January 13, a young South Carolinian accomplished an extraordinary feat.

Woody Binnicker, a businessman from Denmark, S.C., broke the world's record for the number of parachute jumps in a 24-hour period. Woody completed his 201st jump after 17½ hours, an average of 11 jumps per hour. His goal was 240, but the decision to stop after having broken the world's record was made because he was tired and a sprained ankle was giving him some trouble.

The previous world's record of 200 jumps was held by a Canadian.

Mr. Binnicker was assisted on the ground by teams of parachute riggers, pilots, and planes from sports parachuting clubs in South Carolina and other States.

All the jumps were made from an altitude of 2,000 feet, the distance set by the national sports parachuting organization which sanctions such events.

Mr. President, we in South Carolina are very proud of this veteran Army parachutist, and he is to be commended for his courage and bravery in this outstanding undertaking.

Several newspaper articles were published about Mr. Binnicker's remarkable accomplishment. They include: "Parachutists Will Try To Set New Record," the Greenvile News, January 13, 1973; "Jumper Jumping at Record," Florence Morning News, January 13; "Binnicker Captures Jumping Record," the State, January 14; "South Carolina Parachutist Sets World Record," the Times and Democrat, January 14; "Never Again, Vows Jumper," the State, January 15; and "Parachutist Sets World Jump Record," the Union Daily Times, January 15.

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

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

[From the Greenville News, Jan. 13, 1973]

PARACHUTIST WILL TRY TO SET NEW RECORD

BARNWELL.—Veteran parachutist Woody Binnicker said Friday the weather looked good for his latest attempt to set a record for the largest number of parachute jumps in a 24-hour period scheduled to begin at midnight Friday.

"There's no rain and the cold weather is OK," said Binnicker, 34, a Denmark businessman.

Binnicker, a veteran Air Force parachutist and one of the nation's leading jumpers, said he hopes to jump 240 times by midnight Saturday. The current record is 200 consecutive jumps in a 24-hour period.

Binnicker, who had more than 3,000 jumps to his credit, failed in an attempt to break the record last year. He completed 101 jumps in an eight and a half hour period before rain forced him to stop.

Binnicker plans to jump from an altitude of about 2,000 feet. He will use at least two planes taking off from the Barnwell airport.

Binnicker will be assisted by some 15 riggers from Ft. Bragg who will help him with the packing of the parachutes.

[From the Florence Morning News, Jan. 13, 1973]

JUMPER JUMPING AT RECORD

BARNWELL, S.C.—Veteran parachutist Woody Binnicker is trying again to set a new world's record by making more than 200 jumps in a 24-hour period.

Binnicker planned to begin his jumps at midnight Friday at the Barnwell County Airport. Utilizing 12 parachute riggers and several planes, he hoped to average about 10 jumps an hour for a total of 240 by midnight Saturday.

The record of 200 jumps in 24 hours is held by a Canadian. Binnicker was well on the way to topping that last spring but weather conditions forced him to give up the attempt after 101 jumps. However, that earlier effort gave him a record for consecutive night jumps.

A former Army parachutist and now a Denmark merchant, Binnicker is rated the first most experienced parachutist in the nation with more than 3,000 jumps.

He noted that no rain was in the forecast Saturday and said he thinks he has an excellent chance of setting a new record.

[From the Columbia (S.C.) State, Jan. 14, 1973]

BINNICKER CAPTURES JUMPING RECORD

BARNWELL.—Tired and sore but jubilant, veteran parachutist Woody Binnicker captured a world's record of 201 consecutive parachute jumps Saturday.

Binnicker, a 34-year-old businessman from Denmark, completed his 201st jump at 5:32 Saturday afternoon, breaking the old record of 200 jumps held by a Canadian.

He began his feat at midnight Friday and was to have continued through midnight Saturday but he was too exhausted to continue.

Binnicker had set a goal of 240 jumps during the 24-hour period, and was running well ahead of schedule and it appeared he would even surpass that mark when he decided to quit.

A spokesman at the Barnwell airport, where Binnicker was jumping, said the former Air Force parachutist was "awfully tired, sore and stiff."

Binnicker was aided in his efforts by clear, cold weather Saturday. Last year he attempted to break the jump record but was forced to quit after 101 jumps in eight and a half hours by rain.

Binnicker was jumping from an altitude of 2,000 feet, the altitude set by the national sports parachuting organization which sanctions such events.

Two planes were being used during the jumping contest. Binnicker was on the ground only between 11–15 seconds between jumps. When he hit the ground, a four-man team assisted him in unbuckling the parachute and putting another one on.

He then got into one of the planes which had taxied to his landing spot.

Sport parachutists from across the state were in attendance at the airport, and parachute experts from Fort Bragg, N.C., were helping pack Binnicker's parachutes.

[From the Orangeburg (S.C.) Times and Democrat, Jan. 14, 1973]

SOUTH CAROLINA PARACHUTIST SETS WORLD RECORD

BARNWELL, S.C.—Veteran parachutist Woody Binnicker broke the world's record Saturday for jumps in a 24-hour period, making his 201st at 5:35 p.m., some 17½ hours after he began.

Binnicker, a Denmark, S.C., merchant who is in his late 20s, averaged better than 11 jumps an hour. He took a 30-minute lunch and rest break shortly after noon.

Binnicker was expected to continue until midnight Saturday, and his pace of 11 jumps per hour would give him about 265 for the day.

This was the former Army paratrooper's second attempt to break the record held by a Canadian parachutist of 200 jumps in a 24-hour period. Binnicker first went after the record last spring but gave up after 101 jumps when bad weather moved in. He still holds the record for consecutive night jumps as a result of that earlier attempt.

Binnicker began bailing out at the stroke of midnight at the Barnwell County Airport, utilizing teams of parachute riggers, pilots and planes from sports parachute clubs in South Carolina and other states.

The jumps are all made from 2,000 feet, the altitude set by the national sports parachuting organization which sanctions the events.

[From the Columbia (S.C.) State, Jan. 15, 1973]

NEVER AGAIN, VOWS JUMPER

DENMARK.—Woody Binnicker was a very tired young man Sunday. And with good reason.

Binnicker, a 35-year-old retail grocer from Denmark, ("I'll be 36 in a few days") Saturday attained a distinction that few persons

can claim. He became the proud holder of an official world's record.

The softspoken young family man from this small South Carolina town Saturday became the first American to hold the record for the most consecutive parachute jumps in a 24-hour period—201—and fulfilled his fondest ambition.

The first question that comes to mind is "why."

"Well," Binnicker told The State Sunday, "it was one of the records that no one in the United States had ever held, and I knew I could break it. We had been talking about it for a good while and I decided to try it.

"It is just something that will haunt you," he added. "It just gives you a sense of satisfaction to know that you can do it."

Would he try it again if his record is broken?

"No sir," he replied emphatically. "I would just congratulate them."

Sunday he was resting at his home, his ankles, one of which he sprained slightly early in the record attempt, were swollen, and he had slight problems with windburn and chaffing caused by equipment, but otherwise he said he felt great.

Aside from the ankle trouble, he encountered only one other problem during his 201 jumps.

"On one of the jumps I had what is called pilot chute hesitation," he reported, explaining that as a jumper comes out of the plane sometimes the pilot chute, a small canopy which draws the main chute out of the back pack, is caught in a vacuum and fails to catch the wind.

"When that happens, sometimes you can just dip a shoulder and correct it," he said. "But it didn't work right away, so I decided to go ahead and use my reserve (chute)."

That was the only equipment problem he had during the ordeal, thanks, he was quick to add, to an excellent ground crew.

"Those boys were just great. It was quite a hardship on them. Many of them had blisters on their fingers from working so hard to make it work.

He reported that much of the success of the day was a result of those who worked with him.

"The crews on the ground—we had two of them working—had a kind of contest going to see who could get me back in the plane the fastest. One of them got me back in 17 seconds. That was a record for the day."

Binnicker said he was never worried during the day. "Not really. I had complete confidence in those fellows. And my pilot, Bobby Frierson, did an outstanding job. He flew the entire time. He was waiting on the ground as soon as I got down each time.

"He told me earlier that if he showed any signs of slowing up or slowing me up, he would quit, but that didn't happen."

A former paratrooper with the 82nd Airborne Division at Ft. Bragg, N.C., Binnicker began sport jumping 11 years ago, and Sunday had compiled an impressive 3,496 jump total, making him the fifth most experienced jumper in the country, according to official reports.

Though he had intended Saturday to continue jumping past the record 201 jumps, he said that during the hour's rest following that record breaker "I realized just how tired I was and decided to give it up at that."

He said he felt he physically could have gone for a few more, but it was "mentally the monotony of 201 jumps" that finally got to him.

He didn't find himself slowing up during the ordeal, because "the only physical motion was pulling my ripcord," and that was one motion he had an incentive to make even up to the end, he explained humorously.

The only food he could take (during the attempt on the record that had to be called off because of rain after 101 jumps) to eat a steak sandwich, but with the plane taking all those turns and the emotional strain of the event I found that it just didn't agree with me."

What are his plans for the future?

Well, Woody Binnicker, grocer, family man and world record holder plans to take it easy until next weekend when you guessed it—he can go sport parachuting again, just for the fun of it this time.

[From the Union (S.C.) Daily Times, Jan. 15, 1973]

PARACHUTIST SETS WORLD JUMP RECORD

BARNWELL, S.C.—Denmark Merchant Woody Binnicker rested up today after setting a world record for the most parachute jumps within a 24 hour span.

He had hoped for 240 or more, but stopped after 17½ hours with his 201st jump from an altitude of 2,000 feet.

Binnicker said he was dog tired after the 201st leap. He said he was bothered by a sprained ankle that had to be re-taped during his marathon that he began at midnight Friday at the Barnwell airport.

He averaged about 11 jumps an hour, despite taking a 30-minute lunch break about noon Saturday.

The old record of 200 jumps within 24 hours was set by a Canadian.

Binnicker, a former army jumper with more than 3,000 leaps to his credit, and rated as the nation's fifth most experienced jumper, used two small planes and a crew of parachute riggers to accomplish his record.

The parachutist, who will be 36 this week, was foiled in a record try last spring, after more than 100 jumps, when bad weather set in.

In setting the record, Binnicker was on the ground about 15 seconds between each jump.

A team of four men unbuckled his rig and strapped on another and he stepped back into the plane. Planes were changed after each 10 jumps to keep their fuel load, and weight, down for faster takeoffs.

The teams rigging the parachutes, drawn from sports parachute clubs, as were the chutes, were changed every four hours.

UNDERSTANDING GENOCIDE

Mr. PROXMIRE. Mr. President, one of the most serious objections raised against article II of the Genocide Convention is that it is too vague. Although this complaint did not seem to bother the Senate Foreign Relations Committee, it recommended two understandings in order to allay the objections of some of the convention critics.

Article II states that genocide occurs when there is the "intent to destroy, in whole or in part, a national, ethnical, racial, or religious group." This article goes on to say that the following acts are considered genocide:

First, killing members of the group;

Second, causing serious bodily or mental harm to members of the group;

Third, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

Fourth, imposing measures intended to prevent births within the group; and

Fifth, forcibly transferring children of the group to another group.

Critics of the convention have claimed that the phrases "in whole or in part" and "mental harm" need clarification. The committee therefore took on the task of meeting the objections by adding the understandings.

The first understanding states that the United States interprets article II to mean that the intent to commit genocide must be proven and that the act must affect a substantial part of the concerned group. The purpose of this understanding is to make it clear that acts such as lynching, school busing, the dispensing of birth-control materials, and police actions against militant groups do not in themselves, in the committee's opinion, constitute genocide. These acts would only be considered genocide if it could be proven that there was the intent to destroy the group.

During his appearance before the committee in 1950, then Deputy Under Secretary of State Dean Rusk testified:

The legislative history of Article II shows that the United Nations negotiators felt that it should not be necessary that an entire human group be destroyed to constitute the crime of genocide but rather that genocide meant the partial destruction of such a group with the intent to destroy the entire group concerned.

The second understanding states that the United States construes "mental harm" to mean permanent harm to a person's mental faculties. This statement is an attempt to make it clear that mental harassment and other forms of mental cruelty, no matter how reprehensible, do not constitute genocide.

Contrary to the opinions of its critics, the Genocide Convention is neither vague nor ambiguous about which acts are considered to be genocide. The convention, fortified by the understandings, says that there must be an intent to destroy a group, and it lists five specific acts which constitute genocide.

Genocide is a crime against humanity. It is time that the United States join with the 75 other nations who have ratified the convention to say that genocide will not be tolerated. I urge the prompt ratification of this important convention

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CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

CONFIRMATION BY THE SENATE OF APPOINTMENTS TO OFFICES OF DIRECTOR AND DEPUTY DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET

The ACTING PRESIDENT pro tempore. Under the unanimous-consent agreement the Chair now lays before the Senate the unfinished business, S. 518, which will be stated.

The bill was read by title as follows:

A bill (S. 518) to provide that appointments to the Offices of Director and Deputy Director of the Office of Management and Budget shall be subject to confirmation by the Senate.

The Senate proceeded to consider the bill.

REVISION OF UNANIMOUS-CONSENT AGREEMENT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that, instead of the 3 hours in the agreement reached yesterday, the time be reduced to 2 hours,

because the factor which caused us to ask for 3 hours has been removed. Otherwise, the unanimous-consent request will remain the same.

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

PRIVILEGE OF THE FLOOR

Mr. ROBERT C. BYRD. Mr. President, at the request of the distinguished Senator from Montana (Mr. METCALF), who is now presiding over the Senate, I ask unanimous consent that at such time as S. 518 is laid before the Senate today and the Senate resumes its consideration thereof, Mr. Winslow Turner, of the Government Operations Committee, be permitted the privilege of the floor during the consideration of that measure.

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

Mr. ERVIN. Mr. President, I ask unanimous consent that Robert B. Smith, Jr., Eli E. Nobleman, and W. P. Goodwin, members of the professional staff of the Committee on Government Operations, be permitted to remain on the Senate floor during consideration of S. 518.

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

Debate on this bill will be limited to 2 hours on the bill, 30 minutes on amendments in the first degree, 20 minutes on amendments to amendments, debatable motions or appeals, with the time to be equally divided and controlled between the mover thereof and the Senator from North Carolina (Mr. ERVIN).

Mr. MANSFIELD. Mr. President, will the Senator from North Carolina yield?

Mr. ERVIN. I yield.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be not charged to either side, and without the Senator from North Carolina losing his right to the floor.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The Senator from North Carolina is recognized. Does he yield himself time?

Mr. ERVIN. Mr. President, I yield myself such time out of the time allotted to me as I may require.

Mr. President, the pending bill, which I have introduced, with the cosponsorship of 32 Senators, would require that, on the day following the effective day of this act, appointments made by the President to fill the offices of Director and Deputy Director of the Office of Management and Budget be subject to the advice and consent of the Senate; and no individual shall hold either such position 30 days after that date unless he has been so appointed.

This bill, which was ordered reported unanimously by the Committee on Government Operations on Friday, January 26, has as its sole objective—to afford the Senate an opportunity to inquire into the qualifications, background, and fitness of these officials in the same manner as is required for virtualy all other policymaking officials in the executive branch of the Government.

Although the language and purpose of this bill are simple and uncomplicated, underlying this measure is an important constitutional principle—checks and balances.

The question of the power of the President to make appointments was a troublesome one to the Founding Fathers, who devoted many hours to its consideration during the Constitutional Convention. Following the consideration of several alternatives, the Convention adopted the laguage now found in article II, section 2, clause 2 of the Constitution:

* * * he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . 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, . . . or in the Heads of Departments.

Referring to the reasons for the adoption of this provision, Mr. Justice Story, in his celebrated Commentaries on the Constitution, after reviewing the alternatives and the compromise adopted, stated (Vol. 3, pp. 376 ff.):

The president is to nominate, and thereby has the sole power to select for office; but his nomination cannot confer office, unless approved by a majority of the Senate. His responsibility and theirs is thus plete and distinct. He can never be compelled to yield to their appointment of a man unfit for office; and, on the other hand, they may withhold their advice and consent from any candidate, who in their judgment does not possess due qualifications for office. Thus, no serious abuse of the power can take place without the cooperation of two coordinate branches of the government, acting in distinct spheres; and, if there should be any improper concession on either side, it is obvious, that from the structure and changes, incident to each department, the evil cannot long endure, and will be remedied, as it should be, by the elective franchise. The consciousness of this check will make the president more circumspect, and deliberate in his nominations for office. He will feel, that in case of a disagreement of opinion with the Senate, his principle vindication must depend upon the unexceptionable character of his nomination. And in case of a rejection, the most that can be said, is that he had not his first choice. He will still have a wide range of selection; and his responsibility to present another candidate entirely qualified for the office, will be complete and unquestionable.

Pursuant to article II, section 2, clause 2 of the Constitution, Senate confirmation has, since the earliest days of the Nation, been required for appointments to every major policymaking position in the executive branch, and in the regulatory agencies. Even in the Executive Office of the President, where the principal officers of agencies placed therein serve as staff advisers to the President, as well as heads of operating agencies, in many instances, Senate confirmation has been required.

Thus, the advice and consent of the Senate is required for the appointment of the Director, Deputy Director, and two Assistant Directors of the Office of Emergency Preparedness; the Director and Deputy Director of the Office of Science and Technology; the Director and Deputy Director of the Office of Telecommunications Policy; all of the members of the Council of Economic Advisers and the Civil Service Commission; the Executive Director of the National Aeronautics and Space Council; the Director, Deputy Director, and five Assistant Directors of the Office of Economic Opportunity; the Director and Deputy Director of the Special Action Office for Drug Abuse Prevention; and the Chairman and six members of the Price Commission and the Pay Board.

The question that now occurs is why the Congress, when it established the Bureau of the Budget in 1921, did not require Senate confirmation of the appointments of the Director and his principal assistant.

An examination of the legislative history of the Budget and Accounting Act, 1921, reveals that although the question was raised, in view of the nature of the duties of the Director, and his relationship to the President, Senate confirmation was not required. It must be recalled that the duties involved related primarily to the formulation of the President's budget, and study and advice to the President relative to the organization, activities, and services performed by Federal agencies. Concluding that the Director and his deputy were expected to perform services which were administrative and personal to the President, the Congress, exercising its authority under the Constitution relative to the appointment of "inferior officers," vested the appointment of these officers in the President alone.

Now let us examine, in greater detail, the original duties and functions of this agency.

Originally established in the Department of the Treasury to serve as an institutional aid to the President, the Bureau of the Budget, was to assist the President in coordinating activities and managing the execution of programs and policies. In adition to being the budget agency of the Federal Government, when directed by the President, it was to "make a detailed study of the departments and establishments for the purpose of enabling the President to determine what changes—with a view to securing greater economy and efficiency in the conduct of the public service—should be made in (1) the existing organization, activities, and methods of business of such departments or establishments, (2) the appropriations therefor, (3) the assignment of particular activities to particular services, or (4) the regrouping of services." The results of such studies were to be embodied in reports to the President with authority in him to transmit such reports, or any parts thereof, with his recommendations, to the Congress.

By Reorganization Plan No. 1 of 1939, the Bureau of the Budget was transferred from the Treasury Department to the Executive Office of the President, together with all of its functions. The plan provided further that all of the Bureau's functions were to be administered by the Director under the direction and supervision of the President.

By Executive Order No. 8248, dated September 8, 1939, the President listed the functions and duties of the Bureau of the Budget, as follows: First, to assist the President in preparing the budget and formulating the fiscal program of the Federal Government; second, to supervise and control the administration of the budget; third, to conduct research in the development of improved plans of administrative management and to advise the executive department and agencies with respect to improved administrative organization and practice; fourth, to aid the President in bringing about more efficient and economical conduct of the Government service; fifth, to assist the President by clearing and coordinating departmental advice on proposed legislation and by making recommendations as to Presidential action to be taken; sixth, to assist in the consideration, clearance and preparation of proposed executive orders and proclamations; seventh, to plan and promote the development, coordination, and improvement of the Federal and other statistical services; and eighth, to keep the President informed of the progress of activities of Government agencies with respect to work proposed, actually initiated, and completed.

By Reorganization Plan No. 2 of 1970, the Bureau of the Budget was redesignated as the Office of Management and Budget, and all functions vested by law in the Bureau of the Budget, or its Director, were transferred to the President.

Executive Order 11541, dated July 1, 1970, transferred to the Director of the Office of Management and Budget—hereinafter referred to as OMB—all of the functions vested by the plan in the President, and continued in effect all outstanding delegations, rules, regulations, and other forms of executive or administrative action issued or taken by or relating to the Bureau of the Budget, prior to the effective date of the reorganization plan.

Since 1939, vast changes have occurred in the structure, responsibilities, and authority of the Office of Management and Budget—the name was changed from Bureau of the Budget by Reorganization Plan No. 2 of 1970—with a current staff of nearly 700 persons, this agency, originally established by the Congress as a management tool and institutional aid for the President, has developed into a super department with enormous authority over all of the activities of the Federal Government. Its Director has become, in effect, a Deputy President who exercises vast, vital Presidential powers.

OMB determines line by line budget limitations for each agency, including the regulatory commissions. Following authorization by the Congress of programs and activities, and the funding of such activities, the Office of Management and Budget develops impoundment actions, limiting the expenditures of funds for programs approved by law to those falling within the President's priorities, rather than those established by the Congress. By statute, the Director of OMB has authority to apportion appropriations, approve agency systems for the control of appropriated funds and establish reserves.

The Budget and Accounting Act, 1950, as amended, gave the Director important powers over agency accounting and budget systems and classifications, statistical performance and cost-information systems.

Under numerous other statutes, or by Presidential delegations, the Director of OMB has been given a vast number of additional functions. These include, but are not limited to, formulating and issuing rules and regulations relating to: First, coordination of Federal aid programs in metropolitan areas under the model cities legislation; second, the administration of grant-in-aid funds; third, special and technical services to State and local governments; fourth, formulation, evaluation, and review of Federal programs having a significant impact on area community development; fifth, policy guidelines relative to Government competition with private enterprise and the use of technical service contracts; sixth, user charges to be paid by individuals receiving special services from Government agencies; and seventh, Government employee training programs with regard to absorption of costs.

The Director of OMB also exercises control over the nature and types of questionnaires, surveys, reports, and forms which may be issued and utilized by Government agencies. In addition, together with the Chairman of the Civil Service Commission, he determines Federal pay comparability adjustments. Finally, the Director and his staff exercise oversight and control over the management of, and expenditures for, national security programs, international programs, defense expenditures, natural resources programs, and many others having a direct impact upon the economy and security of the Nation.

Mr. President, at this point in my remarks, I ask unanimous consent to print in the RECORD a compilation of 67 statutory provisions, contained in 13 titles of the United States Code, which state various statutory functions and responsibilities of the Office of Management and Budget and its Director. I desire to make it perfectly clear that I do not know whether this list is all-inclusive. It is the best that I have been able to do in the time available.

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

VARIOUS STATUTORY FUNCTIONS OF THE OFFICE OF MANAGEMENT AND BUDGET AND ITS DIRECTOR

TITLE 5, UNITED STATES CODE

305(b): Prescribing and administering regulations on the systematic and continuing review by Federal agencies of the operations of their activities, functions, or organization units.

4111(b): Prescribing regulations on the reductions to be made from payments by the government to employees for travel, subsistence, or other expenses incident to training in a non-government facility or to attendance at a meeting.

4112(a): Providing by regulation, to the extent considered practicable, for the absorption of costs of training programs and plans under chapter 41 of title 5, U.S.C. by the respective agencies from applicable appropriations or funds available for each fiscal year.

5301–5304 (as affected by E.O. 11073, as amended): In collaboration with the Chairman of the Civil Service Commission, conducting an annual review of comparability of Federal salary rates with those of private enterprise and reporting to the President thereon.

5514(b): Approving regulations prescribed by heads of agencies on installment deductions from pay for indebtedness because of erroneous payments.

5702(a): A designee of the President (who may be the Director of the Bureau of the Budget or another U.S. officer) may establish maximum rates of per diem allowances for travel outside the continental U.S.

5707: Prescribing regulations necessary for the administration of 5 U.S.C. 5701–5708, regarding travel and subsistence expenses and mileage allowances.

5903: Prescribing regulations necessary for the uniform administration of subchapter I of chapter 59 of title 5 of the U.S. Code, on uniform allowances.

5943(a): Making recommendations to the President on meeting losses sustained by employees and members of the uniformed services while serving in a foreign country due to the appreciation of foreign currency in its relation to the American dollar.

5943(d): Reporting annually to Congress all expenditures made under 5 U.S.C. 5943 (cf. 5943(a), above).

8147(a): Receiving annually from the Secretary of Labor estimates of appropriations necessary for the maintenance of the Employees' Compensation Fund.

TITLE 7, UNITED STATES CODE

1736(a): The Director of the Bureau of the Budget is made a member of an advisory committee which is directed to survey the general policies relating to the administration of the Agricultural Trade Development and Assistance Act of 1954, as amended, etc.

TITLE 10, UNITED STATES CODE

126(b): Approving intradepartmental transfers of employees of the Department of Defense by the Secretary of Defense (which transfers relate to transfers of functions, etc., by the Secretary).

1074(b): Approving rates of reimbursement to the Veterans Administration by the Department of Defense or the Department of Health, Education, and Welfare for medical and dental care provided by VA under agreement for members or former members of uniformed services.

1085: Establishing rates of reimbursement to appropriations for maintaining and operating facilities which provide inpatient medical or dental care to members or former members of uniformed services.

2210(b): Approving obligations incurred against anticipated reimbursements to stock funds in amounts determined by the Secretary of Defense.

TITLE 12, UNITED STATES CODE

687(g)(2)(D): Accounting with respect to Federal expenditures to business by executive agencies, which accounting is for inclusion in annual reports of the Small Business Administration.

TITLE 18, UNITED STATES CODE

4124: Director is a member of a board which is directed to arbitrate disputes as the price, quality, character, or suitability of prison industries products.

TITLE 22, UNITED STATES CODE

2679: Approving regulations prescribed by the Secretary of State on maximum rates of per diem in lieu of subsistence for foreign participants in exchange-of-persons programs, etc.

2684: Approving determinations of the Secretary of State that administrative services

can be performed more advantageously and more economically as central services.

TITLE 24, UNITED STATES CODE

168a: Approving per diem rate to be paid by agencies to Saint Elizabeths Hospital for care of patients.

TITLE 28, UNITED STATES CODE

605: Receiving, and making recommendations with respect to, estimates of the expenditures and appropriations necessary for the maintenance and operation of the courts and the Administrative Office of the U.S. courts, etc.

TITLE 31, UNITED STATES CODE

1–24: Being titles I and II of the Budget and Accounting Act, 1921, as amended.

18a: The President, through the Director of the Bureau of the Budget, is authorized, and directed to evaluate and develop improved plans for the organization, coordination, and management of the executive branch.

18b: The President, through the Director of the Bureau of the Budget, is authorized and directed to develop programs and to issue regulations and orders for the improved gathering, compiling, analyzing, publishing, and disseminating of statistical information by executive agencies.

18c: Consultation with heads of agencies on actions necessary to achieve, insofar as possible, (1) consistency in accounting and budget classifications, (2) synchronization between accounting and budget classifications and organizational structure, and (3) support of the budget justifications by information on performance and program costs by organizational units.

25: Providing the Congress a horizontal budget showing (a) the totality of the programs for meteorology, (b) the specific aspects of the program and funding assigned to each agency, and (c) the estimated goals and financial requirements.

53(e): Requesting information relating to expenditures from the Comptroller General.

65: With the Comptroller General and the Secretary of the Treasury, conducting a continuous program for the improvement of accounting and financial reporting in the government.

66b(a): Requiring the inclusion, in Treasury Department reports presenting the results of the financial operations of the government, of financial data needed for the preparation of the Budget or for other purposes of the Bureau of the Budget.

301(a): Membership of the Director on the Joint Commission on the Coinage.

623: As nearly as may be practicable, eliminating unnecessary words from all estimates and making uniform the language commonly used in expressing purposes or conditions of appropriations.

624: Annexing to the annual estimates of appropriations a statement of the appropriations for the service of the year, which may have been made by former Acts.

665: The anti-deficiency Act (apportionments, etc.). CF. sec. 16 of E.O. 6166.

703: Receiving reports of Comptroller General on operations under 31 U.S.C. 701–708 (concerning appropriation accounts).

841–871: Government Corporation Control Act. Pertains to budgeting, etc., with respect to government corporations.

1151–1153: Assigns to the Director of OMB (and others) the responsibility for developing and maintaining a standardized information and data processing system for budgetary and fiscal data together with a set of standard classifications for Federal programs, activities, receipts, and expenditures, that will serve both the Congress and the executive branch.

TITLE 33, UNITED STATES CODE

947: Approving allocation by the Secretary of Labor, between certain appropriations and a certain Fund, of the expenses of administration of the Federal Employees Compensation Act and the Longshoremen's and Harbor Workers Compensation Act.

TITLE 38, UNITED STATES CODE

616: Approving per diem rate charged the Veterans' Administration for care and treatment of veterans in hospitals of certain other agencies.

774: Membership of Director of the Bureau of the Budget on the Advisory Council on Servicemen's Group Life Insurance.

TITLE 39, UNITED STATES CODE

2201: Approving inter-appropriation transfers of funds by the Post Office Department (not to exceed 5% of the appropriation).

TITLE 40, UNITED STATES CODE

461(l)(1): Establishing standard metropolitan statistical areas (in conjunction with grants for comprehensive planning of non-Federal public works).

475(b): Authorizing any Federal agency to use, for the disposition of property under the Federal Property and Administrative Services Act of 1949, any funds appropriated, allocated, or available for purposes similar to those provided for in 40 U.S.C. 481 (procurement, warehousing, etc.), 483 (property utilization), 484 (disposal of surplus property), and 486 (policies, regulations, and delegations).

483(a): Approving the extent of reimbursement for transfers of excess property as prescribed by the Administrator of General Services.

485(b): Determining quarterly the amount which may be obligated from a Treasury fund containing proceeds from dispositions of real and related personal property.

486(f): Approving provisions made by Administrator of General Services for the transfer from GSA to another agency of personnel, records, property, and funds when any function under the Federal Property and Administrative Services Act is assigned to such other agency.

487(a)(2): Receiving reports on excessive inventory levels in Federal agencies from the Administrator of General Services.

490(d): Transferring to the Administrator of General Services functions of another agency with respect to the operation, maintenance, and custody of any office building, with exceptions.

490(l)(2): Approving regulations prescribed by the Administrator of General Services on installation, repair, and replacement of certain sidewalks, installations, properties, or grounds.

754: Receiving reports from the Administrator of General Services on intra-agency transfers of funds made in connection with intra-agency rearrangement of functions, etc.

755(b): Determination as to transfers to the General Services Administration, from other agencies, of records, property, personnel, appropriations, allocations, and other funds.

759(g): Exercising fiscal policy control in relation to automatic data processing equipment; and deciding certain disagreements between the Administrator of General Services and other agencies.

TITLE 42, UNITED STATES CODE

2615(a): Approving inter-agency transfers of funds appropriated under the authorization of the Manpower Development and Training Act of 1962.

3334(c): If designated therefor by the President, prescribing rules and regulations deemed appropriate for the effective administration of the section (being sec. 204 of the Demonstration Cities and Metropolitan Development Act of 1966).

4222: Determining, through rules and regulations, specialized or technical services which Federal departments and agencies have special competence to provide a State or political subdivision upon request (in connection with the administration of State or local governmental activities; provision is section 302 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4201 et seq.)).

4233: If designated therefor by the President, prescribing such rules and regulations as are deemed appropriate for the effective administration of Title IV of the Intergovernmental Cooperation Act of 1968 (relating to development assistance programs, etc.).

TITLE 44, UNITED STATES CODE

1108: Approving use of sums from the appropriations available for printing and binding for the printing of journals, magazines, periodicals, and similar publications.

3501–3511: Coordination of Federal Reporting Services (formerly the Federal Reports Act of 1942).

TITLE 50, UNITED STATES CODE

403f(a) Approving transfers of funds to or from the Central Intelligence Agency.

Mr. ERVIN. Mr. President, in addition I ask unanimous consent to have printed at this point in my remarks an extract from the Office of Management and Budget Manual, dated April 25, 1972, which sets forth the primary functions of OMB and citations and summaries of 14 of the principal Executive orders delegating authority to the Director or the Office. Again, I point out that these ere not all-inclusive and there are probably many more.

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

OFFICE OF MANAGEMENT AND BUDGET MANUAL

200–3. GENERAL STATEMENT OF PRIMARY FUNCTIONS

The Office of Management and Budget is charged with a basic responsibility for assisting the President in the development and effective management of Federal programs. Within this framework, the primary functions of the Office of Management and Budget are as follows:

a. To assist the President in the preparation of the budget and the formulation of the fiscal program of the Government.

b. To supervise and control the administration of the budget.

c. To keep the President informed of the progress of activities in agencies of the Government with respect to programs proposed and undertaken.

d. To develop improved budgetary, accounting, and other financial management practices for the executive branch.

e. To develop more effective techniques for the evaluation of the impact of governmental programs and the adequacy of governmental services.

f. To devise programs for more effective development and utilization of career executive talent in the Federal service.

g. To formulate and coordinate programs for the improvement of the management and organization of the executive branch of the Government.

h. To plan and promote the improvement, development, and coordination of Federal statistical services and management information systems.

i. To assist the President by clearing and coordinating departmental advice on proposed legislation and by making recommendations as to Presidential action on legislative enactments, in accordance with past practice.

j. To aid the President in achievement of more efficient and economical conduct of governmental programs through identification of outmoded programs and reduction of duplicate effort.

k. To assist in the consideration and clearance and, where necessary, in the preparation of proposed Executive orders and proclamations.

200–4. RELATED EXECUTIVE ORDERS

Principal Executive orders relating to the Office are:

a. Executive Order No. 8248 of September 8, 1939 (4 F.R. 3864), which specified the functions of the Bureau of the Budget in the Executive Office of the President (see section 200–3).

b. Executive Order No. 9094 of March 10, 1942 (7 F.R. 1972), which provides for coordination and planning of Federal mapping and chart-making activities.

c. Executive Order No. 9384 of October 4, 1943 (8 F.R. 13782), which provides for review of Federal public works and improvement projects.

d. Executive Order No. 10033 of February 8, 1949 (14 F.R. 561), which requires approval for responses by Federal agencies to statistical inquiries from intergovernmental organizations.

e. Executive Order No. 10253 of June 11, 1951 (16 F.R. 5605), which provides specific authority for development of programs and issuance of regulations for the improvement of Federal statistical activities.

f. *Executive Order No. 10579 of November 30, 1954* (19 F.R. 7925), which provides for decisions on appeal by an agency from any determination by the Administrator of General Services with respect to the establishment of an interagency motor vehicle pool or system.

g. *Executive Order No. 10900 of January 5, 1961* (26 F.R. 143), as amended by Executive Order No. 11036 of July 11, 1962 (27 F.R. 6653), which delegates a part of the President's authority to fix amounts of foreign currencies to be used for various purposes and to waive certain statutory requirements.

h. *Executive Order No. 11030 of June 19, 1962* (27 F.R. 5847), as amended by Executive Order No. 11354 of July 1, 1967 (32 F.R. 7695), which provides for clearance for the President of Executive orders and proclamations (see Section 200–3k).

i. *Executive Order No. 11060 of November 7, 1962* (27 F.R. 10925), which requires establishments of rates for hospital care and treatment furnished by the United States for use in connection with recovery from tortiously liable third person.

j. *Executive Order No. 11073 of January 2, 1963* (28 F.R. 203), which requires the Director and the Chairman of the Civil Service Commission to submit annually to the President certain reports relating to Federal pay rates pursuant to 5 U.S.C. 5302.

k. *Executive Order No. 11466 of April 18, 1969* (34 F.R. 6727), which authorizes the designation of projects for joint funding under section 612 of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2962) and section 406 of the Juvenile Delinquency Prevention and Control Act of 1968 (42 U.S.C. 3886) and to designate or provide criteria for the designation of one Federal agency to act for all participating agencies in administering any such jointly funded projects.

l. Executive Order No. 11541 of July 1, 1970 (35 F.R. 10737), which delegates to the Director of the Office of Management and Budget the functions transferred to the President by Reorganization Plan No. 2 of 1970.

m. Executive Order No. 11592 of May 6, 1971 (36 F.R. 8555), which delegates to the Director the functions of granting certain approvals under provisions of the River and Harbor Act of 1970 and the Flood Control Act of 1970.

n. Executive Order No. 11609 of July 22, 1971 (36 F.R. 13747), which delegates to the Director of the Office of Management and Budget the exercise of statutory authorities of the President involving (1) regulatory functions with respect to quarters and facilities, (2) transfers of balances of appropriations, (3) interagency land transfers, land acquisitions, contracts for land acquisitions and other land transactions, and (4) allocation of funds for management improvement.

200–5. ORGANIZATION

The Office consists of the Office of the Director and the following divisions, the organization and functions of which are set forth in subsequent Sections:

a. Divisions:

(1) Organization and Management Systems
(2) Program Coordination
(3) Executive Development and Labor Relations
(4) Statistical Policy
(5) Management Information and Computer Systems
(6) Legislative Reference
(7) Budget Review
(8) Evaluation
(9) Economics, science, and Technology Programs
(10) General Government Programs
(11) Human Resources Programs
(12) International Programs
(13) National Security Programs
(14) Natural Resources Programs

(NOTE.—Approved: April 25, 1972)

Mr. ERVIN. Mr. President, even a cursory examination of the statutory powers, functions and responsibilities of the Director of the Office of Management and Budget, as well as the numerous Presidential delegations, demonstrate beyond any shadow of a doubt, that if this office was once considered "inferior," and its incumbent was once considered an "inferior officer," that status no longer applies.

Over the years, by statute, Executive order and other Presidential delegations, the OMB has developed into a major governmental agency with enormous policymaking and operational functions, responsibilities, and authority. It has become a super Cabinet agency, and its Director, wielding vast Presidential powers, exercises a very high degree of control over all executive branch departments and agencies, including the regulatory agencies, as well as over all of the policies and programs enacted by the Congress.

Mr. President, I might add at this point, as those of us who are chairmen of committees and subcommittees well know, that when we request a department, agency, or office of the United States for information concerning the opinion of that department or agency or officer in respect to proposed legislation, that department or agency or officer does not even reply to information on that point without the permission of the Office of Management and Budget.

I hasten to add that by so doing, the Office of Management and Budget, in effect, controls the request of the legislative branch of the Government for information about the Government.

Mr. President, I desire to make it clear that I do not take issue with the President's requirement for an institutional aid to assist him in exercising management and control over the Federal budget and the executive branch. I believe, however, that such requirement must be balanced with the constitutional role of the Congress in the formulation, finalization, and execution of national policy.

I have therefore concluded, and the Committee on Government Operations, which I am privileged to serve as chairman, concurs unanimously, that the reasons which were the basis for the immunity from Senate confirmation of the Director and Deputy Director of the Office of Management and Budget no longer exist, and that persons chosen by the President to fill these important centers of national power should be subject to the same scrutiny by the Senate as is required for all other nominees to policymaking positions in the Government.

It is simply ironic to require Senate confirmation of the appointment of a second lieutenant in the Army and deny the Senate the power and the duty to pass on the fitness of individuals to serve as Director or Deputy Director of the Office of Management and Budget, individuals whose powers are second only to those of the President of the United States.

I urge the Senate to pass the bill.

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

Mr. ERVIN. Mr. President, I am glad to yield to the distinguished Senator from Wyoming.

Mr. McGEE. Mr. President, I want to join in supporting the sentiments expressed by my colleague, the distinguished Senator from North Carolina. I think it is a constructive way to approach the question that faces us now, and that is, because of the changing times and the force of events which have required a new look at a lot of procedures, it is well that we seek to resolve the issue constructively rather than resolve it in passion or confrontation.

There is one other aspect of the matter that has disturbed me. I am chairman of the Agriculture Department appropriations, and I think it is important that we become very wise about limiting budgets. I think the President is certainly serving the country well when he expresses this concern. But, as chairing a group which deals with appropriations for agriculture, I find it likewise posing a very serious question for us.

Last year, right about this time, the President and the OMB sent to us a request for agriculture moneys, for agencies under the Department of Agriculture. Nowhere in that request did it say that the REA loan program ought to be abolished, that that action was long overdue, or that it was a country club lark, as the White House said this week. Nowhere did it say we ought to abolish REAP. In fact, in the OMB's budget request, through the President, asked for new funds for both of those ongoing programs.

I select those as examples, not alone because they have been very successful programs, at least in rural America, but because here was a specific request by the administration. We held, in good faith, long hearings on them, and tried to arrive at an equitable answer. We arrived at our figure, which was slightly higher than the President's, because the demands were several times what the OMB had requested in these areas. We tried to be as fairminded and as eco-

nomical as we could be. The President looked at those figures and signed them into law, under the processes of our Constitution. Then, last Christmas time, on his own, he did not simply cut back those programs to the funds he had requested, but he wiped them out by a unilateral action.

As I see it, that does violence to our legislative-executive processes under the Constitution. He asked for the moneys on those programs. He did not request that they be abolished. But then, on his own, he wiped them out. I read about it in the Washington newspapers the day it was going to happen.

That is why I am reluctant to hold new hearings on agricultural requests, because of the reasonable suspicion that we would just be spinning our wheels—that it is an attempt to keep us busy. Not one of us can be certain that they will not wipe out something else that we spend a lot of time evaluating.

So I would like to add to the approach the Senator is taking that somehow we have to draw a line and help Congress define what the legislative approach is all about. That is why I have already announced that I do not want to have anything to do with receiving a new request for that department of the government unless we can go back under the Constitution to where we were, on the basis of the President's request, a year ago.

So I would ask what the parliamentary procedure is here. Is this setting out the dimensions of the problem? Are we going to vote on it today or Monday? I was gone yesterday. I was circling airports until 3 o'clock this morning.

Mr. ERVIN. I hope this bill will be passed today. I think it is very essential.

I would say to the distinguished Senator from Wyoming that an ad hoc subcommittee of the Committee on Government Operations and the Separation of Powers Subcommittee of the Committee on the Judiciary are at this moment conducting hearings on the bill relating to impoundment actions and the termination of programs by the President, and we hope to come up with answers to this problem.

In my judgment, the constitution provides the President only one way by which he can disapprove of any act of Congress, or disapprove of other legislative actions, and that is by the veto, which gives the Congress the power, by a two-thirds vote of both Houses, to override the veto.

In my judgment, there is nothing in the Constitution which permits the President to refuse to perform his constitutional duty to take care that the laws be faithfully executed, and in my judgment he has no power to express disapproval or to limit the action of laws passed by Congress except to the extent permitted by the Anti-Deficiency Act; and the Anti-Deficiency Act, in my judgment, clearly does not vest in the President, or any of his subordinates, the power to eliminate programs adopted pursuant to congressional acts which the President has signed.

Mr. McGEE. I appreciate that evaluation. I want to ask one other question of the Senator. Would he agree that the two cases that I have cited here, that disturb me under my responsibilities in looking at agriculture appropriations requests, are a shade different from the impoundment issue per se? I think that is an important issue, too, but here they are not even impounding the excess money we appropriated, but wiping out two programs for which funds had been requested.

Mr. ERVIN. Yes, the Senator is correct; that is an exercise of a power greater than any possible impoundment power, because it results in the ending of a program established by an act of Congress, which has been approved by the President himself. I believe there is only one way under the Constitution to nullify an act of Congress, and that is that the only way, by a veto, which is subject to being overridden.

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

Mr. McGEE. I have just one other point——

Mr. ERVIN. Because the power to end the effectiveness of any act of Congress, including an appropriation act, is a legislative power, and nobody on earth can put an end to statute of Congress except Congress by repeal of that statute.

Mr. McGEE. I have not had a chance to consult. I do not know what the intentions are, but I would certainly hope we are going to be recorded on this vote. I have served notice here that whenever the leadership wants to bring this to a head, I would request that we have a rollcall vote on it. Again, I was not here yesterday, so I do not know what the agreement was, but I will be prepared whenever the appropriate time arrives to ask for the yeas and nays. I shall not do it at this moment, because I understand others want to speak.

Mr. ERVIN. It is my understanding that the leadership desires to have the Senate act on this bill at the earliest possible moment, and perhaps the best way to do that is by voice vote rather than by rollcall vote.

Several Senators addressed the Chair.

Mr. McGEE. I would have to insist on the yeas and nays, because I would like to stand up and be counted.

Mr. MANSFIELD. Mr. President, I do not think there is any doubt as to where the Senator stands, on the basis of what he says, but there was an agreement entered into yesterday by which it was understood that we would be able to get a time limitation today. It was cleared with the parties concerned. Every Member was not on the floor, that is true, and if the Senator wants a vote that is perfectly all right, but I would point out this, that the agreement was, or the suggestion was made—the agreement was made that if there was to be a rollcall vote, it would go over until Monday. If there was not to be a rollcall vote, it was thought that the bill would pass with little or no opposition today on a voice vote basis.

The important thing is, if Senators want to make their stand known, that they get up and say what it is. The important thing is to get a bill of this nature through, and as quickly as possible.

Mr. McGEE. Might I ask the leadership, if it is permissible, if we lay over until Monday on a rollcall vote, what the impact or consequence would be, timewise, for the proposal that we are considering here?

Mr. MANSFIELD. I would not care to judge that, because I do not think it is worth judging. All I am thinking of are the Members who were given the assurance, such as it was, yesterday. As far as the majority leader is concerned, he does not care whether we vote today, Monday, Tuesday, or Wednesday, but I want action on this bill as expeditiously as possible.

Mr. McGEE. I am ready for a yea-and-nay vote today. As I understand, we cannot have that.

Mr. MANSFIELD. No, we cannot have it today, because a commitment has been made.

Mr. McGEE. I would like to be reasonable, too. I simply inject this, at this moment: I was not here to get the benefit of that understanding.

Mr. MANSFIELD. There might be other Senators who will be up in the air on Monday or Tuesday morning, too. So you have got to take into consideration all the little factors.

Mr. McGEE. We should have a yea and nay vote for others who may be caught, as I was for 12 hours.

Mr. MANSFIELD. They still may be caught, yes.

Mr. McGEE. I would ask for the yeas and nays whenever an appropriate number comes.

Mr. PROXMIRE. I want to say to the Senator from North Carolina that I came over here for the same purpose as did the Senator from Wyoming. I want the yeas and nays, too, very much.

This is a tremendously important vote. It should be a rollcall vote. All of us should have the opportunity to make our position known, whether we choose to speak on it or not. I would want to support the Senator from Wyoming very strongly in his position. I hope that he will persist in insisting and doing everything he can, as a Senator, and so will I, to try to secure a rollcall vote. I think we should have it.

I understand the position of the leadership, of course, which the Senator from Montana has indicated. We all got the notices that there will be no rollcall vote today, but I would hope that we could have a rollcall vote on Monday. It makes no difference to me whether it is on Monday or Friday——

Mr. McGEE. Or on Tuesday. I do not want anyone to get caught up in the air as I was. My purpose is not to try to hurt someone who is out of town or is in an airplane, but to move toward a recording of the position of people on this particular question. I think it is a significant one, perhaps one of the most constructive significant ones we have tried to come to grips with. I would certainly prefer a rollcall vote.

Mr. ERVIN. Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. CLARK). The Senator from Michigan is recognized.

Mr. GRIFFIN. Mr. President, I yield myself such time as I may consume.

First, I wish to indicate that I agree with the general objective and general purpose of this legislation. Personally, I believe that a nominee for the Office of Director of the OMB should be subject to confirmation by the Senate.

I have come to that conclusion after taking into account the fact that the Office of the Bureau of the Budget was originally established by law, that the functions of the Director of the Bureau of Budget were subsequently transferred, pursuant to the Reorganization Act under a reorganization plan which had the effect of law, and that the Director of the OMB does exercise powers and functions that extend beyond just being an adviser or an aide to the President as a result of regulation and practice. As well as statutory law, the Director of the OMB has very broad powers and authority.

As I understand, it has been the custom and practice of the OMB Director or Budget Director to appear before the committees of Congress and testify.

I think it should be noted, at the outset that regardless of what the Congress does with request to this particular bill the legislation will not enlarge or diminish the scope of executive privilege when a witness from the executive branch is testifying. Whether or not the Director of the OMB is confirmed by the Senate, the same power of executive privilege, whatever it is and whatever its limitations are, would remain the same.

Having stated that, I wish also to make it clear that I would have no particular objection to requiring application of the confirmation principle to the incumbent Mr. Ash. But I must say—and I shall direct some questions to the manager of the bill (Mr. ERVIN) who is such an outstanding constitutional lawyer—that I have serious concern about the way this bill as now drafted seeks to achieve its objective.

To develop the reasons for my concern, let me begin by reviewing that provision in the Constitution which is basic to the issue now before the Senate. I refer to these words from article I:

> 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:

The crucial words there are:

> And all other officers of the United States, whose appointments are not herein [in the Constitution] provided for, and which shall be established by law:

As I see it, the Director of OMB is an office established by law, and he is an officer of the United States.

So, it seems to me that the Senate might well have taken the position, in the absence of an express provision in a statute to the contrary, that a nominee for the office of Director of OMB was already subject to confirmation by the Senate. It is conceivable that the nominee might have been notified to appear for confirmation hearings before the appropriate Senate committee. If he had refused to appear, a question could have been raised as to his entitlement to be paid his salary in the absence of Senate confirmation. But the question raised in that manner would be very different than the question raised by this bill.

Mr. ERVIN. Yes. The Senator from North Carolina considered not only that but also the question of what effect a hiatus in this office for a period of time might entail. So the Senator from North Carolina had the bill amended so as expressly to provide that the present occupants of the office of the Director or Deputy Director of the Office of Management and Budget should hold office for 30 days after the bill becomes effective before they are required to become confirmed. In other words, to give the Senate 30 days in which to confirm the present occupants in that office if, indeed, the President wishes to nominate them. They can exercise the functions of the office or draw their salaries until the Senate acts on their nominations.

Mr. GRIFFIN. Let me say to the distinguished Senator from North Carolina that I am concerned, frankly, about the constitutionality of this bill as reported. The very reporting of this bill, it seems to me, is a concession on the part of the committee and the Senate that, at present, appointment of the OMB Director requires no confirmation on the part of the Senate. Is that not, in effect, the case?

Mr. ERVIN. So far as the statutes are concerned, that is true. But I seriously doubt whether this bill raises the constitutional question referred to because the Constitution says:

> He shall nominate, and by and with the advice and consent of the Senate, shall appoint . . . 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 courts of law, or in the heads of departments.

I think it is a constitutional contradiction and monstrosity to say that the Director and the Deputy Director of the OMB are inferior offices, either one of them. They exercise more power in this country than any other officers of Government except the President himself.

Mr. GRIFFIN. I think the Senator is agreeing with my logic to some extent. I think the Senator is right. The OMB Director is a high officer. That being the case, we might have taken the position that under the Constitution, advice and consent by the Senate was required. However, as a matter of practice and by reporting this bill, the Senate has, in effect, conceded that such advice and consent is not necessary.

But let me get to the troubling point: I happened to be at the White House this morning. I was invited to go there to witness the swearing in of new officers—Cabinet officers, and so forth—and among those who were sworn in was the new OMB Director.

As I understand the situation now, Mr. Ash was appointed, he has taken the oath of office, and he has begun discharging his official duties. Furthermore, the Senate has conceded, in effect, that confirmation was not necessary.

That being the case, it seems to me that, insofar as the legislation before us purports to apply to the now incumbent OMB Director, it raises a constitutional question as to whether an officer of the United States can be removed from office in this manner.

Mr. ERVIN. I would say, in response to that, that neither Mr. Ash nor any other official has property rights in his office. The courts have long since exploded the theory that the office is the property of the occupier. This office belongs to the American people.

Mr. GRIFFIN. I have no quarrel with that. Let me state again that I am in favor of the objectives of the legislation. But I wonder whether the legislation goes about it in the right way.

Of course, the Constitution provides that an officer can be impeached. The President has the power to remove an officer within the executive branch, as I understand. I suppose it is clear that Congress could pass a law and abolish an office which it created.

But once an officer has been appointed and duly installed, as is the case with the incumbent OMB director, I doubt that Congress can remove him from office in the manner proposed by this bill.

Mr. ERVIN. I say to the Senator that when the original bill establishing the Budget Bureau, which is now the Office of Management and Budget, was considered by Congress, the Senate took the position that the nomination of the Director of the Bureau of the Budget should be confirmed by the Senate, and that was incorporated in the bill as it passed the Senate. The bill went to the House; and the House took the position that a man who had no power at that time to do anything except to add up a few figures for the President's benefit, and advise him on certain specified matters, was an inferior officer within the purview of the Constitution, and they rejected the provision of the bill making the office subject to Senate confirmation.

The conference committee accepted the House position that any officer who had no more power than the original director of the budget had in 1921 was, indeed, an inferior officer. As a result of that action by the conference, the bill, in final form, failed to require confirmation.

But many events have occurred since that time. As I pointed out in my argument, you cannot even get a responsible letter from a department or an agency or an officer of the Executive Branch of the Federal Government, or even receive a communication, without the permission of this office.

Mr. GRIFFIN. I am not arguing with the Senator from North Carolina about the merits of the bill or whether or not the nomination of a person for this office should be subject to confirmation. I raise a different fundamental question.

Let me ask the Senator from North Carolina this question: Congress having taken the position it has in the past—that confirmation of this appointment is not required—and the Senate committee having reported this bill which concedes, in effect, that confirmation was not a requirement; the appointment having been made; and the present incumbent having

taken the oath of office, what would be the effect of this bill upon the present incumbent?

Mr. ERVIN. I say to the Senator that I think that an officer of the Government who makes studies and recommendations to the President by which acts of Congress, to all practical extent, are terminated, and by which there is a decision to refuse to expend appropriations made by Congress, and signed into law by the President, ought to be subjected to scrutiny by the Senate on his merits. The Director of OMB already has more governmental power than any other of the 20 million human beings residing in the United States, except the President of the United States.

Mr. GRIFFIN. I agree with the Senator from North Carolina again concerning the purposes of this bill. I would have no question about the legislation at all if it applied only to future appointments. But it seems to me that there is a serious question about its applicability on a retroactive basis to an official who is already in office.

I seriously doubt that we can remove an officer of the United States in this manner—and that appears to be what the bill would do. Is that what will be the effect of this?

Mr. ERVIN. No. This bill would only give the Senate the power to consider the qualifications and fitness of the present occupants of the offices of Director and Deputy Director, after they have served not to exceed 30 days following the passage of the bill.

Mr. PROXMIRE. Mr. President, will the Senators yield?

As was indicated, the Senator from Wyoming and the Senator from Wisconsin are both anxious to get a rollcall vote ordered—not today. We understand there will not be one today. Would the Senators permit that we have a short quorum call in order to get more Senators in the Chamber?

Mr. GRIFFIN. If we can have unanimous consent that the time will not be charged to either side. The time is limited.

Mr. PROXMIRE. Will the Senator yield for that purpose, with the understanding that the short quorum call will not be charged to either side, so that we can get Senators into the Chamber to ask for the yeas and nays, the vote to occur on Monday? Will the Senator from Michigan permit that? We have almost enough Senators in the Chamber to permit that now.

Mr. GRIFFIN. If we are going to have a rollcall vote on Monday—I direct this inquiry to the majority leader—I wonder whether we might want at least half an hour available prior to the vote for discussion.

Mr. MANSFIELD. That would be fine; but I would prefer, so that all Senators can be informed specifically, that the vote occur at a time certain on Monday, and I would suggest the hour of 2 p.m.

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

The PRESIDING OFFICER (Mr. HUDDLESTON). On whose time?

Mr. PROXMIRE. I ask unanimous consent that the time for the quorum call not be charged to either side. It will be a very brief quorum call.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. MANSFIELD. Mr. President, may I express the hope that all the time would be used this afternoon on any amendments to be offered, and on the bill, too. I think it is mandatory that that be done.

It is my intention, after consultation with the distinguished acting Republican leader and the distinguished senior Senator from North Carolina, the manager of the bill, to ask that beginning at 1 o'clock on Monday next there be a time period of 1 hour to be equally divided between the distinguished Senator from North Carolina (Mr. ERVIN) and the distinguished minority leader, or whomever he may select, and that the vote on the pending matter occur not later than the hour of 2 o'clock on Monday next. I suggest also in connection with that the rule XII be waived, and that the time come out of each side.

Mr. GRIFFIN. Mr. President, reserving the right to object, and I do not anticipate objecting, there was an understanding with the membership that there would be no rollcall votes today. I do not know whether there will be amendments offered today in connection with the debate, but there may well be, and if there are to be rollcall votes on amendments, will they also be carried over until Monday?

Mr. MANSFIELD. Absolutely. If we need extra time we will get it.

It is my understanding that the main interest of certain Members of the Senate is the vote on final passage, and it may be that we could pass on or reject amendments to be offered—I know of only one so far—on the basis of a voice vote.

Mr. GRIFFIN. With the suggestion that the time on this side be assigned to the ranking minority member of the Committee on Government Operations, I have no objection.

Mr. MANSFIELD. Perhaps the Republican leader would like to have the opportunity to select.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana? Without objection, it is so ordered.

Mr. MANSFIELD. I ask that the yeas and nays occur on Monday on final passage.

The yeas and nays were ordered.

The PRESIDING OFFICER. Who yields time?

The text of the unanimous consent agreement is as follows:

Ordered, That, effective on Monday, February 5, 1973, at 1:00 p.m. during further consideration of S. 518, a bill to provide that appointments to the offices of Director and Deputy Director of the Office of Management and Budget shall be subject to confirmation by the Senate, debate on the bill be limited to 1 hour, to be equally divided and controlled by the Senator from North Carolina (Mr. ERVIN) and the Senator from Pennsylvania (Mr. SCOTT) or his designee, with a vote on final passage to occur no later than 2:00 p.m.

SUPPORT FOR CONFIRMATION OF OMB DIRECTOR BY THE SENATE

Mr. PROXMIRE. Mr. President, on January 4, I introduced a bill to provide that the appointment to the Office of Director of the Office of Management and Budget shall be subject to confirmation by the Senate.

I worded my bill in such a way that even if it does not become law until after Mr. Roy Ash takes on the job, Mr. Ash would have to be confirmed by the Senate before he could continue. I am pleased that the substance of my bill is before us today on the floor of the Senate.

It is an oversight that the Director of Office of Management and Budget does not have to be confirmed by the Senate. He is not a mere personal adviser to the President. Over the years, that office has grown tremendously. The Director runs one of the major agencies of the Government. He has life and death power over the appropriations of virtually every Department. In erecting the budget, subject only to the President, he determines our priorities. He has the power not only to spend but to speedup, withhold, slowdown, and impound funds. With the possible exception of the Secretary of Defense, he is the single most powerful man in the Government except the President. The Director of Office of Management and Budget should be confirmed by the Senate.

But it is even more important that the Senate review the qualifications of Mr. Roy Ash. While he has had considerable business success, great controversy also swirls around his head.

As head of Litton Industries he was in charge of two of the most wasteful and inefficient Navy contracts—the LHA and DD–963 contracts—any private company has held with the Government.

His company has made claims of over $160 million against the Navy, for which the Navy has allowed only a pittance. But Mr. Ash nonetheless threatened to "go to the President" on behalf of those claims. Now, as the head of OMB, he is in a position inside the Government to effect those claims. Congress must inquire about that.

Furthermore, the man who protected the public interest and blew the whistle on Mr. Ash and his claims, Mr. Gordon Rule, has now been demoted and assigned an insignificant job. Meanwhile, Mr. Ash has been given power over the entire spending program of the Federal Government.

More ironic, not only has Mr. Ash been designated as Director of the Office of Management and Budget, but the President has also assigned him the duty to oversee a program to bring efficiency to Government.

For all these reasons I highly favor this bill.

Mr. GURNEY. Mr. President, I wish to join the distinguished senior Senator from North Carolina (Mr. ERVIN) in sup-

port of his bill that would require that the appointments of the Director and the Deputy Director of the Office of Management and Budget be subject to confirmation by the Senate.

At present, the Office of Management and Budget employs nearly 700 people and has a yearly budget in excess of $19 million. More importantly, however, its power far exceeds its size, as the recent controversy over impoundment of funds has indicated.

The Bureau of the Budget was created in 1921 for the singular purpose of estimating Federal expenditures and revenues. Since then—and particularly since 1970 when it became the Office of Management and Budget—the role of this agency has grown far beyond that envisioned by Congress when it exempted the Director and Deputy Director from the necessity of Senate confirmation. As presently constituted, OMB has responsibility for a wide range of things—from preparing the budget to carrying out Government reorganization. Among other things, it holds the power of the purse strings, and all that that entails, over not only the departments but also the supposedly independent regulatory agencies.

By virtue of its sheer size and scope, OMB has taken on all the characteristics of a department of Cabinet rank. Because it gets involved in so many things—evaluates so many programs—it is practically impossible for the President to exercise direct control over it. Yet, direct responsibility to the President is the rationale given for not having the Director and Deputy Director of Office of Management and Budget confirmed by the Senate. Furthermore, how can Office of Management and Budget be directly responsible to the President—and responsive to his wishes—if some of its top decisionmakers are under civil service?

So far as I am concerned, OMB represents not only a challenge to congressional authority, but is also a potential threat to the executive branch of Government. In this context, I cannot help but think of the controversy surrounding the rural environmental assistance program—REAP. In his budget message, the President stated that the fight against pollution would be one of the three areas in which more rather than less money would be spent. OMB, however, has impounded funds for REAP, even though the program would promote badly needed pollution abatement projects. In my State, that means we will have smudge pots in the citrus belt rather than pollution-free heaters. One is left wondering whether the situation has arisen—or could arise—where one hand of the executive does not know what the other is doing.

The situation with the regulatory agencies is equally curious. If OMB can cut their funds, or change their method of operation at will, the potential is there for a type of control that more properly should rest with Congress.

I, for one, wholeheartedly favor a reduction of Federal spending, but I think Congress should play a role in deciding how these cuts are to be made. One way to do that—and a good way I think—would be to require that the ideas and qualifications of the two top men actually doing the cutting be reviewed by the Senate. The Senate already confirms the top men in the Office of Emergency Preparedness, the Office of Science and Technology, the Office of Telecommunications Policy, the Council of Economic Advisers and the Office of Economic Opportunity—all executive agencies like OMB—so there is no reason for the Director and Deputy Director of OMB to escape the same scrutiny. In fact, when we consider that even second lieutenants in the military require Senate confirmation, not confirming these two gentlemen seems like a glaring oversight.

This is particularly true right now. In the past, Directors of the Budget Bureau have been willing to testify before Congress—and have frequently done so, even though their authority was less than that enjoyed by the present Directors of OMB. But now, with the President having indicated that he wants to make Mr. Ash a Presidential adviser—as well as head of OMB—the possibility arises that a prospective head of OMB could avoid testifying by invoking executive privilege. That possibility, I think, should be removed—and this bill will remove it.

Constitutionally, there is no reason why we should not pass this bill; in fact, some good arguments can be made for the point of view that these two positions should be subject to Senate confirmation already.

Article II, section 2 of the Constitution provides that Congress can, if it so chooses, exempt inferior officers from the process of Senate confirmation.

Such an exemption was made in 1921, but under far different circumstances. Since then, we have passed two other acts—the Reorganization Act of 1966 and the McCormack Act of 1950—parts of which suggest that when there is a reorganization of the type carried out in 1970, the top officers of the newly created agency should be subject to Senate confirmation. I refer specifically to 5 U.S.C. 904(2) and 3 U.S.C 301.

We let this issue pass in 1970, and that was a mistake. What we need to do now is rectify that mistake by passing this bill reversing the 1921 precedent. I urge Senators to consider and support just such a course of action.

Mr. ROBERT C. BYRD. Mr. President, I send to the desk an amendment and ask that it be stated by the clerk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

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

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment, ordered to be printed in the RECORD, is as follows:

S. 518

On page 2, line 3, after the period, add the following: "The Director and Deputy Director shall each be appointed for a term of four years, with each such term commencing at noon on January 20 of each first year in which the term of President begins, except that—

"(1) the terms of the individuals first appointed in accordance with this Act, after the date of enactment of this Act, to hold such positions shall commence from the date of such appointment through immediately prior to noon January 20, 1977; and

"(2) any individual appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of that term."

Mr. ROBERT C. BYRD. Mr. President, my amendment would require reconfirmation of the Director and Deputy Director of the Office of Management and Budget with the beginning of a new presidential term. It would also require that if the Director or Deputy Director should be replaced in mid-term that the successor be confirmed by the Senate only for the unexpired portion of that term and that he be reconfirmed with the beginning of the next presidential term if he is reappointed.

I feel that the very reasons that have been cited as the necessity for this bill—the tremendous power now exercised by the Office of Management and Budget—require that the Senate be able to reexamine the stewardship of the Director and Deputy Director after 4 years.

My amendment would also require that the appointments should coincide with the term of the President who appoints them, and, if a vacancy should occur during that term, that the new appointee be confirmed only for the unexpired portion of that term, and if reappointed by the President at the beginning of a new presidential term that the director or Deputy Director be reconfirmed by the Senate if reappointed.

I have already introduced legislation, S. 516, requiring Senate confirmation of the Director of the Federal Bureau of Investigation every 4 years, and I will shortly introduce legislation requiring such reconfirmation of Cabinet officers. I feel the time has come when the Senate should cease giving these appointees a blank check, after they have been confirmed, to have the freedom to cite executive privilege, to just plain fail to appear before congressional committees when called, and to control the activities of their departments or agencies without regard for the intent of Congress as to their direction for a possible 8 years or longer, secure in the knowledge that they will not have to be accountable again to the Congress for their acts.

Mr. President, I feel my amendment strengthens this bill, and I hope the distinguished Senator from North Carolina will support and accept my amendment.

May I say in closing that I congratulate the Senator from North Carolina on his preeminently excellent statement earlier today. I think he has amply justified the purposes and reasons for this bill and why it should be enacted.

In that same sense, may I also congratulate the junior Senator from Montana (Mr. METCALF) for the very excellent statement he made yesterday following callup of the bill before the Senate. I read his statement in the RECORD

at about 8 o'clock this morning. It is an excellent statement. It gives the history and background of this whole matter going back to 1921. It refers to how the office has grown and how it began with just a personnel complement of about two dozen persons whereas it now has 700, as its functions have proliferated. His statement surely justifies early enactment of this legislation.

I commend both of these distinguished Senators.

Mr. ERVIN. I favor the amendment offered by the distinguished Senator from West Virgina. Also I would like to join in his commendation of the work of the distinguished junior Senator from Montana (Mr. METCALF). I would say it was largely as a result of the studies which the Senator from Montana made in this field and the activity manifested in the Committee on Government Operations that is responsible for the unanimous approval of the bill in its original form by the Committee on Government Operations.

I am personally willing, so far as it is in my power, to accept the amendment of the distinguished Senator from West Virginia. Of course, the decision is up to the Senate, but I think it is an excellent amendment and I shall vote for it.

Mr. BROCK addressed the Chair.

The PRESIDING OFFICER. Does one of the Senators yield to the Senator from Tennessee?

Mr. GRIFFIN. Mr. President, the Senator from Tennessee has charge of the time as the representative of the Senator from Illinois (Mr. PERCY).

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. BROCK. Mr. President, I wish to say I have no objection to the amendment, but it does raise one question and that is whether or not the Senate provision might be extended.

Mr. ROBERT C. BYRD. It does raise that question. I think this provision should also be made applicable to the Cabinet officers. As I have indicated, I have a bill in my desk which would do that.

Mr. BROCK. I think that at this early juncture I might support the Senator in that bill as well.

Mr. ROBERT C. BYRD. I would be glad to have the support of the Senator as a cosponsor.

Mr. BROCK. I would be delighted to do it.

Mr. President, if there is no further debate on the amendment I wish to ask a parliamentary question.

The PRESIDING OFFICER. The parliamentary question will be stated.

Mr. BROCK. Do we proceed to vote on that measure?

Mr. ROBERT C. BYRD. I am prepared to yield back my time.

Mr. BROCK. I yield to the Senator from Michigan.

Mr. GRIFFIN. I would like to direct a question to the Senator from West Virginia, the author of the amendment, and I want to indicate that I have no particular objection here to what he seeks to do. I do wish to express concern that we would be taking very important action by adopting this amendment, and we would be doing so without the benefit of hearings with regard to this particular amendment. Furthermore, as I understand, there were no hearings on this bill before it was reported out of committee. If I am wrong in that, I hope I will be corrected.

The second paragraph of the amendment reads:

> The terms of the individuals first appointed in accordance with this Act, after the date of enactment of this Act, to hold such positions shall commence from the date of such appointment through immediately prior to noon January 20, 1977.

Now, as a very practical matter, there would be no problem after 1977. But I think there is a question as to the immediate application of this amendment, particularly with respect to the incumbent Director of the OMB if the remainder of the bill should become law. I wonder when his appointment would begin, in light of the other provisions of the bill?

Mr. ROBERT C. BYRD. His appointment, insofar as my amendment is concerned, would be commensurate with the provisions already set forth in the bill. My amendment, if this bill is enacted, would merely say that Mr. X, who is to be confirmed under the provisions of the bill, would serve until just prior to the hour of 12 noon on January 20, 1977. If in the meantime Mr. X should die, or retire, or the President should decide to remove him from that position in midterm, then the successor appointee would have to come up for confirmation, of course; but the individual who might be appointed in the middle of Mr. Nixon's term, say, would not automatically be confirmed for the next 4 years. He would be confirmed only until the beginning of the next Presidential term.

I am not sure I have answered the question. I am not sure I fully understood the Senator's question. But I will be glad to try further, if the Senator wants me to.

Let me say this: If the President feels he is entitled to ask for the resignation of his Cabinet officers and other assistants when he is reelected—and he is entitled to do that—I think the Senate is entitled to give its advice and consent to the reappointment of such officials.

I think that passage of the bill which is before the Senate today is a good step in the right direction, but I am not willing to confirm an individual for a period of 8 years. In some instances, it might be for a period even of 10 years. I want him to come back each time the President is reelected and be reconfirmed again.

Mr. GRIFFIN. I understand that, and, as I have indicated, I have no particular quarrel with that.

Mr. ROBERT C. BYRD. That is the point my amendment addresses itself to. I suppose the Senator's question really goes to the bill, because my amendment does not affect the provisions of the bill in the regard to which the able Senator has alluded, I do not think.

Mr. ERVIN. I think I can answer the Senator's question. The original bill provides that no person now holding the office of Director or Deputy Director shall occupy that office unless he is so appointed by and with the advice and consent of the Senate after the expiration of 30 days. In other words, he would have to be renominated by the President and the Senate would have to confirm him, and it is given 30 days to do that. He can hold office until Senate confirmation, and he can draw his salary as long as he holds the office.

Mr. ALLEN. Mr. President, will the Senator yield for a question?

Mr. ERVIN. The Senator from Michigan has the floor.

Mr. GRIFFIN. I yield.

Mr. ALLEN. Does the Senator understand that this amendment would freeze the appointment in for a 4-year term?

Mr. ERVIN. No; he would still be subject to removal by the President.

Mr. ALLEN. Under what authority?

Mr. ERVIN. The Supreme Court has held that the President can remove any officer he appoints.

Mr. ALLEN. Even if he is appointed to a 4-year term?

Mr. ERVIN. Yes. That is Chief Justice Marshall's premise. President Eisenhower removed a marshal in Pennsylvania before the expiration of his 4-year term. The Supreme Court sustained that removal.

Mr. ALLEN. Should not that be spelled out?

Mr. ERVIN. No, because it has already been spelled out in the Constitution as the court has interpreted it.

Mr. ALLEN. If this is to be a legislative act, should not that be provided in that act?

Mr. ERVIN. The fact that he is appointed for a 4-year term does not mean he cannot be removed. It has been held that under the Constitution these officers have been appointed by the President and he may remove them. He can remove any executive officer at any time.

Mr. ALLEN. Could it not be worded that he could not be appointed for more than 4 years without reconfirmation?

Mr. ERVIN. Well, that is the effect of it.

Mr. ALLEN. That is the effect of it, but that is not the amendment.

Mr. ROBERT C. BYRD. Mr. President, if the Senator will yield, what does the amendment not do?

Mr. ALLEN. The point I am making is that this provides for a 4-year term for the Director and Deputy Director, and there is no express provision for the removal of the Director or Deputy Director during that 4-year period. Reliance would have to be on decisions of the Federal courts allowing removal prior to the 4 years. In other words, the Director——

The PRESIDING OFFICER. Who yields time?

Mr. BROCK. Mr. President, I yield time.

Mr. ALLEN. The Director having a 4-year term and not, by the express provisions of the amendment, being subject to removal by the President, it would seem to the junior Senator from Alabama that that ought to be spelled out in the bill and not be required to resort to looking it up in the court decisions.

Mr. ERVIN. The Senator from Ala-

bama will remember that when Andrew Johnson became President of the United States, one of his Cabinet members was out of sympathy with him and would not cooperate with him——

Mr. ALLEN. Secretary Stanton.

Mr. ERVIN. So Congress passed a law providing that the President could not remove that Cabinet member. One of the charges on which his impeachment was founded was that he had violated the law by removing him. At that time, the Supreme Court was denied jurisdiction to pass on the matter; but many, many years later, the Supreme Court expressed the opinion, as I recall in the Meyers case, that the President had the right to remove any executive officer appointed by him.

Mr. ALLEN. Yes.

Mr. ERVIN. There may be some qualification when Congress annexes a provision to the act creating that office that he may be removed for misconduct or malfeasance, but where there is no such requirement, the President has power to remove him even though the term is fixed by an act of Congress for a definite period of time.

Mr. ALLEN. The Senator will recall that the Cabinet officer to whom he referred was Edwin Stanton, and he should have been removed by the President, but he was serving subject to the pleasure of the President, and not for a 4-year term, as provided in the amendment.

Mr. ERVIN. In the case of the marshal in Pennsylvania, who had been appointed for a 4-year term, it was contended that President Eisenhower could not remove him, but the courts refused to sustain that position, because he was a man who was helping the President to execute the laws and the President had a right to remove him.

Mr. ALLEN. What is the use of providing for a 4-year term if it does not mean anything? Will the Senator answer that?

Mr. ERVIN. All I can say is that Congress had provided a definite term, and it was held that an act fixing a definite term cannot be applied to a man who is appointed to assist the President in his duties, under the Constitution, and the President's power to remove him cannot be denied. I think that is wise, because it would be bad for the President to have a man who would not carry out his policies occupy an office that requires him to carry them out.

Mr. GRIFFIN. Mr. President, with the indulgence of the Senator from North Carolina, I wish to focus once more on the point I raised earlier. I think it is an important point that raises a fundamental constitutional question.

The constitutional scholar Corwin has written this:

> Early in January, 1931 the Senate requested President Hoover to return its resolutions notifying him that it advised and consented to certain nominations to the Federal Power Commission. In support of its action the Senate invoked a long standing rule permitting a motion to reconsider a resolution confirming a nomination within "the next two days of actual executive session of the Senate" and the recall of the notification to the President of the confirmation. The nominees involved having meantime taken the oath of office and entered upon the discharge of their duties, the President responded with a refusal, saying: "I cannot admit the power in the Senate to encroach upon the executive fuinctions by removal of a duly appointed executive officer under the guise of reconsideration of his nomination." The Senate thereupon voted to reconsider the nominations in question, again approving two of the nominees, but rejecting the third, against whom it instructed the District Attorney of the District of Columbia to institute quo warranto proceedings in the Supreme Court of the District. In United States v. Smith (286 U.S. 6–1932) the Supreme Court overruled the proceedings on the ground that the Senate had never before attempted to apply its rule in the case of an appointee who had already been installed in office on the faith of the Senate's initial consent and notification to the President. In 1939 the late President Roosevelt rejected a similar demand by the Senate, action which was not challenged.

Mr. President, I want to acknowledge that the situation Corwin writes about is somewhat different. In that situation, the Senate had confirmed an appointment once and was seeking to reconfirm it.

But it points up a basic question. That is raised by this bill, once we concede that confirmation was not required in the first instance.

Once an official has taken the oath of office and validly entered upon the discharge of his duties, it seems to me that legislation which thereafter requires him to be reappointed and confirmed in 30 days, amounts to nothing more than legislating his removal from office. My concern does not relate so much to the particular individual who happens to be the target at this time; my concern is for the principle involved and the unfortunate precedent that would be established.

Mr. ERVIN. Mr. President, I would agree that there is a very wide distinction from the Smith case. I agree with the theory. I agree with what Mr. Corwin said. That is provided for in the Constitution. In that case a man is subject to Senate confirmation.

It says that:

> He—"the President"—shall nominate, and by and with the advice and consent of the Senate, shall appoint.

The Senate has not advised and consented to that nomination. The Senate will have the provision that it can refuse to advise and consent.

What the Senate did in that case was to attempt to review the advice and consent which, under the Constitution, it was required to give. Having given it once, that was the end of the Senate's power. That decision of the court is entirely correct. But here we are dealing with a statute that would require confirmation.

Congress undoubtedly has the power, because it can pass a law requiring confirmation for any office. The fact that it has not always exercised this power in the past is no reason why it cannot do so in the future.

Mr. GRIFFIN. I agree with the Senator from North Carolina that there is no question as to the power of Congress to require Senate confirmation with respect to future appointments to the office of OMB Director.

But a serious question remains—and I think it is a constitutional question. I refer to the impact and effect which this bill purports to have on an OMB director who has been appointed, who has already taken the oath of office, and who has entered upon the discharge of his duties.

Mr. ERVIN. Mr. President, as I understand the law—and I think this is right—the office of the Director and the office of the Deputy Director of OMB have no special terms. If the Senator from Michigan is right. Mr. Ash, and the Deputy Director, can stay in office until the last trembling note of Gabriel's horn fades into ultimate silence. The Senate would have no right to pass upon that office during that time.

Mr. GRIFFIN. Mr. President, I think there is no question about the constitutionality of the amendment proposed by the distinguished Senator from West Virginia requiring reappointment and confirmation at 4-year intervals coinciding with a President's term of office.

But I ask the Senator from North Carolina, what would be the effect if Congress were to provide by legislation for reconfirmation by the Senate every 30 days.

Mr. ERVIN. I think that Congress would have that power. If Congress can say that certain officers can have a term of office of 4 years, I think Congress can say that he can have a term of office for 30 days.

The effect of this bill is that the Director or his Deputy, now acting, can continue in office for 30 days pending confirmation of the nomination, and cannot continue more than 30 days unless the Senate acts prior to that time.

Mr. GRIFFIN. It is not very likely that we would get the support of any President for such legislation?

Mr. ERVIN. Mr. President, George Washington said in his farewell address that all occupants of public office have a lust for power and are prone to abuse it.

I would say that I can understand a President, being a human being like myself, might like to retain the power he has and deny the Senate of the opportunity to look at the qualifications of his appointees. That would be quite a human thing to do. But maybe we could override a veto on that question. I certainly hope so.

I would hate to see Mr. Ash or the Deputy Director, now serving, have a legal right to remain in that office forever without the Senate of the United States having any authority to look into the qualifications of these men to continue in office.

If this bill is not valid under the Constitution, Mr. Ash has an undoubted right to remain in that office and draw his salary until the last trembling note of Gabriel's horn fades into ultimate silence.

Mr. BROCK. Mr. President, if the Senator will yield, the term expires with the expiration of the President's term.

There is an item of tenure to that Office. The new President in 1977 will have appointive power over who is Director of the Budget; is that not true?

Mr. ERVIN. The new President could remove him, just like President Nixon could remove Mr. Ash any minute.

Mr. GRIFFIN. And there is a constitutional limit on the President's tenure to two terms.

Mr. ERVIN. Yes. I do not think Mr. Ash ought to be allowed to stay in. I do not think any man exercising these vast powers ought to be allowed to hold an office this important without Senate confirmation. Certainly he is not an inferior officer. The only officer who is exempt from confirmation of the Senate, if Congress so provides, is one who occupies an inferior office, and a man who has the power, in effect, to nullify acts of Congress certainly is not an inferior officer.

Mr. GRIFFIN. It is possible that the Senator from Michigan may offer an amendment which might surprise the Senator from North Carolina. I believe it would be more appropriate to abolish the office of OMB for a short period of time and then reestablish it. That, it seems to me, would be a constitutional way to require appointment and reconfirmation of the incumbent OMB Director, if that is the purpose here. On the other hand, I understand that the incumbent has already appeared before at least one Senate committee and I think he should come back again.

Mr. ERVIN. If the Senator has those desires, the best way to get those desires consummated is to vote for the bill.

Mr. GRIFFIN. Perhaps, if it were a valid and constitutional bill. But I do think there are very serious questions about it. What the bill seeks to do, in effect, is to remove an officer after he has already been installed and has entered upon the discharge of his duties. The Constitution provides a procedure for impeachment proceedings if there is any basis for impeachment. Of course, the President has removal powers. But I do not believe it is appropriate for the Congress to remove an officer in this way.

Mr. ERVIN. The reason an officer has to be confirmed is that the Senate would have no power to remove an officer, under the Constitution, once he has been confirmed. As to an officer who has not been confirmed, the Senate can do it at any time, by a change in the law. The fact that a man is in offices does not incapacitate the legislature. I have no doubt about the constitutionality of the bill.

Mr. ALLEN. Mr. President, will the Senator yield just a moment, so that I might ask a question about the language of the amendment?

Mr. ERVIN. I yield.

Mr. ALLEN. Does the Senator have a copy of the amendment?

Mr. ERVIN. I do not. It was drawn by the Senator from West Virginia.

Mr. ALLEN. Where it says:

> The Director and Deputy Director shall each be appointed for a term of 4 years, with each such term commencing at noon on January 20—

Here is the point where the Senator from Alabama raises a question—

> of each fourth year in which the term of President begins.

Under that language, his term would not begin until January 20 of the fourth year of the term, leaving a hiatus in that office for the first 3 years of the President's term. I think there ought to be clarification of that.

Mr. ERVIN. The Senator will recognize, I think, that by this section the Director and Deputy Director are each appointed for a term of 4 years:

> With each such term commencing at noon on January 20 of each fourth year in which the term of President begins.

Mr. ALLEN. That is right. Every fourth year of his term.

Mr. ERVIN. Yes. In other words, if these people are confirmed, they would stay in unless removed by the President or impeached and removed from such office, until January 20, 1977.

Mr. ALLEN. This language says the term does not begin until January 20 of the fourth year of the term, so you would not have any term until after the third year.

Mr. ERVIN. Well, the Senator from North Carolina has no trouble interpreting that. I would agree with the Senator from Alabama that there is some ambiguity, but the objective is twofold: One is to create a 4-year term, and the other is to make it end on January 20 when a new President takes office, and I think the courts, in construing that, would say the January 20 date would apply and would control the extent of the term of the first appointees.

Mr. ALLEN. Well, you could have two fellows claiming the same office there.

Mr. ERVIN. The Court could decide it, and I think the Court would say the controlling provision was the one that made it expire on January 20 as to the first occupant.

Mr. ALLEN. That is the first occupant. It says he goes until January 20, but the next term does not start until the fourth year of the President's term.

Mr. ERVIN. Well, the distinguished Senator from Alabama knows, great lawyer that he is, that when there are apparently conflicting provisions in a statute, the Court reconciles those provisions, if they are possible of reconciliation, so as to give effect to the controlling intent; and the controlling intent in these words, it seems to me, is that those who take the office first under this bill will hold office until January 20 4 years from now.

Mr. BROCK. Surely, if the Senator will yield——

Mr. ALLEN. I would just like to make this one further comment at that point, before I yield to the distinguished Senator from Tennessee:

The distinguished Senator from North Carolina has argued many times, and the Senator from Alabama has followed his leadership on that question, that it is best to leave to the legislative branch the draftsmanship of legislation, and not to require the courts to legislate. Would it not be the better course of wisdom to perfect this amendment before we act on it? That is the thought that occurs to the Senator from Alabama.

I yield to the distinguished Senator from Tennessee.

Mr. BROCK. Mr. President, I would say that the Senator from Alabama has made my point more adequately than I could make it myself. I think it is incumbent upon the Senate to write clear and specific legislation which addresses the thrust of our purpose. If I might suggest it, I think we could lay this amendment aside for a few minutes and let the Senator from Alabama bring this matter to the attention of the author of the amendment. I am sure he has no intention of achieving the effect apparent in the language of the amendment, but I think the Senator from Alabama has brought up a valid point, and I might suggest that we proceed to a general discussion of the bill itself for a few minutes, until the matter can be resolved.

Mr. ERVIN. I would suggest to the Senator from West Virginia that he simply amend subsection (1) of his amendment by striking out the words "from the date of such appointment" and substituting for them these words:

> To begin on the date of appointment and end—

Then it would read:

> The terms of the individuals first appointed in accordance with this Act, after the date of enactment of this Act, to hold such positions shall commence on the date of their appointment and end immediately prior to noon January 20, 1977.

That would make this thing as clear as the noonday sun in a cloudless sky. And if I can suggest an amendment to that effect, or if I can find the Senator—the Senator from West Virginia has temporarily stepped out of the Chamber, I believe he would accept that.

Mr. MANSFIELD. He will be back in a minute.

Mr. ALLEN. Mr. President, I suggest the absence of a quorum, and ask that the time for the quorum call not be charged to either side.

Mr. MANSFIELD. Here he is.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. ERVIN. I might state to the Senator from West Virginia that the Senator from Alabama——

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. ERVIN. That the Senator from Alabama and the Senator from Tennessee have raised a question about when the term of office of the first appointees under this bill, as amended by your amendment. They pointed out some ambiguity about that, and I would suggest to the Senator from West Virginia that he amend subsection (1) of his amendment to strike out "from the date of such appointment through . . ." and then substitute these words:

> Shall commence on the date of their appointment and end immediately prior to noon of January 20, 1977.

That will clarify it, in my judgment.

Mr. ROBERT C. BYRD. Mr. President, it was not my intent in drawing this amendment to deter or interfere with the President in any way in his power to remove the Director of the OMB—or the Assistant Director. I do not believe my amendment would interfere with his right to so remove them.

However, I would suggest that there be a brief quorum call at this time, not to be charged against either side, and perhaps we can resolve this language so that it will clearly not interfere with the President's right to remove.

The PRESIDING OFFICER (Mr. HELMS). The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. CASE. 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 ask unanimous consent that Mr. Tom Hart of the Judiciary Committee staff be given the privilege of the floor during the further consideration of this amendment.

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

Mr. ROBERT C. BYRD. Mr. President, I now suggest the absence of a quorum and ask that the time not be charged against either side.

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.

Mr. ROBERT C. BYRD. Mr. President, I send to the desk a modification of my amendment and ask that it be stated.

The PRESIDING OFFICER. The modification will be stated.

The assistant legislative clerk read as follows:

(3) Nothing contained in this act shall impair the power of the President to remove the occupants of such offices.

Mr. ROBERT C. BYRD. Mr. President, I ask that my amendment be read ab initio in its entirety.

The PRESIDING OFFICER. The amendment, as modified, will be read in its entirety.

The amendment, as modified, was read as follows:

On page 2, line 3, after the period, add the following: "The Director and Deputy Director shall each be appointed for a term of 4 years, except that—

"(1) the terms of the individuals first appointed in accordance with this Act, after the date of enactment of this Act, to hold such positions shall commence on the date of their appointment and end immediately prior to noon January 20, 1977;

"(2) any individual appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of that term; and

"(3) nothing contained in this Act shall impair the power of the President to remove the occupants of such offices."

The PRESIDING OFFICER. The amendment will be so modified.

Mr. ROBERT C. BYRD. Mr. President, the purpose of the modification, I think, is now clear. As I indicated earlier, it is not my intent to do anything in this act that would preclude or impinge upon the right of the President to remove such officer or officers. I think the modification which now has resulted from the question originally asked by the distinguished Senator from Alabama (Mr. ALLEN)—for which I thank him—makes this clear: and I think it is a considerable improvement over the original draft.

Mr. ERVIN. I thank the Senator from Alabama for calling attention to the phraseology which has been corrected. It is now so clear that there will be no room for misinterpretation.

Mr. ROBERT C. BYRD. I also thank the distinguished manager of the bill, Mr. ERVIN, for his very able assistance in redrafting the amendment to carry out the intent which I have expressed.

Mr. GRIFFIN. Mr. President, is the amendment still the question before the Senate?

The PRESIDING OFFICER. The amendment of the Senator from West Virginia, as amended, is still the pending question.

Mr. GRIFFIN. Mr. President, I am not going to spend more time arguing against the pending amendment. I believe it would be wiser and better to consider general legislation that would apply not only to the Director of the Office of Management and Budget but to other Cabinet officers as well. Before voting, there should be hearings on legislation proposing such a fundamental change, and that there should be opportunity for constitutional scholars and others to come in and testify.

It would be unfortunate and rather strange, I believe, if we were to end up with a situation—which could well happen—in which the Director of Office of Management and Budget, whose nomination heretofore has not even required confirmation, would be the only one who would have to be reconfirmed when a President begins a second term. I do not think this is the way to go about legislating on such an important item. However, I see no point in having a rollcall vote; I have no doubt that the amendment would be adopted. Accordingly, I shall let the matter rest at that point.

The PRESIDING OFFICER. Who yields time?

Mr. ROBERT C. BYRD. Mr. President, I am prepared to yield back the remainder of my time on the amendment, if the distinguished Senator from Tennessee is so prepared.

Mr. BROCK. I yield back the remainder of my time on the amendment.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment, as modified.

The amendment, as modified, was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the amendment, as modified, was agreed to.

Mr. ERVIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ERVIN. Mr. President, I ask unanimous consent that the name of the distinguished Senator from Louisiana (Mr. JOHNSTON) be added as a cosponsor of the pending measure.

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

Mr. METCALF. Mr. President, will the Senator yield me time for a similar request?

Mr. ERVIN. I yield.

Mr. METCALF. Mr. President, I ask unanimous consent that the name of the distinguished Senator from Oregon (Mr. HATFIELD) be added as a cosponsor of the bill and the amendment.

The PRESIDING OFFICER. Without objection, is so ordered.

Who yields time?

Mr. BROCK. Mr. President, I yield myself such time as I may require.

I ask unanimous consent that my name be added as a cosponsor of the bill.

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

Mr. BROCK. Mr. President, I support S. 518, which would require confirmation by the Senate of the nomination of the Director of the Office of Management and Budget and his Deputy. These two positions are far too important not to require congressional confirmation of their appointments.

OMB has become certainly one of the most powerful offices in the executive branch of the Government. The Director of the Office of Management and Budget wields as much power as the secretaries of Cabinet-level departments. Yet, he is appointed by and accountable to the President alone.

OMB is no longer a bookkeeping agency, as it was when its predecessor, the Bureau of the Budget, was created in 1921. Through successive administrations, it has become a principal policy-making agency of the Federal Government. OMB determines what programs will be funded, what programs will be cut, and what programs will be abolished. The OMB Director now implements authorities Congress has given him in 15 laws and 2 reorganization plans.

No agency in the Government is permitted to give its recommendations on legislation to Congress without first clearing them with the Office of Management and Budget. This procedure undoubtedly makes OMB one of the most powerful agencies in Washington. It is absolutely essential that Congress participate in the selection of the OMB Director and Deputy Director.

The best description of the expanded management role of the Office of Management and Budget can be found in the President's Message and Reorganization Plan No. 2 of 1970, which Congress approved. The very name change—from Bureau of the Budget to Office of Management and Budget—indicated its shifting role and priorities. President Nixon said:

Creation of the Office of Management and Budget represents far more than a mere change of name for the Bureau of the Budget. It represents a basic change in concept and emphasis, reflecting the broader management needs of the Office of the President.

The new Office will still perform the key function of assisting the President in the preparation of the annual Federal budget and overseeing its execution. It will draw upon the skills and experience of the extraordinarily able and dedicated career staff de-

veloped by the Bureau of the Budget. But preparation of the budget as such will no longer be its dominant, overriding concern.

While the budget function remains a vital tool of management, it will be strengthened by the greater emphasis the new office will place on fiscal analysis. The budget function is only one of several important management tools that the President must now have. He must also have a substantially enhanced institutional staff capability in other areas of executive management—particularly in program evaluation and coordination, improvement of Executive Branch organization, information and management systems, and development of executive talent. Under this plan, strengthened capability in these areas will be provided partly through internal reorganization, and it will also require additional staff resources.

Mr. President, it is useful to compare the Office of Management and Budget with other component offices of the Executive Office of the President, for purposes of determining whether OMB officers should be confirmed.

I have a table showing the 16 component units of the Executive Office of the President, and I ask unanimous consent to have it printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. BROCK. The top officers of 10 of these offices are subject to confirmation. Among them are the three members of the Council of Economic Advisers, the Director and Deputy Director of the CIA, the Special Representative for Trade Negotiations and his two deputies, the Director, and 6 subordinate officials of the Office of Economic Opportunity, the three members of the Council on Environmental Quality, the Director, and Deputy Director of the Office of Telecommunications Policy, and the Director and Deputy Director of the Special Action Office for Drug Abuse Prevention.

Surely, the requirement for confirmation of these officials has not impeded their effectiveness. I do not believe that assertion of the Senate's right to confirm the Director and Deputy Director of the Office of Management and Budget would not inhibit their effectiveness either. A tradition has been established that the OMB Director and his top officials testify before Congress. This was true in the Johnson administration and the practice was carried on by Secretary Shultz when as Budget Director he appeared before congressional committees frequently. Mr. Ash has indicated his willingness to testify. It would seem, then, that requiring confirmation of these OMB posts would impose no additional burden or impediment to the work of these officials.

Finally, Mr. President, I hope that the bill we are debating today is not seen as an attempt to curtail the effectiveness of the Office of the President or the executive branch, or as a part of any effort to exacerbate the current tensions between our two branches. I think the current concern about the respective powers of the legislative and executive departments, of which this issue of confirmations is only a part, is very healthy. I hope that we can move ahead on a number of fronts, including the reorganization of our congressional appropriations process, to redefine and secure the powers properly belonging to the Legislature. This bill is a part of that effort, and I urge its passage by the Senate.

EXHIBIT 1

Component Offices of the Executive Office of the President (EOP) (including the Cost of Living Council, initially a part of the EOP, now considered an "independent agency").

Office	*Authority*	*Top Official*
Not Subject to Confirmation		
1. OMB	Reorganization Plan	Director and Deputy Director
2. National Security Council	National Security Act	Executive Secretary
3. Domestic Council	Reorganization Plan	Executive Director, Deputy Director
4. Council on International Economic Policy	Public Law 92–412, 8/29/72	Executive Director
5. Office of Consumer Affairs [1]	Executive Order	Director and 2 Deputy Directors
6. Cost of Living Council	Economic Stabilization Act and Executive Order	Director
Subject to Confirmation		
7. Council of Economic Advisers	Employment Act of 1946	Chairman, 2 members
8. Central Intelligence Agency	National Security Act	Director, Deputy Director
9. National Aeronautics & Space Council [2]	National Aeronautics and Space Act	Executive Director
10. Office of Emergency Preparedness [2]	Reorganization Plan	Director, Deputy Director, 2 Assist. Dirs.
11. Office of Science and Technology [2]	Reorganization Plan	Director, Deputy Director
12. Office of Spec. Rep. for Trade Negos.	Trade Expansion Act	Special Representative, 2 Deputies
13. Office of Economic Opportunity	Economic Opportunity Act	Director, Deputy Director, 5 Asst. Dirs.
14. Council on Environmental Quality	Environmental Policy Act	Chairman, 2 members
15. Office of Telecommunications Policy	Reorganization Plan	Director, Deputy Director
16. Special Action Office for Drug Abuse Prevention	Public Law 92–255	Director, Deputy Director

[1] Functions to be transferred to Dept. HEW.

[2] Functions to be transferred to other Departments and agencies pursuant to Reorganization Plan No. 1 of 1973.

Mr. ERVIN. Mr. President, I ask unanimous consent that the names of the following Senators be added as cosponsors of the pending measure: the Senator from Michigan (Mr. HART), the Senator from New Jersey (Mr. CASE), and the Senator from Delaware (Mr. BIDEN).

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

Mr. BROCK. 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. GRIFFIN. 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. GRIFFIN. Mr. President, if I may be recognized, under time available on this side, I wish to ask the distinguished Senator from North Carolina, the manager of the bill, this question:

Assuming, as I think we all assume and as this bill concedes, that until now the nomination of the Director of OMB did not have to be confirmed—although I think the Senate could have taken the other view—and assuming that he has been duly appointed and is an officer of the United States, having taken the oath of office and having entered upon the discharge of his duties, what would be the status of the incumbent Director of OMB if this bill were to pass and become law?

Mr. ERVIN. The status of the present Director and Deputy Director would be that they would hold that office until their successors were nominated and either rejected or confirmed, and to provide a 30-day period for the Senate to act on that. In other words, I have no doubt of the power of Congress to pass this law because nobody has a property right in the public office, so the office can be terminated. But this occurred to me: It would be bad to have a hiatus in the occupancy of this office, with no one there to exercise the powers, and that is why the bill provides that no individual shall hold such office 30 days after enactment—in other words, up to 30 days.

Mr. GRIFFIN. And it would be the position of the Senator from North Carolina that the bill could just as easily have provided for a period of 10 days or 5 days?

Mr. ERVIN. Yes. That was put in there solely to keep the office from being vacant. If it were vacant, there might be some decision and there would be no Director or Deputy Director to make it.

Mr. GRIFFIN. So the unmistakable effect of this bill is to remove the incumbent Director after 30 days?

Mr. ERVIN. It would terminate the

occupancy, the right to hold these offices on the part of the present Director or Deputy Director unless they are confirmed in 30 days.

Mr. GRIFFIN. They must be renominated by the President and confirmed by the Senate.

Mr. ERVIN. That is right.

Mr. GRIFFIN. Within 30 days.

Mr. ERVIN. That is right.

Mr. GRIFFIN. Perhaps the Senator from Michigan is unduly concerned about the constitutional problem. But I do not think so. The record now is very clear that what this bill seeks to do is to remove an incumbent official of the United States from office.

I must say that this appears to be a unique and novel way of removing an official. But I also believe it infringes upon the powers of the President who otherwise has the power—except for impeachment—to remove officers in the executive branch.

Mr. ERVIN. I think if the House had not taken the position that the original Director of the Budget, who only added up a few figures and information for the President, which was all the power he had, was an inferior office—the fact that Congress has not made this subject to confirmation before is just dereliction of duty on the part of Congress. I think Congress can change the term of any officer whose term is set by a statute, enacted by Congress. Congress has the right to amend its laws at any time. This does shorten the term of the present incumbents. It shortens it to 30 days unless they are confirmed at that time by the Senate—appointed by the President and confirmed by the Senate.

Mr. GRIFFIN. The Senator from North Carolina is the outstanding constitutional scholar in this body. I wonder if the Supreme Court—in seeking to decide whether this is a valid exercise of legislative power or it is an effort by Congress to usurp or infringe on the removal power of the President—might look on the 30-day period as being a rather unreasonable term of office. I wonder if the Court might not recognize that, instead of fixing the term of office, it is actually an exercise of the power of removal.

Mr. ERVIN. I have to make a confession that on previous occasions I have given the Supreme Court some very sound advice on the law to assist them in reaching a sound conclusion, and sometimes five of them did not agree with me.

But if the Supreme Court does not say Congress usurped power, it is going to say Congress has the right to amend the statutes it passes, and where it has not prescribed any term of office it can terminate the term of office. I do not have the slightest doubt. The present occupants of this office do not have a property right in this office. They do not have any property right which puts them beyond the legislative power of the United States

I do not think the Smith case has any application because that case was dealing with constitutional powers of the Senate to advise and consent to appointments, and the Constitution states that the President can nominate and, with the advice and consent of the Senate, appoint a person to office, and that is what they have done. The Constitution did not authorize Congress to reconsider and advise and consent. In other words it held, in effect, they had to speak when acting or forever hold their peace. I think that was a correct decision.

Mr. GRIFFIN. I shall not detain the Senate further. I am aware that there are probably some political risks attached to the argument I present today. Furthermore, I have no doubt as to how the Senate will vote on Monday. I do believe, however, even though my argument may be misunderstood or misinterpreted, that the question I have raised is an important one for the Senate to consider.

As I have pointed out before, the Constitution provides that the President shall nominate and appoint, and by and with the advice and consent of the Senate appoint—

> * * * 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 courts of law, or in the heads of the departments.

I am not aware of any statute under which the Congress has vested appointment of this particular official in the President alone. On the other hand, by inaction and by recognizing this legislation, we have conceded that appointment to this office does not require confirmation.

Having taken that position, and having failed to assert any confirmation right with respect to the incumbent, who was sworn in this morning, it seems now we ought to be content to require confirmation in the case of future appointments only, and not seek to make the law retroactive in its application.

Mr. ERVIN. I think, in the last analysis, the Senator's position is that if Congress does not exercise its legislative power in a certain period of time, it loses that legislative power. I do not think so. The Constitution provides that Congress may provide for the appointment of inferior officers in the President alone or in the heads of departments. This was an inferior office when it was first established. All the man would do would be to add up a few figures for the President to see what amount he had in the budget. It was merely a matter of arithmetic. Now OMB is the supervisory office for all the executive branch of the Government, and, if I do say, it attempts to supervise the legislative branch also, and I do not think the office of Director is an inferior office any more. I think the Congress has legislative power at any time to make the office subject to the confirmation of the Senate.

Mr. GRIFFIN. I agree with that. However there is this question: In effect, would we be removing an officer who has already been installed and who is proceeding in the discharge of his duties?

Mr. ERVIN. Under the law he had no definite term of office, so he was not installed for any particular time. This is making certain that he can remain in office for approximately 30 days, when he did not have 15 minutes before.

Mr. GRIFFIN. Perhaps he would have had the time it would take to pass a law and have it become effective.

I thank the Senator.

Mr. ERVIN. I would like to say to the Senator from Michigan that he has on many occasions, undergone political risk by taking a courageous position—and I say that even though on some occasions he did not agree with my sound views on a certain position—I do not see that the Senator has suffered any political consequences as a result of taking a stand he saw fit to take.

Mr. GRIFFIN. I thank the Senator.

Mr. ERVIN. Mr. President, I yield back my time.

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

Mr. GRIFFIN. I yield to the Senator from Alabama.

Mr. ALLEN. I merely wanted to ask a question of the distinguished Senator from North Carolina.

As I read the last three lines on page 2 of the bill, as to an individual now holding one of these positions, it would be possible, then, for him to be turned out of office without the Senate ever acting on his appointment, because it requires that he get Senate action within 30 days in order to stay in office.

The appointment might go to a committee, and the committee chairman might sit on the appointment for 30 days, or it might come to the floor and, with a little extended debate on it, it would be very easy for his person or these persons to be turned out of office without the Senate ever taking a stand on their worthiness for those positions. Is that correct?

Mr. ERVIN. If the Senate wanted to relinquish the discharge of its public duty, that could happen. I proposed the legislation on the theory that the Senate ought to have the power to pass on the fitness and qualifications of the occupants of these offices, and I think the Senate will act within 30 days.

Mr. ALLEN. Could there be any method the Senator could think of that would require the Senate to act?

Mr. ERVIN. The Senate could sit here and not do anything. They could all go fishing. But I do not think they will do it. I do not have any fear of that. I have great confidence that the Senate will discharge its public duties.

Mr. ALLEN. The Senator feels it would be acting on these two appointments?

Mr. ERVIN. Oh, I have no doubt about it. The Senate will have 30 days to do it, and I think it will do it.

Mr. ALLEN. Would the Senator be willing to take an amendment suspending this bill of attainder or its execution pending action by the Senate?

Mr. ERVIN. I think the bill is all right as amended. I would not be willing to accept that amendment. I am not going to proceed on the idea that the Senate is going to refuse to perform its public duties in a patriotic fashion.

Mr. ALLEN. Its patriotic duty might be to sit on the appointment.

Mr. ERVIN. I do not think it is. I do not think it is the Senate's duty to sit on them.

Mr. ALLEN. Could the Senator give a reasonable assurance that these appointments would be acted on within the 30-day period?

Mr. ERVIN. I cannot assure the Senator anything, but if the majority of the Senate feels that a position which is as important as this should be subject to Senate confirmation, I believe the committee and the Senate would act within 30 days.

Mr. MANSFIELD. Mr. President, if the Senator will yield, I would say that is the unanimous intent of the Senate brought out in the consideration of the bill. I would agree with the distinguished Senator from North Carolina.

Mr. ALLEN. I thank the distinguished Senator from North Carolina and the distinguished majority leader.

Mr. ERVIN. I thank the Senator for his contribution in clarifying the language of the bill.

Mr. METCALF. Mr. President——

Mr. GRIFFIN. Mr. President, I yield to the Senator from Montana.

Mr. METCALF. Mr. President, I have a statement from the distinguished and able junior Senator from Minnesota (Mr. HUMPHREY) on this bill. He would like to have delivered it today in person. If we are going over until Monday, he will be back and will be able to deliver this statement in his own eloquent and inimitable style. Before Senators yield back their time, I would like to be sure that before we vote on the bill on Monday the Senator from Minnesota (Mr. HUMPHREY) may have 10 minutes to speak on the pending legislation.

Mr. ERVIN. Mr. President, I ask unanimous consent that I may give the Senator from Montana the assurance that the majority leader has propounded a unanimous-consent request which has been agreed to whereby the Senator from North Carolina will control 30 minutes of the time prior to the vote Monday and whereby the Senator from Michigan or his designee will control 30 minutes, and I will assure the Senator from Montana, whom I have paid has contributed much in this field. The Senator from North Carolina will yield time to the Senator from Minnesota, because the Senator from Minnesota, like the Senator from Montana and myself, has been interested in this field.

Mr. METCALF. I think it would be well for him to deliver his statement in his typical, aggressive style.

The PRESIDING OFFICER. Who yields time?

Mr. GRIFFIN. Mr. President, I yield back the time remaining on this side.

The PRESIDING OFFICER. All time on the bill has been yielded back.

What is the will of the Senate?

Mr. ALLEN. Mr. President, third reading of the bill would cut off any other amendment.

Mr. MANSFIELD. The Senator is correct. The Senate was on notice that this bill would be up today. We know of no other amendments. The hope was that it would be debated today and disposed of Monday. A unanimous-consent request was made that a final vote be had at 2 o'clock on Monday.

Mr. ALLEN. Mr. President, would it not be wise to give an opportunity for Senators to amend the bill on Monday?

Mr. MANSFIELD. It does not make any difference to the majority leader. We have an agreement all the way around. And it is still within the hour. But the intent behind the agreement was to give time for debate and to dispose of amendments today. The Senate was on notice, and it was on notice that it would even be possible to pass the bill today. The prospects looked fairly good until this afternoon.

If the Senator would not mind, I would like to retain the unanimous-consent request as it is. However, if he does mind, I will withdraw it.

Mr. ALLEN. It is all right to leave the agreement in effect.

Mr. MANSFIELD. Mr. President, I thank the Senator from Alabama.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

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

STATEMENT ON AGREEMENT TO VOTE

Mr. MANSFIELD. Mr. President, to reiterate, the unanimous-consent agreement is to begin at the hour of 1 o'clock on Monday. The time is to be equally divided between the manager of the bill, the distinguished Senator from North Carolina (Mr. ERVIN), and the distinguished Republican leader, the Senator from Pennsylvania (Mr. SCOTT), or whomever he may designate. The vote on final passage is to occur not later than the hour of 2 o'clock on Monday next.

The PRESIDING OFFICER. The Senator is correct.

ORDER WITH RESPECT TO DEBATE ON UNFINISHED BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, in the event the completion of all orders previously entered on Monday next goes beyond the hour of 1 o'clock p.m., the orders for recognition of Senators be permitted to be concluded before the 1 hour under the agreement with respect to the unfinished business, S. 518, begins running.

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

Mr. ROBERT C. BYRD. Mr. President, this means, of course, that there may be no period for the transaction of routine morning business on Monday next until late in the day.

AIRPORT DEVELOPMENT ACCELERATION ACT OF 1973

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the pending business be laid aside temporarily and that the Senate turn to the consideration of Calendar No. 19, S. 38, that it be laid before the Senate and made the pending business.

The PRESIDING OFFICER. The clerk will report the bill.

The assistant legislative clerk read as follows:

A bill (S. 38) to amend the Airport and Airway Development Act of 1970, as amended, to increase the United States share of allowable project costs under such act, to amend the Federal Aviation Act of 1958, as amended, to prohibit certain State taxation of persons in air commerce, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Commerce with an amendment on page 5, at the beginning of line 12, strike out "(g)" and insert "(f)"; so as to make the bill read:

S. 38

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Airport Development Acceleration Act of 1973".

SEC. 2. Section 11(2) of the Airport and Airway Development Act of 1970 (49 U.S.C. 1711), is amended to read as follows:

"(2) 'Airport development' means (A) any work involved in constructing, improving, or repairing a public airport or portion thereof, including the construction, alteration, repair, or acquisition of airport passenger terminal buildings or facilities directly related to the handling of passengers or their baggage at the airport, and (B) the removal, lowering, relocation, marking, and lighting of airport hazards, and (C) the acquisition, removal, improvement, or repair of navigation facilities used by aircraft landing at, or taking off from, a public airport, and (D) the acquisition, improvement, or repair of safety equipment required by rule or regulation for certification of an airport under section 612 of the Federal Aviation Act of 1958, and (E) security equipment required of the sponsor by the Secretary by rule or regulation for the safety and security of persons and property on the airport, and (F) any acquisition of land or of any interest therein or of any easement through or other interest in airspace, which is necessary to permit any of the above or to remove, mitigate, prevent, or limit the establishment of, airport hazards affecting a public airport."

SEC. 3. (a) Section 14(a) of the Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1714(a)); is further amended—

(1) by striking out "1975" in paragraph (1) and inserting in lieu thereof "1973, and $375,000,000 for each of the fiscal years 1974 and 1975"; and

(2) by striking out "1975" in paragraph (2) and inserting in lieu thereof "1973, and $45,000,000 for each of the fiscal years 1974 and 1975".

(b) Section 14(b) of the Act (49 U.S.C. 1714(b)), is amended—

(1) by striking out "$840,000,000" in the first sentence thereof and inserting in lieu thereof "$1,680,000,000";

(2) by striking out the words "extend beyond" in the second sentence thereof and by inserting in lieu thereof, the words "be incurred after"; and

(3) by striking out "and" in the last sentence thereof and inserting immediately before the period ", an aggregate amount exceeding $1,260,000,000 prior to June 30, 1974, and an aggregate amount exceeding $1,680,000,000 prior to June 30, 1975".

SEC. 4. Section 16(c)(1) of the Airport and Airway Development Act of 1970 (49 U.S.C. 1716(c)), is amended by inserting in the last sentence thereof "or the United States or an agency thereof" after "public agency".

SEC. 5. Section 17 of the Airport and Airway Development Act of 1970 (49 U.S.C. 1717),

relating to United States share of project costs, is amended—

(1) by striking out subsection (a) of such section and inserting in lieu thereof the following:

"(a) GENERAL PROVISIONS.—Except as otherwise provided in this section, the United States share of allowable project costs payable on account of any approved airport development project submitted under section 16 of this part shall be—

"(1) 50 per centum for sponsors whose airports enplane not less than 1.00 per centum of the total annual passengers enplaned by air carriers certificated by the Civil Aeronautics Board; and

"(2) 75 per centum for sponsors whose airports enplane less than 1.00 per centum of the total annual number of passengers enplaned by air carriers certificated by the Civil Aeronautics Board."

(2) by adding a new subsection as follows:

"(e) SAFETY CERTIFICATION AND SECURITY EQUIPMENT.—

"(1) To the extent that the project cost of an approved project for airport development represents the cost of safety equipment required by rule or regulation for certification of an airport under section 612 of the Federal Aviation Act of 1958 the United States share shall be 82 per centum of the allowable cost thereof with respect to airport development project grant agreements entered into after May 10, 1971.

"(2) To the extent that the project cost of an approved project for airport development represents the cost of security equipment required by the Secretary by rule or regulation, the United States share shall be 82 per centum of the allowable cost thereof with respect to airport development project grant agreements entered into after September 28, 1971."

(3) by adding a new subsection as follows:

"(f) PUBLIC USE FACILITIES IN TERMINAL BUILDINGS.—To the extent that the project cost of an approved project for airport development represents the cost of constructing, altering, repairing, or acquiring buildings or facilities directly related to the handling of passengers or their baggage at the airport, the United States share shall be 50 per centum of the allowable costs thereof."

SEC. 6. Section 20(b) of the Airport and Airway Development Act of 1970 (49 U.S.C. 1720(b)), relating to airport project costs, is amended to read as follows:

"(b) COSTS NOT ALLOWED.—The following are not allowable project costs: (1) the cost of construction of that part of an airport development project intended for use as a public parking facility for passenger automobiles; or (2) the cost of construction, alteration, repair, or acquisition of a hangar or of any part of an airport building or facility except such of those buildings, parts of buildings, facilities, or activities as are directly related to the safety of persons at the airport or directly related to the handling of passengers or their baggage at the airport."

SEC. 7. (a) Title XI of the Federal Aviation Act of 1958 is amended by adding at the end thereof the following new section:

"STATE TAXATION OF AIR COMMERCE

"SEC. 1113. (a) No State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) shall levy or collect a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom: *Provided, however*, That any State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) which levied and collected a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom prior to May 21, 1970, shall be exempt from the provisions of this subsection until July 1, 1973.

"(b) Nothing herein shall prohibit a State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) from the levy or collection of taxes other than those enumerated in subsection (a) of this section, including property taxes, net income taxes, franchise taxes, and sales or use taxes on the sale of goods or services; and nothing herein shall prohibit a State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) owing or operating an airport from levying or collecting reasonable rental charges, landing fees, and other service charges from aircraft operators for the use of airport facilities.

"(c) In the case of any airport operating authority which—

"(1) has an outstanding obligation to repay a loan or loans of amounts borrowed and expended for airport improvements;

"(2) is collecting, without air carrier assistance, a head tax on passengers in air transportation for the use of its facilities; and

"(3) has no authority to collect any other type of tax to repay such loan or loans,

the provisions of subsection (a) shall not apply to such authority until July 1, 1973."

(b) That portion of the table of contents contained in the first section of such Act which appears under the center heading "TITLE XI—MISCELLANEOUS" is amended by adding at the end thereof the following:

"Sec. 1113. State taxation of air commerce.".

SEC. 8. Section 12(a) of the Airport and Airway Development Act of 1970 (49 U.S.C. 1712) is amended by striking out the words "two years" in the first sentence thereof and by inserting in lieu thereof "three years".

Mr. MANSFIELD. Mr. President, there will be no discussion or debate on this bill this afternoon that I know of.

QUORUM CALL

Mr. MANSFIELD. 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 TRANSACTION OF ROUTINE MORNING BUSINESS ON MONDAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Monday, immediately following the recognition of various Senators under the order previously entered, there be a period for the transaction of routine morning business not to extend beyond 1 p.m. with statements limited therein to 3 minutes.

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

ORDER FOR SENATE TO DISPOSE OF UNFINISHED BUSINESS BEFORE RESUMING CONSIDERATION OF PENDING BUSINESS MONDAY NEXT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, upon the disposition of S. 518 on Monday, the Senate resume the consideration of S. 33.

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

ADDITIONAL PERIOD FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a resumption of the period for the transaction of routine morning business with statements limited therein to 5 minutes, the period not to exceed 15 minutes.

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

ORDER FOR RECOGNITION OF SENATOR GRIFFIN ON MONDAY, FEBRUARY 5

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the distinguished assistant Republican leader, the Senator from Michigan (Mr. GRIFFIN) be recognized for not to exceed 15 minutes on Monday next, immediately following the remarks of the distinguished Senator from Maryland (Mr. BEALL).

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

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

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for Monday is as follows:

The Senate will convene at 12 o'clock meridian. After the two leaders or their designees have been recognized under the standing order, the following Senators will be recognized, each for not to exceed 15 minutes, in the order stated.

Mr. MCCLELLAN.

Mr. ROBERT C. BYRD.

Mr. BEALL.

Mr. GRIFFIN.

At the conclusion of the foregoing orders, if time permits, there will be a period for the transaction of routine morning business, with statements therein limited to 3 minutes, the period not to extend beyond the hour of 1 o'clock p.m.

At the hour of 1 o'clock p.m., the Senate will resume its consideration of the

unfinished business, S. 518, with a time limitation thereon of not to exceed 1 hour.

The bill, having reached third reading, no amendments will be in order. A yea-and-nay vote will occur on that bill at no later than 2 o'clock p.m.

Upon disposition of S. 518, the Senate will resume consideration of S. 38, a bill to amend the Airport and Airways Development Act of 1970, as amended. There is no time agreement thereon. Yea-and-nay votes can be expected.

ADJOURNMENT

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 12 o'clock meridian on Monday next.

The motion was agreed to; and at 3:01 p.m., the Senate adjourned until Monday, February 5, 1973, at 12 o'clock noon.

EXTENSIONS OF REMARKS

BEGINNING A NEW CONGRESSIONAL YEAR

HON. WILLIAM LLOYD SCOTT

OF VIRGINIA

IN THE SENATE OF THE UNITED STATES

Friday, February 2, 1973

Mr. SCOTT of Virginia. Mr. President, in order to maintain close contact with the people of Virginia to keep them apprised of current issues before the Congress, it was my practice in the House to send out regular newsletters.

This week, the first of our Senate newsletters is in the process of being sent to constituents throughout the State. It contains a commentary on the issue of Government spending and on other subjects of mutual concern, and I ask unanimous consent that it be printed in the RECORD.

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

BEGINNING A NEW CONGRESSIONAL YEAR

My Senatorial service commenced on January 3 upon taking the oath of office in the Senate chambers. This was repeated as shown above in the Vice President's office with my wife, Inez, holding the Bible.

Following the swearing in ceremonies, several hundred constituents and friends attended an informal reception and buffet in the Senate Caucus Room. They came from all parts of Virginia and it was very pleasant to share this day with them.

Much of the time after being sworn in was spent in getting settled in the Senate Office Building, supplementing the staff that worked with me in the House of Representatives, obtaining committee assignments and general orientation.

Committee assignments are Armed Services, Public Works and Small Business which seem very good for one ranked 91st in seniority among a Senate membership of 100. Of course, the past six years of Congressional service puts me ahead of nine of the new Senators and gives me a base on which to build.

There were very few committee meetings during the month of January and very little legislation considered in the Senate. The President has been inaugurated, the Vietnam War ended and we have received the annual budget. All of these will affect Congressional activities.

PEACE

The length of the Vietnam war according to official statistics, was eleven years and twenty-six days, although for POWs or MIAs and their loved ones, such statistics do not tell the complete story. There were 359,859 American casualties including 306,622 wounded in combat, 45,937 killed in combat, and 10,300 dead (not as a result of hostile action). The cost has been estimated at between $130 to $140 billion with an anticipated increase to around $400 billion as a result of Veterans benefits, interest payment on war loans etc. It has been a terrible and terrifying experience for Americans many of whom were in such strong disagreement with the government's policies in Vietnam under Presidents Eisenhower, Kennedy, Johnson and Nixon as to threaten their allegiance to the United States, its leaders and its commitments at home or abroad. I certainly hope that our generation will now enjoy peace throughout the world. Following the signing of the cease-fire agreement, the President was kind enough to send me the following letter:

THE WHITE HOUSE,
Washington, D.C., January 24, 1973.

Hon. WILLIAM L. SCOTT,
U.S. Senate,
Washington, D.C.

DEAR BILL: Now that we have finally achieved peace with honor in Vietnam, I particularly want you to know how much I have appreciated the support you have given during these difficult years to the policies that made that achievement possible. Without those in the Congress who stood steadfastly as you did, we could not have won the settlement that I announced last night.

I know how great the pressures have been. I know the sort of attacks to which you have been subjected, as a result of following your conscience. But I also am confident that history will prove you to have been right, and that in the years to come you can look back with pride on a stern test nobly met.

With best personal regards,

Sincerely,

RICHARD NIXON.

GOVERNMENT SPENDING

You have no doubt heard that the President is impounding Government funds, which is to say, that the Congress has appropriated money for a number of purposes and the President has refused to spend all of the money. He has expressed a determination to hold Government spending for the fiscal year ending June 30, 1973 to $250 billion. Now the President has submitted a budget to the Congress for the 1974 fiscal year. This new budget contemplates expenditures by the Government of $268.7 billion and receipts of $256 billion, which leaves a deficit of $12.7 billion.

In his budget message the President indicates that this 1974 budget fulfills his promise to hold down Federal spending so there will be no need for a tax increase. He rationalizes that based on a concept of full employment, the 1974 budget is balanced. I say "rationalizes" because the concept of a full employment budget in my opinion is another name for deficit financing which we have had practically every year since the depression of the thirties. No businessman would operate his establishment on the basis of full production, in fact, his plant was not operating at full capacity and I do not believe it is fiscally sound to operate the Government on the basis of full employment when we have roughly 5% unemployment in the labor market.

Let us think about it in another way. The Government's total expenditures for 1974 includes an item of $26.1 billion as interest on the national debt. This is the money we must pay because of deficit financing in the past. This fixed interest charge will continue to increase each year that the Government operates on an unbalanced budget. If we had not had deficit spending in the past, we could still spend everything in the President's budget and have a surplus of $13 billion. It just seems reasonable to me that we return to the concept of a balanced budget.

The Federal budget, as you know, is vast and complicated. It is difficult for even the fiscal experts to understand. The President is apparently making a sincere effort to restrain Government spending. It is heartening to note that we are able to reduce the percentage spent on defense but I have reservations about the tremendous increase in recent years on the amount of Government funds spent for human resources. There seems to be a conflict between the pronouncement of a shifting of responsibility to the individual to look after his own needs and a shifting from the Federal government to state and local levels with the funds for human resources provided in this budget.

Perhaps we can reduce the budget to a more understandable basis when we mention that average taxes for the Federal government alone will be more than $1,000 per year for each man, woman and child in the country. If your income is above average, of course, you will pay more than this amount for each member of your family.

While a number of charts have appeared in the newspaper, the one printed below may be useful in seeing a broad picture of where the money comes from and where it goes.

During a private meeting a few days ago, one of our Senators said that we would never again have a balanced budget. While I have no way of knowing whether the budget will be balanced in the future, I intend to be as selective as possible in supporting spending projects so that the Government can once again operate in the black. This may mean that some good programs will have to be deferred or eliminated but I believe the strong desire of the taxpayer to reduce the cost of Government compels us to take a second look at all spending programs.

THE BUDGET DOLLAR—FISCAL YEAR 1974 ESTIMATE

	Billions	Percent of total
Where it comes from:		
Individual income taxes	$111.6	42
Corporation income taxes	37.0	14
Social insurance taxes and contributions	78.2	29
Excise taxes	16.8	6
Other receipts	12.4	4
Borrowing and other means of financing	12.7	5
Total	268.7	100
Where it goes:		
National defense	81.1	30
Human resources	125.5	47
Physical resources	25.7	10
Net interest	18.7	7
Other	17.6	6
Total	268.7	100

STATE OFFICE

In order to serve you better, we have opened a state office in room 8000 of the Federal Building, 400 North Eighth Street, Rich-