Many people in this country are growing weary of this "crisis-a-day" existence in which charges continue to be raised, but seemingly never get resolved. Now we learn the Senate Watergate Committee has decided to postpone further hearings until mid-January in order to "expedite their investigation."

As one leading national newspaper put it recently, the President "is drowning in a sea of unproved charges. The moment he starts to address one of them, his answers are swept away by another" with the result that part of the public is convinced "the President is Satan himself," while another part is convinced he is the victim "of a campaign of endless and baseless innuendo" or a crusade to "get Nixon." There is also another segment of our society that is literally hanging in the balance—not wanting to believe their President is a "crook," but not convinced he is not.

As distasteful and unthinkable as impeachment may seem now in the eyes of some, we may well be reaching the point where it offers the only acceptable means of resolving this dilemma once and for all. Many in the Congress, supporters and nonsupporters of the President alike, are coming to the conclusion that the best hope for a clarifying position by the Congress can only come from a complete and clearcut impeachment investigation and conclusion.

While, to a great extent, impeachment has become a rhetorical slogan for expressing frustration and discontent, in judging whether or not Richard Nixon should be impeached, the public as well as the House of Representatives must now embark on some serious "soul-searching." I, for one, agree with the sentiments recently expressed by Senator AIKEN of Vermont. The time has arrived to either impeach President Nixon or "get off his back"—either indict him by grand jury or admit the evidence does not exist or support an indictment. The President, not unlike all American citizens, is clearly entitled to a bill of particulars against which he can either defend himself or be judged indictable, and which will hopefully define the issues and resolve them.

Herein, then, lies the challenge, the obligation and the constitutional duty of every sitting Member of Congress. The issue before us now is not whether to impeach, or not to impeach—that process is already underway. The issue is—do we really understand what is going on and are we, the people, and our Nation prepared for the consequences?

PROCLAMATION OF THE CZECHOSLOVAK NATIONAL COUNCIL OF AMERICA

HON. EDWARD J. DERWINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, December 10, 1973

Mr. DERWINSKI. Mr. Speaker, the Czechoslovak National Council of America, a nonprofit organization devoted to promote cooperation of all peoples for the preservation of Democratic freedom, saw fit to issue a very timely, concise, yet profound proclamation. It certainly speaks for itself, I believe:

PROCLAMATION OF THE CZECHOSLOVAK NATIONAL COUNCIL OF AMERICA

At a time when the United States are being maligned abroad and our free institutions are being undermined at home, the Board of the Czechoslovak National Council of America, speaking on behalf of numerous American citizens of Czech and Slovak descent, solemnly proclaims: We believe that America represents the best hope for freedom, justice and democracy throughout the world. We declare our intention to do our utmost to strengthen the healthy forces in our society and to help America in bringing peace, justice and freedom to all people deprived today of these values, which alone make life worth living.

SENATE—*Tuesday, December 11, 1973*

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

PRAYER

Dr. C. Leslie Glenn, canon and subdean, the Washington Cathedral, Mount St. Alban, Washington D.C., offered the following prayer:

O Thou, source of all our blessings, in our daily lives we have many things to be thankful for, both small and great. Today we give thanks for the return of professional baseball to our city. We pray it may increase sportsmanship among us, and physical fitness, and that the recreation afforded by the games may be joyous and satisfying for young and old.

And we give thanks for the ordinary round of daily concerns and duties. Help us to perform them with laughter and kind faces. Let cheerfulness abound with industry. Give us to go blithely on our business all this day and bring us to our resting beds weary and content and undishonored, and grant us in the end the gift of sleep. Amen.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Monday, December 10, 1973, be dispensed with.

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

SUDDEN INFANT DEATH SYNDROME ACT OF 1973

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 583, S. 1745.

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

The assistant legislative clerk read as follows:

S. 1745, to provide financial assistance for research activities for the study of sudden infant death syndrome, and for other purposes.

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

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

That this Act may be cited as the "Sudden Infant Death Syndrome Act of 1973".

STATEMENT OF PURPOSE

SEC. 2. It is the purpose of this Act to provide financial assistance to identify the causes and preventive measures needed to eliminate sudden infant death syndrome, to provide information and counseling services to families affected by sudden infant death syndrome and to personnel engaged in research for the prevention of sudden infant deaths.

AUTHORIZATION OF APPROPRIATIONS

SEC. 3. Section 441 of the Public Health Service Act (42 U.S.C. 201) is amended by inserting the subsection designation "(a)" immediately before the first sentence and by adding at the end thereof the following new subsection:

"(b) (1) The Secretary, through the National Institute of Child Health and Human Development, shall carry out research programs specifically relating to sudden infant death syndrome.

"(2) There are authorized to be appropriated to carry out the purposes of this subsection $7,000,000 for the fiscal year ending June 30, 1974, $8,000,000 for the fiscal year ending June 30, 1975, and $9,000,000 for the fiscal year ending June 30, 1976.".

AMENDMENT TO TITLE XI OF THE PUBLIC HEALTH SERVICE ACT

SEC. 4. (a) The title of title XI is amended by adding thereto the words "AND PERINATAL BIOLOGY AND INFANT MORTALITY".

(b) Title XI of the Public Health Service Act is amended by adding at the end thereof the following new part:

"PART C—SUDDEN INFANT DEATH SYNDROME

"SUDDEN INFANT DEATH SYNDROME COUNSELING, INFORMATION, EDUCATIONAL, AND STATISTICAL PROGRAMS

"SEC. 1121. (a) (1) The Secretary through the Assistant Secretary for Health and Scientific Affairs may make grants to public and nonprofit private entities, for the establishment of regional centers for sudden infant

death syndrome counseling, information, educational, and statistical programs.

"(2) The Secretary through the Assistant Secretary for Health and Scientific Affairs shall carry out a program to develop public information and professional educational materials relating to sudden infant death syndrome and to disseminate such information and materials to persons providing health care, public safety officials, and to the public generally. The Secretary may carry out such program through grants to public and nonprofit private entities or contracts with public and private entities and individuals.

"(b) For the purpose of making payments pursuant to grants and contracts under this section, there are authorized to be appropriated $3,000,000 for the fiscal year ending June 30, 1974, $4,000,000 for the fiscal year ending June 30, 1975, and $5,000,000 for the fiscal year ending June 30, 1976.

"APPLICATION; ADMINISTRATION OF GRANT AND CONTRACT PROGRAMS

"SEC. 1122. A grant under this part may be made under application to the Secretary at such time, in such manner, containing and accompanied by such information, as the Secretary deems necessary. Each applicant shall—

"(1) provide that the program and activities for which assistance under this part is sought will be administered by or under supervision of the applicant;

"(2) provide for appropriate community representation (with special consideration given to groups previously involved with sudden infant death syndrome) and the development and operation of any program funded by a grant under this part;

"(3) set forth such fiscal controls and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for Federal funds paid to the applicant under this part; and

"(4) provide for making such reports in such form and containing such information as the Secretary may reasonably require.

"REPORTS

"SEC. 1123. (a) The Secretary shall prepare and submit to the President for transmittal to the Congress within one year after the date of enactment of this Act and annually thereafter a comprehensive report on the administration of this Act with regard to sudden infant death syndrome.

"(b) The report required by this section shall contain such recommendations for additional legislation as the Secretary deems necessary.".

HEALTH SURVEY AND STUDIES

SEC. 5. Section 305(b) of the Public Health Service Act is amended by inserting immediately before the period at the end thereof the following: "specifically including statistics relating to sudden infant death syndrome".

Mr. KENNEDY. Mr. President, I rise in strong support of S. 1745 which is designed to provide for a major increase in programs to combat SIDS. This bill basically provides for two main efforts intended to improve our understanding of what causes SIDS and our ability to deal with the tragedy when it occurs.

Approximately 10,000 babies die each year from SIDS. This amounts to one death for each 350 live births.

A joint hearing was conducted by the Health Subcommittee, which I chair, and the Subcommittee on Children and Youth, which is chaired by my close friend and colleague from Minnesota, FRITZ MONDALE, in September. At that hearing, Senator MONDALE and I heard every witness who testified, except the administration, strongly support the necessity for legislation in this area. The administration contended that legislation was unnecessary.

After having carefully reviewed the record, I cannot agree with the administration's conclusions. In June of 1972, more than a year and a half ago, the Senate unanimously adopted Senate Joint Resolution 206. That resolution called upon HEW to increase in a major way its effort against SIDS. Yet the administration's testimony before our subcommittees makes it abundantly clear that it has chosen to disregard the clear intent of the Senate. For example, the administration's testimony revealed that for fiscal year 1973 there were only 11 grants and contracts primarily in support of research into SIDS. And the testimony also reveals that the Department of Health, Education, and Welfare has not mounted an effective program in respect to counseling, information, public education, and statistical programs regarding SIDS. In my judgment the administration's testimony, without intending to do so, makes an excellent case for the necessity for legislation in this area.

Mr. President, I would now like to briefly describe the major feature of S. 1745. The bill includes a 3-year research program to be carried out by the National Institute of Child Health and Human Development of the NIH. The bill authorizes a total of $24 million for the research program. The bill also authorizes a 3-year program to be carried out by the Assistant Secretary for Health in respect to information, public education, and counseling programs regarding SIDS. The bill authorizes a total of $12 million for these programs. Finally, the bill requires the Department to collect statistics on SIDS as a part of the Federal-State-local data collection system which is now being created.

Lastly, Mr. President, I want to draw attention to an effort which is underway in Massachusetts to combat SIDS. Legislation has been filed by the Special Commission on Child Care which would encourage parents to have autopsies performed in SIDS cases by having the State pay for such autopsies. In addition, that legislation calls for the development of educational programs and materials on SIDS at the University of Massachusetts Medical School for the benefit of medical examiners, police, and other emergency personnel.

Mr. President, as chairman of the Senate Health Subcommittee, I urge all of my colleagues in the Senate to support this legislation.

Mr. SCHWEIKER. Mr. President, the greatest single killer of infants from 1 month to 1 year of age—approximately 10,000 babies each year—is the result of the Sudden Infant Death Syndrome—SIDS.

The nature and the tragedy of the sudden infant death syndrome, often called "crib death," has been with us since biblical times. An apparently healthy, thriving baby is often placed in his or her crib for a nap or for the night, and several hours later is found dead. Taken from his parents by a mysterious ailment, the cause of which we know practically nothing about and for which we have no preventive measure.

The magnitude of the parents' shock and grief at the loss of their beloved child is compounded by feelings of guilt and self-recrimination, but also further intensified, because of public and professional ignorance about SIDS. Grieving parents who have lost their child have recounted to the Health Subcommittee—of which I am ranking minority member—during hearings on the pending bill—of which I am a cosponsor—additional horrible experiences—jailed before the cause of death of their child was diagnosed as SIDS.

I believe we must establish an aggressive national committment on two fronts: First, to provide adequate funding for expanded biomedical research so we can increase understanding of the underlying mechanism of the sudden infant death syndrome, discover its probable cause(s), identify infants at risks of becoming its victims, and explore preventive approaches. Second, to provide adequate funding for increased public and professional informational and educational programs.

To achieve this goal—stimulate scientists to divert their investigative efforts toward finding the solution to this complex problem, and to support counseling information, educational and statistical programs—the bill provides:

First. Twenty-four million dollars is authorized over 3 years to the National Institute of Child Health and Human Development to carry out research programs specifically relating to sudden infant death syndrome; and

Second. Twelve million dollars is authorized over 3 years to develop information and education programs and materials for health professionals, public safety officials, and the public.

Medical science has a long way to go in achieving full understanding of SIDS and ignorance can no longer be an excuse for bereaved parents being held to blame. I urge my colleagues to support this bill.

Mr. MONDALE. Mr. President, I am very pleased that today the Senate has voted to approve S. 1745, the "Sudden Infant Death Syndrome Act of 1973." I would like to express my particular thanks to Senator KENNEDY, chairman of the Health Subcommittee, for his active role in shaping this legislation and moving it to the floor.

In terms of the need, this legislation is long overdue. Nearly 2 years ago, in January of 1972, my Subcommittee on Children and Youth held the first congressional hearing on crib death or Sudden Infant Death Syndrome—SIDS. We were appalled and shocked at the stories of parents who lost babies to this disease and yet could secure no comfort—either from medical research or from social agencies—in their grief.

At that hearing, Frank Hennigan, a business executive from Chicago, described the insensitivity of hospital personnel who dealt with him and his wife after the report of their child's sudden, unexpected death. In Mr. Hennigan's words:

At the hospital, it was immediately obvious to those unemotional, unexcitable, calm pro-

fessional medical authorities that the child was dead, and therefore was a more interesting subject to be discussed. "Had the child fallen?" "Were there symptoms of illness?" Et cetera. The doctor who pronounced Jimmy dead on arrival stated to me that, "He looks like he's been squeezed. How about that, Mr. Hennigan?"

At the 1972 hearing, representatives of the Department of Health, Education, and Welfare submitted information showing that an estimated 10,000 infants die each year in this country from SIDS; and that SIDS is the leading cause of death in infants between the ages of 1 month and 1 year. Yet in fiscal year 1971, the National Institute of Child Health and Human Development was supporting only one grant—in the amount of $46,258—directed specifically to discovering the cause of SIDS.

Following the subcommittee's 1972 hearing, I and 15 of my Senate colleagues introduced Senate Joint Resolution 206. We introduced a resolution rather than new authorizing legislation because HEW representatives assured us of their deep concern for the problem and of their intentions to move ahead on activities related to SIDS. So the resolution we introduced spelled out several areas in which we believed immediate action was necessary. I request unanimous consent that the text of Senate Joint Resolution 206 be placed in the RECORD at this time.

There being no objection, the text of Senate Joint Resolution 206 ordered to be printed in the RECORD, as follows:

S.J. RES. 206

Joint resolution relating to sudden death syndrome

Whereas sudden infant death syndrome kills more infants between the age of one month and one year than any other disease; and

Whereas the cause and prevention of sudden infant death syndrome are unknown; and

Whereas there is a lack of adequate knowledge about the disease and its effects among the public and professionals who come into contact with it: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That it is the purpose of this joint resolution to assure that the maximum resources and effort be concentrated on medical research into sudden infant death syndrome and on the extension of services to families who lose children to the disease.

SEC. 2. The National Institute of Child Health and Human Development, of the Department of Health, Education, and Welfare, is hereby directed to designate the search for a cause and prevention of sudden infant death syndrome as one of the top priorities in intramural research efforts and in the awarding of research and research training grants and fellowships; and to encourage researchers to submit proposals for investigations of sudden infant death syndrome.

SEC. 3. The Secretary of Health, Education, and Welfare is directed to develop, publish, and distribute literature to be used in educating and counseling coroners, medical examiners, nurses, social workers, and similar personnel and parents, future parents, and families whose children die, to the nature of sudden infant death syndrome and to the needs of families affected by it.

SEC. 4. The Secretary of Health, Education, and Welfare is further directed to work toward the institution of statistical reporting procedures that will provide a reliable index to the incidence and distribution of sudden infant death syndrome cases throughout the Nation; to work torward the availability of autopsies of children who apparantly die of sudden infant syndrome and for prompt release of the results to their parents; and to add sudden infant death syndrome to the International Classification of Disease.

Mr. MONDALE. The resolution was approved by the Senate on June 7, 1972, by a vote of 72 to 0. It was not acted on by the House.

After the 1972 hearing and after Senate approval of the resolution, public interest and concern about SIDS continued to build. The National Institute for Child Health and Human Development awarded a contract for the study of how SIDS cases are handled by the authorities, and the study was completed earlier this year. I and my colleagues continued to receive a steady stream of mail from parents who had lost children. They expressed concern about a number of aspects of SIDS: the lack of counseling and information available to parents about the disease; the insensitivity and lack of knowledge of hospital, law enforcement, and other personnel who deal with families who lose children; and the feeling that we simply do not have a national commitment to finding the cause and cure for this terrible disease.

And so on May 8 of this year I introduced S. 1745, "to provide financial assistance for research activities for the study of sudden infant death syndrome, and for other purposes," as a vehicle for discussion about the type of Federal legislation required.

On September 20 the Subcommittees on Children and Youth and Health held a joint hearing on S. 1745. We heard testimony from HEW, from parents, from national organizations that work with parents who have lost children, and from medical examiners.

Mr. and Mrs. John Smiley of California described their ordeal, in which they were charged with manslaughter of their child, who was later found to have died of SIDS. The Smileys were actually jailed for 3 days before the inaccuracy of the diagnosis was established.

It became clear that what happened to the Smileys was not unique. Dr. Abraham Bergman of Children's Orthopedic Hospital and Medical Center in Seattle, who is president of the National Foundation for Sudden Infant Death, Inc. told the subcommittee:

We know of six cases in the past year where people have been thrown in jail.

Representatives of HEW testified that support for medical research "related to SIDS" in 1973 was $4.1 million; and that $3.5 million—a decrease—was projected for 1974. Of the research funds allotted in 1973, however, NICHD could only identify some $603,575 as dealing directly with SIDS.

We cannot wait any longer for HEW to get interested enough in SIDS to develop an adequate, focused effort to provide services to families and to provide sufficient research support. We have spent 2 years educating the public and the Congress about this disease and about its traumatic consequences for thousands of American families. It is time to see that something is done about it.

The Labor and Public Welfare Committee has reported a bill which I believe would provide the Federal focus and support so desperately needed. Two major types of initiatives are authorized—family counseling and related services and research.

Counseling and related activities would be carried out through regional centers authorized to conduct "counseling, information, educational and statistical programs" on SIDS. These centers would be administered by the Secretary through the Assistant Secretary for Health and Scientific Affairs.

Research activities would be carried out by the National Institute of Child Health and Human Development.

S. 1745 is a 3-year bill. The authorizations for research are $7 million, $8 million, and $9 million respectively for the years 1974 through 1976. Authorizations for regional centers are $3 million, $4 million, and $5 million for 1974 through 1976 respectively.

I request unanimous consent that an excerpt from the committee report and the bill as reported by committee be printed in the RECORD.

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

I. PURPOSE

The purpose of S. 1745 is to provide financial assistance to identify the causes and preventive measures needed to eliminate Sudden Infant Death Syndrome and to provide information and counseling services to families affected by Sudden Infant Death Syndrome and to personnel who come in contact with the victims or their families.

II. LEGISLATIVE HISTORY

On May 8, 1973, S. 1745 was introduced in the Senate.

The Subcommittees on Children and Youth and on Health of the Committee held a joint hearing on S. 1745 on September 20, 1973. At that hearing testimony was offered by representatives of the Department of Health, Education, and Welfare; representatives of organizations that serve parents who lose children to SIDS; parents who have lost children to SIDS; and medical examiners and other experts on dealing with SIDS cases. With the exception of the administration, all of the witnesses testified to the need for legislation respecting Sudden Infant Death Syndrome.

On October 10, 1973, the bill was favorably ordered reported with amendments by the Committee.

III. NEED FOR LEGISLATION

At least 10,000 babies die of SIDS each year in this country. The disease is the largest killer of infants between the age of one month and 12 months. No cause and no prevention are known for SIDS.

Because of the lack of public and professional knowledge about the disease, families who lose children suffer acute guilt feelings and other problems of readjustment to normal life.

Thus the need for this legislation falls into three major categories: research, services to families and statistics.

1. *Scientific research.*—At the committee's hearing, Dr. John S. Zapp, Deputy Assistant Secretary for Legislation at HEW, testified:

"The National Institute of Child Health and Human Development is now supporting 72 research projects aimed at understanding the Sudden Infant Death Syndrome * * * Research in related areas is critical to the

development and clarification of our knowledge of S.I.D.S. and represents the best investment of our research funds at this time. Therefore, 11 research grants and contracts are specifically concerned with SIDS, and 61 grants and contracts are for studies related to the syndrome. FY 1973 support approximates $4.1 million compared with $3.5 million in fiscal year 1972.

"In fiscal year 1973, 21 research grant applications directly related to SIDS were reviewed by the National Advisory Child Health and Human Development Council. Seven were recommended for approval; two have been funded. Funding of three is anticipated this month; two will not be funded because of low scientific merit."

At the hearing Dr. Russell Fisher, Chief Medical Examiner of the State of Maryland, stated that research efforts "might be made more responsive to the Sudden Infant Death Syndrome problem by earmarking funds for this special problem."

Saul Goldberg, president of the International Guild for Infant Survival, submitted to the Subcommittee a statement he presented in August to the House Subcommittee on Public Health and Environment. In this paper he said:

"This lack of substantial funding is further explained by government officials by a lack of "meritorious research ideas" or "qualified researchers." Yet there are several potential researchers ready and willing to investigate SIDS in new and promising directions * * *"

The Committee believes it is clear that no permanent solution to the problem of SIDS can be found without a focused, concentrated, continuing medical research effort. Until the cause and cure for this disease are found, thousands of families will continue to suffer the tragedy of suddenly losing an apparently thriving baby.

2. *Information and counseling services.*—S.J. Res. 206, which was passed 72–0 by the Senate June 7, 1972 contains the following passage:

"The Secretary of Health, Education and Welfare is directed to develop, publish and distribute literature to be used in educating and counseling coroners, medical examiners, nurses, social workers and similar personnel and parents, future parents and families whose children die, to the nature of sudden infant death syndrome and to the needs of families affected by it."

The Committee believes that this is an accurate description of the types of programs required to respond humanely to families who lose children to SIDS. Information submitted to the Committee by HEW shows that $75,000—an increase of only about $8,000 over the previous year—would be spent on professional and public information and education activities relating to SIDS in 1974. Dr. Zapp testified that no funds have been spent on directly training medical examiners and other personnel who come into contact with SIDS cases.

The Committee believes that it is essential to provide training to these personnel in order to minimize the grief suffered by families who lose children and to maximize the results of research efforts.

At the hearing, Mr. and Mrs. John Smiley of California described an ordeal in which they were charged with manslaughter of their infant daughter who was later found to have died of SIDS. They were jailed for two days and charges against them were eventually withdrawn after they received the assistance of a lawyer from a national organization that works with families whose children die of SIDS. If law enforcement and medical personnel received adequate training in the diagnosis of SIDS; and in how to deal with parents whose child had recently died, experiences like that of the Smileys would be less likely to occur.

Mrs. Smiley testified that she had not known about SIDS until after her baby died. The Committee suggests that substantial feelings of guilt and misunderstanding could be alleviated if prospective parents were provided with information about SIDS.

Dr. Abraham Bergman, the recipient of a grant from the National Institute of Child Health and Human Development of NIH to study the handling of SIDS cases and president of the National Foundation for Sudden Infant Death, cited examples of several cases in which parents were jailed before the cause of their child's death was diagnosed as SIDS.

"I do not want to give the Committee the impression that it is common practice to throw parents into jail when their babies die of crib death. I am aware of six such cases in the past year. There are probably more of which I am not aware, but even so it is a small percentage of the approximate eight thousand families who lost children to SIDS last year. This tip of the iceberg, however, is indicative of the ignorance about SIDS in the United States. The sad part is it is all so unnecessary. By the expenditure of a small amount of funds * * * and just the semblance of some action on the part of HEW, the human aspects of SIDS which cause an enormous toll of mental illness could be solved within two years."

Dr. Bergman also outlined the need for regional centers to deal with SIDS:

"A community wide system must be established for dealing with all cases of sudden unexpected infant death. It is not practical to expect every community to have the resources necessary to provide proper services. By proper services, I mean (a) performance of autopsies on all cases of sudden unexpected infant death, (b) notification of the family by telephone or letter within 24 hours of the result of the autopsy, (c) the use of SIDS on the death certificate, (d) information and counseling about SIDS by a knowledgeable health professional. Small communities which lack trained pathologists cannot be expected to provide adequate service."

S. 1745 provides that "The Secretary, through the Assistant Secretary for Health and Scientific Affairs may make grants to public and nonprofit private entities for the establishment of regional centers for sudden infant death syndrome counseling, information, educational and statistical programs."

In most cases, the Committee suggests, research into SIDS could fruitfully be coordinated through these regional centers—one in each of the 10 regions currently designated by HEW. It is hoped that if all research within a given region is not specifically conducted by the regional center, that efforts will be made to establish the center as a focal point for information and services related to SIDS within that region.

3. *Statistics.*—The "statistical programs" referred to in Sec. 1121(a)(1) of the Committee bill would be expected to consist of compilation of the most comprehensive, reliable statistics possible concerning the incidence of SIDS within the region.

The Committee's bill also provides that the National Center for Health Statistics of the Department of HEW make a special effort to assure the comparability of local and state statistics relating to Sudden Infant Death Syndrome.

In that respect Dr. Bergman testified that the survey of the management of SIDS showed the need for development of standardized terminology and statistics on the disease.

"An incredible variety of terms were found on death certificates to describe presumed crib death. Only half of the 421 parents interviewed were told their baby died of SIDS or crib death. Eighty-three percent said that the verbal explanation provided at the time of death varied with the death certificate diagnosis, understandably leading to much confusion and bitterness."

IV. CURRENT RESEARCH AND STATISTICAL PROGRAMS

The National Institute of Child Health and Human Development has principal responsibility for federally-sponsored research on sudden infant death syndrome. Since its establishment in 1963, the NICHD has been increasingly concerned with the syndrome and has directed its efforts to enlarge our understanding of it. But progress had been slowed by two critical factors: (1) Few applications dealing with SIDS had been submitted to the NICHD for consideration, and (2) the lack of a code for the syndrome in the International Classification of Diseases made accurate mortality rates difficult to collect.

During the past two years, the NICHD has intensified its program of research to increase understanding of underlying mechanisms of the syndrome, to discover its probable cause(s), to identify infants at risk of becoming its victims, to explore preventive approaches, to inform the scientific community and public about the sudden infant death syndrome, and to stimulate scientists to direct their investigative efforts toward finding the solution to this complex problem. The Institute's program also includes plans (1) to learn more about the current status of management of S.I.D.S. cases in the United States; (2) to develop guidelines for use by coroners, medical examiners, and pathologists in reporting these cases; (3) to support interdisciplinary educational and research conferences and workshops concerned with the sudden infant death syndrome; and (4) to prepare and distribute scientific publications and public information documents.

In FY 1973, the NICHD supported 72 grants and contracts related to S.I.D.S. with a total budget of $4.1 million. In fiscal year 1974, it is projected that approximately $3.5 million will be obligated for S.I.D.S. research. This program has developed an investigation into the etiology of the syndrome and the psychological consequences of the event on parents and siblings. Seven priority areas are highlighted. These include:

1. Abnormal sleep patterns related to breathing and circulation and other functions essential to life.

2. Respiratory, cardiac, and circulatory responses to such stimuli as excess carbon dioxide in blood or oxygen deficiency, which may make some babies likely to die of S.I.D.S.

3. The body's system for temperature regulation and its response to environmental conditions existing at the time of death from S.I.D.S.

4. The baby's developing immune system and how defects in development may predispose an infant to S.I.D.S.

5. The distribution of S.I.D.S within the population and characteristics surrounding its occurrence in order to identify infants at high risk and to try to determine causes.

6. Studies of the structural and functional changes in tissues and organs which may be involved in S.I.D.S.

7. The psychological stresses experienced by the family and the community in which S.I.D.S. occurs.

These areas of emphasis grew out of a research planning workshop sponsored by the NICHD in August 1971. The workshop brought together investigators with scientific expertise in areas which could have a direct or contributing influence upon the cause of death in S.I.D.S. This meeting served to stimulate research in S.I.D.S. because many of those who met had not previously been directly involved in research on S.I.D.S., nor had they considered the relevance of their scientific work to S.I.D.S.

To further enhance this expanded program of research, the institute, between May and

September 1972, sponsored five workshops relevant to the seven priority areas. The purpose of these workshops was to consider the problem at hand, to identify new approaches to the study of S.I.D.S., and to highlight specific research questions in need of in-depth study. A summary report for each workshop was prepared for publication. A seventh workshop, "Voids in Pathology in the Sudden Infant Death Syndrome," was held in the Spring of 1973. As a result of these conferences, a number of specific research-able questions were raised, and areas in need of further study and clarification were identified.

Immunologic Factors and Infectious Diseases Related to S.I.D.S.—A recent NICHD-supported study has suggested that viruses may act as "triggering agents" in some cases of S.I.D.S. A review of previously published research in the S.I.D.S. area has revealed a mild elevation of the antibody Immunoglobulin M (IgM) in association with the syndrome. This antibody is often found associated with recovery from a viral infection. Although this research suggests association of viral infection with S.I.D.S., no specific agent has been identified with the syndrome.

Studies are required to learn if S.I.D.S. might result from an inappropriate or over-violent response of the baby's defense system to a challenge by a virus or other stimuli. Endotoxins—poisons released from certain bacteria—are known to cause illnesses. However, little is known about the relationship between maternal endotoxin effects during pregnancy and infant reactions. Research may clarify whether S.I.D.S. may be the result of an allergy to endotoxin acquired before birth.

In addition, the workshops revealed that there is a significant lack of research concerning the development of the baby's immunologic system both before birth and shortly after birth. Such works is fundamental to identifying the relationship between infectious diseases, and S.I.D.S.

Heart and Lung Factors in S.I.D.S.—NICHD-supported research with an animal model suggests that S.I.D.S. might result from a failure to recover from a normal oxygen-conserving response—a reflex which includes a temporary halt in breathing, a slowing of heartbeat, and constriction of blood vessels.

The role of breathing and circulation in S.I.D.S., however, is still far from clear. Scientists attending one of the workshops suggested that although heart stoppage is probably not a primary factor in S.I.D.S., more research should be carried out to learn the potential effects of an immature heart adversely reacting to a wide variety of stimuli, including low oxygen in the surroundings and high carbon dioxide levels in the blood. Similar stimuli could also adversely affect the still-developing respiratory system.

Relatively little research has been done on the development of swallowing, vocalization, and breathing in the infant. It is conceivable, according to scientists, that uncoordinated activity in these three modalities could lead to respiratory obstruction and consequent lack of oxygen supply.

Other significant voids in our knowledge about S.I.D.S. warrant further attention. For example, much more needs to be learned about changes, at a microscopic level, in the tissues of the kidney, nasopharynx, larynx, and heart of S.I.D.S. victims.

Neurologic factors in S.I.D.S.—Many studies, including several supported by NICHD, have reported that most S.I.D.S. deaths occur during sleep and that death does not seem to involve an outward, violent struggle.

A great deal of research remains to be done in order to understand the complex relationships among sleep, the developing nervous system, and the maturing respiratory system and how they might be involved in S.I.D.S.

Sleep deprivation and the occurrence of S.I.D.S. following such an experience should be clarified, since it has been reported that immature animals may die in the sleep period immediately following sleep deprivation. It is known that increased rapid eye movement (REM) sleep, or periods of "light, active" sleep accompany sleep deprivation. It has been hypothesized that babies may die of S.I.D.S. during such periods of active sleep because their immature nervous, respiratory, and circulatory systems have a low tolerance for such circumstances.

Epidemiologic research in S.I.D.S.—Current epidemiologic data fails to differentiate S.I.D.S. from other causes of infant death and few risk factors have been elucidated which are specific for S.I.D.S. In addition, epidemiologic studies to date have been retrospective or "after-the-fact"; prospective studies are now needed. These could include studies relating maternal factors and events occurring at birth or just after birth to later occurrence of S.I.D.S.

There is need, according to workshop participants, for an internationally accepted definition of S.I.D.S. and uniformity in identifying as S.I.D.S. on death certificates, all sudden, unexplained, and unexpected deaths of infants.

Behavioral aspects of S.I.D.S.—A recently supported study by NICHD has indicated that one of the unsolved problems with S.I.D.S. is the lack of understanding extended to families of victims. Frequently, the study showed, parents are accused wrongly of neglect or child abuse and suffer deep feelings of guilt.

At present, very little is known about the personal, emotional, or social characteristics of parents who lose a child to S.I.D.S. It is not known to whom parents turn for help, nor the response they are likely to receive. The response of the community or community organizations to a death from S.I.D.S. and individual grief has not been investigated in death. Studies need to be conducted to learn if problems of grief can best be handled by counseling from health professionals. through voluntary parents' organizations, or by other means.

Although much research has been undertaken to learn about response to death following long-term illness, little is known about the impact of an unexpected childhood death. In addition, studies need to be carried out to learn about the response of other children in a family which has lost an infant to S.I.D.S.

Classification.—The Department (NICHD and National Center for Health Statistics) has worked with the World Health Organization to create a separate category for S.I.D.S. in the 9th edition of the International Classification of Diseases.

V. COMMITTEE VIEWS

The Committee believes it has become essential to enact legislation specifically respecting SIDS in order to assure that programs of research, counseling, information and public education be effectively implemented.

On June 7, 1972 the Senate passed Senate Joint Resolution 206 relating to SIDS by a vote of 72–0. The basic purpose of that Resolution was to assure that the maximum resources and effort, through the Department of HEW, be concentrated on research into SIDS and on the extension of services to families who lose children to the disease. A copy of S.J. Res. 206 is included as Appendix 1.

It has been 19 months since the passage of S.J. Res. 206. And the Committee is disappointed and not satisfied with the magnitude and the scope of the SIDS program administered by DHEW. In its testimony before the Committee the Administration testified that it has only 11 research grants and contracts for studies specifically concerned with SIDS. These grants and contracts amount to $603,575. Furthermore, the Administration's testimony makes clear that HEW makes virtually no effort in respect to counseling information, public education and statistical effort respecting SIDS, which is most unfortunate given the clear intent of the Committee and the Senate as expressed in S.J. Res. 206 regarding the need for an increased effort in these areas.

The Committee, therefore, rejects the Administration position on S. 1745, which states, "The authority proposed by S. 1745 for support of research in SIDS duplicates the broad and flexible authorities that are already available under the PHS Act. Under existing authority, the NICHD and other DHEW programs are aggressively moving toward the goal of understanding the causes of SIDS and dealing with the problems it presents. As outlined above, we have identified the critical factors hindering our understanding of the problem and have made much progress in removing these obstacles. Additional authorities, such as those proposed in S. 1745 would provide no advantages to the effective activities already under way within the Department. Accordingly, we recommend against enactment of S. 1745."

VI. TABULATION OF VOTES CAST IN COMMITTEE

Pursuant to section 133(b) of the Legislative Reorganization Act of 1949, as amended, the following is a tabulation of votes in Committee:

"There were no rollcall votes cast in the Committee. The motion to favorably report the bill to the Senate carried unanimously by voice vote."

VII. COST ESTIMATES PURSUANT TO SECTION 252 OF THE LEGISLATIVE REORGANIZATION ACT OF 1970

In accordance with Section 252(a) of the Legislative Reorganization Act of 1970 (Public Law 91–510, 91st Congress) the Committee estimates that the cost which would be incurred in carrying out this bill is as follows:

[In thousands]

	1974	1975	1976	Total
Biomedical research	7,000	8,000	9,000	24,000
Counseling, education, and statistical programs	3,000	4,000	5,000	12,000
Total	10,000	12,000	14,000	36,000

VIII. SECTION-BY-SECTION ANALYSIS

Section 1—Short title

Designates the title of this Act as the "Sudden Infant Death Syndrome Act of 1973."

Section 2—Statement of purpose

Cites the purpose of the Act as follows: (1) to provide financial assistance for research into the causes and prevention of sudden infant death syndrome, and (2) to provide information and counseling services to families and personnel involved with sudden infant death syndrome.

Section 3—Authorization of appropriations

This section describes technical amendments to Section 441 of the Public Health Service Act (42 U.S.C. 201) including the addition of the following subsection:

Section 441(b)(1). Designates the Secretary of the Department of Health, Education and Welfare through the National Institute of Child Health and Human Development to carry out research programs on sudden infant death syndrome.

(2) Authorizes appropriations under this subsection amounting to: $7 million for fiscal year 1974; $8 million for fiscal year 1976, and $9 million for fiscal year 1976.

Section 4—Amendment to Public Health Service Act

This section cites two amendments to title XI of the Public Health Service Act:

(1) amends title XI by adding the words, "and Perinatal Biology and Infant Mortality," to the title.

(2) amends title XI by adding at the end thereof the following new part:

PART C—SUDDEN INFANT DEATH SYNDROME

Sudden Infant Syndrome Counseling, Information, Educational, and Statistical Programs.

Section 1121. (a)(1) Authorizes the Secretary of the Department of Health, Education and Welfare to make grants to public and non-profit private entities through the Assistant Secretary for Health and Scientific Affairs to establish regional centers for counseling, information, educational, and statistical programs on sudden infant death syndrome.

(2) Authorizes the Secretary of the Department of Health, Education and Welfare through the Assistant Secretary for Health and Scientific Affairs to establish an information and educational program on sudden infant death syndrome including the development of public and professional educational materials relating to the syndrome and the dissemination of such materials to the involved persons. This program may be carried out through grants to public and nonprofit private entities or contracts with public and private entities and individuals.

(b) Authorizes appropriations under this section amounting to: $3 million for fiscal year 1974; $4 million for fiscal year 1975; and $5 million for fiscal year 1976.

Application; administration of grant and contract program

Section 1122. Requires applicants for grants under this title to:

(1) Insure that programs for which assistance is sought will be administered by or under the supervision of the applicant.

(2) Provide for appropriate community representation in the development and operation of programs under this title.

(3) Establish procedures to control and account for all Federal funds paid to applicants under this title.

(4) Provide for making such reports as the Secretary may reasonably require.

Reports

Section 1123. (a) Directs the Secretary of the Department of Health, Education and Welfare to submit comprehensive reports each year to the President for transmittal to the Congress on the administration of this title.

(b) Authorizes the Secretary to recommend additional legislation regarding this title as he deems necessary.

Section 5—Health survey and studies

This section amends Section 305(b) of the Public Health Service Act by the insertion at the end of that section the following phrase, "specifically including statistics relating to sudden infant death syndrome."

IX. CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no changes is proposed is shown in roman):

PUBLIC HEALTH SERVICE ACT

* * * * *

THE NATIONAL HEALTH SURVEYS AND STUDIES

SEC. 305. (a) The Surgeon General is authorized, (1) to make, by sampling or other appropriate means, surveys and special studies of the population of the United States to determine the extent of illness and disability and related information such as: (A) the number, age, sex, ability to work or engage in other activities, and occupation or activities of persons afflicted with chronic or other disease or injury or handicapping condition; (B) the type of disease or injury or handicapping condition of each person so afflicted; (C) the length of time that each such person has been prevented from carrying on his occupation or activities; (D) the amounts and types of services received for or because of such conditions; (E) the economic and other impacts of such conditions; (F) health care resources; (G) environmental and social health hazards; and (H) family formation, growth, and dissolution; and (2) in connection therewith, to develop and test new or improved methods for obtaining current data on illness and disability and related information. No information obtained in accordance with this paragraph may be used for any purpose other than the statistical purposes for which it was supplied except pursuant to regulations of the Secretary; nor may any such information be published if the particular establishment or person supplying it is identifiable except with the consent of such establishment or person.

(b) The Secretary is authorized, directly or by contract, to undertake research, development, demonstration, and evaluation, relating to the design and implementation of a cooperative system for producing comparable and uniform health information and statistics at the Federal, State, and local levels *specifically including statistics relating to sudden infant death syndrome.*

* * * * *

PART E—INSTITUTE OF CHILD HEALTH AND HUMAN DEVELOPMENT AND OF GENERAL MEDICAL SCIENCES

Establishment of Institute of Child Health and Human Development

SEC. 441. (a) The Surgeon General is authorized, with the approval of the Secretary, to establish in the Public Health Service an institute for the conduct and support of research and training relating to maternal health, child health, and human development, including research and training in the special health problems and requirements of mothers and children and in the basic sciences relating to the process of human growth and development; including prenatal development.

(b)(1) The Secretary, through the National Institute of Child Health and Human Development, shall carry out research programs specifically relating to sudden infant death syndrome.

(2) There are authorized to be appropriated to carry out the purposes of this subsection $7,000,000 for the fiscal year ending June 30, 1974, $8,000,000 for the fiscal year ending June 30, 1975, and $9,000,000 for the fiscal year ending June 30, 1976.

* * * * *

TITLE XI—GENETIC BLOOD DISORDERS—AND PRENATAL BIOLOGY AND INFANT MORTALITY

PART B—COOLEY'S ANEMIA PROGRAMS

Cooley's anemia screening, treatment, and counseling, research, and information and education programs

SEC. 1111. (a)(1) The Secretary may make grants to public and nonprofit private entities, and may enter into contracts with public and private entities, for projects for the establishment and operation, primarily through other existing health programs, of Cooley's anemia screening, treatment, and counseling programs.

(2) The Secretary may make grants to public and nonprofit private entities, and may enter into contracts with public and private entities and individuals, for projects for research in the diagnosis, treatment, and prevention of Cooley's anemia, including projects for the development of effective and inexpensive tests which will identify those who have the disease or carry the trait.

(3) The Secretary shall carry out a program to develop information and educational materials relating to Cooley's anemia and to disseminate such information and materials to persons providing health care and to the public generally. The Secretary may carry out such program through grants to public and nonprofit private entities or contracts with public and private entities and individuals.

(b)(1) For the purpose of making payments pursuant to grants and contracts under subsection (a)(1), there are authorized to be appropriated $1,000,000 for the fiscal year ending June 30, 1973, and for each of the next two fiscal years.

(2) For the purpose of making payments pursuant to grants and contracts under subsection (a)(2), there are authorized to be appropriated $1,700,000 for the fiscal year ending June 30, 1973, and for each of the next two fiscal years.

(3) For the purpose of carrying out subsection (a)(3), there are authorized to be appropriated $1,000,000 for the fiscal year ending June 30, 1973, and for each of the next two fiscal years.

Voluntary participation

SEC. 1112. The participation by any individual in any program or portion thereof under this part shall be wholly voluntary and shall not be a prerequisite to eligibility for or receipt of any other service or assistance from, or to participation in, any other program.

Applications; administration of grant and contract programs

SEC. 1113. (a) A grant under this part may be made upon application to the Secretary at such time, in such manner, containing and accompanied by such information, as the Secretary deems necessary. Each application shall—

(1) provide that the programs and activities for which assistance under this part is sought will be administered by or under the supervision of the applicant;

(2) provide for strict confidentiality of all test results, medical records, and other information regarding screening, counseling, or treatment of any person treated, except for (A) such information as the patient (or his guardian) consents to be released, or (B) statistical data compiled without reference to the identity of any such patient;

(3) provide for appropriate community representation in the development and operation of any program funded by a grant under this part;

(4) set forth such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for Federal funds paid to the applicant under this part; and

(5) provide for making such reports in such form and containing such information as the Secretary may reasonably require.

(b)(1) In making any grant or contract under this title, the Secretary shall (A) take into account the number of persons to be served by the program supported by such grant or contract and the extent to which rapid and effective use will be made of funds under the grant or contract; and (B) give priority to programs operating in areas which the Secretary determines have the greatest number of persons in need of the services provided under such programs.

(2) The Secretary may make a grant under section 1111(a)(1) for a screening, treatment, and counseling program when he determines that the screening provided by such program will be done through an effective and inexpensive Cooley's anemia screening test.

Public Health Service facilities

SEC. 1114. The Secretary shall establish a program within the Public Health Service to provide for voluntary Cooley's anemia screening, counseling, and treatment. Such program shall utilize effective and inexpensive Cooley's anemia screening tests, shall be made available through facilities of the Public Health Service to any person requesting screening, counseling, or treatment, and shall include appropriate publicity of the availability and voluntary nature of such programs.

Reports

SEC. 1115. (a) The Secretary shall prepare and submit to the President for transmittal to the Congress on or before April 1 of each year a comprehensive report on the administration of this part.

(b) The report required by this section shall contain such recommendations for additional legislation as the Secretary deems necessary.

PART C—SUDDEN INFANT DEATH SYNDROME

Sudden infant death syndrome counseling, information, educational, and statistical programs

SEC. 1121. (a)(1) The Secretary through the Assistant Secretary for Health and Scientific Affairs may make grants to public and nonprofit private entities, for the establishment of regional centers for sudden infant death syndrome counseling, information, educational, and statistical programs.

(2) The Secretary through the Assistant Secretary for Health and Scientific Affairs shall carry out a program to develop public information and professional educational materials relating to sudden infant death syndrome and to disseminate such information and materials to persons providing health care, public safety officials, and to the public generally. The Secretary may carry out such program through grants to public and nonprofit private entities or contracts with public and private entities and individuals.

(b) For the purpose of making payments pursuant to grants and contracts under this section, there are authorized to be appropriated $3,000,000 for the fiscal year ending June 30, 1974, $4,000,000 for the fiscal year ending June 30, 1975, and $5,000,000 for the fiscal year ending June 30, 1976.

Application; administration of grant and contract programs

SEC. 1122. A grant under this part may be made under application to the Secretary at such time, in such manner, containing and accompanied by such information, as the Secretary deems necessary. Each applicant shall—

(1) provide that the program and activties for which assistance under this part is sought will be administered by or under supervision of the applicant;

(2) provide for appropriate community representation (with special consideration give to groups previously involved with sudden infant death syndrome) and the development and operation of any program funded by a grant under this part;

(3) set forth such fiscal controls and fund accounting of procedures as may be necessary to assure proper disbursement of and accounting for Federal funds paid to the applicant under this part; and

(4) provide for making such reports in such form and containing such information as the Secretary may reasonably require.

Reports

SEC. 1123. (a) The Secretary shall prepare and submit to the President for transmittal to the Congress within one year after the date of enactment of this Act and annually thereafter a comprehensive report on the administration of this Act with regard to Sudden Infant Death Syndrome.

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(b) The report required by this section shall contain such recommendations for additional legislation as the Secretary deems necessary.

X. APPENDIX I

S.J. RES. 206

Joint resolution Relating to sudden infant death syndrome

Whereas sudden infant death syndrome kills more infants between the age of one month and one year than any other disease; and

Whereas the cause and prevention of sudden infant death syndrome are unknown; and

Whereas there is a lack of adequate knowledge about the disease and its effects among the public and professionals who come into contact with it: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That it is the purpose of this joint resolution to assure that the maximum resources and effort be concentrated on medical research into sudden infant death syndrome and on the extension of services to families who lose children to the disease.

SEC. 2. The National Institute of Child Health and Human Development, of the Department of Health, Education, and Welfare, is hereby directed to designate the search for a cause and prevention of sudden infant death syndrome as one of the [top] *highest* priorities in intramural research efforts and in the awarding of research and research training grants and fellowships; and to encourage researchers to submit proposals for investigations of sudden infant death syndrome.

SEC. 3. The Secretary of Health, Education, and Welfare is directed to develop, publish, and distribute literature to be used in educating and counseling coroners, medical examiners, nurses, social workers, and similar personnel and parents, future parents, and families whose children die, to the nature of sudden infant death syndrome and to the needs of families affected by it.

SEC. 4. The Secretary of Health, Education, and Welfare is further directed to work toward the institution of statistical reporting procedures that will provide a reliable index to the incidence and distribution of sudden infant death syndrome cases throughout the Nation; to work toward the availability of autopsies of children who apparently die of sudden infant death syndrome and for prompt release of the results to their parents; and to add sudden infant death syndrome to the International Classification of Disease.

S. 1745

A bill to provide financial assistance for research activities for the study of sudden infant death syndrome, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Sudden Infant Death Syndrome Act of 1973".

STATEMENT OF PURPOSE

SEC. 2. It is the purpose of this Act to provide financial assistance to identify the causes and preventive measures needed to eliminate sudden infant death syndrome, to provide information and counseling services to families affected by sudden infant death snydrome and to personnel engaged in research for the prevention of sudden infant deaths.

AUTHORIZATION OF APPROPRIATIONS

SEC. 3. Section 441 of the Public Health Service Act (42 U.S.C. 201) is amended by inserting the subsection designation "(a)" immediately before the first sentence and by adding at the end thereof the following new subsection:

"(b)(1) The Secretary, through the National Institute of Child Health and Human Development, shall carry out research programs specifically relating to sudden infant death syndrome.

"(2) There are authorized to be appropriated to carry out the purposes of this subsection $7,000,000 for the fiscal year ending June 30, 1974, $8,000,000 for the fiscal year ending June 30, 1975, and $9,000,000 for the fiscal year ending June 30, 1976.".

AMENDMENT TO TITLE XI OF THE PUBLIC HEALTH SERVICE ACT

SEC. 4. (a) The title of title XI is amended by adding thereto the words "AND PERINATAL BIOLOGY AND INFANT MORTALITY".

(b) Title XI of the Public Health Service Act is amended by adding at the end thereof the following new part:

"PART C—SUDDEN INFANT DEATH SYNDROME

"SUDDEN INFANT DEATH SYNDROME COUNSELING, INFORMATION, EDUCATIONAL, AND STATISTICAL PROGRAMS

"SEC. 1121. (a)(1) The Secretary through the Assistant Secretary for Health and Scientific Affairs may make grants to public and nonprofit private entities, for the establishment of regional centers for sudden infant death syndrome counseling, information, educational, and statistical programs.

"(2) The Secretary through the Assistant Secretary for Health and Scientific Affairs shall carry out a program to develop public information and professional educational materials relating to sudden infant death syndrome and to disseminate such information and materials to persons providing health care, public safety officials, and to the public generally. The Secretary may carry out such program through grants to public and nonprofit private entities or contracts with public and private entities and individuals.

"(b) For the purpose of making payments pursuant to grants and contracts under this section, there are authorized to be appropriated $3,000,000 for the fiscal year ending June 30, 1974, $4,000,000 for the fiscal year ending June 30, 1975, and $5,000,000 for the fiscal year ending June 30, 1976.

"APPLICATION; ADMINISTRATION OF GRANT AND CONTRACT PROGRAMS

"SEC. 1122. A grant under this part may be made under application to the Secretary at such time, in such manner, containing and accompanied by such information, as the Secretary deems necessary. Each applicant shall—

"(1) provide that the program and activities for which assistance under this part is sought will be administered by or under supervision of the applicant;

"(2) provide for appropriate community representation (with special consideration given to groups previously involved with sudden infant death syndrome) and the development and operation of any program funded by a grant under this part;

"(3) set forth such fiscal controls and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for Federal funds paid to the applicant under this part; and

"(4) provide for making such reports in such form and containing such information as the Secretary may reasonably require.

"REPORTS

"SEC. 1123. (a) The Secretary shall prepare and submit to the President for transmittal to the Congress within one year after the date of enactment of this Act and annually thereafter a comprehensive report on the administration of this Act with regard to sudden infant death syndrome.

"(b) The report required by this section shall contain such recommendations for additional legislation as the Secretary deems necessary.".

HEALTH SURVEY AND STUDIES

SEC. 5. Section 305(b) of the Public Health Service Act is amended by inserting immediately before the period at the end thereof the following: "specifically including statistics relating to sudden infant death syndrome."

Mr. JAVITS. Mr. President, when there is no known cause of nor preventive measure for the largest killer disease of infants, I believe we must establish an appropriate national commitment—a commitment adequately to fund appropriate biomedical research and develop appropriate information and counseling services which will allow us to respond humanely to families who lose children to SIDS.

The scope of the problem of "crib death," as the sudden infant death syndrome is often called, is the unexpected demise of an infant not known to have had a serious disease and whose death remains unexplained after complete autopsy. Based upon findings from several epidemiologic studies, both in the United States and abroad, it appears that the mortality rate from SIDS is about 3 per 1,000 live births. In this country, we estimate that some 7,000 to 10,000 infants die each year as a result of this syndrome, which is the leading cause of death in infancy—up to 1 year—after the first month of life. In the majority of cases, the baby is apparently in good health and feeds without difficulty. While there may be evidence of a slight cold or stuffy nose, there is usually no history of a serious upper respiratory infection. Often, the infant is placed in his or her crib for a nap or for the night, and several hours later is found dead.

The Department of Health, Education, and Welfare testified there was approximately $4.1 million in HEW supported research related to SIDS. However, only $603,575, 11 research grants and contracts, are specifically concerned with SIDS. Unless there is focused, concentrated, continuing biomedical research and the cause and cure for this disease is found, thousands of families will continue to suffer the tragedy of suddenly losing an apparently healthy baby.

At the same time, the hearing record is replete with examples of family ordeals because of SIDS. Horrible experiences, beyond the tragedy of losing their child to SIDS, were recounted as parents told of being jailed before the cause of death of their child was diagnosed as SIDS. This cannot be allowed to continue and can be substantially reduced by providing the necessary counseling information and public education and statistical efforts respecting SIDS and by providing assurances that law enforcement and medical personnel will receive adequate training in the diagnosis of SIDS and in how to deal with the tragedy of parents losing such an infant.

I urge my colleagues to support this bill which authorizes a total of $36 million over 3 years: $24 million to carry out research programs on SIDS and $12 million to establish the necessary public and professional informational and educational programs. This bill will allow us to move coherently toward the goal of understanding the causes of SIDS and dealing with the resulting problems of this tragic disease.

Mr. PACKWOOD. Mr. President, it is with a great sense of satisfaction for me personally that the Senate is today giving its favorable consideration of S. 1745, the sudden infant death bill. We have been a long time in bringing the message of this tragic disease to the American public and the Congress, and the passage of S. 1745 culminates many long months of work by untold individuals and groups nationwide.

My own personal interest in this mysterious killer began years ago when close friends lost a dearly loved infant to sudden infant death. At that time, I became aware of the lack of information and research about SIDS, and the need for counseling services and community understanding of this unique tragedy. As a result, I sponsored legislation in the Oregon Legislature to earmark funds for SIDS research at the University of Oregon Medical School. This was the first time that funds had ever been earmarked for specific research, and the first time that SIDS had been singled out for special focus. This in spite of the fact that even then SIDS was causing hundreds of deaths per year in Oregon, and thousands nationwide.

Last year's sense of the Senate resolution, Senate Joint Resolution 206, was a precursor of this bill we are considering today, S. 1745. It is gratifying, to say the least, as a cosponsor of both bills, that the Senate now recognizes the necessity for this urgent effort to deal with this mysterious and tragic killer of infants.

I trust that the other body will also realize the urgency of this work, and will give its prompt approval.

The amendment was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

SENATOR FULBRIGHT AND THE MIDDLE EAST CRISIS

Mr. MANSFIELD. Mr. President, a very sound editorial analyzing the position of the chairman of the Foreign Relations Committee, Senator FULBRIGHT, with respect to the Middle East appeared in the Arkansas Gazette on December 5, 1973. The editorial concludes that Senator FULBRIGHT's position is strikingly similar to that of Secretary of State Kissinger to bring lasting stability to that troubled area are worthwhile and should be given every consideration.

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

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

FULBRIGHT'S ROLE IN MIDDLE EAST CRISIS

In the morning mail there was a newsletter from the celebrated Liberty Lobby, one of the more durable of the ultra-right wing organizations, and its lead item is an attack on Senator Fulbright for his renewed proposal that the United States guarantee Israel's borders, formally, in a treaty.

There must be some kind of lesson here for the Israelis and for the many leaders in the American Jewish community who have been so bitter in denouncing J. W. Fulbright for his policy statements on the Middle East generally and the conflict between the Arabs and Israel specifically. In point of fact, Fulbright's position is strikingly similar to that of Secretary of State Kissinger and we have not heard much criticism of Kissinger from the Jewish community. In any case the question for Jewish leaders is: Can a U.S. Senator whose proposals relating to Israel are denounced by the Liberty Lobby, even as they are largely shared by Henry Kissinger, be all bad?

Fulbright has spoken of internationalizing Jerusalem and, on this point, we think that his position has been unrealistic. The issues engaged in Jerusalem are religious and, therefore, are the fiercest of the lot, as they have been since the time of the Crusades. At the risk of oversimplifying the question, we would say that whoever has Jerusalem is not going to give it up. It is the world capital of religion; it is the City of David and of Jesus and of Mohammed (at the Dome of the Rock, Mohammed is said to have ascended to heaven). It is the misfortune of 20th Century peacemakers that the true believers in two of the three great religions are still all too ready to fight for Jerusalem.

Israel might very well agree to granting full custody of the shrines to the appropriate ecclesiastical figures, but that is the limit of it. The critical need now in dealing with Jerusalem is to get the particular controversy under negotiation while the priority problems—withdrawal from occupied territory and the creation of a buffer zone—are resolved.

It is possible that no one can resolve the Middle Eastern conflict on anything but a makeshift basis and certainly a makeshift will have to do until something better comes along. But no matter how formidable the outlook, the best hope is that Secretary Kissinger, employing the agencies of the United Nations, can work out an interim settlement laying the ground work for something more lasting. The current cease-fire itself represents a preliminary, if tenuous, success in the American effort. Certainly, in any case, Kissinger can effectively use the help of Fulbright, the chairman of Foreign Relations, in addressing the Middle Eastern crisis, as indeed he has been using Fulbright's ideas and influence all along.

Previously we have remarked how Fulbright can wax unnecessarily abrasive in his comment on Israel, especially perhaps on an occasion when he thinks Congress has granted to Israel's foreign minister privileges not normally granted to the representative of a foreign government. Nevertheless, in summing up the specific proposals that Fulbright has for the Middle East, we are struck by their fairness and simplicity.

The essentials in his plan are:

The withdrawal of Israeli forces to the borders occupied before the 1967 war.

Establishing simultaneously a buffer zone in the Sinai, with United Nations forces supervising the demilitarization.

Negotiating a treaty with Israel in which we guarantee Israel's borders against aggression.

The first two elements are basic requirements in any peace arrangement. The third would support whatever settlement was reached, putting the Arabs and the USSR on formal notice that the United States is Israel's protector.

Fulbright proposes that something be worked out to give Israel the essential protection it needs in the Golan Heights, from which the Arabs used to shell villages in Israel. He proposes to negotiate the complex problem of resettling the Palestinians displaced from what was their homeland. He proposes, similarly, to negotiate the questions of what to do about Jerusalem.

AMTRAK CAN HELP THE PUBLIC TRANSPORTATION CRISIS

Mr. MANSFIELD. Mr. President, I do not want to sound repetitious but I feel that the crisis in public transportation brought about by the current energy shortage is worthy of repeated comments until something is done. Amtrak is the logical solution to some of these transportation problems but, to date, there has been little, if any, response to the needs of the traveling public. The passenger train system in our Nation was at its lowest ebb when Atmrak took over most of the Nation's passenger service. This was at a time when the railroad companies themselves abandoned the traditional strong-arm of our Nation's transportation system—the passenger train. Today, we have an excellent chance to regain opportunities for the passenger train.

The current energy crisis pleads for more economical means of transportation for our public. In my estimation, the passenger train system is the most economical and logical answer. Airline schedules have been reduced and automobile travel is being discouraged. Railroads consume less diesel fuel on a per capita basis. Trains require less fuel than any other mode of transportation. I am informed that Amtrak carries 80 passengers for 1 mile for a gallon of gasoline. In addition, there is a sincere demand for improved passenger trains and the energy crisis has severely aggravated this need.

The U.S. Postal Service, which is having its own serious operational problems is now concerned that the energy crisis will reduce available means of transporting mail. Why not put the mail back on the trains? I believe the Nation's mail delivery system was far more efficient 5 years ago when the railroads were the major conveyer of all classes of mail, except air.

Despite repeated appeals from the people of Montana and their representatives in the Congress, Amtrak continues to refuse to expand passenger service when the need is increased beyond all predictions. During the holiday season, thouands of people just in my State alone are being turned away by the Amtrak ticket agents.

I wish to propose a series of questions that Amtrak must respond to if they are sincere in their effort to make the Nation's passenger train system work.

Why has Amtrak continued to refuse to establish daily passenger train service through the southern route in Montana where the need far exceeds service available?

Does Amtrak maintain an inventory of unused equipment?

How many cars and engines could be put into service immediately, not now on the line?

Are delays in upgrading and purchase of rolling stock due to unavailability of funds?

Has Amtrak made overtures to the U.S. Postal Service in reassuming a greater responsibility for hauling mail?

I have received repeated accusations that Amtrak officials discourage passenger service whenever possible, especially on select routes. Is this true?

Are all members of the Amtrak Corporate Board fully committed to a renewed and vigorous national system of passenger trains?

Finally, do Amtrak officials agree that passenger trains could be a very important part of the solution to the Nation's energy crisis?

Does the minority leader desire recognition?

Mr. HUGH SCOTT. Yes, Mr. President.

I am in favor of anything that will improve passenger service and improve the movement of the mails. In fact, I think we ought to do everything we can to get the mails back on the track; and that goes for the females, too. [Laughter.]

The PRESIDENT pro tempore. Under the previous order, the Senator from Indiana is recognized for not to exceed 15 minutes.

SPECIAL PROSECUTOR

Mr. BAYH. Mr. President, for the Senator from Indiana to request a special order is rather uncommon. But I desire to remind Senators that tomorrow we shall consider special legislation to protect the integrity and the independence of the office of the Special Watergate Prosecutor. I do not think I have heard a single Senator suggest that the present arrangement under which Mr. Jaworski is operating is adequate. Yet there are some who say that this appointment has significantly changed our responsibility to insure independence. I disagree, and the following remarks are directed at the importance of S. 2611, which is a measure sponsored by some 55 Members of the Senate.

Although we have virtually unanimous agreement that Congress must, in the light of past events, act to strengthen the prosecutor's protections, there is disagreement on how to structure these protections. The American people regard the President's dismissal of Special Prosecutor Cox and the forced resignations of the two top officials of the Department of Justice as clear evidence that equality under the law is not being maintained and that justice is not being served, and they want us to do something about it, with good reason.

We have before us three alternative approaches to the problem. Two of these—S. 2642, the Hruska-Taft bill, and S. 2734, the Percy-Baker bill—leave the appointment and removal of the Special Prosecutor where it now rests, with the President. The third, S. 2611, the Hart-Bayh bill, places this power in the politically neutral branch of government, the courts, on the basic theory that no man can be a judge in his own case and be expected to investigate himself. That is exactly what we have under the present arrangement.

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

Mr. BAYH. I yield.

Mr. GRIFFIN. I wonder whether the Senator might want to acknowledge that there is a fourth alternative, which was suggested this morning in an editorial by the Washington Post, and that would be for Congress to leave things alone.

Mr. BAYH. Yes; I think we could agree that there is a fourth alternative, an extremely irresponsible one, let me suggest, with all deference to the Washington Post.

I do not see how we could have gone through the Saturday night massacre and have had all the promises, all the assurances, and all the special guidelines put in the Federal Register, have them totally ignored by the President once, and then proceed right down the same track.

I have heard the suggestion that Leon Jaworski is an honorable, able, dedicated man, and that is true, but so are Archibald Cox, Elliot Richardson, and Bill Ruckelshaus.

With all deference to my friend, the Senator from Michigan, I, for one, am not prepared to accept this fourth alternative, although he is accurately pointing out that it is available.

This Nation has not been put through a domestic trauma of the equivalent seriousness of Watergate since the Civil War. It has been with us daily now for almost 18 months and its end appears to lie many months or even years hence, with the way out of the woods being far from clear. What is clear, however, is that the law and the Constitution provide us with two separate mechanisms to sort out the facts, to exonerate the innocent, and punish the guilty. As to the President himself, the mechanism rests in the hands of the people's representatives in the House and Senate—through the impeachment process. As to all others who may be involved, we must look to the criminal process, and it is here that we have run into trouble.

The crux of the problem lies in the fact that under the American political system the executive branch has the basic responsibility of investigating and prosecuting criminal offenses. In the normal case, the system works well, with one branch of Government enforcing sanctions for conduct deemed to be criminal by another branch and with the courts serving as arbiters of individual guilt. The Founding Fathers clearly recognized that this process would break down if the President himself were involved, and thus provided the impeachment process as a remedy in that extraordinary situation. But they did not address themselves to the problem of large-scale criminal misconduct by Presidential appointees and aides, some of whom might themselves be the possessors of evidence of Presidential criminality.

Let me say, in an aside to the Senator from Michigan, that I wish I had more than 15 minutes. I would enjoy some give and take on the matter he has raised. But since I have probably 10 minutes remaining, I think I had better hurry through my remarks.

Mr. GRIFFIN. If the Senator needs some more time, the Senator from Michigan has a special order, and he would be glad to provide some.

Mr. BAYH. If the Senator cares to proceed further, I would be glad to proceed with him. I did not mean to give his comments such short shrift.

Many months ago, the Senate attempted to resolve this problem. During the winter of 1973, it became clear that there had been an attempt to cover up events surrounding the 1972 break-in at the Democratic National Committee. Officials of the executive branch had not been telling the public all they knew about the Watergate break-in or its aftermath and had been involved in diverting or obstructing the Justice Department's investigation. The Department's own investigation of the ITT affair and related matters had been minimal and incomplete. In the wake of the resignations of top White House aides H. R. Haldeman and John Ehrlichman and of Attorney General Kleindienst, even the President appeared to recognize and accede to the public demand that an independent prosecutor be appointed to deal with these allegations of criminal misconduct. In his announcement on April 30 of Elliot Richardson's nomination to be Attorney General he placed the full weight of his office behind the concept of complete independence for the Special Prosecutor, declaring:

I have given Mr. Richardson absolute authority to make all decisions bearing upon the prosecution of the Watergate case and related matters. I have instructed him that if he should consider it appropriate, he has the authority to name a special supervising prosecutor for matters arising out of the case. Whatever may appear to have been the case before, Whatever improper activities may yet be discovered in connection with this whole sordid affair, I want the American people, I want you to know beyond the shadow of a doubt that during my terms as President, Justice will be pursued fairly, fully, and impartially, no matter who is involved.

That is about as unequivocal a pledge of independence, of not getting involved with the Special Prosecutor, as one can ever receive. That is what the President said on April 30. The Senate made it clear that it would confirm Mr. Richardson only if we were given concrete guarantees of the Special Prosecutor's complete independence. I and several members of the Judiciary Committee spent many hours negotiating the exact wording of the guidelines governing Mr. Cox's independence with Mr. Richardson. And the Judiciary Committee was repeatedly assured by Mr. Richardson and indirectly, through Senator SCOTT, by the President himself, that this independence would not be compromised.

Now I, of course, believe that our distinguished minority leader is an honest man, and I believe that he accurately reflected the pledge of independence, of noninvolvement of the President, when he came from the White House directly to the Judiciary Committee. Yet, the President changed his mind. All of us can change our minds, but I suggest that we are foolish if we put ourselves in a position where, for reasons that he feels are appropriate, he might change his mind again.

We now know what happened—repeated attempts by the White House to block Mr. Cox's investigations and refusal to cooperate by making evidence available, culminating in the Saturday Night Massacre of October 20. Perhaps we in the Senate were naive in relying on these assurances for we were creating what was, in retrospect, an inherently unstable situation where the closer the investigation got to the President himself, the more likely it was to break down. What has now become obvious is that if the President or his subordinates select the Special Prosecutor or have any opportunity to restrict or influence him, it will cast a cloud over the credibility of the investigation, no matter what the prosecutor's personal reputation and no matter what the purported safeguards, for executive branch involvement can have only one of three results. First, if the Special Prosecutor is fired in violation of the safeguards, the Nation would undergo another traumatic blow from which the public's faith in Government would not soon recover. Second, if the investigation produces charges against the President, there will be allegations that the Prosecutor had been excessively zealous or unfair in order to demonstrate his independence, that he had gone out of his way to show that he was not a lackey to the President. But, as the Committee report on the Hart-Bayh bill points out:

Most dangerous is the third possible outcome of such an investigation: If a presidentially appointed Prosecutor is not dismissed, if he is able to "work out" disputes with the White House, and if after another year or more the Prosecutor presents no charges against the President, there will be little public confidence in the result. The nation will always wonder which leads were not followed up; what compromises were reached about documents that might have been sought; what evidence of wrongdoing was deemed outside his jurisdiction by the man whom the White House had selected.

The Percy-Baker and Hruska-Taft bills share what I regard as the key defect of leaving the appointment and removal of the Special Prosecutor in the executive branch and thereby failing to meet the essential problem of creating the appearance as well as the reality of independence and evenhandedness. It is certainly true that these bills do attempt to strengthen the Special Prosecutor's position by giving him statutory protection from wrongful removal by the President or the Attorney General, but in both cases his only remedy is to bring a lawsuit after the fact. The distinguished sponsors of S. 2642 and S. 2734 argue, in all good faith, that they too favor giving the Special Prosecutor the strongest possible protections against Presidential interference, but, they say, the Constitution will not permit the complete separation of these investigations and prosecutions from executive control and that to vest this authority elsewhere would breech the doctrine of separation of powers since prosecution is "inherently" an executive function.

But the provisions of the Hart-Bayh bill rest squarely on the express power granted to the Congress under article II, section 2 of the Constitution to vest the appointment of such officers as it deems appropriate in the courts of law. As Senator HART noted in discussing this question on the floor last week:

Whether prosecution is "inherently" or "exclusively" a function of the executive branch as a matter of constitutional law, or merely has become centered in our executive branch by tradition, is a nice question for historians and scholars to debate. But it is irrelevant, because the Supreme Court has flatly said that article II, section 2 of the Constitution permits Congress to vest the appointment power in the courts even of officers whose duties are entirely executive in nature. That is the holding in Ex Parte Seibold, acknowledged to be the controlling case.

The only limitation that the courts have placed on the use of this appointment power is that the courts may not be called upon to make appointments which would be "incongruous" with the nature of their office. Judges regularly appoint attorneys who appear before them in court, and it seems rather obvious that such an appointment is not nearly so far removed from the court's traditional role as is the appointment of school board members, election supervisors, or steamboat inspectors, all of which have been upheld as legitimate by the courts. In fact, even the opponents of the Hart-Bayh bill do not find the serious constitutional problem to lie in vesting the appointment power in the courts. The real problem arises, they contend, when we try to restrict the right of the President to remove the Special Prosecutor.

The line of Supreme Court cases here begins with Meyers against United States, where Chief Justice Taft declared that once the President appointed an executive officer, in that case a postmaster, his power to remove that officer could not be restricted. Later cases, most notably, Humphrey's Executor against United States and Weiner against United States narrowed the broader language of Meyers and said that Congress could validly restrict the President's removal power where the officer was part of a commission or agency which was established by the Congress to be independent of the executive branch.

The Hruska-Taft proposed attempts to solve this constitutional problem by vesting the appointment and removal power in the Attorney General rather than the President without the safeguard of advise and consent by the Senate, thereby coming within the holding of Meyers and the earlier Perkins case, that unheld the power of Congress to restrict removal of an officer if that officer is appointed by a Cabinet officer rather than by the President.

Senators PERCY and BAKER argue that although under their bill the prosecutor would be appointed by the President with the advise and consent of the Senate, he would fall within the Humphrey's exception to the Meyers holding in that, in Senator PERCY'S words,

The very reasons which necessitated the establishment of certain agencies in the Executive Branch of government to deal with complex and controversial matters, free from any pressure which might modify or color their independent judgments, are now present with regard to the investigation and the prosecution of the Watergate related offenses.

As a matter of constitutional law, I am persuaded that a good case can be made for Senator PERCY'S argument. But the issue is by no means free from doubt. In an attempt to resolve this constitutional question, I asked for the views of

the Solicitor General and Acting Attorney General, Mr. Bork, who had previously expressed his doubts as to the constitutionality of the Hart-Bayh bill. He replied that in his opinion the Percy-Baker bill:

> Creates an officer in the Executive branch whose removal is subject to the constraints discussed in the case of Meyers v. United States which held that restrictions could not constitutionally be placed on the removal power of the President in the case of postmasters who were appointed by the President by and with the advice and consent of the Senate.

As Mr. Bork notes, the holding of Meyers applies only to congressionally imposed restrictions on removal of a Presidentially appointed officer. The Hart-Bayh bill thus avoids Meyers entirely by placing both appointment and removal in the courts. As a result there is less constitutional doubt about the solution proposed by S. 2611 than there is about the Percy-Baker plan. I ask unanimous consent, Mr. President, that the full text of Acting Attorney General Bork's letter of December 7, 1973 be printed at the conclusion of my remarks.

In conclusion, Mr. President, as I said on October 26 when I, along with 54 other Members of the Senate, introduced S. 2611 in the wake of that traumatic Saturday night:

> The one thing we can do here in the Congress to reverse this tidal erosion of confidence is to enact speedily legislation to create a new special prosecutor whose independence will be above reproach. That prosecutor must not answer to Congress, nor to the President, that prosecutor can answer only to the American people.

After careful study and debate it is now clear that the only way that this can be accomplished is with S. 2611 and I urge its favorable consideration.

Mr. HUGH SCOTT. The Senator has read a most remarkable sentence from the committee staff-written report on the bill:

> If after another year or more, the Prosecutor presents no charges against the President, there will be far too little confidence in the result.

The Senator from Pennsylvania disassociates himself firmly with that charge, which is an abandonment of the presumption of innocence.

Would the Senator from Indiana comment on the presumption of innocence, since this line assumes that the Prosecutor, whoever he is, must present charges against the President of the United States.

Mr. BAYH. No. I think if one reads the entire report, I say to my distinguished friend and colleague from Pennsylvania, we are talking about not only the President but also those who have been very close to the President. We know there have been a number of indictments and we know a number of Presidential aides have been investigated. I share the Senator's belief in a commitment to the presumption of innocence, but I think anybody who has been out on the hustings talking to his constituents, and perhaps inasmuch as my term expires next year I have had more opportunity to do that than the distinguished minority leader, and if we are to trust the polls, we find a high degree of disbelief and distrust, and for us to go along with a prosecutorial structure that has that seed of distrust is not the course for us to follow.

Mr. HUGH SCOTT. I shall not delay the discussion but I am somewhat shocked at the maliciousness of this sentence coming from the Committee on the Judiciary which waives the presumption of innocence, and says that if the Special Prosecutor, whoever he is, does not present charges against the President—not others, but the President—"there will be far too little public confidence in the result."

In other words, the Prosecutor is told in advance by the committee in this report that he has to find charges against the President of the United States or else there is no reason for him being Special Prosecutor.

Now, what district attorney has ever had such a writ?

Mr. BAYH. Does my friend, the distinguished Senator from Pennsylvania, find that expanded language he just referred to?

Mr. HUGH SCOTT. I read from it.

Mr. BAYH. No, the fact that the committee wants the Prosecutor to find charges against the President. Can the Senator find that language there?

Mr. HUGH SCOTT. I find in there the equivalent of it, which is what shocks me.

Mr. BAYH. Read it carefully.

Mr. HUGH SCOTT. The language states:

> If a Presidentially appointed Prosecutor is not dismissed, if he is able to "work out" disputes with the White House, and if after another year or more the Prosecutor presents no charges against the President, there will be far too little public confidence in the result.

What I am saying is that that abolishes the presumption of innocence and establishes for the committee, which I reject as applying to my views, the idea that there can be no presumption of innocence, that the Prosecutor's duties are going to be to present charges against the President, and otherwise he will not have done his duty.

Mr. BAYH. I do not think the Senator found the language demanding the Prosecutor to go out and bring charges against the President, did he?

Mr. HUGH SCOTT. I did find the language that is in the report if he does not do it.

Mr. BAYH. What language?

Mr. HUGH SCOTT. That there will be——

Mr. BAYH. The following phrase is the important part of the sentence.

Mr. HUGH SCOTT. That there will be far too little public confidence in the result.

Mr. BAYH. That is exactly right.

The PRESIDENT pro tempore. The time of the Senator from Indiana has expired.

Mr. GRIFFIN. I am glad to yield.

The PRESIDENT pro tempore. Under the previous order the Senator from Montana is recognized for not to exceed 15 minutes.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the time allotted to the Senator from Montana (Mr. MANSFIELD) be allotted to my control.

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

Mr. ROBERT C. BYRD. If the Senator from Indiana wishes additional time I will be glad to yield it to him from my time.

Mr. BAYH. I do not wish to mean to impose on the Senate. I appreciate this give and take with the distinguished Senator from Pennsylvania. I thought I had 10 minutes. How much time do I have?

Mr. ROBERT C. BYRD. I said I would yield as much time to the Senator as he requires.

Mr. HUGH SCOTT. I thank the Senator for the colloquy, and he did correctly quote me earlier.

Mr. BAYH. I do not ever intentionally misquote anyone. What really concerns me is that I have great faith in my friend from Pennsylvania, and he knows that. I have great respect for him. We do not always agree, but he is a man of impeccable integrity. Nor I do not attribute any invidious intent to the President, but I think we are making a big mistake to go down that path again.

As one Member who signed that report, the presumption of innocence is in that report. What we are after is a way in which we can accept the responsibility of showing confidence in the result.

Mr. Cox said he had investigated some individuals who had been written about in the press, found that there was no problem and ended the investigation. Archibald Cox could take that position and believe there was no hanky-panky, but the important thing is what the people believe. Tnat is what concerns me about any Special Prosecutor appointed by the President, who can be discharged by the President, whose mission is to investigate activities surrounding the President. I want that result to be believable.

I am equally concerned about those who have not been prosecuted who have been given a clean bill of health that these results be accepted.

That is what the report refers to. I thank the Senator for bringing it out.

Mr. HUGH SCOTT. I thank the Senator from Indiana. I have no desire to prolong the controversy. The Senator knows I have favored a Special Prosecutor from the beginning, from June of 1972, and I was disposed to favor a Special Prosecutor appointed by the President, or the Attorney General, or any other constitutional form of procedure. That is the bill of the Senator from Indiana. But I do think that the journals that are now commenting on the independence asserted by Mr. Jaworski are worth bearing in mind, because it seems to me that is exactly what is happening. Mr. Jaworski is an independent Prosecutor. He is most unlikely to be removed. I do not know what the odds are, but I think a hundred to one, in view of all that has gone before.

In any event, if the Senator's bill went to the White House and were vetoed, the veto probably would be sustained. If it were not sustained the controversy over the constitutionality would go on for months and months and the position of Mr. Jaworski, which is presently clear

and strongly approved by the public generally, becomes invidious, ambivalent, and fuzzy, because he is operating in a shadowy area without knowing if his successor can or cannot lawfully be appointed.

That is my concern, not that we should not have one, but how to go about it.

Mr. BAYH. I know that reasonable men can differ. I like to think I am reasonable.

The PRESIDENT pro tempore. The 5 minutes yielded to the Senator has expired.

Mr. ROBERT C. BYRD. Mr. President, I yield an additional 5 minutes to the Senator.

Mr. BAYH. I would like to feel I am reasonable and if it were not for the fact that those same newspapers that are now writing about the independence of Mr. Jaworski, were writing about the independence of Mr. Cox, and if it were not for such men as the distingiushed Senator from Pennsylvania (Mr. HUGH SCOTT), Elliot Richardson, and Archibald Cox, who said it was impossible for the discharge to happen—if it were not for those things I might feel comfortable with the present arrangement.

Mr. GRIFFIN. Mr. President, will the Senator yield for a further observation?

Mr. BAYH. I yield.

Mr. GRIFFIN. The distinguished minority leader referred to the possibility that the bill providing for a court-appointed Special Prosecutor might be vetoed by the President. If it were vetoed by the President and the veto were not overridden, I suppose there would be a fine situation in terms of the political issues that some may be primarily interested in. But an article in the Washington Jost this morning, written by a House Member——

Mr. BAYH. A Republican House Member.

Mr. GRIFFIN. Yes. It does happen to be a Republican House Member, and he referred to a very interesting possibility; that the President would sign the bill and leave the question constitutionality to the courts. If that should happen, I would think that many of those who are pushing for it would be very disappointed. Then we would have the unfortunate situation of a cloud hanging over the ability of the special prosecutor to carry out his duties.

At an appropriate time, and not to get it involved with the Senator's remarks, I shall ask permission to have both the article by Representative COHEN and the editorial from the Washington Post printed in the RECORD for the benefit of Members who may be interested.

Mr. BAYH. I would be glad to ask unanimous consent that they be put in right now. I am sure the Senator from Michigan did not mean to insinuate that the some 55 of us who are sponsors of the bill I am directing the Senate's attention to are more concerned with political motivations than in solving the problem which faces us.

Mr. GRIFFIN. Not at all. I do not want that implication left.

Mr. BAYH. Since he said perhaps some are, I thought I would give him a chance to clear that up.

I remember sleeping in the hotel room when we were in London on the way to Ankara to a NATO meeting when I found out about this. I was shocked. I walked the streets of London at 3 o'clock in the morning for about 2 hours. I did not know what to do.

I cannot anticipate at this time what the President will do. I am tired of trying to anticipate what the President will do. I think we ought to do our best. If we pass this vehicle, fine. If we pass some other vehicle, fine. Let us do what we think is right. Then the President will have to exercise his responsibility. If he signs it, fine. We have written in it a provision for immediate appeals such as we have in other pieces of legislation.

I might ask the Senator from Michigan, inasmuch as we are operating, at least partially, on his time, is he going to accept either the Hruska-Taft bill or the Percy-Baker bill?

Mr. GRIFFIN. I will respond to the distinguished Senator from Indiana by saying that if we are to have legislation, the bill offered by the Senator from Ohio (Mr. TAFT) at least would be constitutional. I personally believe that the reasoning set forth in the Washington Post editorial this morning is most appropriate and that we would really be serving the public interest to have a thorough, independent, and expedited investigation.

Mr. President, I ask unanimous consent to have printed in the RECORD an article entitled "Endangering the Special Prosecutor" by William S. Cohen; an editorial entitled "Congress and Mr. Jaworski"; and a letter to Senator EASTLAND written by Judge Sirica.

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

ENDANGERING THE SPECIAL PROSECUTOR

(By William S. Cohen)

Justice Holmes once wrote that a "catchword can hold analysis in fetters for 50 years." It is a noteworthy observation, for as Congress prepares to debate and deliberate on the subject of a special prosecutor, it is in danger of being mesmerized by the popular call for an "independent" prosecutor. The need for a special prosecutor whose independence cannot be summarily intruded upon by the body that is the subject of investigation can no longer be a matter of legitimate debate. The question is, how can the objective of establishing the office of special prosecutor be achieved most expeditiously and in a manner that will survive constitutional attack?

The House Judiciary Committee has reported favorably on a bill that would require a panel of U.S. District Court judges to appoint the special prosecutor. Though the bill has several commendable features designed to strengthen it against challenges that are certain to follow, most proponents of the bill, including Archibald Cox, have conceded that it is not free from Constitutional doubt.

It is argued, however, with a familiar ring of pain reliever commercials, that three out of four experts agree that the bill is Constitutional. When further delay in taking action on Watergate-related criminal activities can only contribute to the disintegration of public confidence in our institutions, one must ask what public interest is being served in adopting a bill that has a quarter-moon chance of being validated?

In addition, the U.S. District Court in Washington, in a unique, unsolicited "advisory" opinion, stated that the proposal would be unwise, unwelcomed and (impliedly) unconstitutional. Proponents of the bill dismiss the admonition as not rising to the dignity of judicial *dicta*. It is interesting to speculate what reception the Court's opinion would have received had it endorsed the Judiciary Committee's proposal.

But all of this misses the mark. The question really is not one of independence. Mr. Cox was independent and Leon Jaworski, to the great despair of some, is demonstrating daily that he too is independent. Congress can draw statutory prohibitions against arbitrary orders emanating from the White House concerning the prosecutor's tenure. The problem has been and is the lack of access to presidential documents, memoranda and recordings. Congress, through a confirmation process by the Senate, could insist upon a commitment that is tantamount to a waiver of that vague and seemingly all-purpose doctrine of executive privilege as a condition precedent to its approval of a special prosecutor nominated by the President. Mr. Nixon has said in private that the "special prosecutor should have everything and when he asks for it, he shall get it." Vice President Ford has testified that in his opinion executive privilege should not be invoked in any claims involving alleged criminal conduct. This proposal would simply commit broad promises into the semi-permanence of statutory ink.

Congress, however, dazzled by the glitter of obtaining a special prosecutor who could never be fired by the President for any reason—legitimate or not—appears unwilling to adopt any alternative course of action. Moreover, many proponents of the court-appointed prosecutor privately suggest that whether or not the committee bill proves to be constitutional is of little consequence, since the question soon will be moot.

These members envision the following sequence of events: The bill for a court-appointed special prosecutor will pass the House and Senate. The President will veto the bill and the veto will be sustained. Mr. Jaworski, in the meantime, will continue his efforts in securing indictments against all wrongdoers. If he succeeds, he will be praised by all; should be fail, the proponents of the bill can maintain that they stood tall in the pursuit of justice while the President and his votaries (anyone who opposed their bill) achieved their goal of frustrating and defeating the search for truth.

But assume a different scenario. Assume that certain White House advisers, unhappy with Mr. Jaworski's independence, were to suggest to the President that while they believed the bill to be unconstitutional, the President should not veto it and allow the courts to make the determination. The immediate result would be weeks and perhaps months of delay, confusion and confrontation, Mr. Jaworski would not be able to continue his efforts because congressional action would have superseded his appointment. The President would be under no obligation to "fully cooperate" with a court-appointed prosecutor whose office would almost certainly be challenged, if not by the White House, then surely by prospective defendants. Thus the quest for truth would be delayed and perhaps even derailed.

While it is not the most desirable arrangement, what is best for the country "at this point in time" is to allow Mr. Jaworski to continue in office with his integrity and demonstrated independence buttressed by strong statutory protection. The greatest safeguard against his dismissal by the President is public opinion. President Nixon crossed that Rubicon on October 20, 1973. He is not in a position to cross it a second time.

CONGRESS AND MR. JAWORSKI

The shock and dismay that attended President Nixon's firing of Archibald Cox on October 20, quite naturally—and admirably—

led many members of Congress to consider ways in which they might guarantee the independence and professional longevity of whoever succeeded him as Special Watergate Prosecutor. It is worth recalling that those were the days before Leon Jaworski had come upon the scene and before it was evident that the Special Watergate Prosecution Force was not destined to go the way of the dodo bird. So, in the aftermath of the October 20 "massacre," as it was known, a certain number of bills were introduced in the House and Senate seeking to create a pressure- and intimidation-free prosecutor's office. Now they are coming to a vote in each chamber, and the question is whether intervening events have not rendered them at best obsolete and at worst positively harmful to the prospects of Mr. Jaworski's success. We think the answer is that this legislation has in fact been made both unnecessary and undesirable by what has occurred in the past several weeks.

In an article elsewhere on this page, Rep. William Cohen, a Republican from Maine, argues the case against what is apparently the most popular of these bills: a measure authorizing the U.S. District Court to name a Special Watergate Prosecutor who is wholly insulated from Executive Branch manipulation and answerable only to itself. We think Mr. Cohen is right. From the point of view of those who are genuinely committed to the vitality and effectiveness of the Special Watergate Prosecutor's office, it is probable that the best thing that could happen to this legislation—if it is passed—is that it be vetoed. That is because it has such an enormous potential for mischief, deliberate and inadvertent.

At a minimum, and in the best and most innocent of worlds, the mere creation of a wholly new prosecutor's office would be bound to delay and complicate the present prosecutor's job, to generate obstructive legal challenges and otherwise to dissipate the momentum Mr. Jaworski has gathered. In a less innocent world, which seems to be the one we live in, enactment of such legislation could be taken by the White House as a pretext to get rid of Mr. Jaworski, or at least to hamper and undermine his work. A President so inclined would not veto the legislation—he would welcome it.

Mr. Jaworski's record in his brief time in office is a crucial element in this calculation. He has by all accounts demonstrated himself to be determined, independent and, generally speaking, equal to the job. The White House has already begun to put out stories concerning its dissatisfaction with some of his activities. In the House, an alternative measure to the court-appointed prosecutor bill which is known as the "Dennis substitute" and would merely strengthen Mr. Jaworski's tenure and independence is being supported by Representative Cohen and others. While this approach sounds preferable to us, it is our general view that the best result would be enactment of no legislation at all at this time—including legislation which we have previously supported making the prosecutor's appointment subject to Senate confirmation and strengthening the statutory basis of his independence.

We think Mr. Jaworski is doing just fine. We think the enactment of legislation affecting his office, even that mandating relatively modest changes in his charter, put his continuance in office and his effectiveness at risk. And we think that very large body of congressmen and senators who have committed themselves to the creation of a court-appointed prosecutor, along with those who are committed to the passage of less drastic measures, should be seeking ways to leave these votes in abeyance for the moment. Traditionally, after all, Congress is known for a certain skill at putting off and putting over what it does not wish to bring to a final vote. Finding ways to do just that in this matter should not restrain its inventiveness.

U.S. DISTRICT COURT,
FOR THE DISTRICT OF COLUMBIA,
November 15, 1973.

Hon. JAMES O. EASTLAND,
U.S. Senate, Committee on the Judiciary, Washington, D.C.

DEAR SENATOR EASTLAND: I have received your letter dated November 15th concerning a quotation attributed to me in the *Washington Post* newspaper. I have read the *Post* article you referred to and find it substantially accurate insofar as it refers to my statements. Shortly after Judge Gesell of this Court released his opinion in the case of *Nader* v. *Bork*, I was visited in my chambers by several reporters who asked whether I agreed with the paragraph of that opinion in which Judge Gesell notes his opposition, and the reasons therefor, to a court-appointed special prosecutor. I responded that personally, I am in full agreement with Judge Gesell's statement. I also mentioned that I had been informed that several other judges, members of this court, were of the same opinion.

I might mention that shortly before receiving your letter this afternoon, I had lunch with eight of our judges, each of whom remarked that he disapproves of a procedure that would require this court to appoint a special prosecutor.

Thank you for your letter and interest in this matter.

With kindest regards,
Sincerely yours,

JOHN J. SIRICA.

Mr. GRIFFIN. By leaving this subject alone and allowing Mr. Jaworski to make his investigation, in my opinion, would expedite the business of the Senate as well.

Mr. BAYH. Mr. President, I ask unanimous consent to put in the letter at this point a letter from the Attorney General, Mr. Bork, in which he raises serious constitutional questions on the Percy-Baker bill, based on somewhat the same reasoning on which he raised certain constitutional questions about ours.

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

DECEMBER 7, 1973.

Hon. BIRCH BAYH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: This is in response to your request for views on S. 2734, a bill "To establish an independent Special Prosecution office, as an independent agency of the United States, and for other purposes."

S. 2734 would provide for the creation of an Independent Special Prosecution Office, with the Special Prosecutor to be appointed by the President, by and which the advice and consent of the Senate. The Special Prosecutor could be removed by the President only for neglect of duty, malfeasance in office, or violation of the Act creating the office. A notice of dismissal would have to be delivered to both Houses of Congress, and the dismissal would become effective at the end of the first period of thirty calendar days of continuous session of Congress after the date on which notice is delivered to it. The bill would give the district courts original jurisdiction of an action brought by the Special Prosecutor with respect to his removal or attempted removal from office.

By providing for a presidential advice and consent appointment, S. 2734 avoids the constitutional problems inherent in the proposals providing for a court-appointed Special Prosecutor. However, by providing such an appointment, the bill creates an officer in the Executive Branch whose removal is subject, in my opinion, to the constraints discussed in the case of *Myers* v. *United States*, 272 U.S. 52 (1926), which held that restrictions could not constitutionally be placed on the removal power of the President in the case of postmasters who were appointed by the President by and with the advice and consent of the Senate. S. 2734 attempts to avoid the problem posed by the *Myers* case by making the Special Prosecution Office "independent." That office, however, would not be independent in the same sense as the various independent agencies which perform quasi-judicial and quasi-legislative functions are independent, since the Special Prosecution Office would be performing a function which is essentially an Executive Branch function, the prosecution of criminal cases. For this reason, the holding of *Humphrey's Executor* v. *United States*, 295 U.S. 602 (1934), that Congress could place restrictions on the President's firing of a presidential appointee to the Federal Trade Commission, does not resolve the issue whether such restrictions can be placed on the firing of the Special Prosecutor if he is appointed by the President by and with the advice and consent of the Senate.

In conclusion, I believe the *Myers* case casts great doubt on the constitutionality of the removal provisions in S. 2734. This doubt is not removed by *Humphrey's Executor*. Under the circumstances it would be preferable to create the Special Prosecutor as an "inferior Officer" appointed by the Attorney General with appropriate restrictions on the power of the Attorney General to remove him from office.

Sincerely,

ROBERT H. BORK,
Acting Attorney General.

Mr. BAYH. Mr. President, I do not think that position is well founded, and I think we have ample precedents cited, which are contained in my statement which is in the record, to support the constitutionality of our bill. It has been supported unanimously by the American Bar Association Board of Governors. It has been supported by the deans of some 48 of the most prestigious law schools in America.

I think the question of confusion raised in the Post editorial is a good point to raise. We sit here right now and cannot believe we could ever have had a situation existing which did exist when Mr. Cox, Mr. Ruckelshaus, and Mr. Richardson were discharged.

The distinguished Senator from Michigan is a lawyer, and he has served with great distinction in the past on the Judiciary Committee. We sat there for hours and tediously worked out an agreement. Nobody, in his wildest dreams, could anticipate what happened.

I think, with all respect to the Post and my colleagues who may have other beliefs, it is our duty now to take out an insurance policy to see that this does not happen again, to see that we do not get into a position where we have thousands and thousands of wires indicating that people have lost faith in the governmental process. I do not want to go through that again.

It seems to me that one of the reasonable alternatives that might well result from an independent prosecutor bill would be for that three-judge panel to appoint Mr. Jaworski and let him go ahead and continue to function.

The PRESIDENT pro tempore. The Senator's time has expired.

Mr. BAYH. I yield the floor.

The PRESIDENT pro tempore. The

Senator from West Virginia has 2 minutes remaining.

EXTENDED CHRISTMAS LEAVE FOR U.S. SERVICEMEN AND SERVICEWOMEN

Mr. ROBERT C. BYRD. Mr. President, the fuel shortage has many aspects, and many of our people are likely to be subjected to inconvenience and hardship in the months ahead. I believe that most Americans are willing to put up with inconveniences and to make sacrifices in the interest of conserving energy and thereby easing the shortages.

But one aspect of the situation comes to mind in which I do not believe it is necessary to ask for sacrifices. I am thinking of U.S. service men and women who would like to get home for Christmas to be with their families, but who may not be able to do so, because of the distance they have to travel and because of the curtailment of airline schedules and the reduced availability of military flights.

I know of cases in my own State in which young men and women serving in our Nation's Armed Forces at duty stations in, let us say, Texas, have planned to be with their families in West Virginia on Christmas, but who now find that they cannot get air transportation, and Amtrak trains do not serve many of our towns and cities. They can ride a bus, but the time required to get home and return, in many cases, will leave them only a few hours with their loved ones.

In this situation, Mr. President, it seems to me that our military services should consider a policy of extended leaves for personnel in instances in which ti can be shown that adequate transportation is not available or that travel time would be so lengthy as to make the time at home of only a few hours duration. Our country is not at war, and it seems to me that our service men and women could be given extended time away from their bases in individual situations which would justify it.

Christmas, of all the times in the year, is a family time, a period when all who can do so wish to be with their loved ones at their own hearthside. Longer leaves for those who need them will not use up any more fuel than is going to be burned by buses and trains. If our men and women in uniform can have only a few hours at home, they are probably going to make their trips anyway. Giving them another day or two, it seems to me, could be a big morale builder.

Perhaps some components of the Armed Forces already plan to grant extended leaves where justified. If so, I commend them. I would hope that all branches of the Armed Forces would consider a longer leave plan for the holidays that are now approaching.

I yield the floor.

ORDER OF BUSINESS

The PRESIDING OFFICER (Mr. BAYH). Under the previous order, the Senator from Michigan (Mr. GRIFFIN) is recognized.

LEGAL SERVICES CORPORATION AND RAILROAD BILLS—PRIVILEGE OF THE FLOOR

Mr. GRIFFIN. Mr. President, on behalf of the Senator from Arizona (Mr. FANNIN), I ask unanimous consent that a member of the staff, Mr. Tom Shroyer, be permitted on the floor during the consideration of the Legal Services legislation and, if the Senate should go to the railroad bill, also during the consideration of that bill.

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

ORDER OF BUSINESS

Mr. GRIFFIN. Mr. President, I yield to the distinguished Senator from Pennsylvania (Mr. SCHWEIKER) such time as he may require.

The PRESIDING OFFICER. The Senator from Pennsylvania.

OIL EMBARGO AND/OR SOVIET-AMERICAN TRADE

Mr. SCHWEIKER. Mr. President, I would like to bring to the attention of my colleagues the article which appeared in the New York Times on Saturday, December 8, reporting that the Soviet newspaper, Izvestia, has attacked my resolution (S. Res. 210) calling for a cutoff of American trade with the Soviet Union until the Arab oil embargo is lifted.

The Times quotes Izvestia as saying:

> What kind of connection can the initiators of the bill see between the oil embargo and Soviet-American trade? None at all. But the objective of Senator SCHWEIKER and his sympathizers is very precise—to hinder development of Soviet-American trade.

Mr. President, I am not privy to the secret understandings between the Russians and the Arabs. But I can read the newspapers, and I have read of the Russian strategic arms buildup, the Russian effort in preparing the Arabs for the recent sneak attack, the failure of the Russians to urge the Arabs to sit down and negotiate until the tide of war had turned, the Russian breach of summit promises to consult with Washington prior to international explosions, the massive Russian resupply effort including the reported introduction of nuclear weapons, the threat of unilateral Soviet military intervention—the list is long, and I could go on.

Do these things add up to a "connection" between the embargo and Soviet-American trade? I think so. But in the words of the recent Washington Post editorial, these things at least "revive the most troubling questions about its—Moscow's—readiness to accept the mutual restraint required by true détente."

As for Izvestia's charge that I am trying to hinder development of Soviet-American trade, it is instructive to examine the type of trade concessions sought by the Russians. According to the House Subcommittee on National Security Policy and Scientific Developments, in a report dated June 10, 1973:

> Soviet representatives have indicated that the availability of (U.S.) credits is an indispensable condition to expanded U.S.-Soviet trade.

They are seeking two types of credit from us in order to get the benefit of American technology in Russia: Deferred-payment credit, and "project loans" for transactions such as exploitation of Siberian mineral reserves.

The Siberian oil and gas exploration is a $7.6 billion project, and of that amount, the Soviet Union proposes to put up just $1.5 billion. The remaining $6.1 billion is to be financed on a long-term basis by our Export-Import Bank and private U.S. banks, on terms more favorable than other U.S. trade partners enjoy. In plain language, Mr. President, this means the American taxpayer is going to subsidize this Russian energy development, with the hope that sometime down the road, the Russians will give us some of the oil and gas.

Mr. President, my constituents do not want to send their tax dollars to Siberia while the Russian Middle East policy is depriving them of the right to have comfortably heated homes or drive their cars. If massive American capital investment is going into energy development, and I think it should, my constituents want that investment made here, in the United States, so they are sure to share in the return.

One Russian wheat deal is enough. My constituents are not ready to pay for a $6 billion Russian energy deal, and I am going to see that they are not forced to finance this deal. I think this kind of trade is no trade at all, because we are not sure of getting anything for our money. I think it is against our national interest, and I predict it could leave us holding a lot of unenforceable promissory notes.

So Izvestia says I am trying to hinder development of Soviet-American trade. In the present world situation, I think Russian trade financed by the American taxpayer should be hindered. And I am going to offer my resolution as an amendment to the next appropriate bill in the Senate so the American people have a chance to be heard before their money is spent.

Détente is a two-way street. If we are going to have détente, both sides must pay as we go, and must pay the same price. I am not willing for this country to buy détente now, by submitting meekly to the Arab oil embargo, while the Soviet Union buys détente with American credit.

I thank the Senator very much for yielding.

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

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

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, I yield

back the remainder of my time under my special order.

TRANSACTION OF ROUTINE MORNING BUSINESS

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

ORDER FOR ADJOURNMENT TO 9:45 A.M.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, when the Senate completes its business today, it stand in adjournment until the hour of 9:45 a.m. tomorrow.

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

ORDER FOR RECOGNITION OF SENATORS McGOVERN, MANSFIELD, AND GRIFFIN, FOR TRANSACTION OF ROUTINE MORNING BUSINESS, AND FOR CONSIDERATION OF SPECIAL PROSECUTOR BILL TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow after the two leaders or their designees have been recognized under the standing order, the distinguished senior Senator from South Dakota (Mr. McGOVERN) be recognized for not to exceed 15 minutes, after which the distinguished majority leader, the Senator from Montana (Mr. MANSFIELD) be recognized for not to exceed 10 minutes, after which the distinguished minority whip, the Senator from Michigan (Mr. GRIFFIN) be recognized for not to exceed 10 minutes; after which there be a period for the transaction of routine morning business for not to exceed 15 minutes with statements made therein limited to 3 minutes; at the conclusion of which the Senate proceed to the consideration of the Special Prosecutor bill.

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

ORDER FOR RECOGNITION OF SENATOR BENTSEN ON FRIDAY MORNING

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Friday, after the two leaders or their designees have been recognized under the standing order, the distinguished junior Senator from Texas (Mr. BENTSEN) be recognized for not to exceed 15 minutes.

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

Mr. ROBERT C. BYRD. Mr. President, I have no further morning business.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The PRESIDENT pro tempore laid before the Senate the following letters, which were referred as indicated:

PROPOSED SUPPLEMENTAL APPROPRIATIONS, FISCAL YEAR 1974, DEPARTMENT OF STATE (S. DOC. 93-50)

A communication from the President of the United States, transmitting proposed supplemental appropriations for the fiscal year 1974, in the amount of $27,557,000 for the Department of State (with accompanying papers). Referred to the Committee on Appropriations.

PROPOSED SUPPLEMENTAL APPROPRIATIONS, FISCAL YEAR 1974, LEGISLATIVE BRANCH (S. DOC. 93-51)

A communication from the President of the United States, transmitting proposed supplemental appropriations for the fiscal year 1974, in the amount of $197,535, for the legislative branch (with accompanying papers). Referred to the Committee on Appropriations.

PROPOSED SUPPLEMENTAL APPROPRIATIONS, FISCAL YEAR 1974, DEPARTMENT OF THE INTERIOR (S. DOC. 93-52)

A communication from the President of the United States transmitting proposed supplemental appropriations for the fiscal year 1974, in the amount of $365,000, for the Department of the Interior (with accompanying papers). Referred to the Committee on Appropriations.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. GRAVEL, from the Committee on Public Works:

S. 2798. An original bill authorizing the construction, repair, and preservation of certain public works on rivers and harbors for navigation, flood control, and for other purposes (Rept. No. 93-615). Together with minority views.

(See statement by Senator GRAVEL at conclusion of today's session.)

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

H.R. 3490. An act to amend section 40b of the Bankruptcy Act (11 U.S.C. 68(b)) to remove the restriction on change of salary of full-time referees (Rept. No. 93-610).

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

S.J. Res. 159. A joint resolution to provide for the designation of the last Sunday in May of each year as "Walk a Mile for Your Health Day" (Rept. No. 93-611).

By Mr. ERVIN, from the Committee on Government Operations, with an amendment:

S. 2432. A bill to establish a procedure assuring Congress the full and prompt production of information requested from Federal officers and employees (Rept. No. 93-612). Together with additional views.

S. Con. Res. 30. A concurrent resolution to establish a procedure assuring Congress the full and prompt production of information requested from Federal officers and employees (Rept. No. 93-613).

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

H.R. 11576. An act making supplemental appropriations for the fiscal year ending June 30, 1974, and for other purposes (Rept. No. 93-614).

CONGRESSIONAL RIGHT TO INFORMATION ACT

Mr. ERVIN. Mr. President, I have reported S. 2432, the Congressional Right to Information Act, as reported by the Committee on Government Operations, accompanied by the committee's report on the bill.

As amended by the committee, S. 2432 would for the first time in the history of our country provide a practical and just way to solve the controversies between the legislative and executive branches as to what information the Congress is entitled in order to carry out its constitutional functions.

The bill mandates every Federal official or employee to comply with congressional requests for information unless the President specifically instructs them in writing not to do so.

Upon noncompliance with a request for information, the committee chairmen would be authorized to issue subpenas to compel the production of the information sought. The committees could determine that the information is necessary to its legislative function, and the chairman would be authorized to issue a subpena, notwithstanding the Presidential instruction.

Should the subpena not be complied with, the committee chairman would be authorized to initiate a civil action in the U.S. District Court for the District of Columbia to enforce the subpena.

The District Court would be given jurisdiction over such actions—which it does not now have—and the power to enforce the subpenas by mandatory injunction or other appropriate order. The court also could modify the subpenas or set them aside entirely.

Mr. President, the Congress has groped with the problem of information for years, and S. 2432 finally provides the means to resolve these issues in court, where the concept of "Executive privilege" is being formulated.

There are many details of the bill which can best be obtained from its text. Therefore, I ask unanimous consent that S. 2432, as amended by the Committee on Government Operations, be printed in the RECORD.

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

S. 2432

A bill to establish a procedure assuring Congress the full and prompt production of information requested from Federal officers and employees

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That this Act may be cited as the "Congressional Right to Information Act".

SEC. 2. (a) Title III of the Legislative Reorganization Act of 1970 is amended by adding at the end thereof the following new part:

"PART 4—KEEPING THE CONGRESS INFORMED

"INFORMING CONGRESSIONAL COMMITTEES

"SEC. 341. (a) The head of every Federal agency shall keep each committee of the Congress and the subcommittees thereof fully and currently informed with respect to all matters relating to that agency which are within the jurisdiction of such committee or subcommittee.

"(b) The head of a Federal agency, on request of a committee of the Congress or a subcommittee thereof or on request of two-fifths of the members thereof, shall submit any information requested of such agency head relating to any matter within the jurisdiction of the committee or subcommittee.

"PRODUCTION OF INFORMATION

"SEC. 342. (a) When an officer or employee of the United States is summoned to testify

or to produce information, records, documents, or other material before either House of Congress or a committee of the Congress or subcommittee thereof, that officer or employee shall appear at the time and place specified and shall answer all questions propounded to him, or produce all information, including records, documents, and other material sought, unless, in the case of an officer or employee of a Federal agency in the executive branch, either within twenty days of the date of the summons, or, in the case of any such information which was first requested at an appearance, within ten days after that appearance, the President formally and expressly instructs the officer or employee in writing to withhold the information requested, including answers to specific questions, or specific records, documents, or other material, in which event such Presidential instruction shall set forth the grounds on which it is based.

"(b) Each written Presidential instruction pursuant to subsection (a) shall be transmitted to the House of Congress or committee of the Congress or subcommittee thereof requesting the information, proposing the questions, or seeking the records, documents, or other material.

"SUBPENA OF INFORMATION

"SEC. 343. (a) If a House of Congress or a committee of Congress—

"(1) determines that an officer or employee of the United States has failed to comply with the provisions of section 342(a); or

"(2) upon consideration of the Presidential instruction transmitted pursuant to section 342(b), determines that the information requested is needed to enable it to exercise a legislative function under the Constitution.

it shall prepare a written report setting forth such determination. In the case of a committee, the chairman is authorized, subject to the approval of the committee, to issue a subpena requiring such officer or employee to appear before the committee at a time specified and to provide the information requested by answering the question or questions propounded and to produce any information, including records, documents, or other material requested. In the case of a House of Congress, the majority or minority leader shall introduce a resolution citing such determination and authorizing the majority or minority leader of that House to issue a subpena requiring such officer or employee to appear before such House and to provide the information requested by answering the question or questions propounded and to produce any information, including records, documents, or other material requested.

"(b)(1) If a committee of the Congress determines that an officer or employee of the United States has failed to comply with a subpena issued pursuant to subsection (a) within fifteen days after such officer or employee receives such subpena, the chairman of such committee is authorized, subject to the provisions of paragraph (2), to bring a civil action in the United States District Court for the District of Columbia to enforce such subpena.

"(2) If a committee of the Congress referred to in paragraph (1) determines that the chairman of such committee should institute a civil action in the United States District Court for the District of Columbia to enforce the subpena issued by it pursuant to subsection (a), the chairman shall introduce a resolution in the House or Houses of Congress concerned citing the failure to comply with the subpena of the committee and authorizing the chairman to bring a civil action in such court for such purpose. If such resolution is agreed to by the House or Houses of Congress concerned, the chairman shall institute a civil action in the United States District Court for the District of Columbia to enforce the subpena.

"(c) If a House of Congress determines that an officer or employee of the United States has failed to comply with a subpena issued pursuant to subsection (a) within fifteen days after such officer or employee receives such subpena, the majority or minority leader of that House shall introduce a resolution citing such failure to comply and authorizing the majority or minority leader of that House to bring a civil action in the United States District Court for the District of Columbia to enforce such subpena.

"(d)(1) A resolution introduced pursuant to subsections (a), (b)(2), or (c) shall not be referred to a committee and shall be privileged business for immediate consideration. It shall at any time be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. Such motion shall be highly privileged and not debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(2) If the motion to proceed to the consideration of the resolution is agreed to, debate thereon shall be limited to two hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate shall not be debatable. No amendment to, or motion to recommit, the resolution shall be in order, and it shall not be in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

"(3) Motions to postpone, made with respect to the consideration of the resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

"(4) All appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to the resolution shall be decided without debate.

"(e) The provisions of subsection (d) of this section are enacted by the Congress—

"(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be considered as part of the rules of each House, respectively; and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

"(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to the procedure in such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

"JUDICIAL REVIEW

"SEC. 344. (a) The United States District Court for the District of Columbia shall have original jurisdiction of actions brought pursuant to section 343 of this Act without regard to the sum or value of the matter in controversy. The court shall have power to issue a mandatory injunction or other order as may be appropriate, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the subpena issued pursuant to section 343 of this Act.

"(b) Any congressional party commencing or prosecuting an action pursuant to this section may be represented in such action by such attorneys as it may designate.

"(c) Appeal of the judgment and orders of the court in such actions shall be had in the same manner as actions brought against the United States under section 1346 of title 28, United States Code.

"(d) The courts shall give precedence over all other civil actions to actions brought under this part.

"PROTECTION OF INFORMATION

"SEC. 345. (a) Each House of Congress and each committee or subcommittee of the Congress shall take appropriate measures to insure the confidentiality of any information made available to it under this part which, in the judgment of the Federal agency providing it and the House of Congress or committee or subcommittee of the Congress receiving it, requires protection against disclosure which would endanger (1) personal privacy, (2) trade secrets or confidential commercial or financial information, or (3) the conduct of the national defense, foreign policy, or law enforcement activities.

"(b) The Select Committee on Standards and Conduct of the Senate shall investigate any breach of confidentiality of information made available under this part by a Member or employee of the Senate, and the Committee on Standards of Official Conduct of the House of Representatives shall investigate any breach of confidentiality of information made available under this part by a Member or employee of the House of Representatives. Such committee shall recommend appropriate action such as censure or removal from office or position.

"DEFINITIONS

"SEC. 346. For purposes of this part:

"(1) The term 'committee of the Congress' means any joint committee of the Congress or any standing committee, special committee, or select committee of either House of Congress.

"(2) The term 'Federal agency' has the same meaning given that term under section 207 of this Act, and includes the Executive Office of the President.

"SAVINGS PROVISIONS

"SEC. 347. (a) Nothing in this part shall be construed to require the furnishing or production of any information, records, documents, or other material to either House of Congress if such furnishing or production is prohibited by an Act of Congress.

"(b) Nothing in this part shall be construed as in any way impairing the effectiveness or availability of any other procedure whereby Congress may obtain information needed to enable it to exercise a legislative function under the Constitution."

(b) Title III of the table of contents of the Legislative Reorganization Act of 1970 is amended by adding at the end thereof the following:

"PART 4—KEEPING THE CONGRESS INFORMED

"Sec. 341. Informing congressional committees.
"Sec. 342. Production of information.
"Sec. 343. Subpena of information.
"Sec. 344. Judicial review.
"Sec. 345. Protection of information.
"Sec. 346. Definitions.
"Sec. 347. Savings provisions.".

EXECUTIVE REPORTS OF COMMITTEES

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

By Mr. MAGNUSON, from the Committee on Commerce:

G. Joseph Minetti, of New York, to be a member of the Civil Aeronautics Board.

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

Mr. MAGNUSON. Mr. President, I also report favorably sundry nominations in the Coast Guard which have previously appeared in the CONGRESSIONAL

RECORD and, to save the expense of printing them on the Executive Calendar, I ask unanimous consent that they lie on the Secretary's desk for the information of Senators.

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

The nominations, ordered to lie on the desk, are as follows:

Charles J. Robinson, and sundry other Coast Guard officers for promotion in the Coast Guard; and

Michael P. Lovett, and sundry other Coast Guard Reserve officers to be permanent commissioned officers in the Regular Coast Guard.

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. HARTKE:

S. 2794. A bill to amend chapter 36 of title 38, United States Code, to authorize the Administrator of Veterans' Affairs to continue making educational assistance and subsistence allowance payments to eligible veterans and eligible persons during periods that the educational institutions in which they are enrolled are temporarily closed pursuant to a policy proclaimed by the President or because of emergency conditions. Referred to the Committee on Veterans' Affairs.

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

S. 2795. A bill to authorize the Secretary of the Treasury to change the alloy and weight of the 1-cent piece. Referred to the Committee on Banking, Housing and Urban Affairs.

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

S. 2796. A bill to provide health benefits to employees and their immediate families, and to provide for the distribution of health benefits, for medical education, and for other purposes. Referred to the Committee on Labor and Public Welfare.

By Mr. NELSON (for himself, Mr. HART, and Mr. HATHAWAY):

S. 2797. A bill to require that the three United States Commissioners on the International Joint Commission of the United States and Canada be appointed by the President by and with the advice and consent of the Senate, to establish fixed terms of office for such Commissioners, and to make the Commission bipartisan. Referred to the Committee on Foreign Relations.

By Mr. GRAVEL:

S. 2798. An original bill authorizing the construction, repair, and preservation of certain public works on rivers and harbors for navigation, flood control, and for other purposes. Placed on the calendar.

STATEMENTS ON INTRODUCED BILLS

By Mr. HARTKE:

S. 2794. A bill to amend chapter 36 of title 38, United States Code, to authorize the Administrator of Veterans' Affairs to continue making educational assistance and subsistence allowance payments to eligible veterans and eligible persons during periods that the educational institutions in which they are enrolled are temporarily closed pursuant to a policy proclaimed by the President or because of emergency conditions. Referred to the Committee on Veterans' Affairs.

THE ENERGY CRISIS AND GI BILL PAYMENTS FOR VETERANS

Mr. HARTKE. Mr. President, today I introduce legislation to protect educational assistance or subsistence payments for veterans or eligible wives, widows, and children attending institutions which may be temporarily closed pursuant to an established policy proclaimed in an executive order of the President or because of emergency conditions.

Mr. President, for the last few weeks I have been watching with increasing concern the effect of the energy crisis on institutions of higher learning. As my colleagues may be aware, because of the fuel shortages, many schools in the country and, particularly in New England and the North Central States, are planning extended Christmas vacations or unscheduled leaves during the month of January. I have been quite concerned that these extended closings would cause these students attending colleges on the GI bill to have their monthly assistance payments reduced or cut. Veterans' Administration law and regulations issued thereunder normally provide for monthly assistance payments only during an "ordinary school year," which is generally 9 months. The regulations further provide that college enrolled veterans will not have their checks reduced during the ordinary school year for school holidays and short intermissions between semester terms or periods of instruction. More extended closings caused by the energy crisis, however, would fall outside of those definitions.

Veterans, particularly those with dependents, must rely on their educational assistance checks—which are below the levels where I believe they should be—not only for educational costs, but for subsistence expenses as well. The school closings occasioned by the energy crisis will not present realistic opportunities for veterans to find new employment during those periods.

Mr. President, in response to these congressional concerns, the Administrator of Veterans' Affairs has been able to deal with part of the problem by issuing amendatory regulations effective immediately to prevent any college enrolled veteran from losing GI bill payments during the energy crisis. These new regulations provide for continued payments of educational benefits under the GI bill within a certified period of enrollment during which the school is closed due to an order of the President or due to an emergency situation.

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

There being no objection, the regulations were ordered printed as follows:

[38 CFR Part 21]

VETERANS' ADMINISTRATION EDUCATIONAL BENEFITS

Payment During Emergency Closing of School

The following regulatory change provides for continued payment of educational benefits within a certified period of enrollment during which the school is closed due to order of the President or for any emergency situation.

It is found that it is impracticable and contrary to the public interest to give preliminary notice and postpone the effective date of these regulations until 30 days after publication thereof in the FEDERAL REGISTER (§ 1.12 of this chapter) because of the need for an immediate liberalization of the requirements for awarding educational assistance for veterans and eligible persons under chapters 34 and 35 of title 38, United States Code and for awarding subsistence allowance for veterans under chapter 31 of that title.

1. In § 21.261(b), subparagraph (1) is amended to read as follows: § 21.261 Ordinary leave.

* * * * *

(b) *Charging of ordinary leave.*

(1) For veterans enrolled in educational institutions, leave will not be charged for school holidays and short intermissions between successive terms or periods of instruction within the ordinary school year, provided the veteran was enrolled for the two successive terms. "Ordinary school year" means a period of approximately 9 months which begins in the fall and ends in the spring. At the discretion of the Administrator, payment may be made for breaks, including intervals between terms, within a certified period of enrollment during which the school is closed under an established policy upon an order of the President or due to an emergency situation. Leave will not be charged for such breaks.

* * * * *

2. In § 21.4203(b), subparagraph (1) is amended to read as follows: § 21.4203 Reports by schools; requirements.

* * * * *

(b) *Entrance or reentrance.* The certification must clearly specify the program objective. Upon receipt of a certification of enrollment, an official authorization will be issued showing the beginning and ending dates of each period for which an allowance may be paid. The authorization will be for the period of enrollment or the extent of the eligible person's entitlement, whichever is the lesser.

(1) Schools organized on a term, quarter or semester basis may generally report enrollment for the term, quarter or semester or the complete course to the expected date of graduation. Certifications for the ordinary school year may include the summer session. If a certification covers two or more terms or the complete course, the school will report the dates for the break between terms or school years if a term or school year ends and the following term or school year does not begin in the same or the next calendar month. No allowances are payable for these intervals. At the discretion of the Administrator, payment may be made for breaks, including intervals between terms, within a certified period of enrollment during which the school is closed under an established policy based upon an order of the President or due to an emergency situation. Enrollment certifications for the complete course are encouraged, except where the student is a veteran or eligible person pursuing a program on a less than half-time basis or is a serviceman. For these students a separate enrollment certification will be required for each term, quarter or semester.

Mr. HARTKE. Unfortunately, Mr. President, the Administrator lacks authority to issue such regulations affecting all recipients of GI bill payments. Students attending vocational, technical, or trade schools not leading to a standard college degree, for example, would not be protected and receive continued payments in the event the institutions were closed because of the energy crisis.

Accordingly, to provide the same protection for these students, as well as to clearly establish the policy for all GI bill recipients, the legislation I introduce to-

day would amend subsection (a) of section 1780 of title 38, United States Code, to provide that such payments may continue where an institution is temporarily closed pursuant to an established policy proclaimed by Executive order of the President or because of emergency conditions. Because many educational institutions are planning extended leaves in the month of January, I believe it is important that we act promptly before the close of the session. I am hopeful that the Committee on Veterans' Affairs, which I am privileged to chair, will be able to consider this bill in executive session and report a bill to the full Senate within a week so as to prevent any inequities or disruptions in GI bill payments which might be occasioned by the energy crisis.

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

There being no objection, the bill was ordered printed as follows:

S. 2794

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (a) of section 1780 of title 38, United States Code, is amended by adding a new sentence as follows: "Notwithstanding the foregoing provisions of this subsection, the Administrator may, in his discretion, continue to make educational-assistance or subsistence payments to eligible veterans or eligible persons during any certified period of enrollment that the educational institution in which such veterans or persons are enrolled is temporarily closed pursuant to an established policy proclaimed in an executive order of the President or because of emergency conditions."

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

S. 2795. A bill to authorize the Secretary of the Treasury to change the alloy and weight of the 1-cent piece. Referred to the Committee on Banking, Housing and Urban Affairs.

Mr. SPARKMAN. Mr. President, I am introducing on behalf of myself and the Senator from Texas (Mr. TOWER) a bill that has been requested by the Treasury Department.

I ask unanimous consent that a memorandum, that was sent along with the draft of the bill, be printed at this point as part of my remarks and also that a letter from the Secretary of the Treasury to the President of the Senate, the Honorable GERALD R. FORD, also be printed as a part of my remarks.

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

COMPARATIVE PRINT SHOWING CHANGES IN EXISTING LAW MADE BY DRAFT BILL

Changes in existing law proposed to be made by the draft bill are shown as follows (existing law proposed to be omitted is enclosed in brackets; new matter is italic):

SECTION 3515 OF THE REVISED STATUTES, AS AMENDED (31 U.S.C. 317)

SEC. 3515. (a) The minor coins of the United States shall be a five-cent piece, a three-cent piece, and a one-cent piece. The alloy for the five and three cent pieces shall be of copper and nickel, to be composed of three-fourths copper and one-fourth nickel. The alloy of the 1-cent piece shall be 95 per centum of copper and 5 per centum of zinc. The weight of the piece of five cents shall be seventy-seven and sixteen-hundredths grains troy; of the three-cent piece, thirty grains; and of the one-cent piece, forty-eight grains.

(b) *Whenever the Secretary of the Treasury determines that the use of copper in the one-cent piece is no longer practicable, he may change the alloy of the one-cent piece to not less than 96 per centum of aluminum and such other metals as he shall determine. The one-cent piece authorized by this subsection shall have such weight as may be prescribed by the Secretary.*

THE SECRETARY OF THE TREASURY,
Washington, D.C., December 7, 1973.

HON. GERALD R. FORD,
President of the Senate
Washington, D.C.

DEAR MR. PRESIDENT: There is transmitted herewith a draft bill "To authorize the Secretary of the Treasury to change the alloy and weight of the one-cent piece."

Section 3515 of the Revised Statutes, as amended (31 U.S.C. 317), now requires that the alloy of the one-cent piece be 95% copper and 5% zinc and that it weigh 48 grains. The draft bill would authorize the Secretary, when he determines that the use of copper in the one-cent piece is no longer practicable, to change the alloy to not less than 96% aluminum and such other metals as he shall determine, and to prescribe the weight of the one-cent piece composed of such alloy.

The proposed legislation is necessitated by the steadily rising price of copper, which has increased from approximately fifty cents per pound in January 1973 to almost one dollar by October of this year. The value of copper content of the one-cent piece has correspondingly increased to 0.6c per piece, to which manufacturing and transportation costs and another 0.2¢ per piece. If the price of copper rises to $1.20 per pound, the cost of the metal, together with the production costs, will exceed the face value of the one-cent coin. If the price of copper rises to $1.50 per pound, the metal value of the coin alone will exceed one cent and thus hoarding of pennies will become profitable.

The proposed legislation would permit the Secretary of the Treasury to change the alloy of the one-cent piece when the price or availability of copper no longer makes its use practicable in pennies, thereby preventing hoarding and the resultant shortage in pennies.

There is enclosed a comparative type which shows the changes the draft bill would make in existing law.

It would be appreciated if you would lay the draft bill before the Senate. An identical bill has been transmitted to the Speaker of the House of Representatives.

The Department has been advised by the Office of Management and Budget that there is no objection from the standpoint of the Administration's program to the submission of this proposed legislation to the Congress.

Sincerely yours,

GEORGE P. SHULTZ.

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

S. 2796. A bill to provide health benefits to employees and their immediate families, and to provide for the distribution of health benefits, for medical education, and for other purposes. Referred to the Committee on Labor and Public Welfare.

Mr. PELL. Mr. President, I introduce on behalf of myself and Mr. MONDALE, for referral to the Committee on Labor and Public Welfare, a bill to provide for the improved accessibility and availability of comprehensive health care services for all citizens, to provide for the creation of areawide health services and health education corporations, and to provide a decent level of health benefits to this Nation's employees and their families. My bill is entitled, "The Health Benefits and Health Services Distribution and Education Act of 1973."

Mr. President, I believe that this bill speaks thoughtfully, and soundly, to the continuing serious and complex problem of health care in this country. For years we have known of the inexcusable shortcomings of our health care systems, and although we have made some tentative and piecemeal approaches to the solution of small parts of the health services problem, I do not believe that we have ever attempted to reform it systematically, at its roots. Two years ago, I introduced a somewhat similar bill, and I spoke of the unremedied ills of our citizens and of the Nation's medical delivery and purchase systems. It is frightening that, today, these same ills remain present, and even more unjust and needless than ever, and so, with certain modifications which I believe represent affirmative additions to the timeliness of this measure, I am reintroducing it today.

I believe that two fundamental problems—a shortage and impractical distribution of medical personnel, and an unsound and antiquated financing of the health care industry—contribute in enormous measure to today's health care crisis. My bill is carefully designed to meet these two problems, and to fundamentally restructure the financial and organizational foundations of this Nation's health care system. I believe that health care for all citizens must become a first priority in this Congress; for that reason, I am introducing today the Health Benefits and Health Services Distribution and Education Act of 1973.

I believe that this bill is drawn from the most practical and well proven and understood principles of American organizational and business experience. It is not a plan for socialized medicine or for enormous and never-ending Federal support of a program which will never have to stand the test of the marketplace. Rather, this legislation encourages a coordinated and planned systems approach to the purchase and delivery of medical services, thus maximizing the efficiency and thoroughness of health services, minimizing their costs to the consumer, and still allowing the individual as complete a freedom of choice as he or she has today.

This bill has four major characteristics. First, it asserts that the access to decent health services, like a minimum wage, should be considered the right of every worker in this Nation. Health services are treated as a cost of conducting this Nation's business, and I believe that that is demonstrably true. These health services are basically of a preventative nature, emphasizing periodic and routine examinations, and early detection of disease. These services would be entirely complimentary to the existing curative and hospital benefits which many employees already purchase, and the exist-

ing and proposed systems could be easily merged. The comprehensive health services which I propose, especially annual medical examinations and multiphasic screenings for eyesight, hearing, respiratory and circulatory diseases, are designed to take the fullest advantage of the medical professions skill and experience with preventative medical techniques. I have also included care for drug addiction, alcoholism, and mental illness because each of these diseases seriously harms our Nation's social and economic well-being, as well as being a terrible burden to an individual and family.

Second, this bill provides for the delivery of these mandated services in a more efficient and well-coordinated system than we presently have in this Nation. I am proposing federally chartered corporations which would manage the delivery of the health services prescribed under this bill and educate the still much-needed manpower to provide these services in all parts of this country.

Because of the proven cost benefits realized by well managed corporations. I propose the corporate method as the best fundamental solution to the reorganization of health service delivery. The majority of the board of directors of the corporation would be weighted toward public interest representation, and the corporations, because they would be regionally distributed, would be sensitive and responsible to the particular needs of the communities which they served. I can point with great pride to my own State of Rhode Island, the home of Aime Forand, the father of medicare, and the home of John Fogarty, a long-time crusader for health research, which has proven that these ideas will work. In Providence, the AFL–CIO with the assistance of the Prudential Insurance Co., has built a prepaid group health care plan own paraprofessional staff.

Third, I propose the utilization of Regional Health Planning Councils in each major geographic region of the country, to insure that adequate provisions are made for sufficient service delivery, manpower training, and facility construction.

Fourth, my bill provides a tested and proven method of delivering health benefits and services to the people who need them. Because this bill recognizes and utilizes the marketplace as a factor in targeting services and limiting inflationary costs, I believe it represents a realistic and practical approach which can be quickly implemented so that this enormous problem of health care, which has for too long gone unresolved, may be remedied.

By Mr. NELSON (for himself, Mr. HART, and Mr. HATHAWAY):

S. 2797. A bill to require that the three U.S. Commissioners on the International Joint Commission of the United States and Canada be appointed by the President by and with the advice and consent of the Senate, to establish fixed terms of office for such Commissioners, and to make the Commission bipartisan. Referred to the Committee on Foreign Relations.

Mr. NELSON. Mr. President, the border between the United States and Canada is the longest unguarded boundary in the world. Of that boundary, approximately 1,400 miles is formed by waterways, either lakes, rivers, or canals. Since 1909, all authority of these waterways, which includes not only the Great Lakes but the entire American-Canadian Northern boundary area has rested in the hands of the International Joint Commission on the Great Lakes composed of three Canadian Commissioners chosen by the Queen with the recommendation of the Government Council of Canada and three American Commissioners, who in the past have been chosen by the President with no oversight by any congressional body.

The Commissioners occupy what has become a strategic policy and planning position in the last two or three decades. The settlement of people directly on the shore of the Great Lakes has increased dramatically, as has the commerce and trade which is carried on, particularly since the opening of the St. Lawrence Seaway.

This increased settlement and this heavy increase of traffic have added greatly to the responsibilities of the Commission in overseeing and planning for problems such as water and air pollution and the control of lake levels which in the last few years has destroyed millions of dollars in both public and private property. In addition, the Commissioners supervise research in wildlife habitat and the fishing industry.

More recently, the importance of finding new sources of energy has suggested the possibility of hydroelectric, or tidal power as alternatives to the fossil fuels on which we heavily rely. Certainly these sources of power involve the Great Lakes and thereby come under the control of the Joint Commission. These factors further increase the importance of the planning which the American and Canadian Commissioners must direct.

Presently, the Commissioners coordinate almost 30 technical advisory boards that are investigating problems and helping to plan for the future of the Lakes. This is a most important task. Over 15 percent of the population and economy of this country depends on the Lakes. Over 40 million people now live around the Great Lakes and by the year 2000 that figure is estimated to jump to almost 60 million. Over one-third of the border between Canada and this country transverses the Great Lakes.

The bill that I am introducing with the distinguished Senators from Michigan (Mr. HART) and Maine (Mr. HATHAWAY) is straightforward. It accomplishes three things: First, it mandates that the President's appointments have the advice and consent of the Senate; second, it legislates that these appointments have fixed terms of office; and third, it states that the Commission is to be bipartisan.

In times like these we cannot afford to be caught short in the kinds of men who will fill these positions of increasing responsibility. We must have men of vision who are professionally qualified to carry out the duties and responsibilities of this office with industry and vigor. For these reasons, my distinguished colleagues and myself have written a bill that requires the American nominees for the International Joint Commission to be subject to the same approval of the Senate as is now required of officials appointed to other positions of similar responsibility.

Only in this way, with proper congressional oversight of these appointments, can we insure that the men chosen will be of the caliber that we need to deal with the problems of the future in this area of our international waterways.

The Canadian Government has long subjected its nominees to a strict scrutiny with regard to their qualifications for office. We must begin to do the same, if these positions are to be used with the kind of imagination that is necessary for the future.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 796

At the request of Mr. PELL, the Senator from Maryland (Mr. MATHIAS) was added as a cosponsor of S. 796, to improve museum services.

S. 2700

At the request of Mr. MONDALE, the Senator from Missouri (Mr. EAGLETON), the Senator from Ohio (Mr. TAFT), and the Senator from New Mexico (Mr. DOMENICI) were added as cosponsors of S. 2700, to postpone implementation on the Head Start fee schedule, and that their names appear on any future printings of the bill.

S. 2710

At the request of Mr. HARTKE, the Senator from South Dakota, (Mr. MCGOVERN) was added as a cosponsor of S. 2710, to amend title 38, U.S.C., to increase the rates of disability compensation for disabled veterans, and for other purposes.

S. 2728

At the request of Mr. TALMADGE, the Senator from Florida (Mr. CHILES) was added as a cosponsor of S. 2728, to provide for the control and eradication of noxious weeds, and the regulation of the movement to interstate or foreign commerce of noxious weeds and potential carriers thereof, and for other purposes.

S. 2733

At the request of Mr. HARTKE, the Senator from South Dakota (Mr. ABOUREZK) was added as a co-sponsor of S. 2733, to provide for the embossing of paper currency.

SENATE JOINT RESOLUTION 177

At the request of Mr. DOMENICI, the Senator from South Dakota (Mr. MCGOVERN), the Senator from Georgia (Mr. NUNN), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Utah (Mr. BENNETT), the Senator from Indiana (Mr. BAYH), and the Senator from Utah (Mr. Moss) were added as cosponsors of Senate Joint Resolution 177, to authorize the administrator of any direct Federal loan program or any federally guaranteed loan program to renegotiate or reschedule repayment by any person or business suffering severe economic harm as a result of the energy crisis on a loan under any such program.

ADDITIONAL COSPONSOR OF A RESOLUTION

SENATE RESOLUTION 155

At the request of Mr. HARTKE, the Senator from Indiana (Mr. BAYH) was added as a cosponsor of Senate Resolution 155, expressing disapproval of the testing of nuclear weapons in above-ground explosions.

LEGAL SERVICES CORPORATION ACT—AMENDMENTS

AMENDMENTS NOS. 855 THROUGH 872

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

Mr. TOWER submitted 18 amendments intended to be proposed by him to the bill (S. 2686) to amend the Economic Opportunity Act of 1964 to provide for the transfer of the legal services program from the Office of Economic Opportunity to a Legal Services Corporation, and for other purposes.

LEGAL SERVICES CORPORATION ACT—AMENDMENTS

AMENDMENTS NOS. 873 THROUGH 881

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

Mr. BUCKLEY submitted nine amendments intended to be proposed by him to the bill (S. 2686) supra.

SUPPLEMENTAL APPROPRIATIONS, 1974—NOTICE OF MOTIONS TO SUSPEND THE RULE

AMENDMENT NO. 882

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

Mr. PROXMIRE submitted the following notice in writing:

In accordance with rule XL, of the Standing Rules of the Senate, I hereby give notice in writing that it is my intention to move to suspend paragraph 4 of rule XVI for the purpose of proposing to the bill (H.R. 11576) making supplemental appropriations for the fiscal year ending June 30, 1974, and for other purposes, the following amendment, namely:

Page 2, after line 21, insert the following:

VETERANS' ADMINISTRATION

No funds appropriated in this or any other Appropriation Act for any fiscal year shall be used to make a settlement of any construction contract by the Veterans Administration in an amount which has not been audited independently as to the reasonableness and appropriateness of expenditures and which has not been provided for speccifically in an Appropriations Act.

AMENDMENT NO. 883

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

Mr. PASTORE submitted the following notice in writing:

In accordance with rule XL, of the Standing Rules of the Senate, I hereby give notice in writing that it is my intention to move to suspend paragraph 4 of rule XVI for the purpose of proposing to the bill (H.R. 11576) making supplemental appropriations for the fiscal year ending June 30, 1974, and for other purposes, the following amendment, namely:

Page 13, after line 12, insert the following:

PRESIDENTIAL ELECTION CAMPAIGN FUND

For the Presidential Election Campaign Fund, the amounts designated to such fund by individuals under section 6096 of the Internal Revenue Code of 1954, as of the date of enactment of this Act are hereby appropriated to the fund.

FEDERAL ENERGY ADMINISTRATION ACT—AMENDMENT

AMENDMENT NO. 884

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

Mr. HOLLINGS. Mr. President, the amendment which I submit today to S. 2776 has been twice passed by the Senate. Most recently it passed Monday, December 10 where section 3 of S. 2176 incorporated the language of S. 70, the Energy Policy Act of 1973, which passed the Senate on May 10, 1973. My amendment would establish a three member Council on Energy Policy to centralize the collection and analysis of energy information, coordinate the energy activities of the Federal Government and prepare a long-range comprehensive plan for energy development, utilization, and conservation. This proposal would provide a single place for Congress and the President to seek energy information and policy recommendations. It assures us a single entity would have responsibility for examining the overall energy picture.

S. 2776, the Federal Energy Administration Act, proposes the establishment of a new, line agency principally to administer the fuel allocation and rationing programs designed to meet the current energy emergency. My proposal to establish a Council on Energy Policy is fully compatible with the establishment of a Federal Energy Administration.

The Administration will be primarily concerned with the day-to-day operations of a highly complex and important energy allocation program. Because of the hardships and dislocations that will occur as a result of fuel shortages, the administration of such programs will consume virtually all of the resources and talent of the Energy Administration. The Energy Administration is an essentially temporary effort to put together an entity that can run the emergency programs necessary to alleviate the current shortages. Such an agency will have little time to devote to long-range planning, and the development of a comprehensive and credible system of energy statistics. Its energies will be consumed trying to answer the millions of complaints and attempting to secure fuel supplies to maintain productivity and employment.

For this reason it is imperative that we establish a permanent ongoing Council to focus on providing sophisticated policy analysis and designing a national energy plan that will provide guidance to all agencies of the Federal Government and the private sector.

The Council on Energy Policy parallels in the energy area the successful organizational structure of the Council of Economic Advisers and the Council on Environmental Quality. Energy, like economics and the environment cuts across the responsibilities and operations of virtually every department and agency of the Federal Government. For example, major opportunities exist for energy conservation depending upon the Department of Housing and Urban Development's building and installation standards. If the Department of Transportation encourages mass transit instead of highway construction or rail shipments instead of truck or air shipments, major energy savings can occur, yet HUD and DOT are not part of the Federal Energy Administration.

Tax incentives administered by the Treasury Department, such as depletion allowances, foreign investment tax credits, and intangible drilling expense deductions all have a very significant impact on energy production, yet of course the Department of Treasury cannot be transferred to the Federal Energy Administration.

The foreign policy of the Nation is very much immeshed with energy because imports are an important share of our energy supply. But the Department of State is not part of the Federal Energy Administration.

Last week on December 7, the Senate passed the National Energy Research and Development Policy Act of 1973. The direction and funding of energy research and development can play a critical role in the Nation satisfying its energy requirements in the future but the energy research management project, which would direct these efforts, is not part of the Federal Energy Administration. Yet all of these important energy functions in virtually every agency and department of the Federal Government must be effectively coordinated and a rational energy plan must be established. This task cannot be performed by a Federal Energy Administration that will have its hands full trying to run the allocation and other emergency programs designed to cope with the immediate shortages of energy.

Therefore, I again urge for prompt enactment of these provisions to establish an agency to be responsible for energy policy—a single place to provide information, make policy recommendations and engage in long-range planning. Let us not waste another day attempting to reach energy policy decisions in the dark.

HOUSE BILL REFERRED

The bill (H.R. 9107) to provide increases in certain annuities payable under chapter 83 to title 5, United States Code, and for other purposes, was read twice by its title and referred to the Committee on Post Office and Civil Service.

NOTICE OF HEARING ON NOMINATIONS BEFORE JUDICIARY COMMITTEE

Mr. EASTLAND. Mr. President, on behalf of the Committee on the Judiciary, I desire to give notice that a public hearing has been scheduled for Tuesday, December 18, 1973, at 10:30 a.m., in room 2228 Dirksen Office Building, on the following nomination:

Herbert J. Stern, of New Jersey, to be U.S. district judge for the district of New Jersey, vice Leonard I. Garth, elevated.

At the indicated time and place per-

sons interested in the hearing may make such representations as may be pertinent.

The subcommittee consists of the Senator from Arkansas (Mr. McCLELLAN); the Senator from Nebraska (Mr. HRUSKA) and myself as chairman.

NOTICE CONCERNING NOMINATIONS BEFORE THE COMMITTEE ON THE JUDICIARY

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

Denny L. Sampson, of Nevada, to be U.S. marshal for the district of Nevada for the term of 4 years, reappointment.

Donald E. Walter, of Louisiana, to be U.S. attorney for the western district of Louisiana for the term of 4 years, reappointment.

On behalf of the Committee on the Judiciary, notice is hereby given to all persons interested in these nominations to file with the committee, in writing, on or before Tuesday, December 18, 1973, any representations or objections they may wish to present concerning the above nominations, with a further statement whether it is their intention to appear at any hearing which may be scheduled.

ADDITIONAL STATEMENTS

A SALUTE TO THE HOMESTEAD HIGHLANDER MARCHING BAND

Mr. PROXMIRE. Mr. President, it is with great pleasure that I announce that the Homestead Highlander Marching Band has been selected to march in the Cotton Bowl Parade in Dallas, Tex., on New Year's Day, 1974. This is a particularly coveted honor among high school bands. Only seven bands outside Texas were included among the finalists.

Thanks to a combination of talent, dedication, and plain old hard work, these young men and women have earned the right to represent the State of Wisconsin before the Nation. The national recognition which they will receive from this event is richly deserved.

It is a privilege to salute them on their accomplishment.

PENNSYLVANIA AAA FEDERATION FUEL CONSERVATION PROGRAM

Mr. HUGH SCOTT. Mr. President, I am pleased to recognize the Pennsylvania AAA Federation for their efforts to meet the energy crisis. On December 5, 1973, the federation initiated a 15-point program designed to reduce gasoline consumption by 25 percent by arousing public awareness through a coordinated mass media effort. The federation encompasses 40 AAA Motor Clubs in the Commonwealth with over 1.2 million members. When proven successful, the pilot program will be implemented by other organizations across the Nation.

Because of the tremendous potential impact of this program, I have asked the administration to recognize this program as a prototype to determine if the public through voluntary action, can reduce gasoline consumption by at least 25 percent. I commend the Pennsylvania AAA for their strong action and encourage others to utilize their available resources to implement similar energy saving programs.

I ask unanimous consent that a telegram from the federation and the 15 points of this conservation program be printed in the RECORD.

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

Form car pools. Neighbors should get to know each other. Several people will probably discover they work in the same general area. If four or five people combine to use one car, there will be fewer cars consuming precious gasoline during rush hour traffic.

Housewives should also form car pools. Wives can get together for shopping trips to food stores and to various other shops and stores, especially during the Christmas shopping period.

Car pools can also be formed for those people attending the same worship services.

Businesses and industries should work with their employes to further promote car pools among employes from the same general areas.

School students should leave their cars at home and use school buses, public transit, or walk to school. Otherwise they should help set examples for their parents and form their own car pools. "Joy riding" before and after school should be voluntarily eliminated.

Short trips should be combined. Hops to the store for a quart of milk and a loaf of bread can be eliminated with better planning. Such things can be taken care of when delivering or picking up children at school or on the way home from work.

Recheck the social calendar. More evenings at home with the family together can be mutually rewarding besides being a gas saver.

If buying a second car is called for, make it a smaller one with an economical engine. Vehicle weight and engine size have a direct effect on gasoline consumption.

Keep the car's engine in tune. A poorly tuned engine wastes a good deal of gas. Special attention should be given to fuel and air filters as well as plugs, points, condensers, and emission control devices.

Don't fill the gas tank to the neck. Fuel can overflow while the car is in motion or parked on a hill. Gas also expands in warmer weather and can spill over.

Properly inflated tires cut "road drag" and save gas. Run with the maximum pressure listed on the tire's sidewall, but do not exceed it.

Avoid "jack rabbit" starts and drive at steady, moderate speeds. Do not race from traffic light to traffic light. Anticipating movements early will minimize braking and acceleration. When entering a freeway, use all the available acceleration lane since floorboarding the gas pedal rapidly wastes gas.

After a cold start, don't use a long idling warm up period. Begin driving at moderate speed until the engine has warmed up.

Don't sit for a long time with the engine idling. Turn it off during waiting periods. It takes less gas to start an engine than it does to idle it.

Travel light on long necessary trips. It would be cheaper to ship heavy items ahead of time. Driving with a heavy load steals from fuel efficiency.

HARRISBURG, PA., *December 5, 1973.*

Senator HUGH SCOTT,
Senate Office Building,
Washington, D.C.

DEAR SENATOR SCOTT: This morning I sent telegrams to the President and William E. Simon asking that Pennsylvania be designated a pilot test State to determine if the public, through voluntary action, can reduce gasoline consumption by at least 25 per cent.

I would ask that you discuss this possibility with Congress and the President as a means of averting the need for excessive taxes and/or gas rationing.

The following is a basis for our request:

This morning the Pennsylvania AAA Federation and 40 AAA motor clubs in the State have launched an intensive voluntary gasoline conservation program aimed at reducing motor fuel consumption in Pennsylvania by 25 per cent.

Program includes 15 specific recommendations public should follow to cut gas consumption. These points are being released today to nearly 400 newspapers across the State. Additionally public awareness will be reinforced with repetitive announcements on over 120 radio stations and over 20 TV stations for next several weeks. As a further step we are coordinating a program to encourage every newspaper in Pennsylvania to provide free classified ad service for people seeking car pools.

If given enough time, we intend to further coordinate our expansive public awareness program through cooperation of churches, service clubs, chambers of commerce, PTA's and the various chapters of League of Women Voters.

AAA in Pennsylvania is comprised of over 1,250,000 members who will be most directly effected by our efforts. We ask that you look at Pennsylvania as pilot test State where it can be demonstrated that voluntary conservation can achieve substantial reduction in gasoline cosumption.

We feel that if our program can have effective impact over the next three to four weeks, than it certainly is well worth launching nationwide in deference to restrictive taxes and rationing.

Under separate mail, we are sending you copy of full gas conservation program as initiated by our organization and 40 Pennsylvania AAA clubs. Please review it as carefully as your time permits. We hope you will agree with us that it provides sensible answer to need for public cooperation and that you will view what happens in Pennsylvania as indication of what can be achieved voluntarily on national basis.

Sincerely,

JOHN J. DONOVAN,
Executive Vice President.

HOW SHOULD WE SELECT OUR VICE-PRESIDENTIAL NOMINEES?

Mr. HUMPHREY. Mr. President, we have recently sworn into office the first Vice President of the United States selected under the procedures of the 25th amendment.

The office of Vice President of the United States is the second highest office in this land. Neither recent events, nor the history of that office, nor the many complaints raised about its ambiguities should lead us to minimize its importance. The holder of this office at any time can become the President of the United States. He must be qualified fully to hold that office.

So in the coming months we will be evaluating how wise was our decision in establishing the selection process to fill a vacancy in the office of Vice President under the 25th amendment.

Mr. President, no less important will be our efforts, in Congress, in our political parties, and in the Nation, to evaluate the wisdom of our process for selecting the Vice-Presidential nominees of our political parties. Events of only the last few months have disclosed pos-

sible weaknesses in these selection processes in both of our major political parties.

Mr. President, on December 13, next Thursday, in room 1202 of the New Senate Office Building, a special commission of the Democratic Party will meet in open session to decide on recommendations for reform of our system in the Democratic Party of selecting Vice-Presidential nominees. This meeting of the full Commission on Vice-Presidential Selection of the Democratic Party will culminate a year of work, inquiry, study, debate, and consultation by this commission, which I am privileged to chair.

I call to the attention of the Senate and to other researchers the statement I made in the CONGRESSIONAL RECORD of October 16, 1973, at page 34234 which gives a brief history of our commission, the names of its distinguished members, and a memorandum describing a number of alternative possibilities for methods of Vice-Presidential selection.

Mr. President, I wish to discuss in some detail today the work of our commission. I believe the importance of this matter to the country and to our system of government justifies placing a rather extensive documentation in the RECORD so it may be available to all interested parties and to Members of Congress.

REPORT ON VICE-PRESIDENTIAL SELECTION OF THE EXECUTIVE COMMITTEE

As its meeting of November 29, the Executive Committee of the Vice-Presidential Selection Commission voted, 11 to 1, to recommend to the full Commission two major innovations in the process for selecting Vice-Presidential candidates. These will be submitted on December 13 for approval by the full Commission.

Our proposal would amend convention rules to:

Extend the length of the Democratic National Convention by 1 full day to permit an interval of 48 hours between the selections of the party's Presidential and Vice-Presidential candidates; and

Give the convention, at the request of the Presidential nominee, the option of referring the selection of the Vice-Presidential nominee to a specially convened meeting of the Democratic National Committee, renamed for this purpose, the "Vice-Presidential Nominating Convocation"—a miniconvention.

If the plan is approved by the full commission and the national committee, it will represent the first significant reform of the Vice-Presidential nominating structure in the history of the Democratic or Republican Party.

Our recommendations resulted from the Commission's extensive investigation, discussion and inquiry, including public hearings and the solicitation by mail of the views of thousands of Democrats and interested persons. The executive committee's proposal is based on four principal concerns:

First. The convention is the principal decisionmaking body for both Presidential and Vice-Presidential nominations.

Second. The Presidential nominee has a significant voice in the convention's decision.

Third. Presidential candidates should give assurances of careful deliberation, consultation, and investigation with respect to their possible recommendations of Vice-Presidential nominees.

Fourth. The rules need to provide the option of additional time for selecting the Vice-Presidential nominee, if exceptional circumstances make that necessary.

The new procedures we have recommended call for two major institutional innovations.

First, the length of the Democratic National Convention would be extended by 1 full day to permit an interval of 48 hours between the selections of the party's Presidential and Vice-Presidential candidates.

In other words, following the established procedure of national conventions, the nomination of the Presidential nominee would be made on the third day of the convention.

The agenda on the fourth day would include discussions of rules and charter changes, but not, as has been the case, the selection of the Vice-Presidential nominee. That decision and the acceptance speech of the Presidential nominee would be deferred until the evening of the fifth day—Friday.

Second, the rules would permit the convention to approve an optional plan, if it agreed with the Presidential nominee that the 48-hour interval was not sufficient.

Within 24 hours after the selection of the Presidential nominee, the nominee must recommend to the convention either that it proceed with the Vice-Presidential selection on Friday night of the convention, or that the convention delegate the Vice-Presidential selection responsibility to a specially convened meeting of the Democratic National Committee, the "Vice-Presidential Nominating Convocation."

This convocation would meet between 14 and 21 days following the close of the convention for the purpose of selecting the party's Vice-Presidential candidate.

It is important to understand that the DNC Convocation, under the rules adopted at the 1972 convention, would be chosen by the 1976 convention.

It would be exactly representative of the convention and each delegation would have voting power exactly equal to that State's delegation at the national convention, distributed proportionally to each convocation delegate.

Our proposal emphasizes, also, that under either the convention or the convocation, these rules would apply:

Each Presidential candidate has the solemn obligation to consult, deliberate and investigate carefully with respect to his own preferences for a Vice-Presidential running mate.

The Presidential nominee may indicate his recommendations of one nominee or several nominees for the Vice-Presidential nomination.

It shall be the right of any Democrat to be formally nominated at the convention, providing petitions supporting his or her candidacy are signed by at least 10 percent of the convention delegates, and these are from at least three different States.

Delegates' votes also may be cast during the Vice Presidential selection for persons not formally nominated.

Mr. President, in the interest of documenting the work of the commission for future students of this subject, I will quote for the RECORD the complete text of the commission's report, which will be the subject of our deliberations on Thursday:

REPORT OF THE VICE-PRESIDENTIAL SELECTION COMMISSION OF THE DEMOCRATIC PARTY

To assure the soundest and safest possible continuity of good and responsible government for the United States;

In response to a situation in need of improvement, especially in light of recent developments;

To provide procedures which best assure that the Democratic Party nominates its Vice Presidential candidate after the fullest deliberation and investigation, and after comprehensive consultation with all elements of the Democratic coalition; and

In the hope that any person nominated for the position of Vice President of the United States by the Democratic Party will be an individual of the highest probity, and broad experience, capable of assuming the Office of the Presidency and executing said office in the best interests of the people of our Nation;

The Commission on Vice Presidential Selection, pursuant to the August 9, 1972 mandate of the Democratic National Committee, hereby submits its recommendations to the Democratic National Committee and to the Rules Committee of the 1976 Democratic National Convention.

To give the Party's Presidential nominee additional time to review qualifications and credentials of possible vice presidential running mates, the Democratic National Convention, which by custom has met for four days every four years, shall meet for five days, under the following provisions:

1. The Convention will convene Monday evening, for the purpose of welcoming remarks, a keynote address, and the resolution of all Credentials disputes.

2. A National Platform shall be adopted at the Tuesday evening session of the Democratic National Convention.

3. A Presidential nominee shall be selected at the Wednesday evening session of the National Convention. The Democratic National Convention's Presidential nominee, within 24 hours of the selection of said nominee, shall recommend to the Democratic National Convention either of the following two vice presidential selection options, with the final and ultimate responsibility for choosing between them resting in the hands of the National Convention which shall vote on the question after having the opportunity to hear responsible dissenting opinions to the recommendation of the Presidential candidate:

(a) The Democratic National Convention shall proceed to select the Vice Presidential nominee of the Democratic Party pursuant to past custom, on the last night of the National Convention, pursuant to the same procedures and rules governing the selection of the Democratic Presidential nominee.

(b) The National Convention delegate vice presidential selection authority to a "Vice Presidential Nominating Convocation" of the newly created, and proportionately representative, Democratic National Committee. The "Vice Presidential Nominating Convocation of the Democratic National Committee" shall meet not less than fourteen (14) days nor more than twenty-one (21) days following the close of the Democratic National Convention, at a time not coinciding with the National Convention of any other major political party, to select the Party's vice presidential nominee, pursuant to procedures set forth in Article VII of the

Codified Rules of the Democratic National Committee, which reads:

"(a) The delegation from each State, Territory or District shall be entitled to the same number of votes as that State, Territory or District was entitled to cast at the National Convention.

"(b) The number of votes to be cast by each member present and voting shall be the same proportion of votes allocated to his or her delegation under Subsection (a) of the Section as his or her vote on the Committee is to the total number of votes on the Committee exercised by all members of the delegation from his or her State, Territory or District who are present and voting when the vote is taken.

"(c) Where a vote on the Committee is shared by two or more members of the Committee, it shall, for the purpose of allocating votes for the selection of the vice presidential nominee, be apportioned among those members sharing it who are present and voting.

"4. The full report of the Rules Committee of the National Convention, including the permanent Charter of the Democratic Party of the United States adopted by the 1974 Conference on Party Organization and Policy, shall be presented to the Convention Thursday evening, to be debated fully, amended if necessary, and officially adopted by the Convention.

"5. The Friday evening session of the Democratic National Convention shall include:

"(i) The Roll Call for, and nomination of, a Vice Presidential Candidate of the Democratic Party, if the Democratic National Convention has voted not to delegate such responsibility to the 'Vice Presidential Nominating Convocation of the Democratic National Committee.'

"(ii) The Acceptance Speech(es) of the Nominee(s) of the Democratic Party.

"(iii) Adjournment.

"No provisions of these rules shall be interpreted to prevent any Democrat to announce and run for the Vice Presidential nomination of the Democratic Party. Any person receiving petition support from at least 10% of the assembled delegates representing elements of at least three separate state delegations, whether at the Democratic National Convention or the 'Vice Presidential Nominating Convocation of the Democratic National Committee' shall be entitled to have his or her name placed in nomination for the Office of Vice President of the United States."

Mr. President, I wish to note that subsequent to the meeting of the executive committee I have received inquiries from some members present about a possible omission from this text. The question is whether or not the executive committee agreed that the Vice-Presidential nominee or nominees who are the choice or choices of the Presidential nominee will not have to have petitions filed with signatures of 10 percent of the delegates and with three States represented on the petitions. We wil not be able to clear up this question until the meeting before the full commission, but I wish to note that the question has been raised.

PRESENT SYSTEM

Mr. President, to assist in understanding our proposals for reform, we need to have a firm idea of the way the present system, under the rules of the Democratic National Convention, operates.

The Commission was advised by Mr. Stu Eizenstat, member of and counsel to the Vice-Presidential Selection Commission, that the procedures for nominating a Vice-Presidential candidate are almost exactly the same, on paper, as those for nominating the Presidential candidate.

By recent practice, nominations for Vice President have come on the last day of the convention, which has been Thursday, the day following nomination of a candidate for President. The first 2 days of the convention have been taken up with action on reports of the credentials and rules committees and the adoption of a platform.

A 12-hour interval is required between the nomination of a Presidential nominee and the start of nominations for Vice President. A delegate wishing to nominate a Vice-Presidential candidate may submit a petition bearing signatures representing no less than 50 nor more than 200 delegate votes, of which no more than 20 are from any one delegation.

But any delegate may vote for any candidate, when the roll is called, regardless whether that candidate has been named in a petition. The only advantage gained by filing a petition is that it confers the right to deliver one nominating speech and no more than two seconding speeches for that candidate prior to balloting.

In a report to the Democratic National Committee, Mr. Eizenstat has pointed out that existing convention rules neither recognize the right of the Presidential nominee to express a preference for Vice-Presidential running mate, nor prohibit such an expression. But as a practical matter, the Presidential nominee "taps" his running mate and the convention approves his choice.

The Vice-Presidential nominee, once chosen, is invited to deliver an acceptance speech, which is generally the last order of convention business before adjournment.

If either the Presidential or Vice-Presidential nominee should die, resign, or become disabled, the Democratic National Committee fills the vacancy.

ALTERNATE PLANS CONSIDERED BY THE EXECUTIVE COMMITTEE

Mr. President, before its meeting of November 29, the executive committee studied in detail a number of alternative proposals, not necessarily exclusive of the others, before adopting the recommendations to be taken up on Thursday. I wish to share, in summary, these alternative proposals.

The first alternative required the convening of a "mini-convention" of the newly selected Democratic National Committee at least 14 but not more than 21 days following the Democratic National Convention, for the purpose of nominating a Vice-Presidential candidate.

The Presidential nominee of the Democratic National Convention would be formally charged with consulting with State party leaders, elected officials, and constituent Democratic Party groups, in a process involving the widest possible sample of Democrats at all levels, to test party sentiment on all potential Vice-Presidential candidates.

The national committee would select a nominee following procedures set forth in article VII of the rules of the 1972 Democratic National Convention for filling a vacancy on the national ticket.

The second alternative makes up part of the recommendation chosen by the executive committee for consideration by the full Vice-Presidential Selection Commission. It offers the delegates to the Democratic National Convention the options of either selecting a Vice-Presidential nominee themselves at the close of the convention, or turning the choice over to the miniconvention of the Democratic National Committee.

The third alternative was to retain the present system, which I have outlined.

The fourth reform called for appointment of a seven-member screening commission before May 1, 1976, to review all potential Vice Presidential nominees and report to the rules committee on the credentials and qualifications of the contenders. The report would be made available to all presidential candidates.

The fifth alternative proposed a screening council of three members named by the chairman of the Democratic National Committee, to assist the Presidential nominee in selecting a running mate.

The sixth alternative, called the Calhoun plan, suggested simultaneous balloting for Presidential and Vice Presidential nominees on the Wednesday night of the convention, with the candidate receiving a majority of votes becoming the party's Presidential nominee and the candidate with the second-highest vote total becoming the Vice-Presidential candidate.

The seventh alternative, which has also found its way in principle into the executive committee recommendation, called for extending the national convention an extra day, to provide added time between nomination of a Presidential candidate and selection of a running mate.

The eighth alternative also had the objective of increasing the time interval between selection of the two candidates. It would have accomplished this by scheduling selection of the Presidential nominee for the second evening of the convention, rather than the third, with Vice-Presidential nominee selection coming on the fourth and final evening.

The ninth alternative, or open convention plan, called for selection of the Vice-Presidential nominee by the full convention, from a list of three individuals provided by the Presidential nominee within 12 hours after being selected.

SOME REPRESENTATIVE WITNESSES AND RECOMMENDATIONS

These proposals, Mr. President, evolved over about a year's time, during which the commission corresponded widely with hundreds of interested persons. In addition, we held a series of hearings in various parts of the country. Former Governor Endicott Peabody chaired hearings in Boston, held by Massachusetts members of the commission. Similar hearings were held in New Hampshire. We also conducted hearings in Washington, D.C., and held an exceptionally useful session in New Orleans, in connection with the national convention of the American Political Science Association in September.

Witnesses at these hearings, and correspondents sending their views to the commission, have included Democratic Party workers and members at the grass-

roots level, State party leaders and Democratic holders of State elective offices, distinguished political scientists, Members of Congress and national party leaders including the Chairman of the Democratic National Committee.

A full transcript of the New Orleans meeting is available, as is the record of the Washington, D.C., hearing. In addition, the commission has arranged to have all correspondence and the other materials I have mentioned today recorded on microfilm, to be available to researchers.

As a sample of the views expressed by this large cross section of the Democratic Party and the academic community, I would like to read a brief tabulation prepared by the staff of the Democratic National Committee, containing a roughly representative group of witnesses at our hearings and their preferences among the various alternative methods of reforming the Vice Presidential selection process. I regret that I cannot mention all of the testimony and correspondence we received—or do justice to those I mention—in this brief space.

Speakers favoring a delayed-choice and miniconvention approach included:

Donald G. Herzberg, dean of the graduate school of Georgetown University. He suggested the national convention should write the party platform, nominate the Presidential candidate, select a new national committee and adjourn. The national committee would meet 30 days latter to act on the Presidential candidate's recommendation for a running mate, either ratifying that selection or nominating a different Vice-Presidential candidate.

Robert S. Strauss, chairman of the Democratic national committee. He said the national committee should have the power to ratify the Presidential nominee's selection within a limited time after the convention. But he cautioned that during the delay pressure on the Presidential nominee would build concerning his choice, both within and from outside the party.

Prof. Austin Ranney, a member of the McGovern-Frazier commission prior to the 1972 Democratic National Convention. He said a delayed choice could permit a more deliberative approach while serving to integrate and unify the party.

Senator GEORGE MCGOVERN supported a delay of 7 to 10 days.

Donald Fraser, speaking for Americans for Democratic Action, also spoke for delayed Vice-Presidential nominee selection.

Speaking in favor of continuing the present system, though with modifications in some case were:

Stephen K. Bailey, vice president, American Council of Learned Societies. He agreed greater care by both party leaders and the Presidential candidate is needed in choosing a Vice-Presidential candidate. But a delayed decision, he argued, would serve to "diminish the bargaining, brokerage, and reconciling functions of the national convention."

Representative JAMES O'HARA, of Michigan. His first preference is abolition of the office of Vice President by constitutional amendment, and an entirely new system of providing for Presidential succession. Lacking that, Mr. O'HARA proposed that petitions signed by 10 to 20 percent of the convention delegates would be required to qualify an individual for consideration for the Vice-Presidential nomination, but a letter of preference from the Presidential nominee would carry weight equal to a petition, and the Presidential nominee's choice could be placed in nomination at any time during the convention's consideration of Vice-Presidential nominees.

Senator MIKE GRAVEL, of Alaska. The Presidential candidate should not endorse a nominee for Vice President. He could submit a list of individuals acceptable to him, but the convention should have full power to select the Vice-Presidential nominee, the Senator recommended.

Letters supporting the present system were received from Senators BENTSEN and SPARKMAN and Representatives CHAPPELL, POAGE, and ROY.

Support for a screening committee approach came in testimony from:

Liz Carpenter, member of the Democratic National Committee and a member of the steering committee of the National Women's Political Caucus. She recommended a small task force functioning during the convention as a Vice-Presidential candidate-screening committee, reporting to the Presidential nominee.

Senator WILLIAM HATHAWAY, of Maine, proposed that each candidate for the Presidential nomination should submit a list of three possible choices as running mate, before the convention, with the lists reviewed by the executive committee of the Democratic National Committee.

Rearrangement of the convention agenda to provide more time between the selection of nominees for President and Vice President also received support. Some proponents of this approach included:

Ralph K. Huitt, executive director of the National Association of State Universities and Land Grant Colleges. He also advocated adopting the party platform after the Presidential nominee was chosen, rather than before.

Lawrence I. Radway, professor of political science at Dartmouth agreed that the convention agenda should be reordered to place action on the party platform after the nomination of the Presidential candidate and before selection of a Vice-Presidential nominee.

Prof. Valerie Earl, chairman of Georgetown University Political Science Department, also favored this agenda. Professor Earl said the main business of the convention is to choose a Presidential candidate, and since both the candidate and delegates want a Vice-Presidential nominee who will strengthen the ticket, the choice of running mate "should be left to the time and the situation and the people who are involved. We should not impose a formula upon the candidate and the convention."

Mr. President, we received a variety of other recommendations outside the range of those I have mentioned, and I will list a sampling of them as a further indication of the degree of interest our commission's studies attracted and the kinds of thought-provoking suggestions we received.

Thomas J. Seess, of the political science department of Mount St. Mary's College, Md., proposed that State primaries allow Presidential-Vice-Presidential tandem tickets. The convention then would choose its Presidential and Vice-Presidential candidates as a team, in a single process.

Stanley Arnold of New York, a 1972 Vice Presidential candidate, was among advocates of a national primary. He suggested running two primaries, the first for Presidential candidates and the second to be a runoff among the losers in the first, to select Vice-Presidential candidates.

Landis Jones, professor of political science, University of Kentucky, is the author of a new book on the Vice Presidency. He argued that attention is being focused too much on the mechanics of the selection process. More thought, he said, should be given to the job of Vice President itself, "what it is you want him to do; what it is that you want him to be able to do." Mr. Jones asked what the Vice President is training for, and what the training process should be.

Prof. Aaron Wildavsky, dean of the School of Public Affairs, University of California at Berkeley, argued that the party itself should play a stronger role in selecting the Vice-Presidential nominee. Beyond that, Professor Wildavsky suggested that perhaps both the Presidential and Vice-Presidential candidates should be chosen by "more permanent and powerful groups of party leaders," with the Vice-Presidential candidate particularly chosen with the continuing interests of the party in mind, to reflect the interests of the party as an institution rather than the immediate interests of a single campaign.

Mr. President, we also received numerous letters and other written statements offering varied views.

On the subject of a so-called open-convention system, for instance, we received statements of support from Common Cause head John Gardner, Florida Attorney General Bob Shevin, Prof. James MacGregor Burns of Williams College and Representative ROMANO MAZOLLI of Kentucky.

Finally, Mr. President, I have referred earlier to the contribution of former Gov. Endicott Peabody of Massachusetts, who conducted one of our hearings. As a member of the executive committee of the commission, Mr. Peabody cast the lone dissenting vote from our recommendation to the full commission, and he has subsequently filed a minority report. The work of Governor Peabody must be considered for a complete view of our work.

Governor Peabody proposes a constitutional amendment giving the Vice President a vote on all issues before the Senate, in place of the current restriction confining him to breaking tie votes only. This, argues Governor Peabody, would involve the Vice President thoroughly in legislation and permit him to serve as an official with a national constituency on Capitol Hill.

He further proposes that first-ballot Convention votes for Vice President

should be confined to candidates who had run in primaries either for President or Vice President. Connected to this proposal is one that the Democratic National Committee encourages states to allow Vice-Presidential candidates a separate place on the primary ballots or in party convention endorsement action.

Finally, Governor Peabody recommended, in anticipation of the end of the electoral college system, that candidates for Vice President be allowed to run on their own in national elections, just as do candidates for President.

Mr. President, I wish to conclude my remarks by inviting Members of the Congress and all other interested parties to express to me, the staff of the commission or the DNC, or individual members of the commission your recommendations and comments. It is the intention of the commission to agree on a final report at its meeting of December 13. This final report will be submitted to the Democratic National Committee. The DNC will then pass on it as a matter for inclusion in the rules of the Democratic convention of 1976.

May I also express the deep interest of the commission in the work of a newly appointed committee of the House Democratic Caucus which is also looking into the question of the Vice-Presidential selection process. We hope to have the participation of its chairman, Congresswoman EDITH GREEN, and its members at our meeting of December 13. Because of the strict time limit set for our report, we have not been able to delay it, but we certainly will be in close communication with the members of this House Caucus Committee.

Our report, of course, presumes certain limits to our authorized mandate. We have not considered reforms which require the enactment of legislation, or the adoption of a constitutional amendment.

And finally, Mr. President, may I express the hope that the other major political party will also be able to investigate this question thoroughly. It is their responsibility no less than that of the Democratic Party, and I think the interests of the people of the United States require reform in this field by both parties before the 1976 convention.

THE BLESSINGS OF AMERICA

Mr. BEALL. Mr. President, certainly all of us, in coping with the day-to-day problems of life in our country, sometimes forget the countless freedoms and privileges that this Nation offers to its citizens. Too often, as we criticize a government policy or a political figure, we fail to remember that this right exists in few other countries of the world.

Recently, I received a letter from a new citizen of our Nation, Mrs. Aspasia K. Catsouras, which places back into focus the wonderful gifts which the United States offers its people. I ask unanimous consent that Mrs. Catsouras' letter be printed in the RECORD so that my colleagues might be made aware of her thoughtful comments.

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

CAMP SPRINGS, MD.,
November 28, 1973.

J. GLENN BEALL, Jr.,
Member, U.S. Senate,
Washington, D.C.

DEAR SENATOR BEALL: I have received your letter of November 27, 1973, and should like at this time, to give to you my sincere thanks for the kind thoughts contained in your letter.

During the past eight years in which I have lived in the United States, I really feel that some people here seem to take for granted their right and privilege to be known as a citizen of this country. As we all hear and read every day, we have our share of problems, as do all other countries of the world. However, we, as a country, because of our traditional democratic institutions, are best able to define each problem and then seek a solution in the best interest of all of the people of the United States. Unfortunately, such traditions of democracy exist in very few other countries of the world.

In closing, I am very proud to be writing this letter to you as a citizen of the United States.

Sincerely,

(Mrs.) ASPASIA K. CATSOURAS.

"HUMAN RIGHTS DAY" HIGHLIGHTS THE NEED FOR RATIFICATION OF THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, yesterday we celebrated the 25th anniversary of the proclamation of the Declaration on Human Rights. The University of Wisconsin, in cooperation with the Governor's Commission on the United Nations, marked the occasion by holding a radio roundtable discussion on the subject of human rights. The panel included such experts as Bruno Bitker, chairman of the Governor's Commission on the United Nations; Richard Bidler, University of Wisconsin Law School professor; Everett Refior, professor of political science at the University of Wisconsin; and Marianne Steigerwald, the League of Women Voters

Their discussion encompassed the entire spectrum of human rights, including such topics as freedom of speech, women's rights, rights of minorities, and slavery. Their discussion was particularly timely since I believe that the Senate will take up the Genocide Convention next year.

This treaty is one of several human rights treaties which the world community has adopted in order to give the force of international law to the high ideals expressed in the Declaration of Human Rights. The Genocide Treaty was first presented to the Senate in 1949 by President Truman. Today, over 70 nations have ratified this treaty but the United States has not. Think about it. An entire generation has grown to maturity and the Senate has still failed to act.

Mr. President, this treaty has been reported out favorably by the Senate Foreign Relations Committee several times. It is only fitting that on this, the 25th anniversary of the Declaration of Human Rights, that the United States at last ratify this important human rights treaty.

RISING FOOD PRICES

Mr. SAXBE. Mr. President, consumers in recent months have become concerned over rising food prices. Understandably, the people of this country are almost unanimous in their desire for inexpensive food to put on the table. But many of these same people unwittingly contribute to higher food prices by supporting policies which reduce supplies and increase costs.

An excellent article on food costs was written recently for the Ohio Farmer magazine by its editor, Earl W. McMunn. Entitled, "Let's Reason Together," it tells some of the reasons why food prices have risen along with other costs in our inflationary economy.

I have known Mr. McMunn for a long time, and what he has to say is well worth listening to. I ask unanimous consent to have this article printed in the RECORD.

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

[From the Ohio Farmer magazine, December 1973]

LET'S REASON TOGETHER

(By Earl W. McMunn)

IF CONSUMERS ARE TO HAVE CHEAP FOOD

Consumers of this country want cheap food. That is what they have had although many are not aware of the fact. Rising prices of the past year threw many into a panic. Some ill-informed politicians, labor leaders, newsmen and others screamed that "people couldn't afford to eat!" This in spite of the fact that in 1973 the average person is spending less than 17 percent of his income for food. That is still a real bargain when compared with other nations of the world or for most other times in the history of this nation.

We have cheap food because of a combination of circumstances. Mostly it is the result of an abundance of technical information, use of commercial inputs, and freedom to operate under a profit-oriented economic system. Cripple any of these forces and food will become more expensive. This is a fact of economic life. But the sad truth is that too many governmental decisions are made by people who don't understand economics. Recent efforts to help consumers by controlling livestock prices are but one example.

The forces which provide our cheap food have been building up for at least half a century. We have had an abundance of land, a surplus of farm labor, and plenty of people who wanted to farm. Commercial suppliers provided the machinery, the chemicals and the other inputs. Our know-how was improved by a steady flow of information from both public and private sources.

During this same period, our economy was expanding and people were becoming more affluent. This made it easier for them to buy food with a smaller share of their total incomes. For instance, in the 20 years between 1952 and 1972, wages and incomes rose by an average of seven percent a year. Farm prices rose less than one percent. This is why many consumers developed the idea that they should get a raise every year, but they shouldn't pay more for food. That was the way it had been during most of their lifetimes.

All this has changed during the past year. Now it is becoming clear that food prices must rise when everything else in the economy is on the upswing. People must pay more if they expect to be well fed. And,

there is ample evidence that eating is a habit which no one wants to give up. There is little reason to believe customers will need to make any real changes in their eating habits. At least, not so long as economic forces are permitted to operate. The trouble comes when we try to make economic decisions on the basis of politics.

Here may be our greatest danger. Some of the most critical decisions may be made without real understanding of the problem. This is an ever-present threat where agriculture is involved. It is a fact of life that most members of Congress and the regulatory agencies no longer have a farm background. Too few have even an understanding of agricultural matters. How can they be expected to know, for instance, that a decision which hampers the oil business may cut farm production and add to the cost of food?

As a nation, we haven't yet faced up to the fact that there's a difference between necessities and luxuries. Or, that necessities must come first when hard decisions must be made. We've been sold on the idea that we must have the luxuries, then we'll pay for the necessities if there's anything left over in the budget. This has been true for much of our national planning, just as it has been in many a private household.

What is the value of aimless joy riding when fuel is needed to grow crops, transport them to market, and keep the nation's factories in operation? Look at the traffic clogging our highways during non-working periods and it's easy to see where billions of barrels of fuel could be saved.

But our system has offered little incentive for savings. Most of our policies have been in the opposite direction. Regulatory agencies attempt to impose arbitrary restraints upon retail prices. These work like a two-edged sword—and in the wrong direction! They discourage exploratory drilling, investment in refineries and everything else that is required to boost production. At the same time, low prices encourage consumers to use fuel for many purposes which are both foolish and wasteful.

Price may not be the most popular rationing tool, but a more effective method has not yet been invented.

Modern farming depends largely upon the use of commercial inputs. Anything which interferes with their availability is harmful to food production. Every farmer knows this, but it is not understood by many others.

Recent estimates indicate we are now using commercial inputs at the rate of $50 billion per year. No longer is any farm self-sufficient as in the days of the pioneers.

High crop yields depend upon the use of chemical fertilizers, herbicides and pesticides. We must have fuel to cultivate land and dry the crops. Our rapid increase in labor efficiency is largely the result of abundant use of machinery and equipment. Modern farming would be impossible without vast amounts of capital.

We look to agribusiness for a wide array of production inputs. Other segments of agribusiness process crops into forms that are acceptable to consumers. How long has it been since you saw a consumer carrying a live hen home from market? Now, it's a tender, juicy broiler which is killed, plucked, cut-up, packaged and perhaps cooked in golden batter. The consumer never had it like this in the "good old days!"

And, if we're honest, who in agriculture would like to go back to those good old days? They were the days when wood was cut to heat the house, you turned the soil with a two-horse walking plow, and you killed potato bugs by knocking them into a can of kerosene. No wonder that almost everyone knew something about farming. With the backbreaking work of those "good old days" most people of the nation were needed on farms just to get the farming done!

Consumerism is a popular cause. But some self-styled consumer advocates ignore the fundamentals of sound economics. All they accomplish is to make conditions more difficult for the very people they claim to help. You're not helping anyone when you tear down the agribusiness complex which has provided Americans with the best living ever enjoyed by any people in the history of the world.

Uniformed consumerists are fond of using "profits" as a dirty word. They would squeeze or eliminate profits while implying this helps consumers. What they don't understand is that profits are essential if consumers are to get the products—and this includes food.

No one goes into business expecting to take a loss. There must be a profit incentive before you buy land, build a plant or employ help. Without the profit incentive there is only one other way. This is the Communist method where the production assets are owned by the government and people are told what to do. But, compared wtih our system, that method has a poor track record!

So it is clear that some things are necessary if we are to retain our ability to produce an abundance of food and at reasonable cost.

Basic to everything else is that we retain the incentive pricing system. It is the governor which signals for more production when demand is great and a slowing off when demand is weak. Price ceilings are a signal to produce less—not more.

We must have adequate supplies of machinery, parts, fertilizer, fuel, chemicals and other commercial inputs. Already we have seen how farm production suffers when any of these is in short supply.

Unwise environmental regulations can seriously hamper our ability to produce. Some environmentalists would ban almost all insecticides, herbicides, antibiotics and fertilizer. They don't know, or refuse to admit, what this would do to the food supply. We in agriculture shouldn't be forced to defend against these irresponsible attacks. The people who will really suffer are consumers who want an adequate supply of wholesome food and at reasonable cost. This is what they have been getting. Ill-informed environmentalists should be their problem, not ours! The sooner they understand this fact, the better off we all will be.

Fuel and transportation place other limits on our abiltiy to produce. If added acreage is farmed in 1974 it will take more gasoline and other forms of fuel. Extra rail and truck transportation will be needed to get the crops to market.

Adequate food supplies will require greater investments in research. Surpluses of recent years led some people to conclude that public research was no longer needed. At the same time, private research was discouraged by watch-dog agencies of government which made it increasingly difficult to bring a new product to market. Now we are learning the hard way that there is need for more research—not less.

It all boils down to one simple fact. If consumers want cheap food, they must support policies which make cheap food possible.

MAKING THE PRESIDENTIAL ELECTION CAMPAIGN FUND DOLLAR CHECKOFF EVERY CITIZEN'S BUSINESS

Mr. HUMPHREY. Mr. President, I am pleased to report some positive developments concerning the public financing of Presidential election campaigns, despite the recent setback to broader public financing reform.

As Senators know, the Presidential Election Campaign Fund Act, as amended, provides every taxpayer the opportunity to check a box on his tax form and thus designate $1 for this now nonpartisan campaign fund to be used by Presidential candidates of major and minor parties in general election campaigns.

Designation of the $1 for this purpose does not add to the individual's tax due and does not reduce his refund.

As the result of the amendment adopted last summer, the checkoff question and box are printed on the first page of both the long and short tax forms. In addition, a court suit has resulted in a checkoff box being added to both short and long forms to allow those who did not participate in 1972 to designate $1 of that year's taxes toward the nonpartisan fund.

Further, Mr. President, as I reported in the CONGRESSIONAL RECORD of September 18, the Internal Revenue Service has approved my suggestion that employers be allowed to include notices which encourage participation in the checkoff with the 1973 forms they mail to their employees.

Mr. President, on November 13 I wrote to the IRS requesting a report on the steps they plan to encourage participation in the public financing fund, pursuant to their agreement with Members of Congress.

Mr. Donald Alexander, Commissioner of the IRS, has sent to me a letter outlining the steps he plans to take to publicize the checkoff between now and the April tax deadline. He reports these specific plans.

First, a 30-second public service television announcement, in color, will be sent to TV networks and stations all over the United States. This announcement will stress that the fund is nonpartisan and that designation of $1 for it does not affect the amount of tax a person pays or the amount of a refund.

Second, printed advertisements in four sizes will be distributed to some 700 major national publications and to IRS field offices for distribution to the local print media.

These ads are designed so that they can be "dropped in" to advertising spaces of publications on a public service basis when there is space available.

As a third part of the information campaign, an 11 by 14-inch poster for placement on walls and counters in IRS offices has been prepared.

A fourth part of the publicity campaign will be a news item prepared by the IRS for Members of Congress who wish to use this newsletter.

Other parts of the campaign will include a news release for Washington daily newspapers, two news releases for local daily papers to be distributed by IRS field offices, two releases for local weekly papers to be sent from IRS field offices, and two radio spot announcements for networks and stations all over the country.

In addition, Mr. President, the front covers of both the 1040 and 1040A tax forms have prominent references to the

checkoff, and boldface type in red ink on both the forms and the package covers draws it to the attention of taxpayers.

The instructions for both short and long forms contain the following description of the dollar checkoff:

Presidential Election Campaign Fund.—You can tell us to turn over $1 of your tax to the presidential election campaign fund by checking the appropriate box on line 8. On a joint return, the election to designate or not to designate is available to both spouses. For example: (1) Both may elect to designate $1 each for a total of $2. (2) Both may elect not to designate. (3) One may elect to designate $1 and the other choose not to.

If you check the box(es), it will not increase your tax or reduce your refund.

The checkoff question on the forms is phrased as follows:

Presidential Election Campaign Fund.—Check (box) if you wish to designate $1 of your taxes for this fund. If joint return, check (box) if spouse wishes to designate $1. Note: This will not increase your tax or reduce your refund.

If a person files his 1973 return without checking off a dollar for the fund, he may amend his return later to do so by filing Form 1040X, which also will permit a checkoff for 1972.

Taxpayers who make a mathematical mistake on their return or who are billed for taxes due or receive refunds larger or smaller than they claimed will also be given a notice of the checkoff. Mr. Alexander estimates there will be 11 million such notices for 1973 returns.

Mr. President, of course, the long-form return also includes the opportunity for the taxpayer to take a tax credit or an itemized deduction for contributions to candidates for public office. While that is not the subject of my statement today, I will enclose the text of the explanatory statement for the tax credit or deduction at the close of my remarks, as enclosure No. 3.

This publicity campaign is encouraging to me. It gives impetus to the only system of public financing of Presidential campaigns that we presently have. I agree with many of my colleagues and many people across the country that the dollar checkoff limited to general election Presidential campaigns is not enough in and of itself, but it is an important step in the right direction. Our hope for further reform should not delay efforts to fully utilize the fund as now established.

Only 3.1 percent of the taxpayers participated in the checkoff last year. It is my earnest hope and belief that with proper publicity this year we can greatly increase that percentage. If we work at it, we can have $75 to $100 million in the fund for the 1976 election even if other reform efforts fail. And if we are successful in broadening the fund along the lines approved by the Senate in the last 2 weeks, our efforts now to encourage participation in the checkoff will have given us a better foundation on which to build.

Mr. President, I ask unanimous consent to print in the RECORD my letter to the IRS and Mr. Alexander's reply to me of November 30, 1973, followed by those enclosures to his letter which can be reproduced in the RECORD.

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

NOVEMBER 13, 1972.

Mr. DONALD C. ALEXANDER,
Commissioner, Internal Revenue Service, Washington, D.C.

DEAR MR. ALEXANDER: As you know, I have greatly appreciated the initiative and cooperation of the Internal Revenue Service with respect to encouraging taxpayer support of the Presidential Election Campaign Fund. In particular, I am encouraged by the immediate IRS approval of my suggestion that employees be allowed voluntarily to encourage taxpayer participation through the dollar check-off on the tax form by including informational materials with their mailing of W-2 Forms.

In this connection, I would appreciate an opportunity to see the text of advertising spot announcements or printed materials which the IRS plans to distribute or make available for distribution regarding the dollar check-off. As you know, no official laymen's description of the dollar check-off has been published. I would like to see your information as soon as possible.

With best wishes.

Sincerely,

HUBERT H. HUMPHREY.

INTERNAL REVENUE SERVICE,
Washington, D.C. November 30, 1973.

Hon. HUBERT H. HUMPHREY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HUMPHREY: This is in reply to your previously acknowledged letter of November 13 asking to see the texts of advertising spot announcements or printed materials on the dollar check-off which the IRS plans to distribute or make available for distribution.

Our program to remind taxpayers of the check-off includes:

1. Public service television announcement, in color, to be distributed to networks and stations throughout the United States.

2. "Drop-in" ads in four sizes for distribution to 700 major national publications and to IRS public information field officers for local media. Drop-in ads are designed to fit into the standard advertising spaces of publications, which print the ads as a public service when they have space available.

3. Poster, 11" x 14", to be placed on walls and counters in IRS offices,

4. News item for Congressional newsletters,

5. News release from Washington for daily newspapers,

6. Two news releases for local daily newspapers to be distributed by IRS field offices,

7. Two news releases for weekly newspapers to be distributed by IRS field offices,

8. Two radio spot announcements to be distributed to networks and stations throughout the United States.

Items 1, 2, and 3 are in final form, and text or facsimiles are enclosed. The balance of the items are being prepared and we will send you copies when they are completed.

The front covers of the 1973 tax form packages for both the 1040 and 1040A contain a prominent reference to the check-off. Boldface type in red ink draws attention to the check-off on the package covers and on the forms themselves. Those who did not indicate a check-off on their 1972 returns will be able to do so right above the block for their signatures. We are enclosing copies of these forms for your information.

Taxpayers who file their 1973 tax returns without making a designation for 1973 will have another opportunity to check-off. They will be able to do so by amending their return with Form 1040X, "Amended U.S. Individual Income Tax Return." Form 1040X will also permit a designation for 1972 by those who did not make a check-off for that year.

Form 5185, "Presidential Election Campaign Fund Designation," will be included in all computer-generated notices sent to taxpayers and will enable them to check off if they haven't already done so on their returns. Taxpayers receive these notices whenever they make a mathematical error on their return, are billed for taxes due, or receive a refund larger or smaller than they claimed. An estimated 11 million notices will be mailed concerning 1973 returns.

Forms 5185 and 1040X are at the printers. Copies will be mailed to you when they are available.

Last year, 3.1 percent of all returns included 1976 Presidential Election Campaign Fund designations. We would expect that changes in the law, method of checking off, the residual effect of earlier IRS publicity efforts, and our current efforts to acquaint the public with the check-off will result in a significantly greater participation by taxpayers in the coming months.

Please let us know if we can be of further service.

With kind regards,

Sincerely,

DONALD C. ALEXANDER.

TV PROGRAM FORMAT

VIDEO

CU of flag in "Spirt of '76."

Zoom back to entire painting.

MS of old artwork with man holding money.

Shot of man (old artwork) working on paper gives impression of man working on tax return.

Zoom in on 1040 and 1040A.

Super IRS logo.

AUDIO

Music: Fades up: Fife and drums.

Music up full.

VO: The Spirit of '76 . . . we're going to celebrate it again. In 1976, we'll have a presidential election. You can give a dollar of your taxes to a non-partisan fund to help pay campaign expenses of presidential candidates. This doesn't affect how much tax you pay or the amount of your refund. Look for the check-off section on your federal income tax return. And, if you did not do so last year, you can also check off for 1972 on your 1973 return.

Music up and out.

COPY FOR DROP-IN ADS AND POSTERS

TO CHECK OR NOT TO CHECK

You may participate in the 1976 Presidential Election Campaign Fund by checking the box on your tax form 1040 or 1040A. This will designate $1 (or $2 on a joint return) to a nonpartisan fund. If you didn't do so last year, you can also check a box for 1972. This will not reduce your refund or increase your tax.

Department of the Treasury, Internal Revenue Service.

PART IV.—CREDITS

Line 52—Credit for Contributions to Candidates for Public Office.—You may claim a tax credit on line 52, Form 1040 or an itemized deduction on line 33, Schedule A (Form 1040), but you cannot claim both, for political contributions paid.

If you elect to claim a credit on line 52, Form 1040, the amount of the credit is one-half of the political contributions paid, but not more than $12.50 ($25 if married and filing a joint return). This credit may not exceed the tax on lines 16, 56, 57, and 58 less the amount of credits on lines 49, 50, and 51. Make a side calculation before you enter the credit on line 52.

DEFINITIONS

"Political contributions" means a contribution or gift of money to—

(1) A person who is a candidate for nomination or election to any Federal, State,

or local elective public office in any primary, general, or special election, for his use to further his candidacy.

(2) Any group organized and operated exclusively to support the nomination or election of one or more candidates seeking Federal, State, or local public office, for use by that group to further its purposes.

(3) The national committee of a national political party.

(4) The State committee of a national political party as designated by the State committee of that party.

(5) A local committee of a national political party as designated by the State committee of that party.

"Candidate" means a person who has publicly announced candidacy for nomination or election to Federal, State, or local elective public office and meets the legal qualifications to hold the office.

"National political party" means:

(1) A political party presenting candidates or electors for President or Vice President on the official ballot of ten or more States during an election year.

(2) In the case of contributions made during any other taxable year of the taxpayer, a political party that met the qualifications described in the preceding paragraph (1) in the last Presidential election.

"State" means the States and the District of Columbia.

"Local" means a political subdivision or the total of subdivisions of a State or part of it.

GREATER INTERNATIONAL UNDERSTANDING

Mr. MONDALE. Mr. President, last April a poem composed by A. A. Granovsky, professor emeritus at the University of Minnesota, appeared in the newsletter of the International Institute of Minnesota.

This poem expresses beautifully the sentiment shared by U.S. citizens of Ukranian ancestry who are proud of their cultural heritage and deeply loyal Americans. It is also an eloquent plea for freedom, mutual understanding and dignity among people of all countries.

Mr. President, I believe many of my colleagues would enjoy reading this poem by a distinguished entomologist and an eloquent spokesman on behalf of greater international understanding. I ask unanimous consent that it be printed in full in the RECORD.

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

I LOVE THEM BOTH

I have been often asked—how can I love
Two countries, as my fatherland, so dearly?
To share my soul with them, my life, and lore . . .
And faithful be to both—how could be, really?!

But it is so! Indeed,—I love them both!
I love America—as though my wife,
With whom I share my happiness and life—
Why shouldn't I love her till the last of breath?

I love Ukraine as well! As faithful son
Loves Mother.—She that gave me life, first kiss! . . .
To both I owe creative thoughts and bliss,—
For their future greatness under sun!

My love to both of them is true and strong
And my devotion to the cause—sincere,
I see no conflict in my love, no fear,—
For liberty of both I sing my song! . . .
With freedom here—in stature grows each man
With dignity to share in fullest measure,
So dear to him his priceless native treasures,—
With love to both! What more can one demand?!

And you, my friends, have kept this guiding light—
To see America as true, as love,
Enriched with cultures, visions and the lore—
For human destiny and freedom's fight! . . .

—A. A. GRANOVSKY.

CAPT. PATRICK K. HARROLD

Mr. DOLE. Mr. President, yesterday, memorial services were held in Leavenworth, Kans., for Capt. Patrick W. Harrold, U.S. Air Force. These services followed a finding by the Air Force that Captain Harrold is presumed to have been killed in action during the Vietnam war in 1969. No information or evidence was ever developed on his fate or that of another pilot who vanished after their aircraft crashed during an attack on North Vietnamese forces in Laos.

These services stand as a vivid reminder to each of us individually and to the Nation as a whole that the Vietnam war is not a closed book. Captain Harrold was one of some 1,300 Americans whose status was not resolved by the Paris peace agreements of January 1973. These individuals, listed by the Armed Forces as missing in action, are constant reminders to us that the Vietnam war cannot be considered a completed chapter in our history. Neither can we forget that the North Vietnamese and the Vietcong have failed to comply with their obligations under the Paris agreements to assist in obtaining information on our MIA's.

As one who has worked for many years with the wives, parents, and friends of our prisoners and missing men, I know the likelihood of any of them having survived as many as 5, 6 or 7 years is slim. But that is not the entire point. Our forces have data on crash sites, combat engagements, and returned prisoners reports which—if on-the-scene investigations could be made—might very well lead to solid, factual determinations on these men.

But there has been no cooperation from North Vietnam or the Vietcong. In stark violation of the Paris agreements they have refused to allow our Joint Casualty Resolution Center Task Force to make inspections.

Thus the wives, families, and loved ones of these men must either go on not knowing—in emotional and legal limbo—or accept the legally effective determinations by the services, as in Captain Harrold's case.

So I believe that the services in Captain Harrold's honor yesterday serve two basic purposes. First, they pay that last measure of respect and tribute to an American who gave the ultimate measure of devotion to his country. Second, these services also signal his fellow countrymen that we must not and shall not forget others—some 1,300—whose missing-in-action status is being prolonged unnecessarily and inexcusably by Hanoi.

Mr. President, I ask unanimous consent that an editorial from the Leavenworth Times of December 3, 1973, be printed in the RECORD.

And, Mr. President, I would also express to the family of Captain Harrold my personal sympathies and the greatest measure of respect for his valiant sacrifice to the Nation whose uniform he wore.

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

EDITORIAL—WITH DEEPEST SYMPATHY

The long wait for some official finding has ended for the family of Air Force Capt. Patrick K. Harrold. The Air Force has notified his next of kin that his status of missing in action has been terminated by a presumed finding of killed in action as of Nov. 19, 1973.

Captain Harrold was one of two pilots who vanished over Laos during an attack mission against advancing North Vietnamese forces the night of Dec. 5, 1969. The presence of large numbers of Communist forces in the area prevented a ground search. Aerial search revealed no clue to their fate and returned prisoners of war and other sources have provided no information concerning them.

To the discredit of the North Vietnamese who promised on Jan. 23 of this year to assist in accounting for all Americans missing in action, that country and her allies have refused ever since to provide either help or information.

We join the many friends of Captain Harrold's family in offering our deepest sympathy and our prayers. It was not our privilege to have known the deceased personally, but he was an American patriot who made the highest sacrifice for his country and in the name of freedom.

RETIREMENT OF ANDREW E. RUDDOCK

Mr. McGEE. Mr. President, as chairman of the Committee on Post Office and Civil Service, I want to take this opportunity to commend Mr. Andrew E. Ruddock, who will retire effective January 1, 1974, after 34 years of service.

Andy Ruddock plans to step down after a career in which he rose from messenger to head of the Bureau of Retirement, Insurance, and Occupational Health.

As director of that Bureau, Mr. Ruddock was a frequent witness before my committee. Always he was knowledgeable, informative, and helpful. Indeed his thinking and his direction have been major factors in the development of civil service retirement, group life, and group health insurance programs. His efforts have been recognized by advancement through the Commission's ranks to his present position and by his receipt of the Commissioners' Award for Distinguished Service in 1961. I cannot permit Andy Ruddock's impending retirement from his post at the Civil Service Commission to pass without acknowledging the debt of thanks for his truly dedicated service to civil service employees and the public. Also I want to express thanks to him for the high degree of cooperation which the Bureau of Retirement, Insurance, and Occupational Health has always shown to the Committee on Post Office and Civil Service and the Congress as a whole.

Happily, Mr. President, the Bureau will remain in good hands. Thomas A. Tinsley, Deputy Director of the Bureau for the past 4 years, will succeed Mr. Ruddock. With John G. McCarthy as Associate Director for Operations and Solomon Papperman as Associate Director for Policy to assist him, Tom Tinsley will, I am confident, continue the outstanding administrative record of the Bureau.

A USEFUL AND ESSENTIAL UNITED NATIONS

Mr. JAVITS. Mr. President, in addition to the vital role played by the United Nations in the containment and cessation of the recent outbreak of hostilities in the Middle East and the crucial role the United Nations has played in so many other world crisis situations, in recent years there has been an ongoing debate as to whether the United Nations is anything more than a debating society. In my judgment, the U.N. has proved its worth many times over in its essential peace keeping role and in the settlement of such disputes in areas as Cyprus, Korea, the Congo, and other areas. Furthermore, the United Nations has sponsored the Declaration of Human Rights, and numerous international conventions, such as the conventions dealing with genocide, forced labor, and slavery, all of which serve to protect the human rights and civil liberties of all peoples.

In an article published in the September 1973 Free Mind—a publication of the American Humanist Association—Mr. Jesse Gordon has succinctly described why, in his judgment, the United Nations is the useful and essential world organization that it, in fact, is. I recommend this article, "AHA and the United Nations," for the information of all Senators, and I ask unanimous consent that it be printed in the RECORD.

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

AHA AND THE UNITED NATIONS

(By Jesse Gordon)

When delegates from 50 nations met at San Francisco in the spring of 1945, World War II was not yet over, but a determination to establish an international organization to keep the peace was paramount in the minds of the delegates. After two months of intense negotiations, the language of the Charter of the United Nations was agreed upon.

Twenty-eight years have passed since the nations of the world pledged themselves "to save succeeding generations from the scourge of war."

In judging the political performance of the UN and in making the organization the scapegoat for the difficulties of its members, a number of important considerations are often conveniently forgotten. The first of these is the origin of the UN. The UN was not set up by small or medium powers. It was set up by the great powers themselves under the shock and experience of two devastating world wars. Kurt Waldheim, the secretary-general of the UN, states: "The UN was set up by the great powers to avoid in the future the mistakes, weaknesses and misunderstandings which, twice in less than 30 years, had led them into total war. We ignore this historical fact at our peril."

The American Humanist Association is active among the hundreds of non-governmental organizations sponsoring the UN.

The A.H.A. realizes there is an urgent need for greater understanding and support of the United Nations by the millions of citizens who are the constituents of non-governmental organizations. The A.H.A. is represented in the NGO group by Mrs. Henrietta Rogoff with Mr. Jesse Gordon, alternate.

In 1945, the UN came into existence accompanied by the usual flowery speeches. It was seen as "the great hope of humanity," "the hope of the world," and "the last, great hope for peace."

Has the UN fulfilled the "hope" that so many people placed in it as "The last great hope of humanity?" Or, is it just a useless debating society?

First of all, the UN has contended with a world of many revolutions—peaceful and otherwise. The original membership of the UN was 51; it now numbers 135, with the two Germanys recently joining. The UN has many achievements to its credit. It can count among its successes, in the political area, the negotiated settlement of disputes affecting Indonesia, Kashmir, and West New Guinea, among others. The Middle East "question" has, of course, been before the UN almost continuously since 1947. It can be shown that UN presence in the area has prevented many incidents from developing into a wider war.

One might ask the question: What might have happened in the Congo and neighboring states in 1960 if it had not been for the UN peacekeeping force there? Critics point to Soviet intervention in Hungary and Czechoslovakia and the impotence of the UN to act in those situations.

It all comes down to big power politics and political objectives. The U.S. role in Indochina could similarly be examined for violations of the U.N. Charter.

What are the principles of the Charter?

The Charter is based on seven main principles:

(1) The equality and sovereignty of all member states.

(2) Fulfillment "in good faith" by all members of obligations assumed under the Charter.

(3) Peaceful settlements of disputes.

(4) Renunciation of the threat or use of force.

(5) Cooperation with the UN in any action it takes.

(6) Encouragement of non-member states to abide by its principles.

(7) Non-intervention by the UN in the internal affairs of any state.

The Charter also calls for freedom of religion. Many faiths, each with a different conception of God, are represented at the UN. A moment of silence opens and closes each General Assembly session, and there is a Meditation Room at UN headquarters which is open at all times. There is no mention of God in the Charter just as there is none in the U.S. Constitution.

The UN Charter pledges all members to cooperate for the promotion of human rights. Although the authority of the United Nations is limited to debate, study, publicity, and recommendation, it has exerted immeasurable influence on behalf of human rights.

In 1948 the General Assembly adopted the Universal Declaration of Human Rights. Its clauses on the civil, political, economic, and social rights of human beings have influenced the written constitutions of a number of new nations. Its provisions have been incorporated in several important peace treaties.

The General Assembly has also produced draft conventions—treaties—in the human rights field. Some forbid particular offenses such as genocide, forced labor, and slavery. Others set standards in particular areas such as political rights of women. Such conventions must be ratified by the individual UN members in accordance with their constitutional processes. In addition, the Assembly has produced two comprehensive human rights covenants, one on civil and political rights and one on economic and social rights, both ratified by more than 30 governments.

For many years UN experts have offered advisory services to governments on human rights questions. Various UN-sponsored international seminars on human rights have been held. The UN has also served as a central point to which aggrieved groups may complain of specific human rights violations. But there is disagreement as to how the UN should handle such complaints. One proposal would establish a UN office, that of High Commissioner for Human Rights, to receive inquiries and complaints from both governments and private parties and to advise and conciliate at their request. The High Commissioner would have no power to overrule a government, but his views would carry moral authority.

LEGAL SERVICES CORPORATION

Mr. HARTKE. Mr. President, with the enactment of legislation concerning legal representation for those otherwise unable to afford counsel in matters under the law, we are taking several giant steps toward the constitutional command of "equal protection of the laws." Many words have been written and spoken on this subject already and I shall therefore keep mine brief.

I would like to point to the outstanding record of the Legal Services Organization of Indianapolis, Ind., which has succeeded in 1,495 cases which it brought into the courts of this country. I do not here imply that 1,495 cases would have otherwise gone without justice, but I am sure the quality of justice which these cases have brought to the litigants furthers the spirit of respect for the law in Indianapolis.

Mr. President, the bill S. 2686, which we are considering here goes a long way in assuring the people of this country that they will be represented by counsel in the courtrooms. The Committee on Labor and Public Welfare has performed a remarkable task in balancing the independence of counsel with the political ramifications of public finance. Even though certain sections of the bill do not represent clear and concise lines, it is the start of a corporation which will bring justice to all the peoples of America.

The legal profession will gain new respect and identification with all individuals in our society when the poor have representation just the same as the corporations.

Mr. President, I ask unanimous consent that a letter received by me from one of the lawyers in the Indianapolis office, along with supporting information and articles from several newspapers be printed in the RECORD.

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

LEGAL SERVICES ORGANIZATION OF INDIANAPOLIS, INC.,
December 6, 1973.

Senator VANCE HARTKE,
Old Senate Office Building,
Washington, D.C.

Attention: Steven Cloud.

DEAR SENATOR HARTKE: Enclosed is a summary of the structure and activities of the

Legal Services Organization of Indianapolis. I also attach some newspaper articles which may be of help to you as well.

Our file containing letters of endorsement from Indianapolis groups was destroyed in the recent Indianapolis fire, which completely destroyed LSO's downtown office in the Thomas Building. We are attempting to reconstruct the file by obtaining the originals of the letters which were sent to the Mayor and to City-Council members last year and if we are successful, I will send them on to you without delay.

Please get in touch with me if I can be of any further assistance.

Yours truly,

JODY RAPHAEL,
Attorney-at-Law, Northeast Office.

DECEMBER 6, 1973.

The Legal Services Organization of Indianapolis is a non-profit corporation organized under the laws of the state of Indiana, which since 1966 offers free legal services to poor persons living in Marion County. It receives its funds from the Office of Economic Opportunity and currently employs 14 attorneys who work in three offices in Indianapolis.

In a period beginning March 1, 1972 and ending February 28, 1973, LSO of Indianapolis handled 6,506 cases, an average of 337 cases per staff attorney. The average cost per case was $81.00. Of these cases, 1739 were family problems, including divorces, guardianships, support, adoptions, custody, separation and paternity actions; 1769 were juvenile court cases; 722 consumer and employment problems; 446 welfare and social security matters; and 504 housing problems.

The LSO record in Indianapolis demonstrates that the program is allowing poor persons access to attorneys which they did not have before the inception of the program. In the last year, 2214 new clients stated during the initial interview with an LSO attorney that they were seeing a lawyer for the first time in their lives. 1047 new cases in the one year period were referred by private attorneys to LSO. Conversely, LSO referred 992 ineligible cases to the Indianapolis Bar Association's Lawyers' Referral Service, which represents 15 percent of all those people who contacted the service during this period.

THE POOR'S LAWYERS—GROUP SCORES WELL IN INDIANAPOLIS

(By Fred Sievers)

INDIANAPOLIS.—An organization dedicated to protecting the legal rights of the poor has achieved such success it has prompted a storm of controversy in this eleventh largest city in the nation.

The furor is over the role of Legal Services Organization of Indianapolis (LSO), a group of lawyers largely fresh out of law school with an impressive record of courtroom victories for the poor.

LSO's successes against the status quo in controversial areas of school desegregation, student discipline and welfare rights have provoked the ire of city fathers and raised threats of loss of local funding for LSO next year.

Organized seven years ago and financed largely by the federal Office of Economic Opportunity, LSO lawyers have gone into federal and state courts to score significant victories not only for the poor in Indianapolis but in the rest of the state as well.

It has been blasted by some of the city's editorial writers, judges, school and municipal officials, and praised by the Indianapolis League of Women Voters, Urban League, and Model Cities Board.

Critics have accused LSO of meddling, of concentrating on sensational class actions involving large groups of the poor rather than on the needs of poor individuals and of generally being a trouble-maker.

Norman P. Metzger, the 34-year-old director of the agency's 18 lawyers, all except one younger than Metzger, says it is the problems of the poor, and not the acts of LSO, which have brought court decisions of which critics complain.

What's more, he maintains, LSO is helping many of the once skeptical poor to have a new respect for the orderly processes of the law.

He cites the efforts of a group of Indianapolis high school students to sell and distribute their own newspaper on school property as a prime example.

The newspaper, published by students without aid or support of the school, brought protests from parents, school officials, and the school board, partly because of the newspapers' use of a four-letter word.

On orders of the school board the students were barred from distributing the newspaper on school premises. Six students appealed to LSO for help.

"The kids came to us and asked if we would represent them," said Metzger in an interview. "Here was a group of students who weren't picketing, demonstrating or doing similar cop-outs but who wanted to put the system to a test to learn whether it protected them, too."

A major issue was whether the school, acting in place of parents in matters dealing with educational discipline, could exercise such authority despite constitutional rights of free speech and press.

A federal district court, upholding the right of the students to distribute their newspaper on school property, ruled that children have rights independent of those of parents.

To Metzger, the students obtained a lesson in democracy they could never have gotten in school.

They learned that the American system of justice serves regardless of age.

The school board, which has appealed the decision to the federal Circuit Court of Appeals in Chicago, apparently felt otherwise.

In another victory against the school board that added fuel to the fire of critics, LSO lawyers, acting on behalf of several welfare parents, won a federal court ruling that the board had violated the court's order against assigning so many black students to a school as to tend to cause white parents to withdraw their children and move away.

One of the most far-reaching federal court victories won by LSO lawyers was a suit brought by a welfare mother protesting state welfare rules against paying aid for dependent children to women who had not been separated from their husbands for six months.

The court not only struck down the six-month waiting period as unreasonable but held, in effect, that those denied aid for that reason could be eligible for assistance retroactive to 1970.

Some welfare officials have claimed the retroactive provision could cost the state millions of dollars. The decision is being appealed by the state's attorney general.

In still another decision of major consequence, LSO lawyers won for an Indianapolis township poor relief recipient a federal appellate court ruling that he was entitled to a pre-hearing before his aid was discontinued by the township trustee.

LSO lost in federal district court and appealed to the Seventh Circuit Court of Appeals. The suit was brought against the Center Township trustee.

Indiana Attorney General Theodore Sendak, protesting the case could be a landmark in federal-state relations, sought but was denied permission to intervene in the case.

It was LSO attorneys who won for a group of welfare women a public hearing, as required by law, on a proposed 25 per cent reduction by the state welfare board in the standards of needs governing welfare payments.

While LSO has won major victories for the poor, it has lost some battles. It lost in an effort to invalidate the state's ejectment statute, which it claimed gave landlords an economic advantage over needy tenants. Its attack on the state's mechanic lien law, which permits a garage to retain possession of a car when the owner is unable to pay repair charges, was unsuccessful.

But in both cases, the defeats were for technical or procedural reasons, not on the merits of the issues.

The city council has withheld a decision on whether it will continue to provide LSO with special federal funds, which amounted to $172,000 this year, or will contract with another organization for legal services for the poor. LSO also receives $318,000 in OEO funds and is expected to continue receiving such funds.

WE NEED THE LEGAL SERVICES ORGANIZATION

We believe there should be one standard of justice for all people in this country—whether they can afford the services of an attorney or not. And we won't believe that single standard of justice can become a reality unless everyone, including the poor, has equal access to legal assistance.

In most criminal proceedings today, if a defendant can't afford an attorney, the court must appoint one and see that he's paid.

In most non-criminal situations, however, the poor in this community must depend on the Indianapolis Legal Aid Society and the Legal Services Organization of Indianapolis—better known as L-S-O.

Legal Aid gets its operating funds from the United Fund and other nongovernmental sources. L-S-O relies entirely on *public* funds.

On Monday evening, the Public Safety Committee of the City-County Council will consider an L-S-O application for slightly more than 200-thousand dollars in federal Community Service Program funds—about a third of the money needed to maintain L-S-O operations for the coming year.

We strongly favor the continued funding of L-S-O. And we urge the committee to recommend approval of this request by the full City-County Council.

Legal Aid, with a total of *four* attorneys, and apparently with no desire to accept public funds, can hardly be expected to serve all the legal needs of the poor in this community. So L-S-O, with 22 attorneys, is needed.

And, according to an outside evaluation of the agency, made last month, L-S-O in Indianapolis has "a very effective program with a director who is doing a very good job generally and with a dedicated, highly intelligent staff of attorneys."

The agency is not above criticism. And some *was* contained in the recent evaluation report. But most of L-S-O's critics *seem to* be persons who oppose the whole concept of a federally funded legal service for the poor.

We see no viable alternative to such a service. And we believe Indianapolis is *fortunate* to have an L-S-O that is providing the poor with legal service rated "good to excellent" by knowledgeable persons who've taken the time to examine this service closely.

LSO MERITS SUPPORT OF THE COMMUNITY

To the EDITOR: Sometime ago when the cities were burning, people were being looted all one could hear was, "Why don't these people use the system?" Maybe one should ask the question now "Have the same people changed their philosophy and now wonder why some do use the system?"

It may not have materialized to the degree many feel it should have and maybe it has materialized to a much greater degree than many would like. In any event, I feel the

purpose of LSO is to provide greater access of the system to the "have-nots" and I'd like to make it clear that I am encouraged by the complaints coming from the "haves" rather than the "have-nots" and I am sure that there are those who might not share these viewpoints.

What about the question of who should be sued? This reminds me of a committee in the Legislature that covers all segments of the state investigating the question of taxes. They can all agree there should be an increase but the other party should be the one to pay it. If we truly intend for the poor to have adequate legal service then we must agree that the one to be sued has no priorities in the eyes of the attorney who is desperately trying to obtain a settlement for his client.

The mayor or the Council might agree that it is alright to sue everyone else except the state. If I understand the President's remarks then I can agree with him that there ought not to be any restrictions on who the poor people can sue through LSO.

Just for a minute, let's agree that there are some restrictions then I ask you, "What kind of a committee structure should be set up to decide?" Should it be the editorial writers, should it be the John Birch Society, should it be the KKK, should it be the Black Panthers, should it be labor unions, should it be corporations, should it be state government, city government or federal government? I think it should stand as it is now, the LSO or LAS for the indigent and the private attorneys for the people who are lucky enough to make enough money to pay their own way. Naturally, I would be willing for the Board of Directors of LSO to hand down the guidelines on this matter. I do want to make it clear that the situation as it now stands, in my opinion is a drastic attempt to infringe upon the authority of the Board of Directors of LSO.

It seems that many people have talked about letting the community people decide on their activities and they are fully in favor of LSO. I truly believe this whole episode will adversely affect the representation of the poor. It is regrettable, all the accusations and the false impressions that have been made against this group. It is ironic that $191,104 was earmarked for the dog pound last year and $363,123 was allocated for legal representation for our city for this period—all of which is accepted without question—while $202,000 for legal representation for the poor in our town causes an uproar.

I'd like to address myself just for a minute as to the class action suits. I want to make it clear that I'm not satisfied with LSO in this matter. In this city, if a mother or father's son is picked up, he has to write a letter to the jail and the authorities will write back when the parents may visit. If they happen to be from a well-to-do family I'm sure this rule would be bent with mere phone calls. In any event, at least the bondsman would be available for his release.

In many cases the poor, and not even what you would consider the poor, are blocked from being released inasmuch as communications with the individual jailed are restricted because they don't have access to the credit union funds he has available or checking account that he has available that could be used for his release. I don't pose as an attorney but I would certainly welcome LSO, LAS or any other attorney that might want to try this on for size. In this state, we have handicapped children reaching the age of 18 or 19 before they receive any education. There were cases in other states that did induce this state to pass legislation that would provide this education to those as of July of this year. As it now stands, most people acquainted with the problem feel the passing of the law satisfied the decision in the other states and that this state will not allocate funds to satisfy this great need.

When I think of the people who have the money for legal service and object to the poor having the same I'm reminded of the minister who told the story of the little boy that was in love with sunshine and decided to selfishly box himself up some of this sunshine and when he nailed on the last board, he found he had none. It may very well be that unless we respect other peoples' rights to have legal representation we may very well find ourselves in the little boy's position.

BUFORD C. HOLT,
Director, Greater Marion County United Auto Workers Community Action Program.

Mr. HARTKE. Mr. President, last year, LSO was involved in 2,402 litigated matters. In those which went into litigation, LSO succeeded in 1,495 of the cases, which is a win record of 73 percent. This includes 13 higher court appeals including two cases in the U.S. Supreme Court.

Two attorneys and 10 part-time law students, supported by a grant from the Indiana Criminal Justice Planning Agency and the community services program of the Indianapolis City Council, represent juveniles at the Marion County Juvenile Court. A third attorney in the project is presently supported by the Reginald Heber Smith community lawyer fellowship program of OEO.

LSO publishes 5,000 copies of a monthly preventive law newsletter, "You and the Law," and prepares preventive law columns for over 10 neighborhood and community newspapers in Indianapolis. It writes brochures on such areas as landlord-tenant and consumer law and speaks to large numbers of community groups. Its monthly newsletter, "The Advocate," is mailed to some 2,500 members of the bar and the public. It informs the public about the activities of LSO and contains articles on legal developments in Indiana and Marion County which affect poor persons. The purpose of "The Advocate" is the education of the public about the legal problems and legal rights of poor persons.

Last year, LSO served 30 eligible community groups, dealing with the problems the groups were solving which would improve the quality of life in various Indianapolis neighborhoods.

LSO's relatively few class action suits this year established important rights for poor persons in Marion County. LSO won for an incapacitated Indianapolis township poor relief recipient the right to be informed of the reasons for his termination from poor relief and the opportunity for a hearing before termination of assistance.

LSO brought another case on behalf of a welfare mother and her children who were denied welfare because she had not been separated from her husband for 6 months. In striking down this Indiana regulation, the court ruled that Congress had not sanctioned a 6-month waiting period for AFDC eligibility. In a recent case, an LSO attorney is attempting to win for a tenant the important right not to be retaliated against by her landlord because she took various actions aimed at bringing the home up to minimum housing code standards.

LSO's board of directors, reflects the wide-ranging interest in LSO on the part of city government and the Bar in Indianapolis. Four members of the 15-member board are appointed by the City-County Council of the Consolidated City of Indianapolis, four by the Indianapolis Bar Association, one by the Marion County Bar Association, one by the mayor of Indianapolis, and five by the client community by a democratic selection process. These five represent the Indianapolis Branch of the National Association for the Advancement of Colored People, the Indianapolis branch of the Urban League, the Indianapolis Southern Christian Leadership Conference, the Indianapolis Welfare Rights Organization, and the Marion County Central Labor Council of the AFL–CIO.

LSO enjoys broad-based public support in the Indianapolis community. It has an advisory council which attends board meetings and is otherwise active in LSO operations. Members of that council include representatives from the Indianapolis Chamber of Commerce, United Auto Workers of Marion County. Indianapolis League of Women Voters, Community Services Council of Greater Indianapolis, the Indianapolis Church Federation. Hispano-American Society, the Near-East Side Community Organization, the Model Cities Board—City Demonstration Agency Board—the West Indianapolis Neighborhood Congress, and the United Southside Organization.

IMPEACHMENT

Mr. McCLURE. Mr. President, I have said it before, and I will say it again: We do not get a true understanding how the American people feel on major issues by listening to congressional rhetoric and reading Washington papers.

As far as the President's problems with Watergate are concerned, I note that the House Judiciary Committee is busy setting up an impeachment study and everything I read in the press indicates a somewhat foregone conclusion that Mr. Nixon will be out of office shortly.

I now call attention to a poll conducted among Boise State College students November 27. We are led to believe that of all groups, the students of this Nation are, indeed, in the forefront of the impeachment effort. Yet, at Boise State the sentiment is in the other direction—and quite conclusively so. I ask unanimous consent that the results of the poll be printed in the RECORD.

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

POLL RESULTS

[Answers in percent]

I. Should the President be impeached?

Yes	11.4
No	62.8
Unsure	25.8

II. Should the President resign?

Yes	25.7
No	60.0
Unsure	14.3

III. Do you approve or disapprove the manner in which the President is handling his job?

Approve	54.2
Disapprove	31.4
Unsure	14.4

GASOLINE RATIONING

Mr. HASKELL. Mr. President, last month the Senate narrowly defeated an amendment which I proposed to the Energy Emergency Act directing the President to implement a gasoline rationing program by January 15, 1974. Since that time, appeals for immediate rationing have become common and increasingly urgent.

The administration steadfastly refuses to admit there is no reasonable alternative to gas rationing, stating it must be used only as a last resort. And even as the administration formally announces there will be no decision until at least March on whether there will even be gas rationing, unidentified administration spokesmen are quoted almost daily in the press as admitting rationing is inevitable.

As Senator JACKSON has repeatedly pointed out, each day rationing is delayed costs us 1 million barrels of oil. Mr. President, for a Nation which will fall critically short of the 17 million barrels of oil it uses daily, the waste of 1 million barrels daily can only be called reckless.

Why does the administration delay imposing rationing? We can only hope that it is not seriously considering instead a heavy tax of 30 to 50 cents per gallon as we hear rumored. No doubt such a tax would achieve the desired drop in consumption, but it will do it solely at the expense of the lower and middle-income groups in this country. Others would simply buy their way out.

Is rationing delayed because the administration fears the political consequences of imposing it? Mr. President, if that is the reason, I am afraid someone is seriously misreading the feelings of the American people.

Of the Coloradans who have written to me about the energy crisis recently, over 90 percent, favor gas rationing as opposed to a heavy gasoline tax.

I will not suggest to you, Mr. President, that Colorado residents are anxious to live with gas rationing. But when the clear need exists, as it does now, to severely limit consumption, most far prefer the rationing approach.

As I see it, there are two deadly political dangers in this energy crisis. One lies in putting a vital commodity—fuel for energy—up for bids. The other lies in giving hollow reassurances, thus delaying the hard choice until the pumps are dry and the question is moot.

The American people have the good sense to know when sacrifice is called for. They have the strength and the will to sacrifice; they ask only that the sacrifice be fair. I urge the administration to recognize this and begin implementing a rationing program without further delay.

ENERGY CONSERVATION

Mr. DOMENICI. Mr. President, we are all well aware that many sacrifices are necessitated by our current energy shortage. One of the most obvious of these sacrifices is the response of many communities which are refraining from putting up their usual Christmas lights in their downtown areas. This action, combined with other necessary measures currently being taken, can cause some dampening of the Christmas spirit, especially in small communities which are, as a rule, not so well lighted as larger cities.

These small communities abound in rural America, a section of the country which has been most responsive to our call for energy conservation. The dilemma of these communities is clear—how can they do their patriotic duty by conserving energy without depriving their citizens of the uplift in spirits which cheerily lighted downtown areas have historically provided.

Mr. President, some of the folks in my home State of New Mexico have found the answer to this problem and I ask unanimous consent that a letter which I received from C. Richard Cothrun, manager, Ruidoso Valley Chamber of Commerce, be printed in the RECORD.

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

RUIDOSO VALLEY CHAMBER OF COMMERCE,
Ruidoso, N. Mex., December 5, 1973.

Senator PETE V. DOMENICI,
U.S. Senator,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR DOMENICI: Since 1961, the Village of Ruidoso has not had downtown Christmas lights. This year new ones were purchased and preparations made to put them up. However, in view of the energy crisis we were reluctant to turn them on and use extra electricity.

Then, we came up with a solution—A community wide appeal was made to our citizens to volunteer to turn off their lights and use candlelight for only one night during the three weeks period our downtown lights will burn, thereby offsetting the additional energy to be consumed.

The response was heartwarming, although we only needed 120 families (according to figures computed by the electric company) several hundred volunteered. So, we will not only not use any additional energy, but will actually conserve it. Many of our local merchants are offering discounts on candles to help those citizens participating.

We just wanted you to know what people working together can do. We didn't feel with all the worry and gloom in the world today, that this was the time to turn off the Christmas lights. All of us will feel a great deal of joy when the lights turn on for everyone to enjoy because we turned ours off for one night.

Blessings during the Christmas season,
C. RICHARD COTHRUN,
Manager.

P.S.—Paul Harvey gave us national exposure on this project on his 12:30 radio broadcast today.

CLARIFYING THE RECORD

Mr. McGOVERN. Mr. President, one of the most courageous young men I came to know during the recent campaign for the Presidency was Mr. Rob Risner, the eldest son of Col. Robinson Risner, an American pilot who was held as a prisoner of the North Vietnamese for a considerable period of time. Mr. Risner endorsed my candidacy in Oklahoma City in the summer of 1972 and remained a firm supporter throughout the campaign. On April 23, 1973, he wrote a letter to Time magazine correcting an erroneous story in Time, indicating that he had later become a supporter of Mr. Nixon.

I ask unanimous consent that Mr. Risner's letter in the April 23 issue of Time be printed at this point in the RECORD.

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

[From Time magazine, Apr. 23, 1973]

NONSUPPORT

Sir: In your story on the P.O.W.'s [March 19] you said that as a newly returned prisoner of war, Colonel Robinson Risner had even talked all of his children into supporting President Nixon, although they all had supported Senator McGovern in the presidential campaign. I am Colonel Risner's oldest son, and I do not now support, nor have ever supported President Nixon.

When Senator McGovern campaigned in Oklahoma City last summer. I explained in his presence that I believed President Nixon had failed at any attempt to end the war and free the prisoners; and that I believed Senator McGovern was sincere in his efforts to end the war and bring the prisoners home.

ROB RISNER.
HUNTSVILLE, TEX.

THE MENOMINEE RESTORATION ACT

Mr. NELSON. Mr. President, last Friday, the Senate passed H.R. 10717, the Menominee Restoration Act. This legislation restores to the Menominee Indian Tribe, of Wisconsin, the full Federal recognition that other American Indian tribes enjoy. Along with that recognition comes the provision of needed Federal services in health, welfare, education, roads, employment, and economic enhancement.

The passage of the Menominee Restoration Act is truly an historic occasion. In 1953, the Congress approved House Concurrent Resolution 108, which expressed the sense of the Congress that there should be a termination, as rapidly as possible, of all special Federal services for Indian tribes, and for a transfer of Indian property to the Indian owners freed of any Federal trust.

Pursuant to this resolution, the Congress passed in 1954 the act terminating the Menominee Tribe of Wisconsin. The legislation was essentially forced on the Menominee, for attached to the bill was a provision which provided for the distribution of approximately $10 million in funds which the tribe had on deposit in the U.S. Treasury. If the tribe wanted to get the $10 million, it would have to terminate Federal assistance. Faced with this threat and with a feeling that opposition would be futile, the tribe gave its consent.

The result of termination of services to the Menominee was predictable. When the procedures involved in termination were completed in 1961, I traveled to Washington to oppose the ending of Federal assistance, as Governor of Wisconsin, on the grounds that not only was termination unworkable, but it would cause

severe economic depression on the reservation. Termination was completed, and economic disaster resulted.

Mr. President, a report of the Bureau of Indian Affairs to the House Committee on Appropriations and the House Interior Committee reveal the vast evidence of the failure of termination to make the Menominee Indian reservation self-sufficient.

That report, submitted on April 6, reported that—

Almost without exception, the economic and social indicators for the Menominees are considerably lower than those of any other population segment in the State of Wisconsin.

Employment—Only 46% of Menominee County Indians were reported in the labor force, compared to 59% for the State of Wisconsin. The low figure is caused by the fact that almost a fourth of those in the labor force were reported as disabled or handicapped. Of those in the labor force, 26% were unemployed, as opposed to 5% for the state.

Income—The average per capita income for Menominee County Indians was $1,028 compared to Wisconsin's $3,158 and the average family income for Menominee County Indians was one-half that of the State's . . . Almost 40% of the Menominee County Indian families had income below the poverty level.

Taxes—In the 60's, the total taxes paid by the Menominees doubled. Even with this steady rise, the revenues obtained were not sufficient to meet the needs of the Menominees.

Education—The median grade completed by persons 25 years of age and older was 9.2 for the Menominee Indian, but 11.9 for the people of Wisconsin. More than 75% of the former have dropped out of school before graduating.

Health—There are neither hospital facilities nor practicing physicians in Menominee County. Both services were available prior to termination.

Housing—Half of Indian occupied homes in Menominee County have complete plumbing and central heating . . . somewhat more than a third have telephones. All of these facilities are available to more than 90% of homes elsewhere in the State. The median value of Menominee County homes was a little over $5,100, which is less than a third of the State's average.

The Bureau of Indian Affairs report brings forth the following conclusion, after an exhaustive study of the economic condition of the tribe:

Our study of the situation has led us to the same conclusion that has been accepted by most Menominee, that is, the return of the Menominee tribe to the trust relationship with the Federal government is the only solution to this almost hopeless situation.

The expressions of support that have been offered for restoration of the Menominee Tribe have been greatly appreciated by those of us working for the passage of this legislation.

Melvin Laird, the President's domestic adviser, and formerly a Congressman who represented the Menominee, on September 5 stated that—

The proven reliability and willingness of these people to accept the responsibilities of self-government proves that restoration of the Menominee Indian tribe is not only advisable but well deserved.

The chairman of both the House and Senate Interior Committees, Senator HENRY JACKSON and Congressman JAMES HALEY, offered their support for the Menominee Restoration Act. Senator JACKSON, in a speech before the National Congress of American Indians said:

No other tribe has met with more disastrous consequences than the Menominee tribe of Wisconsin. The Menominee have a valid claim for corrective action. Their claim cannot, in equity and good conscience, be ignored.

The support of the Secretary of the Interior Rogers C. B. Morton, Wisconsin Gov. Patrick J. Lucey, and a bipartisan group of Congressmen and Senators, have attested to the widespread public support for restoration.

And perhaps most important, the Menominee people themselves have worked long and hard for this legislation, and for them, the passage of the Restoration Act is a very personal victory. Hundreds of Menominee traveled to Washington to appear at the Senate and House hearings. Miss Ada Deer, a full-time Menominee representative, spent almost 2 years working to bring the story of the Menominee Indian Tribe to the attention of the Congress. When the legislation at last appeared to reach the hearing stage, they did not stop. The Menominee Indians kept working, and helped signficantly in understanding the importance of this legislation.

Mr. President, the pasage of the Menominee Restoration Act is only the beginning of important efforts to reverse this Nation's Indian affairs policy. The efforts in the future will take much time, effort, and patience. But the lesson to be learned from the Menominee Restoration Act is that, with cooperation and understanding, progress can be made. This Nation can reaffirm its traditional support for the rights and privileges of the American Indians.

I ask unanimous consent that the bill as passed by the Senate, and a portion of the Senate Interior Committee report on H.R. 10717, be printed in the RECORD.

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

H.R. 10717

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 "Menominee Restoration Act".

SEC. 2. For the purposes of this Act—

(1) The term "tribe" means the Menominee Indian Tribe of Wisconsin.

(2) The term "Secretary" means the Secretary of the Interior.

(3) The term "Menominee Restoration Committee" means that committee of nine Menominee Indians who shall be elected pursuant to subsections 4(a) and 4(b) of this Act.

SEC. 3. (a) Notwithstanding the provisions of the Act of June 17, 1954 (68 Stat. 250; 25 U.S.C. 891–902), as amended, or any other law, Federal recognition is hereby extended to the Menominee Indian Tribe of Wisconsin and the provisions of the Act of June 18, 1934 (48 Stat 984; 25 U.S.C. 461 et seq.), as amended, are made applicable to it.

(b) The Act of June 17, 1954 (68 Stat 250; 25 U.S.C. 891–902), as amended, is hereby repealed and there are hereby reinstated all rights and privileges of the tribe or its members under Federal treaty, statute or otherwise which may have been diminished or lost pursuant to such Act.

(c) Nothing contained in this Act shall diminish any rights or privileges enjoyed by the tribe or its members now or prior to June 17, 1954, under Federal treaty, statute, or otherwise, which are not inconsistent with the provisions of this Act.

(d) Except as specifically provided in this Act, nothing contained in this Act shall alter any property rights or obligations, any contractual rights or obligations, including existing fishing rights, or any obligations for taxes already levied.

(e) In providing to the tribe such services to which it may be entitled upon its recognition pursuant to subsection (a) of this section, the Secretary of the Interior and the Secretary of Health, Education, and Welfare, as appropriate, are authorized from funds appropriated pursuant to the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13), the Act of August 5, 1954 (68 Stat. 674), as amended, or any other Act authorizing appropriations for the administration of Indian affairs, upon the request of the tribe and subject to such terms and conditions as may be mutually agreed to, to make grants and contract to make grants which will accomplish the general purposes for which the funds were appropriated. The Menominee Restoration Committee shall have full authority and capacity to be a party to receive such grants to make such contracts, and to bind the tribal governing body as the successor in interest to the Menominee Restoration Committee: *Provided, however,* That the Menominee Restoration Committee shall have no authority to bind the tribe for a period of more than six months after the date on which the tribal governing body takes office.

SEC. 4. (a) Within fifteen days after the enactment of this Act, the Secretary shall announce the date of a general council meeting of the tribe to nominate the candidates for election to the Menominee Restoration Committee. Such general council meeting shall be held within thirty days of the date of enactment of this Act. Within forty-five days of the general council meeting provided for herein, the Secretary shall hold an election by secret ballot, absentee balloting to be permitted, to elect the membership of the Menominee Restoration Committee from among the nominees submitted to him from the general council meeting provided for herein. The ballots shall provide for write-in votes. The Secretary shall approve the Menominee Restoration Committee elected pursuant to this section if he is satisfied that the requirements of this section relating to the nominating and election process have been met. The Menominee Restoration Committee shall represent the Menominee people in the implementation of this Act and shall have no powers other than those given to it in accordance with this Act. The Menominee Restoration Committee shall have no power or authority under this Act after the time which the duly-elected tribal governing body takes office: *Provided, however,* That this provision shall in no way invalidate or affect grants or contracts made pursuant to the provisions of subsection 3(e) of this Act.

(b) In the absence of a completed tribal roll prepared pursuant to subsection (c) hereof and solely for the purposes of the general council meeting and the election provided for in subsection (a) hereof, all living persons on the final roll of the tribe published under section 3 of the Act of June 17, 1954 (25 U.S.C. 893), and all descendants, who are at least eighteen years of age and who possess at least one-quarter degree of Menominee Indian blood, of persons on such roll shall be entitled to attend, participate, and vote at such general council meeting and such election. Verification of descendancy, age, and blood quantum shall be made upon oath before the Secretary or his authorized representative and his determination thereon shall be conclusive and final. The Secretary shall assure that adequate notice of such meeting and election shall be provided eligible voters.

(c) The membership of the tribe which was closed as of June 17, 1954, is hereby declared open. The Secretary, under contract with the Menominee Restoration Committee, shall proceed to make current the roll in accordance with the terms of this Act. The names of all enrollees who are deceased as of the date of enactment of this Act shall be stricken. The names of any descendants of an enrollee shall be added to the roll provided such descendant possesses at least one-quarter degree Menominee Indian blood. Upon installation of elected constitutional officers of the tribe, the Secretary and the Menominee Restoration Committee shall deliver their records, files, and any other material relating to enrollment matters to the tribal governing body. All further work in bringing and maintaining current the tribal roll shall be performed in such manner as may be prescribed in accordance with the tribal governing documents. Until responsibility for the tribal roll is assumed by the tribal governing body, appeals from the omission or inclusion of any name upon the tribal roll shall lie with the Secretary and his determination thereon shall be final. The Secretary shall make the final determination of each such appeal within ninety days after an appeal is initiated.

SEC. 5. (a) Upon request from the Menominee Restoration Committeee, the Secretary shall conduct an election by secret ballot, pursuant to the provisions of the Act of June 18, 1934, as amended, for the purpose of determining the tribe's constitution and bylaws. The election shall be held within sixty days after final certification of the tribal roll.

(b) The Menominee Restoration Committee shall distribute to all enrolled persons who are entitled to vote in the election, at least thirty days before the election, a copy of the constitution and bylaws as drafted by the Menominee Restoration Committee which will be presented at the election, along with a brief impartial description of the constitution and bylaws. The Menominee Restoration Committee shall freely consult with persons entitled to vote in the election concerning the text and description of the constitution and bylaws. Such consultation shall not be carried on within fifty feet of the polling places on the date of the election.

(c) Within one hundred and twenty days after the tribe adopts a constitution and bylaws, the Menominee Restoration Committee shall conduct an election by secret ballot for the purpose of determining the individuals who will serve as tribal officials as provided in the tribal constitution and bylaws. For the purpose of this initial election and notwithstanding any provision in the tribal constitution and bylaws to the contrary, absentee balloting shall be permitted and all tribal members who are eighteen years of age or over shall be entitled to vote in the election. All further elections of tribal officers shall be as provided in the tribal constitution and bylaws and ordinances adopted thereunder.

(d) In any election held pursuant to this section, the vote of a majority of those actually voting shall be necessary and sufficient to effectuate the adoption of a tribal constitution and bylaws and the initial election of the tribe's governing body, so long as in each such election, the total vote cast is at least 30 per centum of those entitled to vote.

(e) The time periods set forth in subsections 4(c), 5(a), and 5(c) may be changed by the written agreement of the Secretary and the Menominee Restoration Committee.

SEC. 6. (a) The Secretary shall negotiate with the elected members of the Menominee Common Stock and Voting Trust and the Board of Directors of Menominee Enterprises, Incorporated, or their authorized representatives, to develop a plan for the assumption of the assets of the corporation. The Secretary shall submit such plan to the Congress within one year from the date of the enactment of this Act.

(b) If neither House of Congress shall have passed a resolution of disapproval of the plan within sixty days of the date the plan is submitted to Congress, the Secretary shall, subject to the terms and conditions of the plan negotiated pursuant to subsection (a) of this section, accept the assets (excluding any real property not located in or adjacent to the territory, constituting, on the effective date of this Act, the county of Menominee, Wisconsin) of Menominee Enterprises, Incorporated, but only if transferred to him by the Board of Directors of Menominee Enterprises, Incorporated, subject to the approval of the shareholders as required by the laws of Wisconsin. Such assets shall be subject to all valid existing rights, including but not limited to, liens, outstanding taxes (local, State, and Federal), mortgages, outstanding corporate indebtedness of all types, and any other obligation. The land and other assets transferred to the Secretary pursuant to this subsection shall be subject to foreclosure or sale pursuant to the terms of any valid existing obligation in accordance with the laws of the State of Wisconsin. Subject to the conditions imposed by this section, the land transferred shall be taken in the name of the United States in trust for the tribe and shall be their reservation. The transfer of assets authorized by this section shall be exempt from all local State, and Federal taxation. All assets transferred under this section shall, as of the date of transfer, be exempt from all local, State, and Federal taxation.

(c) The Secretary shall accept the real property (excluding any real property not located in or adjacent to the territory constituting, on the effective date of this Act, the county of Menominee, Wisconsin) of members of the Menominee Tribe, but only if transferred to him by the Menominee owner or owners. Such property shall be subject to all valid existing rights including, but not limited to, liens, outstanding taxes (local, State, and Federal), mortgages, and any other obligations. The land transferred to the Secretary pursuant to this subsection shall be subject to foreclosure or sale pursuant to the terms of any valid existing obligation in accordance with the laws of the State of Wisconsin. Subject to the conditions imposed by this subsection, the land transferred shall be taken in the name of the United States in trust for the Menominee Tribe of Wisconsin and shall be part of their reservation. The transfer of assets authorized by this section shall be exempt from all local, State, and Federal taxation. All assets transferred under this section shall, as of the date of transfer, be exempt from all local, State, and Federal taxation.

(d) The Secretary and the Menominee Restoration Committee shall consult with appropriate State and local government officials to assure that the provision of necessary governmental services is not impaired as a result of the transfer of assets provided for in this section.

(e) For the purpose of implementing subsection (d), the State of Wisconsin may establish such local government bodies, political subdivisions, and service arrangements as will best provide the State or local government services required by the people in the territory constituting, on the effective date of this Act, the county of Menominee.

SEC. 7. The Secretary is hereby authorized to make such rules and regulations as are necessary to carry out the provisions of this Act.

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

Amend the title so as to read: "An Act to repeal the Act terminating Federal supervision over the property and members of the Menominee Indian Tribe of Wisconsin; to reinstitute the Menominee Indian Tribe of Wisconsin as a federally recognized sovereign Indian tribe; and to restore to the Menominee Tribe of Wisconsin those Federal services furnished to American Indians because of their status as American Indians; and for other purposes."

SECTION-BY-SECTION ANALYSIS

Second 1 provides that the act may be cited as the Menominee Restoration Act.

Section 2 defines the terms "tribe", "Secretary", and "Menominee Restoration Committee."

Section 3 extends Federal recognition to the Menominee Indian Tribe of Wisconsin under the provisions of the Indian Reorganization Act of 1934; repeals the act of June 17, 1954, which terminated Federal recognition of the tribe and reinstates the tribe to all rights and privileges which were lost thereby, provides for protection of existing rights and obligations; and provides that any services which the tribe might become eligible for from the Bureau of Indian Affairs and the Indian Health Service may be provided to them by these agencies through a grant process.

This section effectively restores the tribe to the legal status it occupied prior to the Termination Act, and protects and preserves any valid existing right or obligation which may have vested in any person, Indian or non-Indian, during the years between termination and restoration.

Some concern was expressed that section 3(b) reinstating the tribe and its members to all rights and privileges under any Federal treaty, statute or otherwise which might have been lost or diminished by the termination act, might be interpreted to be retroactive to 1954, thus giving rise to claims against the United States. The committee wishes to make clear that the subsection has no retroactive effect and is not intended to be the basis for any claim against the United States.

Section 3(d) provides for the protection of existing property and contractual rights and obligations, "including existing fishing rights." The committee recognizes that there is current litigation pending in the Wisconsin Supreme Court regarding fishing and hunting rights. It is made clear that this provision is not a congressional determination of what those rights, if any, may be.

Section 4 provides for the re-establishment of tribal self-government by creating mechanisms and procedures for opening and bringing current the tribal membership roll which was closed and made final by the Termination Act; the adoption by democratic process of a tribal constitution and bylaws for the government of the tribes; and the initial election of tribal officers under such constitution and bylaws. The section provides for the nomination and election of a nine-member Menominee Restoration Committee which will represent the Menominee Indians during the process of re-establishing tribal government, including preparation of the reopened roll. The Menominee Restoration Committee, under the general supervision and direction of the Secretary of the Interior, would prepare the roll, draft a proposed constitution and bylaws, hold and supervise an election to adopt the proposed constitution and bylaws, and hold and supervise an election of the initial officers of the tribe under the constitution and bylaws. All of these actions will be subject to the provisions of the Indian Reorganization Act of June 18, 1934.

Section 4(a) and (b) provide for the nomination and election of the Restoration Committee, which will take place prior to the completion of the new tribal roll. In order to insure that as many as possible of the

persons who are eventually found to be eligible for enrollment have an opportunity to participate in this process, subsection (b) provides that, solely for the purposes of such nomination and election, all persons eighteen years of age or over who think they meet eligibility requirements may offer evidence of eligibility to the Secretary, and they may vote if the Secretary determines they are eligible.

Section 5 provides for the drafting of a proposed constitution and bylaws by the Restoration Committee and the holding of an election thereon by the Secretary under the provisions of the Indian Reorganization Act. Subsequent to the adoption of such constitution and bylaws and approval thereof by the Secretary of the Interior, the Restoration Committee would conduct an election, pursuant to the newly adopted constitution and by laws of the initial officers of the tribe.

Section 6 provides for the transfer of the land and other assets of Menominee Enterprises, Inc., to the Secretary of the Interior on behalf of the Menominee Tribe. This land would be taken in trust for the tribe and would constitute their reservation.

The transfer of assets will be subjected to the terms and conditions of a plan negotiated between the Secretary and the members of the Menominee Common Stock and Voting Trust and the Board of Directors of Menominee Enterprises, Inc.

Section 6(a) provides that a plan shall be submitted within one year from the date of enactment of the act to the Congress and if neither House passes a resolution disapproving the plan within 60 days it shall take effect.

The committee appreciates the arduous task ahead in restoring the Menominee Tribe to essentially the same status it enjoyed prior to termination of Federal supervision over the tribe and its affairs in 1954. During the interim period between that date and enactment of restoration legislation, numerous events have contributed to complex social, economic and legal problems for the Menominee Tribe and its members. This act necessarily grants broad authority to the Secretary to negotiate with individuals, tribal members and appropriate corporate representatives in the development of a plan to provide for the transfer of the corporate assets (land and mill) to the Secretary to be held in trust for the Menominee Tribe.

Because of the inherent problems to be faced in the foregoing process, the committee has placed reliance and confidence in the Department's expertise to examine carefully all of the critical areas relating to development of a plan. In this connection, the committee wishes to clarify that the Secretary and appropriate tribal and corporate representatives shall, prior to the actual drafting of a plan, consider, among others, the following:

1. Maximum Indian self-determination to permit the tribe to exercise control and management over its affairs including natural resources so long as such management does not conflict with statutory responsibilities of the Federal trustee;

2. That the Menominee forest will continue to be administered under the sustained yield concept;

3. That cultural pride and tribal autonomy are maintained; and

4. That existing and future rights of Menominee Indians and non-Menominee are protected. This particular concern involves the actual definition of what rights actually exist to insure that the final plan will avoid needless litigation.

The committee wishes to emphasize that it is not mandating these specific factors be included in the plan. To this end, the committee will, of necessity, rely on the judgment and expertise of Departmental officials.

The transfer of the assets will be subject to the approval of the shareholders of the Corporation and the provisions of the laws of the State of Wisconsin governing the disposition of corporate assets. The assets would remain subject to foreclosure or sale under the terms of such obligation in accordance with the laws of Wisconsin. The transfer of the assets, and the assets after transfer, would be exempt from all local, State, and Federal taxation.

Section 6(c) provides that the Secretary may accept a conveyance to the United States in trust for the Tribe of any real property of members of the Menominee Tribe if the owner voluntarily conveys it. The terms of such transfer, including the compensation to be paid to the owner, would be left to the plan to be negotiated pursuant to subsection (a).

As with the transfer of the corporate land and other assets, the transfer of the individual real property would be subject to any valid existing rights and obligations and would be subject to foreclosure or sale pursuant to the terms of such obligation in accordance with the laws of Wisconsin. The tax exemptions provided in subsection (b) are the same for transfers under this section.

Subsections 6(d) and (e) provide for the orderly transfer of governmental functions and continuation of necessary governmental services during such transfer. Subsection 6 (e) was included in the legislation to make clear that the act does not in any manner authorize the State of Wisconsin to deviate from its own constitution or laws with respect to Menominee County after restoration. The committee wishes to emphasize that nothing in the act prevents the State of Wisconsin, pursuant to its constitution or laws, from making provisions for local government structure.

Sections 7 and 8 authorize the Secretary to make such regulations and rules as are necessary to carry out the provisions of the Act and authorize such appropriations as may be necessary for that purpose.

COST

The first-year cost of this legislation is estimated to be $5,020,991, as follows:

Bureau of Indian Affairs—Federal program services	$1,369,000
Bureau of Indian Affairs—Roll preparation and election costs	35,000
Indian Health Service—Federal program services	1,300,000
Indian Health Service—1-time nonrecurring cost of sanitation facilities construction	1,800,000
Department of Health, Education, and Welfare—Impact aid (Public Law 81-874)	516,991
Total	5,020,991

Thereafter, the annual cost of this legislation is estimated to be $3,185,991, based on the present level and cost of the general Indian program. This cost will of course change from year to year.

WHITE HOUSE SHENANIGANS

Mr. McGOVERN. Mr. President, the columnist, Tom Braden, has recently drawn attention to a number of memoranda involving Pat Buchanan and other political wheelhorses at the White House. Because they shed additional light on the shabby character of Mr. Nixon's reelection effort and, therefore, bear on the pending responsibility of the Congress to investigate administration wrongdoing, I ask unanimous consent that portions of these memoranda, printed in the Washington Post of December 3 and 6, be printed in the RECORD.

Also included is a special memorandum entitled "The Assault Book," which indicates some of the dirty tricks of Buchanan & Co. that were designed to discredit the democratic campaign.

It is difficult to believe that characters of this kind have come to occupy a high place in our Government. The sooner they are removed from the public scene, the better it will be for the Nation. I think that all of these materials should be read carefully by the Congress.

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

[From the Washington Post, Dec. 3, 1973]

THE NIXON WHITE HOUSE PAPERS: MEMOS ON THE MEDIA

(NOTE.—In our letters space today, White House aide Patrick J. Buchanan and syndicated columnist Tom Braden engage in a dispute over a column Mr. Braden wrote a while back. In it he asserted that a collection of documents he called the "Buchanan papers" was worth reproducing and distributing "free," owing to what they revealed about the Nixon administration's attempt to control and distort the free flow of information, via the press, to the people.

(Mr. Buchanan contends that the particular documents cited by Mr. Braden should not have been named after him, since they were not his doing—and he is right: the documents should properly be called the Nixon White House papers. And Mr. Braden is also right in his judgment of their value as reading matter for today's concerned citizens. That is why we have reproduced lengthy excerpts from the documents in question below.

(Lest Mr. Buchanan feel that we are only compounding Mr. Braden's original error in focusing on these memoranda, as distinct from those made public by the Ervin committee in connection with his testimony—34 documents that could go by the name of the "Buchanan papers"—we should add that we intend to reprint lengthy excerpts from the latter as well within a few days. They are very much of a piece with the "non-Buchanan" papers—and at least as illuminating for what they have to say about the mentality and the morality which have done so much to bring about the current crisis in Mr. Nixon's government.)

For the sake of identification, the following documents, variously classified as Confidential, Secret, Eyes Only, were written by, or to: H. R. (Bob) Haldeman, former chief of staff at the White House who resigned on April 30, 1972; Jeb Stuart Magruder, who worked for Haldeman at the White House before becoming deputy director of the Committee to Re-elect the President in late 1971; Lawrence Higby, who also worked for Haldeman and is still at the White House; Herbert G. Klein, former Communications Director for the administration; and Charles W. (Chuck) Colson, special counsel to the President until his resignation last February.

Higby to Magruder: As I indicated to you the other day, we need to get some creative thinking going on an attack on (Chet) Huntley (NBC) for his statements in Life. One thought that comes to mind is getting all the people to sign a petition calling for the immediate removal of Huntley right now. The point behind this whole thing is that we don't care about Huntley—he is going to leave anyway. What we are trying to do here is to tear down the institution. Huntley will go out in a blaze of glory and we should attempt to pop his bubble.

Most people won't see Life Magazine and for that reason I am asking (Pat) Buchanan to draft a statement for the Vice President to give. We should try to get this statement on television. Obviously there are many other things that we can do, such as getting independent station owners to write NBC saying that they should remove Huntley now; having broadcasting people look into this due to

the fact that this is proof of biased journalism, etc. Let's put a full plan on this and get the thing moving. I'll contact Buchanan and forward copies of my correspondence with him to you so you will know what the Vice President is doing.

Magruder to Higby: The issue of Chet Huntley is fairly well played out. We leaked his letter of apology to the President and it got very good coverage.

We will continue to hammer at press favoritism on a regular basis. We will ask the Vice President to make this a standard fare while he's on the stump in the congressional campaigns.

We will keep tabs on examples of partisan press treatment and feed them into the Vice President (and Cabinet officers on the stump) on a regular basis. Now that Huntley is out, he is no longer the issue.

However, the general question can be kept in the news as we find more and more examples of unfair treatment by the press. This will simply be a continuing function.

Haldeman to Magruder: A couple of points that I did not want to cover in the general meeting but that you do need to move ahead on quickly. First, I'm sure you have studied that TV summary done by Buchanan, which is a devastating indictment of NBC, especially of David Brinkley . . . The need, probably, is to concentrate on NBC and give some real thought as to how to handle the problem that they have created in their almost totally negative approach to everything the administration does. I would like to see a plan from you; don't worry about fancy form, just some specific thinking on steps that can be taken to try to change this, and I should have this by Friday. Get Klein and Ziegler both involved in the thinking on this, and I would suggest also Nofziger, who could be very helpful, and perhaps get Pat Buchanan in. In fact, I feel definitely you should get Pat Buchanan in to work with you on it; but move quickly.

Another area is the mobilization of the Silent Majority, which we touched on briefly in the meeting today. We just haven't really mobilized them, and we have got to move now in every effective way we can to get them working to pound the magazines and the networks in counter-action to the obvious shift of this establishment to an attack on Vietnam again. Concentrate this on the few places that count, which would be NBC, Time, Newsweek and Life, The New York Times, and The Washington Post. Don't waste your fire on other things.

Magruder to Haldeman: We can achieve this goal.

1. Begin an official monitoring system through the FCC as soon as Dean Burch is officially on board as Chairman. If the monitoring system proves our point, we have then legitimate and legal rights to go to the networks, etc., and make official complaints from the FCC. This will have much more effect than a phone call from Herb Klein or Pat Buchanan.

2. Utilize the anti-trust division to investigate various media relating to anti-trust violations. Even the possible threat of anti-trust action I think would be effective in changing their views in the above matter.

3. Utilizing the Internal Revenue Service as a method to look into the various organizations that we are most concerned about. Just a threat of a IRS investigation will probably turn their approach.

Magruder to Haldeman and Klein. (Tentative Plan Press Objectivity):

Plant a column with a syndicated columnist which raises the question of objectivity and ethics in the news media. Kevin Phillips could be a good choice.—Klein

Through an academic source, encourage the Dean of a leading graduate school of journalism to publicly acknowledge that press objectivity is a serious problem that should be discussed. Also, attempt to arrange an indepth analysis in a prestigious journal like the Columbia Journalism Review.—Klein/Safire

Have Rogers Morton go on the attack in a news conference . . . Have him charge that the great majority of the working press are Democrats and this colors their presentation of the news. Have him charge that there is a political conspiracy in the media to attack this Administration.—Klein/Colson

Arrange for an "expose" to be written by an author such as Earl Mazo or Victor Lasky. Publish in hardcover and paperback.—Klein

Produce a prime-time special, sponsored by private funds, that would examine the question of objectivity and show how TV newsmen can structure the news by innuendo. For instance, use film clips to show how a raised eyebrow or a tone of voice can convey criticism.—Klein/Magruder

Have outside group petition the FCC and issue public "statements of concern" over press objectivity.—Colson

Generate a massive outpouring of letters-to-the-editor.—Magruder

Have a Senator or Congressman write a public letter to the FCC suggesting the "licensing" of individual newsmen, i.e., the airways belong to the public, therefore the public should be protected from the misuse of these airwaves by individual newsman.—Nofziger

Colson to Haldeman: The following is a summary of the most pertinent conclusions from my meeting with the three network chief executives . . .

I had to break every meeting. The networks badly wanted to have these kinds of discussions which they said they had had with other administrations but never with ours. They told me anytime we had a complaint about slanted coverage for me to call them directly. Paley (William S. Paley, chairman of the board, CBS) said that he would like to come down to Washington and spend time with me anytime that I wanted. In short, they are very much afraid of us and are trying hard to prove they are "good guys."

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

Paley made the point that he was amazed at how many people agree with the Vice President's criticism of the networks. He also went out of his way to say how much he supports the President, and how popular the President is. When Frank Stanton (vice chairman and director, CBS) said twice as many people had seen President Nixon on TV than any other President in a comparable period, Paley said it was because this President is more popular.

The only ornament on (Julian) Goodman's (president, NBC) desk was the Nixon Inaugural Medal.

(James C.) Hagerty (vice president, ABC) said in (Leonard) Goldenson's (president, American Broadcasting Companies, Inc.) presence that ABC is "with us." This all adds up to the fact that they are damned nervous and scared and we should continue to take a very tough line, face to face, and in other ways. . . . I will pursue with Dean Burch the possibility of an interpretive ruling by the FCC on the role of the President when he uses TV, as soon as we have a majority. I think that this point could be very favorably clarified and it would, of course, have an inhibiting impact on the networks and their professed concern with achieving balance . . . I am realistic enough to realize that we probably won't see any obvious improvement in the news coverage but I think we can dampen their ardor for putting on "loyal opposition" type programs.

"Talking Paper" to Magruder (sender not identified):

1. Put someone on The Washington Post to needle Kay Graham. Set up calls or letters every day from the viewpoint of I hate Nixon but you're hurting our cause in being so childish, ridiculous and over-board in your constant criticism, and thus destroying your credibility.

2. Nofziger should work out with someone in the House a round robin letter to The Post that says we live in Washington, D.C., read the D.C. papers, but fortunately we also have the opportunity to read the papers from our home districts and are appalled at the biased coverage the people of Washington receive of the news, compared to that in the rest of the country, etc.

Magruder to Haldeman: Here is a report on the talking paper given to me last week.

1. We have a team of letter-writers who are pestering The Washington Post from the viewpoint that was suggested.

2. I have asked Lyn Nofziger to work up the House round robin letter to The Post.

[From the Washington Post, Dec. 6, 1973]

THE NIXON WHITE HOUSE PAPERS—II

(NOTE.—The following are excerpts from 34 documents which received relatively little attention when they were released by the Watergate Committee some weeks ago in connection with the testimony of White House Special Consultant Patrick J. Buchanan. They were brought forcibly to our attention as the result of a controversy between columnist Tom Braden, who urged that they be given wider circulation, and Mr. Buchanan, who replied that Mr. Braden wasn't quoting from the right collection of papers. These samplings are from the "right collection" and we think they are worth reading in their original language for the insights they give into two particular characteristics of the Nixon White House: (1) its preoccupation with manipulating the appearance of things and (2) its boundless faith in the utility of contrivance and intimidation as effective political instruments.)

The following memos were written by, or to: John Mitchell, former Attorney General who became director of the Committee for the Re-Election of the President; Jeb Stuart Magruder, who worked at the White House before becoming deputy director of CRP; Robert Odle, former director of administration of CRP; William Timmons, assistant to the President for legislative affairs; and Kenneth L. Khachigian, a speechwriter for the President. Timmons and Khachigian are still at the White House.

PJB (Buchanan)/Khachigian to Mitchell: Our idea of a typical first rate Truth Squad would be Hatchet Man (Sen. Robert) Dole with Good Guy (Donald) Rumsfeld; young, tough, aggressive, attractive—and willing to mix it up with the Democratic candidate.

Suggest establishment of a "Fair Coverage Committee" or "Equal Time Committee" which might be located in the RNC, which would "clock precisely the positive and negative coverage of presidential and vice presidential candidates on the networks. If we are getting anything more than "equal time," this committee can remain silent; if we get anything less than equal time, it should confirm same with Mort Allin's news monitors—and then send a memorandum to John Mitchell who should get on the horn to the network president and point this out, indicating that if it is not corrected, and equal time not provided—this will be made an issue in the campaign, and the subject of legislation in the coming Congress.

On all the black radio stations in the swing states, we should run ads on Muskie's statement about no blacks for Vice President. "If he does not think the time has come for one of us to be even considered for Vice President, then the time has come for Black America to tell Ed Muskie we don't think

it is time for him to be considered for President. Write in Shirley Chisholm."

Magruder to Mitchell: Attached is a copy of an Evans and Novak column from the July 25 Washington Post which indicates the Democrats are setting up a '72 Sponsors Club similar to the President's Club of the LBJ era. For $72 a month, there are a number of privileges accorded to those who contribute.

Pat Buchanan has suggested that we have someone we know, preferably a Democrat not connected with us, join this club. This could be arranged by having the individual write in explaining that he read about the club in the newspaper and is fed up with the administration's policies and wants to contribute his share and become a member of the club. This would give us many advantages in keeping track of Democratic contenders and their strategy.

Magruder to Haldeman: Based on this morning's meeting we have begun moving on the following:

Ten telegrams have been drafted by Buchanan. They will be sent to Time and Newsweek today by 20 names around the country from our letter writing system. Copies are attached. . . . Letters to the editors of The Times, Post, Star, Chicago Daily News, St. Louis Post Dispatch are being prepared and sent.

Nofziger is having statements placed in the Congressional Record. Once they appear, they will be printed and distributed together with favorable columns to editors, publishers, business leaders, and other opinion leaders.

Nofziger has contacted Victor Lasky, who has agreed to run a column. Nofziger will also contact Lawrence, Kilpatrick and Paul Martin.

An attempt is being made to get a resolution from Sigma Delta Chi condemning the pre-press conference meeting by 25 commentators to set strategy to embarrass the President.

Odle to Timmons: Fourth Party Candidacies. Top-level consideration should be given to ways and means to promote, assist and fund a Fourth Party candidacy of the Left Democrats and/or the Black Democrats. There is nothing that can so advance the President's chances for re-election—not a trip to China, not four-and-a-half percent unemployment as a realistic black presidential campaign . . .

The Black Vice President bumper stickers calling for black presidential and especially vice presidential candidates should be spread out in the ghettoes of the country. Also, anti-Muskie stickers. We should do what is within our power to have a black nominated for Number Two at least at the Democratic National Convention . . .

Buchanan to the President: Humphrey is struggling heroically to get well on this issue (Vietnam), to make himself, now, an acceptable alternative, to the party's left. The Prodigal Son, however, is not welcome back home—if the New Republic and I. F. Stone are to be believed. A little Machiavelli here might be of use. If the President, who is not revered on the Left, were to publicly express thanks to HHH for the quiet support he has given on Vietnam—HHH is likely to be astonished and stunned, and his leftwing courtship broken off on the spot. Perhaps (Sen. Robert) Dole or the Vice President even might compliment HHH on the "strong support" he has consistentiy provided for the war in Vietnam.

Buchanan to Mitchell: There is an interesting development shaping up. McGovern's ambitious children seem to be busy "stealing" Wallace delegates—and playing false, by "ripping off" the Wallace delegations in Tennessee and elsewhere, places like Michigan. This is excellent. We should hold back commenting upon the process which Governor (Jimmie) Carter (D-Ga.) is raising hell about, until it is accomplished—and then accuse the Democratic Convention of shafting the legitimate popular winner, and stealing the delegates of a bed-ridden matyr.

THE "ASSAULT BOOK"

Buchanan/Khachigian Memo (Assault Strategy):

We need to shed the "in bed with big business" image. PJB believes we should seek out the opportunity to "take out" some egregious, giant, preferably, but not necessarily Democratic, corporation publicly—as Kennedy did with big steel in 1962. Business will be with us in 1972—but one of our problems is a too close identification in the public mind with corporate power. ITT reinforced that. Public presidential anger at the price-gouging of some big business firm would be, in my judgment, a good thing.

If we have abandoned the idea of introducing or supporting "tax reform"—I trust we have not—I would recommend RN publicly veto one, two or three huge spending bills—on national television. Two minutes would be sufficient. . . .

As the campaign progresses, we should increasingly portray McGovern as the pet radical of Eastern Liberalism, the darling of the New York Times, the hero of the Berkeley Hill Jet Set; Mr. Radical Chic. . . .

My recommendation is that PJB—using our Radical Chic materials, as well as the Assault Book materials—write, not a full-length book, but a 5,000-word piece, using full color, good paper, like *First Monday* with pictures of Hiss and Hoffman and other endorsees, and that this be printed and distributed by the millions. A quality, brightly written, colorful picture biography of McGovern of 5,000 words would be infinitely superior to those old full-length hatchet biographies that are never read.

Further, though a bit outrageous, McGovern can be charged, among Democrats, with "packing" caucuses, with "stealing" the nomination from the more popular candidate, with not representing the average man in the Democratic Party—but rather the left-wing organizers. . . .

To reverse the "underdog" image of Mr. McGovern—we should, upon his nomination, cease speaking of an easy win. We should, in public, both to rally our troops and to remove this "underdog George" label—argue that the Democrats have the largest party. We should leak polls showing us worse off than we are. . . .

Impressions of McGovern may be favorable but they are not fixed. They can be changed. And we should be moving this material into the public record. How? Not bitterly or stridently. To do so gives the appearance of arrogance and power which we want desperately to avoid. Thus, when our "heavies," if you will—the Vice President, Bob Dole, etc.—use this material they should for the present be scrupulously exact and precise, and avoid for the present—the blistering attack. There will be "time enough. . . ."

When McGovern backs off some of these Black radical schemes, as back off he must—we should continue to hang them around his neck—and then mail his recantation to the black media.

Some on the media are slobbering all over George; they may have to be charged publicly with being pro-McGovern—to force them to back off a bit. (Incidentally, given his performance the other night, (Sander) Vanocur (PBS) is a positive disaster for us—and McGovern's most effective campaigner. He may have to be fired or discharged—if we are to get anything approaching an even shake out of that left-wing taxpayer subsidized network.)

A CRITICISM OF ADMINISTRATION POLICY ON HOUSING FOR THE ELDERLY

Mr. PELL. Mr. President, I recently read an excellent article, appearing in the December 1973 American Association of Retired Persons News Bulletin, by Mr. Bernard E. Nash, the executive director of the National Retired Teachers Association and the American Association of Retired Persons. Mr. Nash makes the point that this Nation's senior citizens are being severely hurt by the President's housing moratorium, and that, if the proposed replacement of housing construction by cash grants becomes a reality, our elderly citizens will be hurt even more. There still exists a real shortage of available, and affordable, housing which seniors can rent. Housing must be near transportation, medical, shopping, cultural, and recreational facilities, if it is to be of any value to the elderly. If housing does not meet these requirements, we will be forcing our elderly into isolation, and away from a meaningful role in the community. Merely offering elderly persons cash or vouchers with which to rent housing does nothing to meet the problem of decency, cleanliness, safety, or accessibility of residences. Because I believe that Mr. Nash's article speaks to these problems, I ask unanimous consent that it be printed in the RECORD.

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

IS GOVERNMENT AWARE OF CRITICAL HOUSING NEEDS OF THE ELDERLY

(By Bernard E. Nash)

Recognizing the fact that government spending can fuel the fires of inflation, older citizens generally support efforts to curb unnecessary and wasteful spending for government programs. At the same time, as I pointed out in my report last month, too much budgetary zeal can often result in the crippling of necessary and successful programs that are deserving of revenue.

Recent policy changes by the Department of Housing and Urban Development in housing programs for older citizens constitute a perfect example of this excessive zeal for budgetary integrity. What is worse, they raise serious questions about the degree of awareness at the Federal level of the special and critical housing needs of older citizens.

Following the 1971 White House Conference on Aging, the Administration, heeding the advice of its own experts in the Departments of Housing and Urban Development and Health, Education and Welfare, announced its endorsement of current federally assisted housing programs for the elderly.

But last January, the Administration declared an 18-month moratorium on most federally-supported housing construction. And in his long-awaited housing message in September, President Nixon not only announced that the moratorium would probably continue until early next year, but also suggested that a program of direct cash grants to those seeking housing might replace the present direct government involvement in housing construction.

Reaction to this proposal from older citizens and their representatives has been both swift and negative. In a meeting with HUD officials last month, representatives of our Associations and of several other organizations of older Americans were highly critical of the cash grant proposal.

Our arguments are these:

While it is true that many federal housing programs have been plagued by failures, it is generally agreed that the elderly housing program is the one HUD program that has been uniformly successful.

The demand and need for more of such housing is clear and critical.

Housing requirements for the elderly in-

volve many considerations such as proximity to transportation and community services, ease of access, nearby health care facilities and shopping areas. Cash grant assistance for housing which meets few or none of these criteria would be of little value to older persons.

For older persons, housing as well as cash is scarce, and cash cannot buy a commodity which does not exist.

Our Associations oppose the phasing-out of the present federally assisted housing programs for older citizens. Limiting government involvement in housing construction will not prevent these special needs from arising. It will merely make them more difficult to meet.

THE BISHOP OF TAMMANY PARISH

Mr. McGOVERN. Mr. President, the December 3 issue of the Washington Post carried a piece by Nicholas von Hoffman referring to a recent interview with the former New York Tammany Hall Democratic leader, Mr. Carmine DeSapio.

Because the article contains a number of human-interest references and observations on American politics, I ask unanimous consent that it be printed in the RECORD.

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

THE BISHOP OF TAMMANY PARISH

(By Nicholas von Hoffman)

NEW YORK.—In the years of his greatest power, when he was the leader of Tammany Hall, the New York County Democratic leader and national committeeman, his enemies called Carmine DeSapio The Boss while the people in his organization called him The Bishop. Now defeated, deposed and despised by his enemies for having lost power, he is back in town after having served two years in the federal slammer for conspiring to bribe a city official. But you can still see why they called him the Bishop.

He has an episcopal gravity. You feel you are in the presence of a presence. The famous dark glasses, which he wears because of an eye disease and which make him look so sinister in the newspapers, turn out to be rather pale. Far from appearing threatening, DeSapio, the last of the great New York bosses whose line stretches back through William Marcy Tweed to Federalist times, comes across at age 65 as a weighty man who compels strangers to like him without cracking jokes or acting silly. On first meeting you trust him and you hope that the charges of corruption and gangster affiliation against him aren't true.

"Nixon makes Tweed look like St. Francis of Assisi," DeSapio said when he agreed to be interviewed about Watergate. He was reluctant to do it. He's still quietly active in politics, making the rounds of wakes, marriages and testimonial dinners, taking calls from politicians in his office where he says he sells insurance, but he knows that if his name is publicly coupled with that of any of his friends they can get burned.

He was also dubious because with jail and everything he wondered if he had any "credibility" left, yet outside of Chicago's Richard Daley there isn't anybody in the country whose views on Watergate would be more interesting to hear. DeSapio could play politics as rough as Nixon but he too was scandalized: "I saw a headline where it said Rose Mary Woods may take the Fifth. This is deplorable. Whether she does or she doesn't, she is the President's secretary. Unbelievable! . . . They were operating the government like a menu in a restaurant."

DeSapio says these things calmly, not like a man in the pulpit. He knows that they can say he's a fine one to talk, but of course he is a fine one to talk because he does know and he can make distinctions about traditionally permissible and impermissible conduct the rest of us can't. So he says of the break-in that it was crazy: "If I'm a professional political leader operating outta Washington nobody can convince me I gotta send a guy into the Republican National Committee by force . . . and that Cuban-CIA thing, I'd throw a net around 'em . . . what those people were obviously trying to find out was McGovern's schedule to give their advance people so they'd know who's going to be where at what time and then they could set up a harassment to throw the candidate off balance, but you know the press has all those schedules. You can get one from a reporter. Or if I wanted information on the National Committee I could get any young guy or gal to volunteer to work in there."

DeSapio isn't very impressed one way or another about the argument over did Nixon know. As he sees it, whether Nixon knew or not, it's what Nixon did in a general way that set up Watergate: "If I'm the leader and people are working around me it's my business to convey to them the area of activity and the course of conduct they must pursue in terms of what I think is good for our party, for our party's elected officials and for them. I must set the tone. When Wagner was first elected mayor in 1953, I said to the district leaders the days are over that a leader can walk into police headquarters. I told 'em, 'Forget, that's out.' "

Watergate pains a man like DeSapio because it has brought the profession of politics into disrepute as nothing else, his own conviction included. For him politics is a dearly earned skill, and even now when he cringes at the word boss, he takes the title of professional politicians with pride. Nixon didn't have professionals around him. The mere fact that he had those advance men (Ehrlichman and Haldeman), men who knew how to whip up a crowd or arrange for the balloons to drop at the right time, that doesn't make them professionals."

To DeSapio a professional first of all protects his boss. That is, he is a guy with flexibility and "sophistication." At the same time DeSapio, as a committed party organization man, believes in loyalty every bit as much as the Nixon people, but "it depends if the top man permits the right type of loyalty to exist. Take Kenny O'Donnell and Larry O'Brien, all those fellows around John Kennedy, they were as fiercely loyal to Kennedy as Ehrlichman and Haldeman were to Nixon but they had the know-how not to be so arbitrary and to be more flexible.

"I think part of the difference is that Nixon in my opinion is an insecure guy. Sure, he deserves a hell of a lot of credit for bringing himself to the spot he's in, but even at his apex I think he was the type of guy who says 'I hope they don't catch up with me because I have a pretty good act going here.' John Kennedy was different. Maybe inwardly he was just as rough but his style was different. He had the Irish malarkey and he knew when to ease off."

For somewhat different reasons, DeSapio, like reporter David Broder and other political analysts, feels that the decline of party structure has a great deal to do with Watergate: "The type of person Nixon brought in built his own personal organization for him, and I've never seen it to fail when that happens things start to deteriorate so that the whole house comes down on the housekeeper."

As Carmine sees it, a powerful functioning party structure is an important additional check on how public office is being administered because, as he says, even if the elected official is willing to take risks that may result in his political extinction the party isn't; the party has to worry about what happens after he is gone.

The collapse of party structure he thinks also has incapacitated Congress: "Why did Watergate happen? Let me ask you, did we have strong leadership, and by that I don't mean old time pols or hacks? I say the answer is no. In Congress you did not have a strong leader who was respected. Individualism is not what makes for strong institutions. The members of Congress can be individuals, consult their conscience and so forth but they also have a responsibility to make these institutions work, and if they were working Ehrlichman and Haldeman would not have been able to take Congress on. Remember the guy you can make a deal with easiest is the guy who is leaderless. He's the guy who sells himself out for a dam or a post office."

DeSapio would rebuild the party system by "scattering a dozen Dick Daleys around the country in strategic places," but as a nation we've spent a century destroying the structures and disciplines that made the DeSapios possible.

Now they are gone and we feel the loss, sometimes so strongly we sentimentalize the bosses of yore and forget how rank they could be. But, however you feel about that, the last of the great Tammany chieftains does have an answer to Nixon's defense that he was just doing what politicians have always done.

THE DEBATE ON THE DEBT LIMIT BILL AND PUBLIC CAMPAIGN FINANCING AMENDMENT

Mr. ERVIN. Mr. President, in its issue of Sunday, December 9, 1973, the Birmingham News, the largest newspaper in Alabama, published an article, written by its Washington correspondent, James Free, about the debate on the debt limit bill and public campaign financing amendment. Mr. Free, who is one of the most respected media correspondents on Capitol Hill, draws an interesting word picture of our colleague from Alabama.

Mr. President, I ask unanimous consent that this article be printed in the RECORD.

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

ALLEN WAS NOT OBSTRUCTIONIST; HIS FOES WERE

(By James Free)

WASHINGTON.—The story of Sen. James B. Allen's repulse of the Senate liberals' plan for public financing of presidential elections is certain of a place in legislative history. But it is important that a few current misconceptions about it should be cleared up.

Opponents of the Alabama senator's stand called it a filibuster. Yet they talked more than he did.

And it was Allen, rather than the proponents of the public financing amendments, who was pressing for a showdown vote on the only "must" issue at stake—the pending House-approved bill to raise the public debt limit by $10.7 billion.

The traditional filibuster has been an effort to prevent a crucial vote, not to get one. It is true that Senators Edward Kennedy, D-Mass., Walter Mondale, D-Minn., and others contended that Allen was blocking a vote on their "compromise" package that included their U.S. Treasury aid to presidential candidates proposal. But the really urgent issue before the Senate, however, was the lifting of the public debt limit, for the authority of the debt ceiling expired at midnight last Friday.

And it was on that Friday, of course, that the liberals tried to stage their shotgun wedding of the debt ceiling bill with their election financing amendments.

The Alabama senator pointed out that the House had rejected by a seven to one margin a substantially similar package sent over from the Senate earlier in the week. Significantly, the House had rejected out of hand the Senate amendments, which at that stage called for providing public money for Senate and House races as well as Presidential campaigns.

DOWN ALLEN'S ALLEY

This House action is what put the business before the Senate down Allen's alley. He had, naturally, opposed the earlier Senate combination of the debt ceiling with campaign financing, but the Senate rules permit nongermane amendments. "So there was no real opportunity for effective minority resistance that first time around," said Allen.

Last Friday, Allen saw his opportunity and seized it.

"I had not consulted with any members of the House on this matter," said Allen, "but I was delighted at the way the House had handled it. The House did not differ with the Senate amendments on campaign financing and asked for a conference with the Senate. It turned them down flat, and sent back a 13-line bill that lifted the temporary public debt ceiling.

"This meant that when Kennedy, Mondale, and company moved to tack on their 122-page campaign financing amendments, they had become the obstructionists to prompt approval of the "must" public debt bill. For even if the Senate accepted the liberals' package, it would take several days at the very least for the House to act again on these nongermane amendments.

"Besides, there was no assurance either that the House would reverse its earlier position and take the package bill to a House-Senate conference or that, if the package bill cleared both the House and Senate within a few days, the President would sign it. In fact, we were told that Mr. Nixon would veto the bill if the campaign financing amendments were included."

ALLEN GETS PRIORITY

This set of circumstances meant that when Allen interrupted a formal motion for floor consideration of the package bill with his motion for the Senate to recede from (or kill) its campaign financing amendments, that his motion got precedence, or priority consideration. "This was because my motion to recede from the Senate amendments was, in effect, a vote on final passage of the House-approved debt ceiling bill."

The first Allen motion to recede was tabled Friday by a margin of 36 to 32. This convinced the Alabama senator that he had an excellent chance to win. It also showed that the issue could not be resolved either Friday or Saturday. Ardent supporters of the public financing plan filed a petition for cloture, or closing debate, and this opened the way for a cloture vote as early as Sunday.

So the first Sunday session of the Senate since 1929 was set to begin at 10 a.m. One naive senator suggested starting at 1 p.m., but was quickly squashed with reminders that the Redskin-New York Giants football game kickoff was scheduled for about 1:15 p.m.

Not quite incidentally, the Senate did meet at 10 a.m. last Sunday, and somehow managed to wind up for the day at 11:58 a.m.—giving those interested plenty of time to get to Robert F. Kennedy Stadium.

Before adjournment Sunday, the cloture motion received 47 yeas to 33 nays, thus failing to get the necessary two-thirds. And Sen. Allen put in another motion to recede from the Senate public financing amendments. This time 36 senators supported him, or four more than on Friday.

"I figured then that we were gaining strength," said Allen, "that the liberals could not win. They put in a second cloture petition Sunday, but must have known that their ball game was over."

Why did they think they could win in the first place?

"Well," said Allen, "remember that they had the backing of both Democratic Leader Mike Mansfield and Republican Leader Hugh Scott, plus Democratic Whip Robert Byrd and Sen. Russell Long, of Louisiana, chairman of the Finance Committee, who favored public campaign financing for some time. They thought they could ramrod this through by sticking it onto the 'must' debt ceiling bill.

Allen recalled that many of the proponents of public campaign financing had tried without success to "pack" the Senate Rules Committee with a number of liberals from the Judiciary Committee, including Sen. Ted Kennedy, when the investigation of Rep. Gerald Ford as the Nixon nominee for Vice President was assigned to the Rules Committee.

ARROGANT POWER GRAB

"This was another grab for power," said Allen. "It was an arrogant abuse of constitutional and legislative procedures. It would have struck directly against the foundations of democracy—the separation of powers between the House and Senate and the separation of powers between the Congress and the Presidency.

"This business of sticking a non-germane Senate amendment on a really urgent and critical bill approved by the House and sending it back to the House usually results in House-Senate conferences to resolve differences and then an up or down vote in the House on the conference bill. Most members of the House get no opportunity for input on the final round. They have to take it or leave it.

"In this instance, too, many supporters of the package bill were trying to force the President into having to veto a public campaign financing proposal in order to get a second chance to sign a bill lifting the public debt ceiling. Either that or having to accept the financing amendments in order to get the debt ceiling bill. In short, it was a move to deny the President his constitutional right to veto a particular bill."

NIXON TELEPHONED ALLEN

What about liberal claims that President Nixon was really the power behind the turnback of the public campaign financing plan?

"Well, it was news to me," said Allen. "I went into this on my own when there seemed to be no concerted effort to block the liberals on it.

"I did not talk to anybody at the White House. I did talk with Sen. John Sparkman, my Alabama colleague, and he said I could count on his support. But I did not ask any other senator to vote with me. Many of them did, and I appreciate it. A number of them joined in floor debate. It was not a one-man fight although I was the one who seemed to get it started and moved to make full use of the senate rules as we went along."

Among those speaking on Allen's side were Senators John Stennis, D-Miss., Strom Thurmond, R-S.C.; Sam Ervin, D-N.C.; Jesse Helms, R-N.C.; Sam Nunn, D-Ga.; Lowell Weicker, R-Conn.; James Buckley, Conservative-N.Y.; Pete Domenici, R-N. Mex.; and Robert P. Griffin, R-Mich.

Griffin, the Republican Whip, was the only Senate party leader who did not back the public campaign financing plan.

President Nixon did telephone his congratulations to Allen on Tuesday, the day after the final cloture attempt, which saw Allen's side on this issue go up from the previous 33 to 34, with the yeas picking up only from 47 to 49—far short of the two-thirds needed. The final vote to recede was 48 to 36.

WATERGATE MAJORITY

Sen. Allen is proud of the fact that four of the seven members of the Senate Watergate Committee agreed with his opposition to the "half-baked" campaign financing plan. It has been mentioned that Ervin, the chairman, and Weicker, made speeches on the floor. Senators Edward Gurney, R-Fla., and Herman Talmadge, D-Ga., did it with their votes. Sen. Joseph M. Montoya, D-N. Mex., joined the liberals, while Senators Howard Baker, R-Tenn., and Daniel Inouye, D-Hawaii, were absent.

"I'm pretty sure Baker would have voted with us," said Allen.

This majority backing from the Watergate Committee was meaningful, Allen noted, because the committee was created not only to probe the Watergate scandals, but to come up with legislative proposals to prevent abuses in future presidential campaigns. Its report is not due until February, 1974, so the liberals were premature with their sweeping proposals.

MASTER OF RULES

It is commonly agreed now that no senator knows and uses the rules and precedents of that body better than Jim Allen.

As Alabamians are well aware, their junior senator got his first schooling in legislative rules as a member of the Alabama House of Representatives, and later as a member of the Alabama Senate, plus eight years as Lieutenant Governor, or presiding officer of the Alabama Senate.

"Most of the rules of the House in Alabama are in the gavel of the Speaker," said Allen. "The rules of the Senate in Alabama, while not nearly so broad, are based on the rules of the U.S. Senate. There is not nearly so much reliance on precedents, or previous rulings, however, in the Alabama Senate. The precedents used are mostly from memory, for there is no readily available listing of the precedents. The U.S. Senate Rules and precedents are carefully listed in a book that has 759 pages."

On coming to the U.S. Senate in January, 1969, Allen looked on the customary freshman Senator's frequent assignment to preside over the Senate as an opportunity rather than a chore—an opportunity to learn its rules. He is the only sitting senator to have earned two gavels for presiding over the body. One gavel is awarded for each 100 hours.

Allen is a firm advocate of adherence to the Senate rules and precedents. "There's a sound basis for them. I have found that at least nine times out of ten the rule is what it ought to be, logically.

"I agree with John Hattel, the English parliamentarian, who said parliamentary rules:

"Whether those forms be in all cases the most rational or not is really not of so great importance. It is much more material that there should be a rule to go by, than what that rule is; that there may be a uniformity or proceedings in business, not subject to the caprice of the presiding officer or captiousness of the members. It is very material that order, decency, and regularity be preserved in a dignified public body."

Sen Sam Ervin is prone to extravagant language at times, as television viewers of the Watergate hearings know. But he has observed Allen in action in the Senate, and one can undertsand the general basis for what the Tar Heel senator has written along with his autograph on a photograph of Ervin that hangs in Allen's office.

Sen. Sam wrote: "If I had to stand with one man at Armageddon and battle for the Lord, I hope that man will be Senator Jim Allen of Alabama, whose industry, intelligence and courage make him one of America's finest public servants of all time."

INDOCHINA AID

Mr. McGOVERN. Mr. President, the Senate will shortly consider legislation

appropriating funds for both military and economic aid to the Thieu government in South Vietnam. In connection with those funding measures, I hope we will be mindful of one of the most compelling truths about our long and bitter experience with a succession of regimes in that country.

From the beginning we have viewed more American aid as a vehicle to inspire reform of various governments in Saigon. And for just as long, we have been wrong. Those governments have seen our aid, whether it was American dollars or American troops, as something quite different; not as a vehicle for reform but as an alternative to the steps that were necessary to win the support and confidence of the Vietnamese people.

We should recognize that our post-settlement dollars are no less susceptible to abuse of that kind. In fact, there is persuasive evidence that President Thieu is using our aid now as a means of avoiding the kind of accommodation envisioned by the Paris agreement, and that we are once again underwriting construction of a narrow, corrupt, and dictatorial regime in Vietnam. It is the sort of government which represses opposition of all kinds, and which—with our aid—sows the seeds of its own inevitable doom by literally driving away the people whose support it most needs.

These conditions have recently been described most persuasively by a Vietnamese historian, Mr. Ngo Vinh Long, who currently serves as the Cambridge director of the Indochina Resource Center. His article, "U.S. 'Aid' Prelude to War," is highly relevant to the Vietnam aid issue, and I ask unanimous consent that it be printed in the RECORD.

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

U.S. "AID": PRELUDE TO WAR

Previous to the signing of the Paris agreements the United States channeled a very large amount of unauthorized funds to the Thieu regime and its armed forces through to the U.S. army and other agencies. According to Colonel Hoa of the ARVN Department of Logistics, the Saigon military budget averaged about $5 billion a year at the official exchange rate instead of about $1 billion as the public has been led to believe (quoted in the Saigon daily Duoc Nha Nam, December 11, 1971.) The presence of American troops also brought various fringe benefits in the form of G.I. spending and work contracts for the Thieu regime and its supporters. After the signing of the accords, however, the withdrawal of American troops deprived the Thieu regime of the much needed money pump and hence all the attached fringe benefits. Of course American military and economic aid still remains at the very high ceiling of about $2.5 billion a year. Yet even this is not enough for Thieu because the Thieu regime has absolutely refused to demobilize any part of its armed forces. On September 14, 1973, Thieu himself declared that ARVN had to be maintained "to beat the Communists." (Le Monde, September 16–17, 1973). In fact, as his Interior Minister, Le Cong Chat, testified before the joint session of the Budget and Finance Committee and the Interior Committee at the Saigon Lower House on October 30, 1973, Saigon's national police force are to be increased to 122,000 men and the local Popular Defense Forces to 4 million persons by 1974. The minister stated that the salaries for the national police alone amounted to 29.5 billion piasters this year and is to be increased to 35.8 billion piasters by 1974. Also, the proposed expansion of the prison system in South Vietnam will incur a further expense of 5.7 billion piasters. Of this amount 1.6 billion piasters will go to the Department of Correction and the rest will be shared by the Con Son Prison Administration and the central office at the Department of the Interior (Dien Tin, November 1, 1973). According to the official statistics given by the Thieu regime, in 1971 its national budget was 235 billion piasters, in 1972 this was increased to 328.5 billion piasters, in 1973 the amount is 467.2 billion piasters, and during FY 1974 it will be increased to 630.7 billion piasters, an increase of 275 per cent over 1971, 195 per cent over 1972 and 130 per cent over 1973 (Dien Tin, November 6, 1973).

THIEU AND TAXES

Where will Thieu get all this money? One way is through increased taxation. The main part of the tax package for 1974 is 226.5 billion piasters, or an increase of 85 percent over the total tax package of 126.5 billion for FY 1973 (Dien Tin, October 25, 1973). The amount of 226.5 billion piasters of tax money for 1974 also represents an increase of 182 percent over the total for FY 1972, a deputy at the Saigon Lower House recently stated. However, according to the same deputy, the 226 billion piasters will only pay about 65 percent of the salaries of the military and civilian personnel. This amounts to over 330 billion piasters alone (Dien Tin, November 6, 1973). While this is the case, the 226 billion piasters in tax is a large chunk of the gross national product of South Vietnam, which is given as 453.9 billion piasters for 1974 (Dien Tin, October 25, 1973). Robert H. Nooter, Assistant Administrator for Supporting Assistance of the State Department, testified on July 13, 1973 before the Senate Subcommittee on Foreign Operations that Saigon's GNP in 1972 was 124.6 billion piasters at constant (1960) prices. Since the foreign exchange rate was 102 piasters per US dollar in 1960 and around 430 piasters per dollar in 1972 (Vietnam Economic Data, April-June, 1973, AID Bureau for Supporting Assistance), it seems that South Vietnam's GNP has been declining.

This development is reflected in the critically high and steadily increasing rate of unemployment recently announced by the Saigon Department of Labor. Among the unemployed are the 3.9 million who fled into the towns and cities for safety, 600,000 officially listed refugees who are still living in the camps, 160,000 former employees for American and other foreign companies and firms, 250,000 young people of working age joining the labor force every year, several hundred thousand former barmaids and of thousands of disabled veterans, widows, prostitutes for the foreign troops, and tens and discharged soldiers. The total population of the country is given as 18.7 million. (Dai Dan Toc, October 28, 1973)

As for those who are still employed, they have received little or no increase in salary since 1971. The minimum monthly salary of a male employee is still 6,375 piasters (Dai Dan Toc, November 4, 1973), while a 100-kilo sack of rice now costs over 27,000 piasters in Saigon (Dien Tin, October 19, 1973). This means that a worker can buy only about 25 kilos of rice a month, which is only enough for his own consumption. Nevertheless, the Thieu regime has ordered that taxes must be "collected to the utmost" (tan thu) for the sake of the national budget (Dien Tin, November 1, 1973). And in the countryside a person has to pay from eight to 14 kinds of taxes, depending on his occupation or lack of occupation (Dien Tin, October 19, 1973).

"COLLECTION TO THE UTMOST

"Collection to the utmost" does not simply mean collecting all the taxes in full. It also means official sanction to use all possible means to extortion to get those taxes. In the October 1973 issue of this newsletter we documented in some detail the rice collection policy, which involved massive military forays into the countryside, causing death and suffering and threatening a full-scale resumption of the war. We have now learned that this policy is being pushed with unprecedented cureIty and that, not content with leaving it to the regional commanders, the province and district chiefs and other local authorities, the Thieu regime has ordered the high command of the Saigon Armed Forces, the Department of Commerce and Industry, the Department of Agriculture, and the Department of Economy to join forces in the collection of rice (*Dien Tin*, November 2, 1973).

We also described a gigantic land grab being carried out by Thieu's officials. Using their bureaucratic power these officials employ the army to evict the peasants from their land even though they have legal proof of ownership. The timber and produce from the peasants' land are then taken away for export to bring in the much-needed foreign currency. In the past five years Saigon has had to import on the average over $800 million in foreign goods each year. The only year it imported less than $800 million was 1970. The total imports planned for 1974 amount to $870 million, while South Vietnam only has a foreign reserve of $27 million this year (*Dien Tin*, October 25, 1973). Even Robert H. Nooter of the State Department testified before the Senate Subcommittee on Foreign Operations on July 13, 1973 that the State Department's own planning for Saigon's import will amount to $800 million in 1974. Foreign currency is not only for imports but also for transfer of funds abroad, to Swiss and other foreign bank accounts. The land grab by Thieu's officials continues with increasing cruelty despite the fact that several million people are unemployed and starving. More than one million hectares of the once cultivated land has been laid barren by the war and recent floods (caused in part by the American defoliation program) destroyed additional crops in some central and southwestern provinces during the past few months. To maintain the loyalty of its officials and the flow of taxes and supplies to Saigon, the Thieu regime sanctions a system of unbridled corruption, extortion and terror in the countryside far worse than in any other period since the Diem regime first came to power.

The Western press, impressed as it is by the destructiveness of modern war-making gadgets and spectacular military offensives, has failed to notice the suffering and death caused by Thieu's officials by quieter and simpler means. A measure of the seriousness of the situation has been the response of the Saigon newspapers. In spite of extremely heavy fines, strict censorship, the constant threat of confiscation of the papers and closing down of their presses, these papers have been carrying hundreds of articles fully documenting and detailing the corruption and extortion, the murders and liquidations carried out every day by Thieu's officials. In what follows we briefly summarize some of the typical cases as reported in several Saigon newspapers.

ASSASSINATION SQUADS

The first typical case is described in detail in the October 24–31, 1973, issues of *Dien Tin*. It involves Major Ngo Van Thi, district chief of Ben Tranh in Dinh Tuong province. Like many of his colleagues, this district chief has all kinds of ingenious ways of making money. He organizes gangs of thugs (many of them his own soldiers) dis-

guised as NLF troops, armed with captured NLF weapons, and sends them out to rob people at gunpoint. These gangs are called the "assassination squads." During village and hamlet elections, anybody who wants to run for office has to pay him 50,000 piasters and anybody who wants to "win" has to pay from 100,000 to 300,000 piasters. Almost all of the seats in the hamlets and villages under his jurisdiction have been sold in this manner. The sum of 300,000 piasters is equal to the annual salary of a colonel or a Saigon university professor. Although this may appear to be a huge sum of money to pay for a village seat, "the successful candidate" can easily get back his investment with interest in a short time, simply by using his bureaucratic power to exact as much money from the people as he wants. Many of the village chiefs in the district will in turn recruit gangs of their own and send them out disguised as NLF soldiers to rob the people. On one occasion, May 31, 1973, the national police of Tan Hoa Thanh learned of this and brought it to the attention of the district chief. Within hours, the commander of the robbery, Le Van Man, took his M-16 rifle with him in search of the police who dared to bring the matter up.

The district chief's henchmen also arrest people, branding them as "Viet Cong" or deserters, in order to exact money from them. Meanwhile, the real deserters are holding many of the official positions in the villages and hamlets after paying the district chiefs huge sums of money. The district chief also forces the peasants to sell rice to rice merchants working with him and then pockets half the profit made. Any person who wants to bring rice to Saigon for sale has to pay him 150,000 piasters for permission. At the beginning of this year the district chief had group photos taken of the 10,000 households in his district to make it easier for him to control them. In the process he made at least 1.5 million piasters by shaking down the photographers.

He also forced the households to hang out Saigon flags and made more than 300,000 piasters from that. The district chief confiscates identity papers from the population and returns them to their holders only after a certain amount of money has been paid. He sends his henchmen out to collect and destroy the certificates of land ownership from landholders and then usurps their lands. Following his example landlords go on a rampage stealing lands from the peasants. Any peasants who attempt to go back to their land have been either beaten or brought to court. The whole thing is so rampant and callous that the Director of the Office of Paddyfields and Land in Dinh Tuong province has had to protest in a report. As for those owners who have not had their certificates of ownership taken away from them, they have to pay 30 gia (about 900 kilos) of rice per hectare. This amounts to about 30 per cent of the yield. In addition to this they have to pay taxes of course to the central authority.

There are many other ways of making money, notably demanding 20 to 70 thousand piasters from regional forces who do not want to be transferred to dangerous areas in the district. Many of these forces are in turn used by the district chief to run his various businesses, such as raising pigs, repairing motor-cycles and cars, and providing personal services for him and his various wives.

Many people have dared to bring the matter to the attention of the Thieu regime. People with documented proof of the corruption of the district chief have had the papers confiscated and have been beaten, in some cases killed, by his hired thugs. The latest victim of such a murder was Mr. Le Van Duyen, a fairly well-off inhabitant of Ben Tranh. Mr. Duyen had supplied the government with impressive documentation of the district chief's crimes. As a result, in the middle of the night of October 25, 1973, the district chief sent two of his henchmen and executed Mr. Duyen in front of his wife and daughter by shooting him through the temple with a revolver. After that District Chief Ngo Van Thi forced Mr. Duyen's family to bury him immediately and would not allow an autopsy.

According to *Dien Tin*, the case of the district chief of Ben Tranh has been brought to the attention of the Thieu regime many times with full documentation. Many times, because of public pressure, investigative teams have been sent out, but nothing ever came of such investigations and not a word has been uttered about the case officially. The October 30 issue of *Dien Tin* formally charged the Thieu regime with protecting the district chief, detailing some of the reasons. This issue was immediately confiscated. *Dien Tin* then concluded that the district chief of Ben Tranh was "covered by a huge umbrella as large as the sky." The entire population of Ben Tranh is of less consequence than the district chief who is absolutely indispensable in "herding the people."

MORE EXTORTION CASES

The second typical case involves Major Nguyen Van Hac, district chief of Giao Duc, Dinh Tuong province. His case has been discussed in some detail by many Saigon papers for months, and it was again mentioned in the October 27–29 issues of *Dien Tin*. Basically, Nguyen Van Hac has been guilty of the same crimes as Major Ngo Van Thi, only more openly. He has no need to disguise his people as NLF troops when they go out to rob the people. He simply sends Captain Tuong or Sergeant No out with a group of soldiers to knock on people's doors and demand money. When a public outcry unavoidably brought the case of Nguyen Van Hac to the attention of the Thieu regime, an official investigating delegation was sent out which was merely a whitewash. Nguyen Van Hac wined and dined the delegation and nothing came of it. In fact, Mrs. Nguyen Van Hac even declared publicly that she had bought off the entire delegation and that her husband would shortly be made deputy provincial chief of Dingh Tuong. Nguyen Van Hac also personally bragged to the inhabitants of his district, "I am still district chief of Giao Duc. All those local people and reporters who accused me have been thrown in jail. You'll see, whenever I get tired of this place I'll go to Dinh Tuong to take up the post of deputy regional commander."

The third typical case is that Major Vu Cong Khanh, district chief of Thang Binh, Quang Tin province. He has been accused by the village councils in all the villages under his jurisdiction of cruelty, extortion, and wanton destruction of private and church properties. Even the Province Council of Quang Tin was forced to send an official report to Thieu himself, summarizing the crimes committed by the district Chief and asking Thieu to transfer the district chief to another place while his crimes were under investigation. The letter was dated September 25, 1972, but so far Thieu has not responded to it in any way. For this reason, a verbatim transcript of the letter was printed in the November 3–5 issues of *Dien Tin*. Major Khanh's activities are similar to those of his two colleagues just mentioned. The only difference is that he is even more brazen in his approach. (This is perhaps due to the fact that northern provinces are usually regarded by the Thieu regime as "unfriendly" requiring harsher measures.) Any village official who does not go along with the district chief's activities is personally beaten up by him. The victims of this kind of physical abuse have been the village chiefs and other village officials of Binh Lam, Binh Lanh, Binh Tri, and Binh Phu. Although the district chief received money in April for rehabilitating 11 villages, he officially allowed the inhabitants of only 6 villages to come home. The inhabitants of the other villages were ordered to go south and that as far as he was concerned their villages ceased to exist. As well as pocketing the entire amount of money allotted to the five villages and a very large chunk of the money of the other six, he also sent Company 3 of the Army Corps of Engineers to the villages of Binh Lam and Binh Lanh with bulldozers and power saws and razed them to the ground. Churches and pagodas, houses, orchards, and even graveyards were completely flattened. Then the district chief ordered army trucks to carry back to his district headquarters anything of value. Of particular interest to the district chief was the timber from jackfruit trees, a valuable article. It took 10 trucks working continuously for two weeks to transport all these trees.

"THE LITTLE MONARCH"

The fourth typical case involves Major Le Van Sy, district chief as well as military commander-in-chief or Phuoc Long, the province of Bac Lieu. As described in the November 3–5, 1973, issues of *Dien Tin*, *by* holding these positions Major Sy makes a huge sum of money by replacing and transferring village officials, soldiers, outpost commanders and so on. The Major has an impressive force of retainers who specialize in extortion, protection of gambling, rapes and torture. They beat people whenever they feel like it, for no reason at all. Rapes are committed both impulsively and systematically. Two of the Major's most effective henchmen in the village of Phong Tay, for example, order families with beautiful girls to their village headquarters to sleep at night under the pretense that these families are considered "Viet Cong suspects." Then the women are taken to their private quarters and raped. Those families who refuse to go to the village headquarters to sleep are branded as Viet Cong and punished accordingly. The Mayor sends his henchmen out daily to find out which peasant households have some rice and which have relatives with the NFL. Sometimes disguised as NFL soldiers, his men will ask the inhabitants for help. The people who fall into this trap are immediately arrested and tortured to extort money from them. Many of the major retainers are draft-dodgers and deserters. At one point the national police made a sweep in the area and arrested eight of Major Sy's retainers because these people did not have the necessary papers. The major forced the national police to release them at once.

To make extra money, the Major also makes his soldiers raise pigs, chickens and ducks for him. All the local rice milling stations have to supply feeds free of charge. Soldiers are also used as servants for his three wives. At one point, owing to public pressure the IV Corps Headquarters was forced to investigate but without result. Major Sy's protector was so powerful that the authorities of the IV Corps were obliged to announce that "Major Sy is a meritorious and effective administrator and has never done anything wrong." Since that day, the Major has behaved even more heavy-handedly and the inhabitants in his district are even more fearful of him. And for this reason, he has earned the nickname "the little monarch" of Phuoc Long.

The list of local despots protected by the Thieu regime might be extended but enough has been given to show how much the Vietnamese people have to go through. And the despots are not limited only to officialdom. Landlords and even some Catholic priests have been especially active in robbing and bulling the people. Catholic priests who are involved in such activities are usually more subtle than the officials, but not always so,

as in the case of the parish priest of Cai San, a Catholic community of several hundred thousand Catholics who originally had come from North Vietnam. The case of this priest, who is the spiritual father in charge of the whole community of Cai San, is described in the October 25, 1973, issue of *Dien Tin*.

The father stops at nothing to get an income for himself. Even the officials in Cai San are scared of him and "have to shake their heads and stick out their tongues because the Father's activities would even make the devil cry and the gods frown in sadness." In Cai San community there is a 75-year-old man, who is a descendant of a five-generation Catholic family and advisor to the parish's Catholic Council. This man, Tran Van Huan, advised the father to refrain from his unpopular activities. But the father went on with his business and so Mr. Huan had to oppose him publicly. The father subsequently sent a disciple to destroy Mr. Huan's house and beat his daughter almost to death. As a result of this, Mr. Huan prepared a document to be presented to the Saigon regime describing the crimes of the father. A policeman was then dispatched to Mr. Huan's house armed with a rifle. Everybody in the house was shot and a woman in the neighborhood who was visiting at Mr. Huan's house was killed on the spot. Only Mr. Huan and his wife escaped death with severe injuries and had to leave the community. All of Mr. Huan's land was then seized by the father. And even though Mr. Huan again sent a letter to the Saigon regime on October 7, 1973, asking for help and intervention, nothing has been done.

But this kind of abuse of power is not limited to the districts and provinces alone. It happens right in Saigon under the very noses of foreign observers and the foreign press. For example, as reported in the October 27, 1973, issue of *Dien Tin*, on the previous day Saigon representatives held a conference at which they reported the widespread confiscation of properties on the pretext of not having paid the full amount of taxes. Often the properties confiscated are worth more than 100 times the amount of taxes owed. These would in turn be sold off cheaply and the money gained would be pocketed by the tax collectors and their protectors. An example of this tactic is given by Representative Ruyet: A bread bakery on Hai Ba Trung Street, a few blocks from Thieu's Independence Palace, was taxed at 200,000 piasters. But the collector made the owner pay 2 million piasters. After the owner paid this, an additional 5 million piasters was demanded. The owner said he had no more money and in two days this bakery, worth "several tens of millions of piasters," was confiscated and sold for a few million piasters. Money is also being made in the name of "urban beautification," Thieu's latest program for attracting foreign tourists. One of the ways of extracting money from the Saigon population under this program is the widespread confiscation of motor bikes on the pretext of "traffic law violations" as described by Deputy Do Sinh Tu in the November 1, 1973 issue of *Dien Tin*.

Again, one can simply go on and on citing cases of extortion right in the city of Saigon itself. What can be done about it. The Thieu regime says it needs more money from the United States and other countries. The Nixon administration agrees, and has been forcing Congress to vote generous sums to the Thieu regime. The assumption of the Nixon administration and a majority in Congress is that the Thieu regime will behave better if given more money. They assume that it is the lack of money that has made the Thieu regime embark on its course of corruption, extortion, and terror. But this is an erroneous assumption, for several reasons. American aid given to Thieu at the present rate asked by the Nixon administration will meet only a third of Thieu's budget (*Dien Tin*, October 25, 1973). Thieu will still have to "collect to the utmost" from the Vietnamese people to meet his expenditures. This aid will not make Thieu's officials any less despotic but instead it will give them added strength and ammunition in carrying out their activities. Not only will they have more means at their disposal, but the foreign currencies supplied through the aid will enable them to transfer the wealth they exact from the Vietnamese people abroad. Perhaps the most serious of all is the fact that as long as the Thieu regime thinks it can depend on U.S. aid, it will never make peace with the Vietnamese people. As a Saigon newspaper recently stated. "The more critical the situation the Saigon government creates for itself, the more reason there is for the Nixon administration to continue military aid." (*Dien Tin*, October 3, 1973.) If such is the expectation, then the Thieu regime will never make peace with any segment of the society, including the Third Force. Thieu has declared that all Third Force groups are "traitors with their "strings pulled by the Communists." (*Dien Tin*, October 3, 1973.) And Deputy Nyugen Ba Can, chairman of the Saigon Lower House and one of Thieu's most effective supporters, said "there is no such thing as national reconciliation and national concord" with other political forces. (*Dien Tin*, October 3, 1973.)

But the importance of a Third Force for national reconciliation and national concord is real and is not just a "Communist ploy" to outmaneuver Thieu politically by using it as a focus for the vast popular opposition to the Thieu regime. Even if the PRG should become a dominant force in the future, with or without a coalition government, a Third Force can at least provide a channel through which Thieu's present henchmen and local despots can reform and give them an opportunity to prove that they are willing to change and work for the benefit of the national community. It also makes it possible for the PRG to cooperate with them and use them in the future without risking strong criticism from the population who have been their victims and perhaps from the PRG soldiers and rank-and-file who have sacrificed so much for the national community. There is no doubt that many of the present despots are talented people and could be of good service to their country if given the opportunity to change their ways.

This opportunity is thrown away as long as U.S. aid flows indiscriminately to the Thieu regime. There should be a complete or at least a very substantial aid cut. The Thieu regime must be made to realize that it needs the Vietnamese people and not be allowed to rely on continued U.S. aid to oppress people. As long as the Thieu regime still has the illusion that it can beat large segments of the Vietnamese people into submission with continued aid, it will continue with its present policies and its officials will continue heaping suffering and death upon the Vietnamese people. Under such circumstances, there is no guarantee that the PRG won't lose its patience and be pressured by public opinion to take military measures to curb the Thieu regime or even attempt to get rid of it. When this occurs, not only will there certainly be ramifications beyond the wishes of most Vietnamese but there will be little the United States can do to save Thieu. Besides the obvious loss of lives and destruction of property in the course of the fighting, the prospect for national reconcilation and concord as envisioned in the Paris agreements will become more difficult. To cite but one possible example, the present despots have to be punished if a sense of justice is to be felt and if social order is to be promoted. It will be too late for them to repent all of a sudden and it will also be too late to let them go scot-free even if the future government wanted to do this badly enough. On the other hand, if the despots were appropriately punished for their crimes the cry of "bloodbath" will resound in the Western world and especially in the United States. Even sympathetic people will call the Vietnamese authoritarian and will explain any punishment in terms of Vietnamese culture as in *Fire in the Lake*. Even if these despots were to be sent to "correctional facilities", to use an American term, for a short period to allow them to think things through, the cry of "thought reform," "brain washing," and "kiem thao"—again as in *Fire in the Lake*—will be loud and clear. Many Americans on both sides of the political fence would feel especially self-righteous either about their correct idea of the nature of a socialist or communist society or their correct idea of the nature of Vietnamese society. Either way, in the eyes of these people, the Vietnamese can't win. At best, they will be victims of Communism or their own culture!

The tragedy of continued aid to the Thieu regime, therefore, does not stop at the continued death and suffering for the Vietnamese people but it includes as well the danger that the most significant social experiences in the history of the world will never be fully understood by people in the West even after the expensive price they have had to pay for it.

THE 13th ANNIVERSARY OF THE REPUBLIC OF UPPER VOLTA

Mr. HARTKE. Mr. President, today December 11, 1973, marks the 13th anniversary of the Republic of Upper Volta. For the past 5 years tragedy has stalked this African country in the form of drought, that has brought misery and starvation to untold thousands.

The will to survive has given the people of the Republic of Upper Volta new vigor and determination.

The Republic of Upper Volta has been under the able guidance of President Lamizana, who took office in 1966 and proceeded to institute new reforms and social programs.

In October 1973 President Lamizana represented the six drought stricken countries at the United Nations, where he made a passionate plea for relief.

Following his plea in New York, President Lamizana called upon the President of the United States and again appealed for more aid.

To date the United States has committed $80 million to the six countries.

Mr. President, such determination as manifested by the people of the Republic of Upper Volta deserves our recognition.

ANTISMOKING SPIES

Mr. ERVIN. Mr. President, every American who flies on a commercial aircraft during the Christmas holidays stands to be spied on by agents of the Government.

This spying will not be done to prevent possible hijackings.

It will not be done to insure the safety of passengers and crews.

It will not be done to save fuel in every way possible.

But it will be done to enforce the smoking segregation rules—those regulations which require that Americans who choose to smoke must be herded off by themselves, away from those who do not.

My own spies have reported to me that

the Civil Aeronautics Board is urging all its 680 employees to perform this spying function during the holidays. The CAB wants them to act as "observers" and report violations of the no-smoking rules and what action, if any, the airline crews took to stop the violations.

It is not enough that the pilots and crews must worry about their jobs in the face of the fuel crisis. Now they must worry about the creeping presence of Federal bureaucrats who may be watching over them at every opportunity.

I wonder whether these bureaucrats will openly announce their presence to the crews in advance—or whether they will sneak about undercover, perhaps wearing red wigs and filing top secret reports on the smokers of America when they return to Washington after Christmas.

Have we not seen enough of this type of activity in the past few years? Have we not seen enough surveillance of civilians by the Army and so-called plumbers in the White House itself?

Are not Federal employees already beleaguered enough without being made spies on behalf of those who choose not to smoke? We have seen Federal employees forced to participate in social experiments after working hours, and we have seen their right to privacy severely restricted. Have we not seen enough?

Mr. President, I call upon the Chairman of the CAB to call off this activity and to stick to the purposes of the agency. It seems to me that the CAB will have its hands full merely insuring that air transportation is provided safely and economically during the holidays.

I also call upon the Chairman of the Civil Service Commission to investigate this activity so that CAB employees will not be required to demean themselves by spying on their fellow Americans.

NATIONAL HEALTH INSURANCE

Mr. HARTKE. Mr. President, earlier this year, I introduced S. 444, the Health Care Insurance Act. This bill has 180 cosponsors in the House and Senate, making it the health insurance bill with the most support in Congress.

I have noted with interest the introduction of a health insurance bill by the distinguished chairman of the Senate Finance Committee (Mr. LONG) and the distinguished Senator from Connecticut (Mr. RIBICOFF). While I will have more to say about that bill at a later date, I think it important to point out here that the Long-Ribicoff bill is a bill for disaster, not a bill for health care. It provides coverage once you have a serious problem, but it does nothing to encourage preventive health care.

The Health Care Insurance Act is designed to provide a coherent package of health care benefits covering preventive health maintenance, normal illness, and catastrophic illness. It is designed to assure that financial help is provided to those who need it most in the form of tax credits and deductibles—deductibles which for catastrophic insurance are geared to family income.

A recent article in Modern Medicine outlines the current administration health insurance plan. Those who have been waiting for it will be disappointed. For an average annual premium of $625 per family, a person can look forward to having the "privilege" of paying an additional $825 in health care costs before any real benefits are provided. That means that each family will be liable for almost $1,500 in health care costs. For most workers today, that is no improvement at all.

Mr. President, these two proposals are both "frontloaded." That is, they seek to discourage basic health maintenance. When you have a serious problem, both plans come to your aid, but preventing serious health problems is another, quite different matter.

Once my colleagues have had the opportunity to give these bills detailed consideration, I am confident that their deficiencies will become apparent. The Health Care Insurance Act represents a much more desirable and far more feasible alternative. It will provide quality health care to all Americans at reasonable cost.

THE FUEL CRISIS

Mr. McGOVERN. Mr. President, during recent trips to South Dakota I have been approached by constituents across the State who are terribly concerned about the energy crisis.

Aside from a great bewilderment as to how our country ever got into the present situation, their greatest single concern is the price of gasoline for their cars and what if any rationing system will be imposed. Like most midwestern farm States, South Dakota depends almost exclusively on the automobile for transportation. Without adequate supplies of gasoline, South Dakotans could not get to work because there are no mass transit systems. Rural families could not get to the nearest town to buy groceries. Most frightening of all, farmers could not run many of the machines that are vital to our Nation's food supply.

There has been a great deal of talk about a gasoline tax that would raise the price of gas to around $1 per gallon. For South Dakotans that would be disastrous. Sixty-eight percent of South Dakota's families earn less than $10,000 per year and 15 percent of the families in the State earn less than $3,000 per year. They must have gas to earn their livings and buy their food and clothes. A per gallon gasoline tax of 30 or 40 cents would literally take food out of their mouths and clothes off their backs.

Mr. President, there is little doubt in anyone's mind that we must have some kind of allocation system that will conserve the gasoline we do have. As we study the different possibilities we must consider the needs of those who use the product and not just the shortened supply of the product itself. A per gallon gasoline tax would be in effect an allocation program based exclusively on the ability to pay with no consideration given to the needs of the middle- and lower-income families in South Dakota and all across the country.

It is for this reason, Mr. President, that I wish to go on record as being adamantly opposed to any per gallon gasoline tax. Other methods of rationing may be more difficult to administer, but it is clear that we have an obligation to the people of this country to go to whatever lengths are necessary to insure that their livelihoods are not threatened.

There has been one other concern expressed to me by South Dakotans that is also of immediate importance. Service station operators and bulk dealers across the country have experienced cutback after cutback in their allotment of gasoline since early last summer. For those in rural farm States it has been most difficult since the decision is left to them as to which customer should get how much.

The energy officials in the administration have recognized in every allocation program the priority farmers must have to produce the Nation's food supply. Gasoline is still being apportioned in an inefficient way through the old voluntary allocation system. Farmers in South Dakota are going from station to station with 5 and 10 gallon containers in order to get the gas they need to run their farm machinery. They have turned to looking for black market supplies from Canada or anywhere else it might be available.

We should be completing our work on the legislation authorizing mandatory allocation of gasoline very soon. Even without it, many experts believe the administration has the tools they need to allocate our gasoline supplies. I would hope that the new energy chief, Mr. Simon, would find time to give consideration to some provisional measures that will insure our Nation's farmers that they can obtain the gasoline they need to run their farms. He has already made it clear that no system of rationing could be put into effect before March 1. I do not believe our farmers can wait that long. And I do not believe they should have to wait. A delay now may well mean a serious food shortage in the very near future.

Mr. President, I would like to insert in the RECORD a letter written to Mr. William Simon by Senator ABOUREZK and myself asks his consideration of the farm fuel problem.

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

WASHINGTON, D.C., *December 7, 1973.*

Mr. WILLIAM E. SIMON,
Administrator,
Federal Energy Administration,
Washington, D.C.

DEAR MR. SIMON: Farmers need a decision from you in the next several weeks. They need to know if they are going to be allocated fuel sufficient to plant the extra 10 million acres that the Agriculture Department is requesting them to plant.

As you know, the present allocation for farmers is 100 per cent of the fuel that they used in 1972. USDA officials tell me that this allocation will be 1.6 billion gallons less than what will be required to plant the additional acres.

We are sure that you also know that our corn and wheat supplies will be down by one billion bushels in 1974, as compared to the stocks of those supplies on hand in 1972.

As you also know, we desperately need these extra acres for food production to improve our balance of payments situation.

We urge you to make this additional allocation immediately.

Sincerely,

JAMES ABOUREZK,
U.S. Senate.
GEORGE MCGOVERN,
U.S. Senate.

THE WORLD'S SILENT CRISIS: FOOD

Mr. KENNEDY. Mr. President, the energy crisis understandably occupies our attention and concern today. Last week I addressed in some detail how our Nation might better deal with the energy crisis in cooperation with other nations around the world.

But there is a companion crisis that is every bit as important, and as difficult, as the one over energy and oil and fuel. It is the quiet crisis of world food.

Recently, the 17th session of the United Nations Food and Agriculture Organization—FAO—concluded in Rome a critically important conference on world food problems. For the first time in modern history, they met under the shadow of worldwide food scarcities that, in many areas, imperil the health and well-being of millions of people.

Yet it is a sign of the times that this silent crisis has gone unnoticed as long as it has.

Unlike the strong reaction to the energy problem, few world leaders have yet to speak out or express great concern over the growing crisis in world food supplies.

But, unlike the energy crisis, the current world food situation carries with it the silent and deadly hand of starvation and famine—which silences people, not simply machines—and which may condemn millions to face malnutrition and sudden death. Only those who cannot be heard suffer malnutrition in silence, or die of famine—and today that is a growing majority of the third world.

Mr. President, few Americans will recognize many of the names or areas that were the focus of the recent FAO Conference. Who has heard of Wollo, Ethiopia; or Bamako, Mali; or Dinajpur, Bangladesh? They are all places that seem distant and remote to us. Yet the food crisis the people in these areas face today is as much ours as it is theirs—and it is as urgent as it is now neglected.

These areas are the first to experience the effects of the growing shortage in world food reserves, creating scarcities in that most basic element that sustains all human life—protein. Few Americans have yet realized how greatly we are tied to the same forces which are now so tragically affecting the lives of millions of people in the developing areas of the world. For years we have thought ourselves immune from scarcities. After decades of surplus food—when we were accustomed to having plenty, when there were rising expectations, and unending confidence in the miracles of technology and service—it comes as something of a shock to find that we and the world face acute scarcities in food and other resources.

The plain fact is that there are signs that man has not been able to, and perhaps cannot, bridge the gap between his limited resources and his growing rate of consumption—a demand rate produced both by increased population and greater affluence. Americans have now been awakened to the limits of energy, but in the final analysis the inconvenience of an empty gas tank pales in comparison to the prospect of empty food bins.

Perhaps when the pictures of the gaunt faces and the swollen bellies of starving children around the world begin to enter our homes, we will begin to comprehend the tragedy involved in prolonged global food shortages. Perhaps when our grocery shelves become empty of important food items, as they did recently, we will begin to understand the plight of so many throughout the third world today. And perhaps then our national leadership will end its silence on the food crisis and express some greater measure of concern over the new requirements for correcting the inadequacies and imbalances in present international food policies.

But we cannot wait long. If the doomsday message of Malthus is to be avoided, the world community must act soon.

The FAO conference in Rome has set the stage for action. It has provided a basis for initiating new and forthright policies to meet the immediate humanitarian needs created by food shortages, as well as to begin the necessary corrective actions to eliminate the causes behind the food crisis.

INCREASE WORLD FOOD PRODUCTION

The first area of concern is to increase world food production sufficiently to permit the establishment of an internationally coordinated food reserve. At a time when the world's total food production dropped sharply for the first time since World War II—yet which was matched by an increase, in the opposite direction, of the world's total population—the agenda before the FAO was as clear as it was ancient: Produce more food and save some of it for emergencies.

Furthermore, the adverse effects of weather and the increase in market demands for food grains in the developed nations, has depleted the world's food reserves for the first time in modern history. The world carryover of food, or the reserve stocks of food grains from last year, was less than 100 million tons—or less than a 1-month's world supply. Wheat stocks in the major exporting countries—principally the United States, Canada, Australia, and Argentina—are now at the lowest levels in over two decades.

All this means that the world is now entirely at the mercy of this year's weather and its effects upon this year's crop. Although the current forecasts are good, the predictions of FAO's director-general, A. H. Boerma, are also correct; after 2 successive years of poor harvests in the developing countries, and poor food production in the Soviet Union and elsewhere—

> Per capita food production in the developing countries as a whole has now fallen back to the level of 1961–65. The real measure of our anxiety is that while a marginal shortfall in expected production in a major area in 1973 could lead to a serious deficit at the world level, a marginal improvement would not much relieve what is already a dangerous situation.

Revised FAO estimates, made only last week, indicate that world agricultural production will increase by only 3 or 4 percent this year. But because the world's population has increased by nearly the same percent, and because world food prices have skyrocketed, the fact is that more and more people are still eating less and less.

SOUTH AND SOUTHEAST ASIA

Nowhere are the statistics on food shortages more bleak than in South and Southeast Asia, and in Africa. According to the FAO, there was an 8-percent drop in food production throughout the Far East generally, from the 1970 peak, and an average 6-percent drop in food production in South and Southeast Asia alone.

Countries that were formerly rice-exporting nations, such as Thailand and Burma, this last year found that their rice production dropped by 10 percent. In areas which were marginally self-sufficient, such as the Philippines, are once again deficit areas. But especially hard hit have been the already deficit food areas, such as Bangladesh and Ceylon, where the slightest drop in food production produces even greater human tragedy.

In Bangladesh, for example, drought later compounded by flooding, has meant that the total food deficit for 1973 is estimated to be 2.5 million tons of grain, worse than at any time since the 1971 civil war disrupted agricultural production. Still recovering from the aftermath of that tragic struggle, the current food crisis has set back efforts by the Bangladesh Government to rehabilitate its agricultural sector. By forcing it to use limited foreign exchange to purchase food for its hungry cities and towns, Bangladesh is placed in a vicious cycle where it is unable to purchase the fertilizers, insecticides, and other agricultural investments necessary to increase its food production next year. Instead, it will be faced again, the following year, with the need to buy more food, sometimes at double the price, with even less funds available for improvement of agricultural production.

Throughout South Asia, the drop in food production over the past 2 years—because of various adverse weather conditions—has meant that nearly all food reserves have now been exhausted. Such is the case in India, Pakistan, and Ceylon. The governments in these developing countries have had to increasingly depend upon foreign import of food—using hard currency in most instances—to buy food precisely at a time prices have doubled. The impact upon their economic development programs has been severe, and the sharp increase in the local price of food has had serious consequences on people who already spend 80 percent of their income on food. A doubling of the price makes food for the poor an even more scarce commodity.

WEST AFRICA

Mr. President, the grim situation in Africa has also been widely reported. As James MacCracken, of Church World Service and chairman of the American Council of Voluntary Agencies, phrased it recently in testimony before the Judiciary subcommittee on Refugees:

A new equator circled our globe last year: Its name was drought and famine."

The circle of famine has been most evident in West Africa. Seven years of increasingly severe drought conditions in the Sahel region has brought unparalleled tragedy to millions of people, and has virtually destroyed a way of life for a whole people.

Hundreds of thousands of rural, mostly nomadic people, have fled their villages and the countryside in a desperate search for food and water. Livestock herds are decimated. Crops are destroyed and the very land itself has been made fallow. Threats of epidemic and disease are casting their shadows over urban areas choking under a wave of refugees seeking assistance.

A measure of progress has been made in recent months in meeting the immediate, emergency humanitarian needs created by the drought. A successful international relief effort has helped to stave off mass starvation, even as famine conditions persist. A recent report from AID's Sahelian Drought Emergency Task Force concludes that this year's harvest in the area will be "as much a deficit year as 1972." The report goes on to note that—

The coming harvests will likely be inadequate to meet the demands of the urban population . . . and inadequate to support the nomads who have now been forced by the drought to become refugees.

Thus, even as the world continues to help these six West African nations meet the immediate relief needs caused by the drought and food shortage, an effort to address the longer term problem of rehabilitation and agricultural development has barely begun.

ETHIOPIA

But perhaps the best example of the food crisis era into which the world has now entered, is the case today of Ethiopia. As I reported to the Senate on November 27, large areas of Ethiopia are suffering from drought conditions similar to those in West Africa, although the food crisis there has received little or no attention abroad.

Yet the food problem in Ethiopia is, in many ways, typical of the silent and unseen food crisis that we have seen—and will likely continue to see—across the globe in the coming decades, unless something is done soon.

The food problem in Ethiopia is most graphically stated in an unpublished report in October of the United Nations development program. For 3 years, since the beginning of 1971, major areas of northern Ethiopia have been suffering from severe drought and famine conditions. Over 6 million people have been affected, and an estimated 1.2 million are now in need of relief aid. As of September 29, some 63,000 famine refugees were located in 12 relief camps in Wollo province alone.

Thousands of families have been forced to leave the parched earth of rural areas to seek food and shelter in urban centers. The United Nations team indicates that—

Estimates of deaths number in the tens of thousands, and that over 100,000 people are living in conditions inimical to the preservation of a reasonable standard of health.

As in West Africa, Ethiopia is experiencing the accumulated effects of a prolonged drought—and long neglect. As the U.N. team notes:

It has affected the quantity of land under cultivation, the crop yields in areas which have been planted, and the amount of water forage and grazing available for livestock. The result has been the debilitation and decimation of livestock, . . . and for the nomadic populations, about 125,000 people, . . . the effects have been catastrophic, making the nomads almost totally dependent on food relief.

The U.N. report concludes that 150,000 tons of food assistance will be required throughout 1974 to meet even minimum requirements. Thus far, the international community has offered or delivered approximately 40,000 tons, less than the amount needed to meet the needs of 3 months. The United States has contributed to date 18,000 tons.

FOOD: A DECADE FOR SURVIVAL

Mr. President, as the food crisis in Ethiopia illustrates, food conditions have deteriorated so severely in so many areas of the world, the international community can no longer simply speak of foreign assistance for development, but for mere survival. In the optimism of the 1960's, the United Nations declared it to be a decade of development. Given the realities of today, particularly in food production, the FAO would be wise to declare the 1970's a decade for survival in food production.

Food shortages—and even famine—are on the minds of people around the world—from the villages of South Asia and the desert of West Africa, to the farms of Nebraska. And it is long past time that it becomes a matter of concern in the capitals of the world, and reflected in the deliberations of our policy planners.

As FAO Director-General Boerma noted in his introductory report to the conference:

It would indeed be a blessing in disguise if the precarious world food situation of 1973 could lead to the longer term measures that are required to ensure that such a situation can never occur again. It is intolerable that, on the threshold of the last quarter of the twentieth century, the world should find itself almost entirely dependent on a single season's weather for its basic food supplies."

RECOMMENDATIONS FOR ACTION

Mr. President, there can be little comfort taken in this hope of the FAO director unless our Government and other governments take the strong and urgent measures needed to turn around the world food situation—from one of world scarcity to one of controlled world reserves—from international competition for food, to international cooperation in food distribution.

As we take needed steps to remedy our food problems here at home, we cannot neglect hungry people overseas. Although we no longer have unlimited surpluses to meet all their needs, we must do what we can, with what we can. For the United States and North America remain the breadbasket of the world. And, in the immediate years ahead, millions of hungry people in Africa and Asia and elsewhere will depend upon a wise and humane allocation of our limited food surplus. The allocation of our food should be done in close cooperation with other food exporting countries, and hopefully under international auspices.

Regrettably, the administration's record in this significant area of public policy has fallen short in meeting our country's international responsibilities. The administration has not only blundered in the domestic economy and in the allocation of food and other resources for Americans—it has also blundered in its food allocations overseas.

Mr. President, just as the current energy crisis demands that we chart new courses in our distribution of oil and energy resources, so, too, does the growing crisis in international food supplies demand that we take new initiatives in world agricultural cooperation. Given the progress made in this area at the recent FAO Conference, I propose that our Government move now on at least four fronts:

1. ESTABLISHMENT OF A WORLD FOOD BANK

The food crisis of this past year has shown, if nothing else, how perilously close the world can come to simply running out of food. We have fallen increasingly to the mercy of unpredictable weather and drought conditions rather than to international planning in our reserve food supply.

The FAO Conference mandated that this "close call" in food surpluses must not happen again—that the world finally must establish a meaningful international policy of food reserves, coordinated under international auspices. The mechanism for achieving this—as for achieving the control of energy resources—will obviously be one of the more important and difficult questions to be resolved in the coming months.

But our Government must now show greater leadership in this area. Not only because America is still the single most important producer of the world's exportable food—and, until last year, the holder of the world's largest residual foodgrain reserve—but because the concept of "freedom from hunger" is also a longstanding national commitment in our foreign policy.

To give substance to this commitment, we must see in the days ahead an explicit offer by our Government to support, and to contribute to, an international food reserve system. We can hardly ask some nations to share with us their limited resources, particularly in energy, if we are not prepared to cooperate with others in sharing our abundant resources in food—especially to those developing nations who need it the most.

The Congress has already mandated that our Government must review over the coming year our international food policies. Section 39 of the Foreign Assistance Authorization, passed by the Senate this past week, asks for a careful review of all aspects of our international food policy and particularly our capacity to participate in an internationally coordinated program of food reserves. This review by the various departments within the executive branch must proceed with urgent speed if we are to lend credibility to our concerns in this area.

2. PROTECTION OF ENERGY RESOURCES FOR FOOD

Nowhere is the linkage between the companion crisis of food and energy more direct, or more painfully clear, than

in the alarming impact the current shortage of oil products will have on the production of fertilizers—and, ultimately, on the total production of next year's world food supply.

Already, in many areas of Asia, the cutback in fertilizer supplies means that the once heralded "green revolution" is in danger of literally withering away because the "miracle" behind almost all of the new miracle seeds, is fertilizer. Without proper nitrogen fertilizer, most new strains of rice and wheat produce little more than traditional varieties—and science will take a great leap backward.

More ominous still is the fact that most of the rice-growing nations of South and Southeast Asia simply must increase their food production just to keep pace with the estimated growth in their populations. Without a steady supply of fertilizer this will be impossible.

The intensity of the shortage that has developed in the world fertilizer supply can best be gaged by the skyrocketing price a ton of the most commonly sold variety of nitrogen fertilizer now brings on the world market. Once selling for approximately $50 a ton in 1971, a year later it climbed to $75 to $100 a ton, and then as the oil crisis worsened this autumn, it has again doubled in price to approximately $200 a ton.

All this means that the countries which must increase their agricultural production the most, will be the least likely to receive or able to buy the necessary fertilizer to achieve it.

Even as we now see the necessity of protecting our own domestic oil supply to safeguard agricultural production—to assure our farmers that they will have sufficient priority for the oil and energy they need—so, too, must the international community engage in cooperative planning to assure that petroleum products for agriculture have the highest priority around the globe.

The developed nations, such as the United States, Japan, and Western Europe, have a heavy obligation to help maintain fertilizer commitments to the third world. Given the growing shortage and competition for agricultural petroleum products, this will obviously require more than verbal assurances. Rather, it will more likely require some kind of international rationing of fertilizer—or, at the minimum, guarantees for providing on a priority basis, fertilizer supplies to third world countries that fall short. This can be negotiated either bilaterally or under the auspices of the FAO or other appropriate international trade agencies.

For our part, the U.S. Government must make clear its firm intention to help provide fertilizer supplies to the developing countries, after the minimum needs of our own farmers are met. Without this—and the contribution of other developed nations—there can be little hope of averting more severe food shortages next year.

Cut-throat, competitive marketing in oil resources for agriculture can only mean doom for the vast majority of mankind, threatening famine for millions throughout the third world. To ration oil resources for food must surely be as great a priority as rationing oil for economy.

3. FOOD FOR PEACE

We must review, and reassert, the humanitarian principle and purpose of Public Law 480, the food for peace program. Last year, at the expense of both our own citizens, and starving people in Africa and Asia, the administration pursued a policy of "food for cash" instead of "food for peace."

This policy upset food commitments to hungry people around the world. It caused chaos in the shipment and delivery of emergency humanitarian food overseas. It nearly destroyed the many developmental food programs of America's voluntary agencies, and reversed long-standing policy guidelines on the implementation of the title I and title II provisions of the law.

It is deplorable under any circumstance to divert all our available surplus food for commercial purposes—to sell our exportable food to the rich at the expense of the poor. And during last year's acute worldwide food scarcity, this policy was nearly catastrophic to the many important nutritional and developmental programs abroad. Worse still, it caused an even further escalation of world food prices, making what food there was available even less likely for the poor.

This reversal in our traditional humanitarian priorities demands not only a policy review, but I believe new legislation to assure that the high purpose of Public Law 480 will in the future be fulfilled.

We should seriously consider the recommendation made by the voluntary agencies, made both before the Refugee Subcommittee hearings last month and in informal meetings with various Senators, that the Congress legislatively earmark at least 10 percent of our exportable food grains for humanitarian purposes.

As James MacCracken, of Church World Service, sees it:

> This 10% would be very much like the traditional tithe in the Judeo-Christian heritage—a moral responsibility to use at least that amount of our exportable, surplus food resources for humanitarian purposes as a gift not only to help the poor, but for the larger benefit of mankind.

It is important to emphasize that we are again talking about surplus—that amount of food left after America's own food needs are met. And we are talking about the use of food after the farmer has been paid what he normally would under market conditions. We are speaking of surplus food for export, and the purpose of Public Law 480, as amended in the mid-1960's, was to assure that humanitarian needs would always have an important place in our export priorities.

The Department of Agriculture should come clean on its current intentions for Public Law 480 next year, and its plans for food allocations under title II and title I. If this administration will not wisely use our surplus food for humanitarian as well as commercial purposes—as it has done over the past 2 years—then the law must regrettably be amended once again, and the humanitarian provisions of Public Law 480 strengthened.

Finally, Mr. President, in the short term, there are critical food shortages in a number of areas which, as I noted earlier, must now receive greater attention and priority if we are to avoid massive starvation. The food relief effort in West Africa must continue, and the food needs in Bangladesh remain critical. And, most important, the neglected needs of Ethiopia must finally be met.

The amount of food required to meet the nutritional needs of the people of these drought-stricken areas are certainly not great—particularly when compared to the grain consumption of the wealthy countries. For example, in the United States we divert an estimated 5 to 8 percent of our high protein food grains just to feed our pets. Some 4 million tons of food grains go to our pets annually—or enough food to meet the current emergency food requirements of Ethiopia, Bangladesh, and West Africa combined for the coming year.

In addition, the international community must soon begin to develop more efficient mechanisms for responding to famine situations. The neglect of Ethiopia today is, regrettably, simply another example—of which there are many—of a humanitarian crisis routinely neglected, rather than routinely responded to. This will continue to occur as long as more effective organizational mechanisms are not established, internationally, as well as within our own Government, to respond to food crises whenever and wherever they occur.

The tentative steps of the United Nations to create a permanent international emergency relief service must be supported, and, within our own Government, we must some day see the creation of a Bureau of Humanitarian and Social Services within the Department of State to coordinate and give greater priority to our relief efforts abroad.

In the weeks ahead, the Subcommittee on Refugees, and the Labor and Public Welfare Subcommittee on Health, will continue to press ahead in their joint inquiry into this important area of public policy—offering positive recommendations concerning the growing problem of world hunger, health, and refugees.

CONCLUSION

Mr. President, food is the most fundamental commodity to sustain human life—more so than oil, or gas, or other energy resources. So the threat of world shortages in food is menacing anywhere—not only to the physical and mental health of the people involved, but also to the social and economic development of individual countries and entire regions of the world, including our own.

Energy and food. Both are basic to the life we now know. Both are essential for the peace of the world. We have the choice today of uncontrolled competition for them, or cooperating their more equitable distribution. But the more scarce these resources become—especially food—the more dangerous to the health and peace of mankind becomes the competition for them. If we undertake international cooperation now, essential patterns for the future will be established.

Mr. President, the recent history of

people around the world tells us that threats to the peace are more than just arms races or military confrontations. Famine can be a threat to peace and stability. Massive refugee movements can unbalance the peace. And natural disasters can create upheavals worse than war.

Clearly people problems cannot be ignored—for the health and well-being of people is an essential ingredient in building a structure for peace.

Mr. President, I ask unanimous consent that various materials from the FAO Conference be printed in the RECORD.

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

[From FAO News]

STRATEGY PROPOSED TO BRING GREATER HARMONY TO AGRICULTURAL PRODUCTION AND TRADE OF NATIONS

WASHINGTON, November 28.—Action toward improving the use of the world's agricultural resources by cooperation of individual nations has been taken by the biennial conference of the Food and Agriculture Organization (FAO) of the United Nations meeting in Rome.

The conference requested FAO Director-General A. H. Boerma to prepare a draft strategy of international agricultural adjustment including guidelines, indicators and arrangements for periodic review and appraisal of progress. After consultation with other agencies and consideration by the FAO Council, this proposed strategy should be submitted to the next session of the conference in 1975.

The 131-member governing conference called on the secretariat to work on a strategy which would have as its objectives:

—A faster and more stable rate of growth in world agricultural production, especially in developing countries where demand is expanding most rapidly;

—A better balance between world supply and demand for agricultural products with more orderly expansion of food production and consumption and greater security in the availability of food in adequate quality and quantity to all consumer groups, taking due account of the need for more rational use of world food and agricultural resources;

—An orderly and more stable acceleration of trade in agricultural products;

—A rising share for developing countries in a general expansion of agricultural trade.

In calling for this action the conference recognized that most individual countries had long acted to influence agricultural production within their own borders. However, the conference said, these actions were usually taken with insufficient regard for the agricultural production and trade of other countries.

The conference agreed that it was desirable that such national measures should take account of international as well as national objectives, that they should contribute to the attainment of the targets established for the U.N. Second Development Decade (1971–80) (a four percent annual growth rate for agriculture) and that they should help to meet the special requirements of the developing countries.

The conference said that adjustment in the agricultural sector was a continuing process consisting of interdependent changes at the farm level and the national and international levels. It endorsed the need for the development of a world-wide framework within which governments could work together towards greater consistency in their national and regional adjustments policies (see FAO release 73/94 of October 29, 1973).

Introducing the subject at the start of the general debate, which preceded the conference decision, Dr. E. M. Ojala, FAO's Assistant Director-General for Economic and Social Affairs, said:

"At the global level, there is no counterpart of the national government with its power to determine policies. At the same time, as we all know, the agricultural sectors of different countries are interdependent to a significant and possibly increasing extent. What one country does in the course of managing its agricultural adjustment is almost bound to have an effect, for good or ill, usually ill, on other countries. The adjustments needed can be brought about by market forces alone, and sometimes they have been with effective but often brutal results. Few countries are now prepared to accept such consequences, and rightly so."

The apparent need, said Dr. Ojala, was ". . . A general acceptance by all governments as to the broad directions in which world agriculture ought to develop in the medium and long run, together with a readiness on the part of governments to develop machinery, or use existing machinery, to consult together as required to facilitate their efforts to harmonize national adjustments in the agreed general direction for world agriculture."

Dr. Ojala said adjustment was often interpreted as calling for cutbacks in the volume of production. In fact, he said adjustment in a world of rising populations and incomes is mainly matching supply to a rising total demand.

[From FAO News]

FAO ENDORSES UNANIMOUSLY WORLD FOOD CONFERENCE IN 1974

WASHINGTON, November 27.—Member nations of the Food and Agriculture Organization have endorsed unanimously a proposal for a World Food Conference in November 1974 under the auspices of the United Nations and voted $500,000 towards the costs of the Conference.

A report proposing general objectives and format for the Conference was approved in plenary session of FAO's 130-nation biennial conference, meeting in Rome November 10–29. The FAO conference recommended that, because of the availability of technical expertise in FAO, the World Food Conference be held in Rome.

The report will now be transmitted to the Economic and Social Council of the United Nations in New York which will place its recommendations before the U.N. General Assembly, where a final decision is expected before the middle of December.

"The principal task of the World Food Conference," the FAO report declares, "should be to bring about a commitment by the world community as a whole to undertake concrete action towards resolving the world food problem within the wider context of development problems."

In its report the FAO conference indicated that the world food problem which had undergone a serious deterioration during the past year, could not be solved within the agricultural sector alone. It suggested that the next year's World Food Conference should be at the ministerial level with full participation of all members of the United Nations, or of its related agencies including those not members of FAO. In earlier debate on the question many delegations stressed the importance of participation of the USSR which is not a member of FAO.

As envisaged by the FAO report, major emphasis of the World Food Conference should be placed on additional measures for increasing the food production consumption and trade of developing countries.

"Particular attention," the report declares, "should be paid to maximizing the production potential of available land to an extension of the area under irrigation, and to the expansion of the availability of agricultural inputs, which should increasingly be manufactured in the developing countries. Action should also be foreseen to reduce losses, both before and after harvesting."

The question of what role trade matters should play in the World Food Conference was the focal point of considerable debate as the item moved through commission and plenary sessions of the FAO conference.

The report does not envisage the World Food Conference as a negotiating forum. It suggests that the aim should be to reach agreement on specific objectives and programs, which would subsequently be carried out through existing international machinery. Since questions of food balances and trade are highly interlinked, the area of international trade and international agricultural adjustment has particular significance, the report indicated.

During earlier debate many delegations had emphasized the urgency of improving unfavorable conditions on international markets for the agricultural commodities produced in developing countries.

Under arrangements which the U.N. General Assembly is expected to make, UNCTAD would be invited to cooperate in the work of the Conference. While the Conference would not be expected to duplicate the work of UNCTAD or the General Agreement on Trade and Tariffs—GATT—it could give "valuable support and impetus to it".

Following the report's unanimous adoption by the FAO conference plenary, FAO Director-General Addeke H. Boerma expressed "great satisfaction" that member countries had been able to agree on a report which would give the U.N. General Assembly "clear guidance as to what this Conference thinks should be done."

"The World Food Conference," said Dr. Boerma, "presents a great challenge and a great opportunity . . . provided that it can express the political will of all member states to put an end to the shameful state of affairs in which millions of people still suffer from hunger."

He hoped that the spirit of collaboration evident here in Rome would be sustained when the issue came before the U.N. General Assembly and in subsequent discussions.

While preparations for the World Food Conference cannot be decided upon until the U.N. General Assembly reaches its final conclusions on the proposals, the FAO conference authorized Dr. Addeke Boerma, FAO's Director-General, to enter into appropriate arrangements for FAO participation if U.N. General Assembly endorsement is received. It also authorized the Director-General to draw on the Organization's working capital fund up to a maximum of U.S. $500,000 to cover costs connected with the Conference. The FAO report recommends that the Conference be held in Rome where FAO headquarters facilities would be available to the Conference preparatory committee, Secretariat and the Conference itself.

[From the FAO News]

WORLD FOOD PROGRAM FACING 50-PERCENT CUT IN FOOD PLEDGES

WASHINGTON, October 3.—The World Food Program's aid resources have been slashed almost in half by spiralling cereal grain prices, Executive Director Dr. Francisco Aquino said today at the opening of the WFP 24-nation governing body meeting in Rome.

While WFP needed 1.2 million tons of food to meet all its approved projects and emergency operations to the end of 1974, projections showed that only 613,000 tons were likely to be available, Aquino reported to the Inter-governmental Committee.

He said that even after drastic reductions

in commitments, which would mean stopping many good projects, a deficit of 161,000 tons was anticipated to the end of 1974. Thus, for the first time in the program's history, the governing body would not be asked at this meeting to approve any new projects.

The meeting also heard expressions from the Secretary-General of the United Nations and the Director-General of FAO, on their grave concern over the world-wide grains shortage and rising prices which had forced the World Food Program to reduce sharply its grants of food-as-aid to development.

Dr. Kurt Waldheim, for the UN, and Dr. Addeke H. Boerma, for FAO, urged delegates to adopt a target of $440 million in food, cash and services to be pledged to WFP during 1975 and 1976.

Dr. Waldheim said the target figure did not reflect the rising prices and expressed the hope that "donors would compensate by making supplementary pledges."

Dr. Waldheim's message was read by his Under-Secretary-General, Mr. Vittorio Winspeare Guicciardi, while Dr. Boerma addressed the meeting in person.

Since its establishment ten years ago WFP has given more than $1.3 billion, mainly in surplus foods to economic and social development projects in 94 countries. It is estimated that 26 million persons have benefited from the projects.

A portion of its resources is also used in disaster relief operations and WFP currently is playing a major role in the aid to the drought-stricken West African Sahelian Zone.

Faced with a shrinking pool of resources, WFP has had to resort to a pruning of all ongoing projects and for the first time its governing body was not being asked to approve new projects.

This situation, Dr. Boerma said, "is a unique step backwards in the history of the program," a program that represents "a special kind of indicator of the richer world's sincerity towards the developing countries and their real needs."

Dr. Boerma said the ten-year record of WFP had shown it to be a "new and vital armament in developing strategy."

He noted that some bilateral aid programs dispensed food on a larger scale than that of WFP.

"But," he added, "the fact remains that, in this much-politicized world of ours, the World Food Program, as a multilateral agency generally free from the taints of suspicion that attach fairly or unfairly to many bilateral aid efforts, is something of a model test case."

Thus, he said, if the scaling-down of large surpluses in the richer world were to lead to a crippling of the program's activities, it would once again raise the old question of WFP's basic purpose.

"Is it really a development aid program or is it just an elegant international device for surplus disposal?," he asked.

His own conclusion was that ten years experience had given WFP a reason-for-being "quite apart from any considerations of convenience as to surplus disposal." But a sharp cutback in the program's resources would both "stifle the slender hopes of large numbers of impoverished people" and "call in question again the whole political and moral rationale of WFP on which a growing number of other hopes have been based."

In outlining the severe cutbacks he has been forced to make, Aquino urged the governing group to keep constantly before it the fact that "behind the stark figures lie hardship and the disruption of economic activities."

"In recent weeks I have had to make a number of hard—to me, regrettable—decisions which will adversely affect the lives of thousands of people in the developing countries, and will in some countries seriously impede development," he said.

After the program's statutory and other firm commitments had been fulfilled, the executive director reported top priority would be given to projects in the 25 least-developed countries, and to countries such as Pakistan, Bangladesh, Ethiopia and Nicaragua, which had suffered recent disasters.

Donor countries pledge commodities to the program in monetary terms, but its commitments to recipient countries are made in specific quantities of food.

The pledging target figure of $440 million for 1975/76, submitted for approval at the Intergovernmental Committee's last meeting in April, was inadequate, as $650 million would now be required to finance the program's activities as planned, Aquino said. Anything less than the original target figure would be unrealistic, and he said he was hopeful that donors would surpass it. He was also confident that as the world food situation improved, countries would come forward with supplementary pledges as in the past.

KANGAROO GRAND JURIES

Mr. KENNEDY. Mr. President, the November 19 issue of The Nation contains an excellent article by Frank J. Donner and Richard I. Lavine describing a deeply disturbing pattern of grand jury abuse by the Department of Justice. In recent months a number of Senators and Representatives have emphasized the need for reform in this area, including comprehensive legislation to protect the rights of citizens from the sort of free-wheeling and oppressive grand jury abuses that have become so prevalent in recent years. I believe that the article, entitled "Kangaroo Grand Juries" will be of interest to all of us in Congress concerned about the problem, and I ask unanimous consent that it may be printed in the RECORD.

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

FROM THE WATERGATE PERSPECTIVE—KANGAROO GRAND JURIES

(By Frank J. Donner and Richard I. Lavine*)

For two generations, the American imagination has either denied the possibility of facism in this country or, while conceding its possibility, has been unable to project a convincing description of how facism may come, to identify the institutional stress points, and describe its potential constituency. Watergate teaches that, for all our constitutional political restraints on the abuse of power, if a police state comes into being here it will surely rest on an all-powerful Presidency in control of a centralized political intelligence apparatus. In its January 3, 1972 issue, The Nation published "The Grand Jury Network" (Donner and Cerruti), a report on the growing use by the Department of Justice of federal grand juries to curb political dissent. Events of the past two years have substantiated the earlier contention that this distortion of the grand jury function is part of a master plan to attack political opposition through a new centralized intelligence system. More specifically, the Internal Security Division (ISD) of the Justice Department has used the traditional accusatory function of the grand jury as a cover for:

(1) A secret White House-sponsored network for the systematic collection of political intelligence by illegal means and for purposes unrelated to law enforcement.

(2) The laundering or legitimizing through grand jury interrogation of such tainted evidence.

(3) The development of evidence through the grand jury process to support an indictment already handed up—a form of pretrial discovery not permitted in criminal cases.

(4) The use of civil contempt not to obtain testimony but solely to punish uncooperative witnesses. In the past eighteen months, twenty-one individuals have, after grants of immunity, been jailed for contempt.

Specific instances of these practices will be dealt with in a moment, but before revisiting the grand juries we need to look more closely at the roots of these abuses, now laid bare by Watergate.

The enormous range of the Watergate disclosures invites a piecemeal response, and the large patterns thus break down into small clusters of seemingly unrelated events. It is, of course, important to know whether Dean or Ehrlichman is telling the truth, what may be learned from the Presidential tapes, the extent of the President's knowledge of the events, the source of authority for Operation Gemstone. But the concrete question of who did it conceals the deeper issue of why it was done. In American public life we almost invariably reduce power conflicts to issues of due process, of individual rights; the one is typically abstract, and the other more accessible because it is specific and "human." Finally, a need for stability, a desperate dependence on institutional order and continuity, makes us reluctant to confront claims of usurpation of power, as though the very recognition of its possibility would deny meaning to the American experience.

But one can hardly sweep under the rug the wealth of evidence, uncovered by Watergate, of the growth of Caesarism in the White House, a phenomenon made visible by the President's plush accouterments of power and the use of his office for personal gain. The meat for this Caesar, the means by which he has sought to consolidate his power, is political intelligence, a system of surveillance and related practices ranging from informers and wiretapping to sabotage, break-ins, mail interception and dossiers. From almost the start of his first term, Nixon initiated a series of moves designed to seize control of the intelligence capability of the nation. Beginning in 1939, when the FBI was first given domestic intelligence jurisdiction, the intelligence community in this country had been highly diffused, with a variety of institutional bases and haphazard coordination. This decentralization reduced the efficiency of domestic surveillance and postponed the inevitable showdown with libertarian forces. In the same period a democratic constituency had on the federal level (urban and state units are another story) imposed jurisdictional limits on the scope of intelligence practices and targets; these restraints, though precarious and frequently evaded, were still no mean achievement when one recalls the struggle to rein in the surveillance excesses of the Defense Department, the CIA and the FBI. But the lack of effective and publicly responsive facilities to monitor essentially secret operations left open the danger of abuses, periodically exposed by alert Congressmen, defecting whistle-blowers and the media.

What President Nixon undertook was nothing less than the relocation and centralization of the entire intelligence establishment in the White House. More, he moved to eliminate all the bitterly won jurisdictional restraints on domestic espionage. And the justification for this no-holds-barred secret

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police *apparat* was national security, a goal which assertedly absolved the President from responsibility to the law or, save by impeachment, to the Constitution and beyond the reach of the courts. When in 1972 the Supreme Court unanimously rejected these expansive claims as a justification for domestic intelligence practices, the Administration simply renewed its contentions about the very same practices, but now under the warrant of "foreign intelligence."

The main leverage in the campaign to take over political espionage was the alleged need to refocus intelligence priorities and coordinate intelligence sources. The agencies traditionally responsible for domestic intelligence had developed a vested interest in the old Left and in antiquated files of political subjects. But the entrenched bureaucrats of political surveillance thought they had a powerful shield against the new wave of political headhunters—the Congress, which was itself under pressure from White House power seekers, and the Congressional anti-subversive committees. So it was that J. Edgar Hoover turned to his Congressional allies for protection against threats to his fiefdom, not from his liberal enemies but from White House firebrands. His seemingly bizarre Congressional testimony about the alleged Berrigan plot in November 1970 was an attempt to find sanctuary in his Congressional power base. Hoover's intelligence methods and priorities supported a structure that had evolved over a quarter of a century, built cooperatively by the bureau, Congressional committees and tenacious cold-war supporters. Now the committees were moribund, the bureau under severe attack, its senile director obsessed with his immortality, the cold war receding into the past, traditional surveillance practices riddled by Supreme Court decisions as new targets were moving to the center of the radical stage. In addition, the cry for more sophisticated intelligence and a cohesive structure was not confined to the White House. It was also demanded by sections of the surveillance community symbolized by the clash between Hoover and William Sullivan, former director of FBI domestic intelligence, and an Administration ally.

AN ADMINISTRATION "BESIEGED"

Domestic, peacetime intelligence systems have, with the growth of the modern state, evolved into a centrally controlled intelligence community. In the course of this development, political police became a special force independent of all other instruments of state administration, enjoying unlimited jurisdiction, answerable only to the head of state. This process was enormously accelerated by the release of powerful movements for change, beyond the control of conventional police units—one need only recall Sidmouth's England, Fouché's France, the European continent after 1848. In the United States, the "natural" growth and centralization of the intelligence community has been hobbled for reasons already indicated, but the political stimulus to such expansion is unmistakable.

In 1969, the incoming Nixon Administration was faced with a society heaving with unrest. All of the major intelligence initiatives in the first Nixon term can be traced to a hysterical reaction to successive waves of protest. A "siege mentality" gripped the Administration almost from the day it took over. Nixon was haunted by the fate of Johnson, ambushed by what seemed to be the revolt of an entire generation. Those long years of powerlessness, of wandering in the wilderness, was it all to be for naught? Were the country's unruly dissenters to be allowed to frustrate Nixon's too-long-delayed entry into the promised land?

Early in 1970, the Administration began intensive preparations to expand and improve its surveillance capability over militant left-wing individuals and groups. In a series of interviews with a *New York Times* reporter, Administration officials conveyed the President's concern about the wave of bombings and bomb scares. On March 12, Nixon and some of his aides met at dinner with New York University Prof. Irving Kristol. According to the news account, "the discussion included attempts to draw parallels between young American radicals and the Norodniki, the children of Russian aristocrats who assassinated Czar Alexander II." No one mentioned Alexander III's jackboot repression of the radicals in the wake of the assassination, but the extraordinary horror—if not hatred—of radical youth comes through the interview.

The "official view" was that the militants were political criminals. In mid-March President Nixon told the Congress that the bombings were the work of "young criminals posturing as romantic revolutionaries." In April one of his advisers told the *Times*, "It wouldn't make a lot of difference if the war and racism ended overnight. We're dealing with the criminal mind, with people who have snapped for some reason." A "key official" in the Administration added, "We are facing the most severe internal security threat this country has seen since the depression." He said that the President had "expressed distress that the intelligence system was not capable of pinpointing the activities of these people" and insisted that there was a desperate need to improve government intelligence. One White House aide proclaimed, "The greatest safeguard for the rights of individuals is to have good information on what [the radical fringes] are doing." He urged that the government substitute for traditional criminal prosecutions the collection of information to "prevent the perpetration of an act of violence." This benign verbiage masked the preparation of a comprehensive plan for restructuring the American political intelligence system into a cohesive political police force serving the same purposes as its counterparts in 19th-century European despotisms.

President Nixon personally initiated a project to draft recommendations for intensified domestic intelligence at a meeting in the White House on June 5, 1970. Present in the Oval Office that day were Nixon; H. R. Haldeman, then White House chief of staff; John Ehrlichman, then the domestic counselor to Nixon; Tom Charles Huston, a Presidential aide, and the chiefs of the four intelligence agencies: J. Edgar Hoover; Adm. Noel Gayler, director of the National Security Agency; Lieut. Gen. Donald V. Bennett, director of the Defense Intelligence Agency; and Richard Helms, director of the CIA.

The proposals submitted by the committee, believed to be the handiwork of then domestic intelligence chief William Sullivan and now known as the "Huston plan," included a program of electronic surveillance of "individuals and groups in the United States who pose a major threat to the internal security," covert mail coverage or the opening of sealed materials before delivery, surreptitious entry (burglary), and an increase in the number of "campus sources" in order to "forestall widespread violence." Approved by Nixon on July 23, the plan was assertedly never implemented because of Hoover's opposition.

But Hoover was not objecting because the proposed tactics were illegal. The FBI had routinely made illegal searches, including both burglary and mail interceptions, before the policy was changed in 1966. What disturbed Hoover was the proposal of an interagency group to supervise the bureau, thus ending his one-man rule and acting as a buffer between him and the President. "What was really at stake," reported one participant in the report's preparation, "was whether Mr. Hoover was going to be able to continue running the FBI any damned way he wanted." In a recent interview Huston has explained Hoover's actions in the same way: "In my judgment if Hoover at any time raised what I regarded as a principled objection . . . if he had said this thing is wrong because it is unconstitutional, the President doesn't have the power to order it, that it is unethical . . . any kind of principled objection, then on that basis he'd have hit me right between the eyes. . . . But when a guy says, you know, that I don't want to do it—that it's too risky, but I don't care if someone else does it, then as far as I am concerned, I think it's fair to draw an inference that the guy is just trying to save his butt and duck the responsibility that's his and of the agency that's charged with these problems." ("Tom Charles Huston: Don't Call Him a Sonofabitch," by Terence Sheridan, *Rolling Stone*, October 25.)

Although Hoover's objections stymied the Huston plan, it hardly moved the Administration from the conviction that some form of secret police operation (always euphemistically described) was imperative to contain the radicals. As we will show, the Internal Security Division of the Department of Justice and the bureau pressed forward to spearhead the drive on the radicals. The release of the Pentagon Papers, one of a series of leaks, caused another White House explosion in 1971—a "panic session," Colson called it—and demands for an effective intelligence sanction to choke off these new threats to the Administration's authority. Again this response throbbed with a wildly exaggerated insistence that the very foundations of Presidential power were being undermined. As the trial record in the Ellsberg case later demonstrated, the asserted threat to national security was ludicrously overstated, but every surveillance initiative seeks acceptance because of a claimed emergency, an imminent peril to a vital interest. In most cases such assertions are ritualistic, but in the corridors of the White House and in the Oval Office it became a *cri de coeur*, an expression of a fear of betrayal from within. From the beginning, Nixon and his aides felt surrounded by hostile forces, by holdovers from prior administrations who were in league with the press and the networks to "get" the President.

Mounting frustrations plainly took their toll of Nixon as he lurched back and forth from megalomania to paranoia. In the tightly knit Presidential circle, an ominous thesis was evolving, a sort of political Manicheanism in which legitimate critics and rivals for power, regardless of their political affiliation, were indiscriminately condemned as "enemies" to be stopped by any means necessary. Grandiosity and bitter rancor began to set the tone of the Presidency, completely personalizing it in the process. Only those could qualify for the President's approval who shared his self-appraisal that he was a lion beset by jackals. In such an atmosphere what was more natural than the transfer to the domestic theatre of intelligence tactics traditionally used against foreign enemies, a real-life version of a James Bond script performed in our own back yard? Viewed in this chilling setting, many seemingly disconnected images again fuse into a pattern: the shuttered inward-turning world of the Presidency, supported by the fanaticism of personal loyalty; the cult to toughness ("balls"); the rise to prominence of kamikaze types such as Colson and Ehrlichman; the "enemies" list, and the Nixon-ordered 1969–71 wiretaps of staffers and newsmen.

Nixon's activation in July 1971 of the "plumbers" unit is enormously significant. For the first time in American history, a Chief Executive formed an espionage network, a secret intelligence system answerable only to himself and operating outside the

law and the Constitution. To most Americans such an action must seem borrowed directly from the manual of a police state, but as Nixon saw it, he could do no less, for, as he told Mardian at San Clemente in July 1971, his capacity to govern was threatened. No member of the White House staff close to Nixon was permitted to forget that a sanction against Ellsberg was an obsessive Presidential priority. His orders were to "get" Ellsberg; had he not learned from his other "crises" that capture of the offensive by a bold stroke was the most effective way to deal with "enemies" out to "get" him? Had he not by such tactics triumphed over Alger Hiss, another Eastern intellectual, twenty-five years earlier?

Ehrlichman, Krogh, Dean and the rest must have felt very much like the courtiers who heard Henry II's angry cry against Thomas à Becket, "Will no one rid me of this turbulent priest?" The formation of the plumbers' unit; the CIA involvement; the burglary of Dr. Fielding's office; the tenacious surveillance; the hoaxlike covers (national security, "prosecutibility"); the barrage of grand jury subpoenas in Boston and Los Angeles; the organized attempts to assault Ellsberg on the Capitol steps in May 1972; the attempt to influence the outcome of the Ellsberg trial by offering the trial judge the directorship of the FBI; the deliberate suppression for weeks of the evidence of the burglary; the invented laxness of Hoover and the FBI—are all the fruits of the President's nightmare reaction to the Ellsberg affair. In his May speech, Nixon described the situation as "so grave as to require extraordinary actions," an organized effort to "find out all it [the plumbers' unit] could about Mr. Ellsberg and his motives." If there was a "White House horror," this corrupt use of power, unmistakably instigated by the President, was it.

Significantly, a major frustration of the Cox investigation was the Administration's refusal to turn over materials relating to the plumbers. And it will be recalled that the President admittedly told Asst. Atty. Gen. Henry Petersen last April "to stay out of national security matters" when interrogating the master plumber, Howard Hunt.

POPKIN'S ORDEAL

Despite the claim advanced to witnesses that the Ellsberg grand jury in Boston was a legitimate law-enforcement proceeding, newly revealed background facts establish that it was merely a branch of a White House project intended primarily to develop material which would smear Ellsberg and inspire extralegal sanctions against him. For all of the spooky rhetoric used by Hunt, the grand jury proceeding was part of a campaign of political gangsterism made familiar by such films as *Z*. It had a dual objective: to give color to the suggestion that Ellsberg was a victim of some repellant psychic deviation (preferably sexual in origin) and to identify him as a member of a conspiratorial ring with ties to Russia.

Two memoranda on the "Pentagon Papers project" in the Watergate record are revealing. The first, dated August 11, 1971, from Krogh and Young to Ehrlichman, reports on the process of the Boston and Los Angeles grand jury proceedings and the preparation of a CIA psychological study (considered "disappointing" and "superficial"), and proposes the seizure of Dr. Fielding's records by a "covert operation," which Ehrlichman approves "if done under the assurance that it is not traceable." This memo corroborates testimony that the major focus in the Ellsberg matter was on personal smear— not, it should be noted, that such *apparatchiks* as Liddy and Hunt had difficulty with the notion that a man who had "turned" from ardent hawk to a midnight purloiner of national secrets was indeed deranged.

The memo establishes that both grand juries were feeding into the plumbers, who coordinated and evaluated the data received for inclusion in a comprehensive investigative "game plan." But when Ellsberg's counsel, six months later, attacked the Boston grand jury on the ground that its process was being improperly used to develop evidence for the Los Angeles case, the ISD lawyer vigorously denied it. And his Los Angeles colleague took the same position when Ellsberg moved the court for a protective order to prevent the use of the Boston grand jury as a source of evidence for the Los Angeles trial. The courts relied on these questionable representations in denying relief.

By August 26, plumber David Young had broadened his vision. Initially the aim of the project had been, to use Young's euphemism, "the development of a negative image." Now, according to a memo of that date, a new theory was developed as the result of a meeting with Congressional moguls: Mardian, a Justice Department functionary, and the Defense Department's general counsel, J. Fred Buzhardt. The notion that Ellsberg was a "prime mover" was to be abandoned in favor of the hypothesis of a subversive conspiracy of insiders (Halperin, Gelb, Warnke and others), already victims of Nixon-sponsored wiretaps. And if the break-in produced usable "negative" material, it should be released through a Congressional investigation, not by press leaks. (This last was the contribution of White House aide Patrick Buchanan.) Plumber Egil Krogh in a recent press interview has solemnly averred that this entire project was presented to him by the President as a "matter of the most urgent national security." The break-in was intended not for any squalid smear purpose, but to verify a hypothesis that Ellsberg was "involved with a foreign power" in an intrigue to damage President Nixon's peace with honor strategy. Krogh never explained how Ellsberg's emotional problems could throw light on this thesis.

The Boston investigation, first by bureau agents and then by the grand jury, fits well the objectives discussed in the memoranda and establishes that law enforcement was a flimsy cover. One person interviewed by bureau agents, Everett E. Hagen, director of the Center for International Studies at M.I.T., where Ellsberg had an office, reports that the questions he was asked dealt mainly with personal qualities: "I had the feeling that they would have liked me to say, 'Dan Ellsberg's a kind of odd person; he stands on his head in his office every afternoon.' "

FBI agents also interrogated Samuel Popkin, then a Harvard faculty member specializing in Vietnamese village life. The interview commenced on a curious note. As Popkin recalls, one agent began by making this observation: "We would like to ask you questions about Dan Ellsberg. We want to understand him and we need your help." The leitmotif of the interview was expressed through terms such as "emotions," "stability" and "psychiatric." "I had the impression the agents were trying to elicit negative comments about Ellsberg. . . . All sorts of questions were also asked me that didn't sit right like, 'Does Ellsberg seem to be a nervous person?' 'Is Ellsberg emotional?' 'Is Ellsberg erratic?'—questions that at the time I thought were there to impugn the person, to try to paint him as a neurotic, or a crazy person, or a person with a grudge or a vendetta."

After unsuccessful attacks on his subpoena, Popkin appeared before the grand jury on August 19. "My first contact with the manipulative side of the grand jury," he recalls, "came when I asked the prosecutor, 'May I please be told the subject of the matter under inquiry?'

"The prosecutor reared up at me and gave a long lecture in a very stentorian voice, saying: 'The judges just told you that you may not ask this question, to appear here immediately and testify. Please don't keep these people waiting. Why are you trying to hold up the process of justice?'

"Not having immunity, I immediately took the First, Fourth and Fifth Amendments on totally trivial elementary questions: 'Do you read the *Boston Globe, The New York Times?*' "

But Popkin was soon confronted with more sensitive questions and unsuccessfully sought a protective order freeing him from the obligation of exposing confidential sources. His ordeal stretched on through the rest of 1971, as other subpoenas were dropped for a variety of reasons, including a deficient government denial of wiretapping in the cases of three other witnesses.

On January 18, 1972, Popkin again refused to testify, this time because of uncertainty over the continued validity of a previous grant of immunity. Finally, on March 29 he was held in contempt for having refused to answer seven questions before the grand jury two days earlier.

In his testimony, Popkin denied all knowledge of who might have possessed the Pentagon Papers before their general publication the previous June, or how they were distributed to the press. An unofficial transcript of the proceedings (printed in the *Harvard Crimson*) reads in part:

Q. Mr. Popkin, more specifically, do you know if someone possessed what is now known as the Pentagon Papers in Massachusetts other than to the extent you have previously testified?

A. May I see my lawyer?

Q. Mr. Popkin, as you know, a witness has the right to see his lawyers only on serious questions. You have been out of the room twice already for periods as long as ten minutes. You are now asking permission to leave the room for a third time. Is this necessary?

Q. Mr. Popkin, do you recall an immediate reaction that was formed in your mind upon hearing about original stories in *The New York Times* about who may have been the source?

A. I request permission to see my counsel.

Q. Mr. Popkin, how can your counsel be of use in this case? We're asking you about your immediate reaction.

A. I request permission to see my counsel.

Q. Mr. Popkin, you are being asked about your immediate opinion, how can your counsel be relevant?

A. I request permission to see my counsel.

Q. Mr. Popkin, you are stretching things for this grand jury. Your exits from the room have been ranging about five minutes. This is an inconvenience for the grand jury.

Popkin eventually gave answers to these questions, after intense intimidation and harassment by the prosecutor. However, he refused absolutely to divulge to the jury his "opinions" about who might have had access to the documents.

Q. Mr. Popkin, perhaps I should rephrase that question. What is your opinion as to persons you believed possessed the Pentagon Papers in Massachusetts prior to June 13, 1971?

A. Is this grand jury really asking me to violate confidences necessary to my research, simply to discover my opinion?

Q. The grand jury does not answer questions.

A. I respectfully decline to answer this question on the grounds that it violates my rights under the First Amendment to freedom of press, assembly and speech.

He also refused to divulge the contents of conversations on which he based such opinions:

Q. The question was prior to June 13, 1971, what was your knowledge as to the persons who participated in making the study?

A. May I be advised as to the pertinence of that question to the subject under inquiry?

Q. No, you may not.

A. My only knowledge of that answer comes from scholarly research.

Q. What is that knowledge?

A. I respectfully decline to answer that question on the grounds that it violates my rights under the First Amendment to freedom of the press, speech and freedom of assembly.

Q. Is the knowledge derived in part from conversations you had with others? Who were the persons you interviewed to acquire this knowledge of who participated in the study? When and where were the conversations in which you acquired knowledge as to who participated in the Pentagon Papers study? Forget that.

A. The persons I acquired this knowledge from were interviewed in the course of my scholarly research.

Q. The question was who were the persons you interviewed to acquire this knowledge?

A. I respectfully decline to answer this question on the grounds that it violates my rights under the First Amendment to freedom of press, freedom of speech and freedom of assembly.

In the end Popkin refused to answer four questions seeking his opinion on who had had copies of the Pentagon Papers and how he had formed that view. He declined to answer two additional questions about how he had learned who had originally written the official study. The last unanswered question was whether he had discussed the study with Daniel Ellsberg, whom he knew professionally.

The danger of such a fishing expedition was evident. The Harvard faculty adopted a resolution urging "restraint" in grand jury inquiries and asking that the government show a strong need before putting such questions. It warned that "an unlimited right of grand juries to ask any question and to expose a witness to citations for contempt could easily threaten scholarly research." Twenty-four other scholars filed affidavits on Professor Popkin's behalf.

In May 1972, the First Circuit Court of Appeals in Boston upheld Popkin's right to refuse replies to the four questions having to do with his opinions of who might have had copies of the papers. One circuit court judge went so far as to label some of the questions "repugnant." Another judge simply said they were "badly phrased." But the court ruled that the others were proper questions, and required Popkin to answer them, although only "to the extent that the persons were not government officials or other participant-sources." In other words, Popkin was still forced to disclose the names of other scholars with whom he had discussed the Pentagon Papers, and from whom he may have learned the names of participants in the study.

This left Popkin near the end of his rope. On November 10, the Supreme Court, by an 8-to-1 decision (Douglas dissenting), refused to delay the execution of his contempt judgment. On November 16, Popkin filed stipulations offering to answer the questions, but only if he would not be forced to compromise his confidential sources. This offer was rejected by the Court of Appeals and on November 21, 1972, Samuel Popkin became the first American scholar jailed for protecting sources of information.

One week later, the government suddenly decided to dismiss the grand jury, which had been scheduled to run another six weeks, and Popkin was released. The decision came after Derek Bok, president of Harvard University, had joined the case to argue in Popkin's favor, and after Daniel Steiner, general counsel to the university, had met in Washington with A. William Olson, then head of the Internal Security Division, to urge that some way be found to release Popkin as soon as possible. Throughout Popkin's long ordeal, the prosecution continually asserted that the grand jury was investigating in good faith into the commission of federal crimes, and that the questions at issue were necessary to that investigation. Judges routinely accepted that claim.

THE GRAND JURY CHAIN

The pursuit of Ellsberg was layered in falsehoods—to grand jury witnesses and their lawyers, judges, the media, even to the Watergate committee. Such deceptions became inevitable when intelligence sanctions were deployed against Ellsberg outside the law-enforcement process. Intelligence, of course, routinely draws upon the arts of deception: "covers" to prevent discovery of the action, the identity of the participants, or the source of the operation.

Intelligence covers of the sort described above are functional. But domestic political intelligence practices, unless required for a vital purpose, are unconstitutional and in a democracy repellent. Another layer of deception is therefore needed, a normative or constitutional cover. And the more offensive the practice, the more strident and deceptive the justification. Such deception, to paraphrase La Rochefoucauld, is the tribute that lawlessness pays to constitutional democracy.

In the beginning was the word; the strategy of deception rests on a foundation of euphemisms. The very term "plumbers" is a mask on reality. The burglary was a "surreptitious entry," preceded in Hunt's priceless euphemism, by a "judgment visit" or a "feasibility study." The official cover for the burglary is Aristotle's "invented terror"—the fraudulent claim of an imperiled national security. Moreover, this cover was exploited, not merely to justify the burglary but also President Nixon's suppression of the evidence of the burglary and his evasion of Judge Byrne's order for production of this evidence for weeks, until a threatened resignation of the Attorney General to his deputies forced his hand.

To give this claim of national security the indispensable panache of a foreign threat, the CIA was brought in for "support services," ranging from a wig to a psychological study. But the chief support role was performed by those indispensible heavies, the Russians. According to Krogh and Ehrlichman, the Presidential mandate to the plumbers and the burglary was triggered by the discovery that the Russian Embassy had been mailed a copy of the Pentagon Papers. But this contention is questionable: The New York Times began printing the papers on June 13, 1971. The plumbers unit was commissioned by a Presidential ukase (verbal of course) a week after publication began, and did not become operational until early July. Why couldn't the Russians simply clip the Times? What a naive question! There was, it seems, another version of the papers, containing supersensitive material not printed by the Times, and it was undoubtedly this collection which turned up at the embassy. Who are we to say nay to such a contention, or to be nagged by the suspicion that a copy of the papers was deliberately sent to the embassy as justification for the break-in—a routine tactic for a Hunt or Liddy?

But another serious difficulty plagues this argument. If any government agency would know about the Russian Embassy's mail, it would be the FBI, which deploys an incredible arsenal of surveillance weapons against the embassy. And where would the embassy's receipt of such material serve a vital function? Obviously there is one place where such evidence would be invaluable: at the Pentagon Papers trial before the U.S. District Court on June 18, 1971, and the argument on appeal on June 22. At both of these proceedings the government had a chance to offer support for its key contention that publication of the papers had threatened our national security, especially through the channel of foreign relations. The government could have made such proof in open court or, if it was necessary to protect sensitive national security matters, *in camera*. When the plumbers' contention was made public in May of this year, an inquiry was addressed to then U.S. Attorney, Whitney North Seymour, Jr., seeking verification. In a letter dated May 5, 1973, he replied as follows:

"I have since looked into the matter and am relieved to be able to report that apparently neither this office nor the court was deceived as to the information available to the government at the time of the Pentagon Papers proceeding here. I have not been permitted to see the actual reports, which are classified, but I have been advised by an official in Washington that the FBI had no information concerning the possibility of the Soviet Embassy having possession of the papers at the time we presented our arguments to the District and Circuit Courts. I should add that I have not been able to learn the actual extent or scope of the papers that may have come into the embassy's possession."

As national security transmutes common crime into noble acts, so at the same time the actors are changed from criminals (perjurers, forgers, burglars and the like) into patriotic heroes. That is why in his testimony Hunt sounds aggrieved that an ungrateful nation did not reward him more generously with "support money," or perhaps, as in one of his thrillers, "take care of its own." In this view, of course, the victims of his acts become villains, subversives with no rightful claim to legal redress.

"National security" has been used, not merely to gild a single isolated caper; it is the trademark, the signature as it were, of President Nixon himself. Small wonder that national security has become the Administration's chief justification for resisting an effective investigation into its own affairs. In his May 22nd statement, the President used the term twenty-three times and "security" by itself thirteen times.

The standard model of this cover evades or represses dissent by claiming that it threatens our bargaining position abroad or that now is not the time, when negotiations are in so delicate a state, to rock the boat. Such covers have been used for a variety of purposes, from defusing the peace movement to braking the impeachment drive. Reliance on them naturally increases with the intensification of the President's domestic difficulties. The more he is without honor in his own country, the more he becomes a "prophet" abroad. This process ultimately gives Nixon such a stake in foreign conflicts that he is tempted to provoke them. Certainly a persuasive case can be made for the view that this motivation contributed to the President's unilateral decision to call a worldwide military alert in the middle of the night of October 24–25, when the movement to impeach him was cresting. To the obvious danger of such provocation must be added the loss of credibility involved in crying wolf.

The activation of the plumbers and the burglary required the fabrication of yet another cover. What bothered many Americans more than the question of power was the fact that President Nixon had by-passed the FBI. But the Administration had prepared for this contingency. It would appear that the formation of the plumbers was forced on the Administration because J. Edgar Hoover was sabotaging the Ellsberg investigation. Ehrlichman testified that Hoover wouldn't allow his agents to interview Ellsberg's father-in-law, Louis Marx, because he was an old friend of Hoover. But documentary evidence established that Hoover and Marx had met only once, thirty years earlier. In addition, Marx had, in fact, been interviewed by bureau agents before the plumbers were commissioned by the President. Nor was that all. FBI agents had twice sought interviews with

Dr. Fielding, once on July 20, 1971, and again on July 26. Moreover, on August 3 Hoover had written Krogh fully committing the FBI to the Pentagon Papers investigation and, as we have seen in the memo of August 11, Krogh informed Ehrlichman of Hoover's communication that the Ellsberg investigation had the highest bureau priority. Covers come in all colors and sizes—even in reversible models. In 1971, the bureau's asserted apathy served as an Administration pretext for bypassing it. But, in the 1972 Watergate cover-up, the bureau was too active for the Administration's purposes and fear of leaks was used to conceal the Administration's sabotage of its investigations. The CIA, which in 1971 permitted itself to be compromised and used as a foreign intelligence cover, was reluctant to perform the same role in 1972, either for Watergate itself, or the Mexican (money-laundering) connection.

The Huston plan concentrated on student radicalism, an area in which Huston himself, a former national leader of Young Americans for Freedom, was considered an expert. Depicting the campuses as "the battleground of the revolutionary protest movement," he recommended the recruitment of informers in college groups, along with burglary, wiretaps and mail covers. Like Ehrlichman and others, Huston thought that the mere pronouncement of national security, unchecked by any judicial evaluation, was sufficient to put the President beyond the reach of the law.

Mardian, appointed to head the ISD in November 1970, took over the war on radicals. His unit had especially close ties to Sullivan's FBI Division 5, and it is not surprising that it was to Mardian that Sullivan turned in the summer of 1971, to forestall the use by Hoover of the "Kissinger wiretap" tapes for blackmail purposes. Mardian was a red hunter of the old school, a mind of the 1950s with a provincial outlook somewhat unpalatable to the more "philosophically" conservative Huston, who once turned up his nose at a job offer from Mardian. But what Mardian lacked in finesse he more than made up in zeal. With the operational support of Division 5 and the collaboration of his field marshal, Guy Goodwin, he launched a series of grand jury probes against the Weatherman faction of SDS which served both as a cover for intelligence gathering and as a directly punitive attack on radical witnesses.

The first of the seven grand juries against Weatherman was called in Detroit. On July 3, 1970, acting solely on the testimony of an informer, Larry Grathwohl, it returned an indictment charging thirteen individuals with conspiring to bomb military and police installations in Cleveland, Detroit, Milwaukee and Los Angeles. Fifteen unindicted co-conspirators were also named.

The first major grand jury attempt by Goodwin to stage an extensive investigation occurred in Tucson in October 1970. In the course of those proceedings five individuals subpoenaed from Los Angeles were jailed for seven months for refusing to testify. On October 20, the grand jury indicted one John Fuerst for transporting explosives in interstate commerce. Fuerst had been named in connection with an overt act set forth in the Detroit indictment, although he was neither indicted nor named as a co-conspirator by the Detroit grand jury. The testimony before the Tucson grand jury makes it quite clear that it was primarily concerned with Fuerst, but that did not prevent it from developing a detailed and comprehensive picture of West Coast radical activities. The "over" use of Fuerst for fishing purposes was emphasized by the fact that no additional indictments were issued after Fuerst's original indictment, despite the subsequent testimony of five witnesses.

In November 1972, another ISD grand jury was convened in Cleveland. On November 29, a California woman subpoenaed to testify there was given limited (use) immunity and then interrogated about bombings in Cleveland in 1970, involvement with SDS in Cleveland and her knowledge of various people in the area. She admitted knowing some of the people she was asked about, but was unable to answer most of the questions, and so testified. The focus of this grand jury was the Weatherman underground and again Fuerst was used as a cover for an extensive interrogation about activities charged in the Detroit indictment as "overt acts." Indeed most of the evidence gathered in Cleveland was developed for use in the Detroit trial.

In fact it was only a week after the appearance of the California witness before the Cleveland grand jury that a Detroit panel handed up a new indictment against fifteen people in Weatherman, superseding the original indictment with similar charges now fleshed out with evidence gathered by the grand juries in other areas.

The superseding indictment in Detroit did not put an end to this seesaw process. Early in January 1973, the Cleveland grand jury subpoenaed two witnesses, one of whom had testified in November. In this round of questioning she was presented with a rerun of the earlier questions, despite the fact that it was the same grand jury. The second Cleveland witness refused to answer a number of similar questions on the ground that they were based on illegal wiretaps. In response, the government dropped her subpoena rather than disclose its sources. On January 10, two days later, indictments were handed down in Cleveland against three of the Detroit defendants. These indictments were based on the testimony of an FBI agent; the two witnesses had been called solely for the purpose of developing information to aid in the prosecution of the new Detroit indictment.

The Cleveland indictments were simply moves in a game. The acts listed in these indictments are identical to those charged by the Detroit grand jury. In an effort to provide a justification for the grand jury probe and to mask its true purpose the prosecution "indicted" three individuals who were underground and thus unlikely to come to trial. It is also noteworthy that the indictments were returned only two days after the Detroit defendants sought to intervene as the Cleveland grand jury was being improperly manipulated to develop evidence for use in Detroit.

Another grand jury proceeding which was activated to develop testimony for use in the Detroit trial began in Madison, Wis., in February 1973 when two women, each named as an unindicted co-conspirator in the Detroit indictment, were subpoenaed. By a familiar coincidence, one of the witnesses was asked about activities which are described as overt acts in the Detroit indictment. When she refused to testify the government sought a grant of immunity from prosecution and an order compelling her to testify. At the immunity hearing, the judge asked the government what the purpose and scope of the grand jury's inquiry was. The government refused to answer, insisting that it had no obligation to reveal the purpose of the grand jury's activity. The judge then refused to grant immunity or to order testimony. He ruled that the Internal Security Division attorney was abusing the grand jury process.

Still another front in the grand jury offensive against the SDS radicals was opened in the fall of 1972 in San Francisco with a volley of eleven subpoenas for a group of individuals, most of them strangers to one another, scattered all over the United States and Puerto Rico. From the questions asked in San Francisco by Goodwin and his assistant, it became clear that this investigation sought information about links between fugitives and techniques for the protection and support of persons in the underground. Subjects covered included mail drops, welfare and food-stamp acquisitions, transportation, housing arrangements and travelers' checks. Some questions were asked about the bombing of a San Francisco police substation in Febuary 1970. Even at the time, however, police and the local press did not attribute the bombing to Weatherman. It was generally believed to have been an isolated event with no organizational link. An intensive investigation for more than two years had yielded no suspects. The questions about the bombing seem to have been a smear technique, attempting to link the witness with terrorism, with the expectation that the questions would be made public when read at the subsequent immunity and contempt hearings.

Other questions involved a San Francisco residence, referred to in the Detroit indictment as having been rented by one of the defendants for the illegal purpose of storing explosives. Again, a deliberate abuse of the grand jury process. But when a number of Detroit defendants sought to intervene, the government inisisted that the development of evidence was not the "sole or dominant purpose" of the investigation. The San Francisco proceedings were marked by abrasive confrontations between the prosecutors and the witnesses. In many instances the witnesses were sharply limited in consulting counsel.

One witness, John Davis, brother of Chicago conspiracy defendant Rennie Davis, challenged his subpoena on wiretapping grounds. The government admitted that it had wiretapped Davis, but denied that the information which it had garnered was used to prepare either the subpoena or the questions. A hearing was then held to determine possible taint—whether the questions asked of Davis were based on wiretaps—and the government submitted approximately 250 pages of questions. The logs indicated that Davis had been "overheard" on numerous occasions in 1969, when he used telephones in the national office of SDS.

On June 1, 1973, three days before Davis' next scheduled appearance, the government dismissed the subpoena. Davis and another witness who had been subpoenaed in October but never questioned, commenced a civil suit asking an injunction to prevent the grand jury from questioning witnesses until the National Commission on Individual Rights is in operation. The commission was created in the 1970 Organized Crime Control Act, the same Act which created "use" immunity. It has never met because President Nixon had failed to appoint the seven members he is required to name. Minutes before the witnesses were to appear in court as plaintiffs, the government scrapped the subpoenas and contended that the civil suit was therefore moot.

In all, seventeen witnesses were called in the San Francisco probe, beginning in September 1972. Of these only four actually testified, and one other was jailed for thirty days for refusing to testify, although his conviction was later reversed on appeal. Another witness was also held in contempt, but was ultimately not required to testify because the government refused to comply with a court order that he receive a transcript of his testimony. The subpoenas of the other witnesses were dismissed.

After all the smoke had cleared, only one person—a fugitive Detroit defendant—was indicted as a result of the grand jury's work. Indeed, despite the government's disavowals, the main purpose of the San Farncisco proceeding appears to have been, once more, to dig up evidence for Detroit. None of the four witnesses who testified knew anything at all about the indicted defendant; his indictment was thus the result of information already in the government's possession.

Like Watergate itself, the grand jury ses-

sions described here and in the January 1972 article form a pattern. It does not mean too much to discover that this or that grand jury was driven to excess by a zealous prosecutor, that rudeness and overreaching deprived a particular witness of his or her rights, or that in an isolated instance the subpoena power was used to collect evidence for trial after the indictment was returned. In exercising its proper function in good faith, a grand jury may step over a line; it is an abuse inherent in all institutions whose boundaries are not rigidly fixed. The remedy for such infractions is judicial redress or more scrupulous public servants. But the "whole" which here is so much greater than the sum of its parts is usurpation of power, the planned and manipulative rigging of an instrumenatlity for reasons unrelated to its basic purpose.

Nothing so clearly demonstrates this use of the grand jury for intelligence purposes as the government's repeated failure to remove from subpoenas and interrogations the claimed taint of illegal tapping. There is hardly a grand jury proceeding—Boston, San Francisco, Vermont, Cleveland, Harrisburg and Detroit, to name only a few—where subpoenas have not been dismissed because of alleged warrantless tapping. The August 11, 1971 plumbers' memorandum to Ehrlichman about the Elisberg project, contains the notation, "It seems unlikely that Barnet, Raskin and Gifford will be called [as grand jury witnesses] because they have been overheard." (This last term is a modest entry in the surveillance dictionary of euphemisms.) In the Detroit case, the sheer bulk of the secret tap logs is staggering: 12,000 overhearings for nine months—and this from only one source, SDS headquarters in Chicago. In many cases, as in Seattle and Detroit, the government balks at disclosing the contents of the taps; it then seeks dismissal out of sheer embarrassment, claiming that national security would be "compromised" by further disclosure, or insisting that the challenged practice took place in hot pursuit of "foreign intelligence," an allegation almost invariably based on proofs so tortured as to make Ehrlichman's defense of the President's power to burglarize Dr. Fielding's office a model of persuasive reasoning. Rather than permit a profanation of the sleepless struggle to protect us from foreign foes, the government drops the case. The fact is that the Administration has failed utterly to develop a "foreign intelligence" sanction for domestic surveillance—catnip for every spy master since Walsingham. In 1970 the President commissioned the CIA to ferret out the foreign support for domestic protest, only to be told that it was an empty burrow. This report made his claimed need for otherwise illegal surveillance factually improbable and, irony of ironies, his détente policy made it politically incredible.

TWO HATS FOR MARDIAN

Lawyers for the Detroit Weatherman defendants, in preparation for a "taint" hearing ordered in a sweeping ruling by Judge Damon Kaith lest June, have uncovered powerful evidence that the ISD grand juries are a link in a surveillance network. Investigation corroborates documents submitted by John Dean to the Watergate prosecutor and Ervin committee (some of them were classified and only partially released to the press) that in the fall of 1970 the operational aspects of the Huston plan, from wiretaps to break-ins, were implemented by a White House-sponsored agency which had two covers: it was located in the Department of Justice as a part of the Internal Security Division and it claimed to be nonoperational, merely a conduit for intelligence generated by others. Its cover name was the Intelligence Evaluation Committee (IEC), but despite its interagency format (FBI, NSA, CIA, DOD, etc.), its *de facto* chief was Robert Mardian, who wore two hats: law enforcement and intelligence. Both operations were directed at the same organizational targets—SDS, Panthers, VVAW, Weatherman, etc. The linkage is plainly demonstrated by the admitted "almost daily" use of highly restricted ISD intelligence files by CREEP's security chief, McCord, and by the fact that the lawyers for groups targeted by the ISD for law enforcement were, as we shall presently show, systematically afflicted by office burglaries and fires. Also revealing is the unusually close relationship between ISD litigation chief, Guy Goodwin, and intelligence sources.

For example, he maintained continuous contact at the investigative level with Larry Grathwohl, an FBI informer in the Detroit case, and with informer William Lemmer in the Gainesville (VVAW) case. The Gainesville case, at the trial stage, provides an extraordinarily vivid illustration of the willingness of the ISD to get into bed with the most squalid informers and provocateurs. This promiscuity contrasts with the conventional role of the prosecutor, which is to test and evaluate data developed by investigators. But most important is the dominant use of ISD grand juries as an investigative tool and as a means, by compelling testimony through grants of immunity, of laundering evidence that has already been illegally obtained through intelligence.

What is less clear are the mechanics of the plan. Who organized the burglaries, mail interceptions, wiretaps and similar intrusions? Who designated the targets, recruited the operatives and instructed them what to look for? Although the FBI has, through a single affidavit of agent Clavin Clegg in Washington, denied that it "possesses" (i.e., as of the summer of 1973) records reflecting such capers, it is the prime suspect as chief wiretapper—a very expensive, labor-intensive form of surveillance. Its field operatives certainly included urban red squadders—that is a matter of record—possibly recruited by New York City BOSS veterans, Caulfield and Anthony Ulasewicz. [See "New York's Red Squad: BOSS Is Watching" by Claudia Dreifus, *The Nation*, January 25, 1971.] Ulasewicz himself may have lent a hand from 1970 to 1972, a period when he admits being busy in intelligence matters which he can no longer recall. Since at least 1970, the bureau has developed and funded a program, furthest advanced on the West Coast, for acquiring intelligence through paid informers run by local police units. This collaboration, quite visible when a particular organization (SDS, Venceremos, Revolutionary Union) becomes a priority target, permits the FBI to harvest the fruits of illegal surveillance while preserving "deniability." There are also indications of interagency sharing of intelligence resources made available by the Treasury Department's Alcohol, Firearms and Tax Division, an agency with which first Liddy and then Caulfield had important ties during the period in question. Urgently needed in this context is a thorough Congressional probe to fix responsibility for this shocking (and foolish) attempt to use law enforcement as a cover for intelligence, an "option" which even Tom Charles Huston thought would come to a sticky end.

The ISD, understandably enough, could hardly afford the airing that Judge Keith had ordered. On October 13, the prosecution, having stalled and thrashed about for more than four months in an effort to evade compliance with the judge's order, finally threw in the national-security-*cum*- sensitive-foreign-intelligence towel and moved for dismissal. Detroit thus joined the series of cases which the ISD's Goodwin lost, largely because of a fatal clash between covert intelligence practices and the norms of law enforcement.

From 1970 until 1973, more than fifteen cases are reported in court documents of burglaries on the premises of lawyers for radical groups and individuals, and in a few instances on those of their clients. According to an affidavit filed by Weatherman lawyer Gerald Lefcourt, his office was twice burglarized; first in the fall of 1970 and again in the winter of that year. On April 12, 1970, a fire, classified "suspicious," occurred at his Manhattan office. Lefcourt said one of his files on Mark Rudd had been scattered about the office. Two burglary attempts were made at Lefcourt's New York City home between the spring of 1970 and the spring of 1971. Nothing was taken in the second break-in, so police were not notified. Of the first, Lefcourt says, a television set was found in the building lobby and was taken to a police precinct station, where he went to claim it.

At the San Francisco office of attorney Michael Kennedy, burglars rifled files and scattered them about. The San Francisco police confirmed the break-in. During another burglary of his office, his briefcase was rifled. On August 19, 1971, the People's Law Office in Chicago was burglarized. Police confirmed the crime, and that items stolen included an electric typewriter, $50 in a cashbox and a shotgun. In a burglary at the law offices of Henry diSuvero on June 8, 1972, files were rifled. In addition, the offices or homes of other attorneys, including Charles Garry, Melvin Greenberg, Jeffrey Haas, Carol Scott, Lee Holly, Carl Maxey and Michael Lerner (counsel *pro se* in the Seattle 9 case), were entered under circumstances marked by a common pattern: the rifling or theft of files, with nothing else of value being taken.

An example of attempted mail interception is supplied by the July 23rd affidavit of a Chicago postman:

"I have been assigned to the Lincoln Park Station of the Chicago Post Office since 1968 as a mail deliverer.

"Part of my duties were to deliver mail to 2242 N. Bissell Street.

"I was aware that members of the People's Law Office staff including Jeffrey H. Haas, Courtney Esposito, Liza Lawrence and G. Flint Taylor, Jr. were living at and receiving mail at that address.

"On several occasions I was approached by men in plain clothes outside of 2242 N. Bissell Street who showed me badges which were sometimes of the Chicago Police Department and sometimes of the Federal Bureau of Investigation.

"These plain clothed officers asked questions of me about inhabitants of said house, took pictures of said house and watched said house.

"On several occasions I was approached and offered a job by some of these plain clothed police which I declined to accept.

"All of this occurred in the Spring and Summer of 1971."

Another insight into the *modus operandi* of the ISD network can be gained from two incidents, both involving attempts to develop evidence for the Detroit case. On April 24, 1970, the Chicago apartment of Martha Real, the cousin of Detroit defendant Mark Real, was searched illegally by Chicago's red squad Weatherman expert, Maurice (Maurie) Dailey. During this search, many items were seized, including Marth Real's personal address book, two sealed addressed letters, and alleged contraband consisting of several firearms. After the material was suppressed by the court as illegally seized, the record of her arrest was also expunged, pursuant to the court's order. The illegally seized items were then turned over to federal authorities and on July 9, 1970, Martha Real was subpoenaed by the Detroit grand jury.

When Miss Real first appeared before the grand jury she invoked her Fifth Amendment privilege in response to all questions. Thereafter, U.S. prosecutor Guy Goodwin and his colleagues successfully applied for an order granting her immunity from prosecution and requiring testimony. Goodwin then questioned Miss Real about the con-

tents of the sealed and addressed letters illegally seized in Chicago, about other physical evidence illegally seized there, and about what was said in a tapped telephone conversation with a defendant in the Detroit case. That indictment recites an overt act which almost certainly was based upon material obtained from the illegal search and wiretap. In addition, by inducing Judge Keith to grant immunity, the prosecution made him an unwitting accomplice to laundering the illegally obtained evidence by compelled grand jury interrogation derived from this tainted source.

Robert Swartwout, an unindicted Detroit co-conspirator also mentioned in connection with an overt act, was in the early part of 1970 detained and beaten in Chicago by Dailey and his partner. He was then told he was under arrest because he was wanted on a charge in Virginia and was taken, without process of any court, to the Chicago airport where a ticket was purchased for him with money taken from his person. When the plane landed at the National Airport in Virginia, Swartwout fully expected to be met by police, but no one appeared and he was never thereafter arrested or charged in Virginia on any warrant. Information that had been gleaned from him as a result of the Chicago beating turned up in the Detroit prosecutor's file.

THE VETERANS IN MIAMI

The attack on Weatherman personnel was triggered by a White House decision that they were a threat; the tactics we have described flowed naturally from that decision. This linkage between the urgency of dealing with a target and the grand jury process appears again in the case of the Vietnam Veterans Against the War. The Administration viewed the veterans' peace movement with special hostility: organized opposition by veterans to policies in Vietnam could, unless curbed, divide and weaken a vital Nixon constituency. The Watergate coverup according to testimony at the trial of the original Watergate defendants last January, attributed the expenditures of large sums of cash and the bugging of the Democratic National Committee to the need to protect the Republican convention from violent demonstrations, specifically by the VVAW. At that trial, Jeb Magruder testified that he had paid money to defendant G. Gordon Liddy, who was to uncover "the plans of potentially troublesome demonstrators around the country and at the Republican National Convention."

James McCord, also convicted at that trial, claimed that his activities were justified "to avoid the greater harm, which in this case would be violence directed to Republican officials," specifically by the VVAW. In his testimony before the Senate Watergate committee, McCord expanded on this charge. He discussed intelligence data furnished him by the Internal Security Division, which was regularly feeding such information to CREEP through Robert Mardian, who had left ISD to work on the Nixon campaign:

"*Q.* (*Senator Weicker*): Now I would like you to describe for me as best you can types of information, further detail, that you received from the Internal Security Division. . . .

"*A.* (*McCord*): One such report dealt with, as I recall, a funding operation that was reported in which the McGovern committee purportedly funded a so-called barn-storming tour of several members of the Vietnam Veterans Against the War on the West Coast, as I recall, starting from Los Angeles, Calif., and going up the coast. It came concurrently with some other information that that same group was planning violence at the Republican National Convention involving danger or threats to life of individuals."

Although such reports were circulating through the Justice Department before the first Watergate break-in of May 27, 1972, the Internal Security Division did not even convene a grand jury until after the Watergate burglars had been caught and a cover story trumpeting the menace of VVAW had been concocted in the White House.

When the grand jury did meet, it was accorded an unusual amount of publicity. On July 11, while the Democratic convention was in progress and three days before any indictment was handed down, a spokesman for the Department of Justice gave an interview about the case. He described the "pretty bizarre and destructive weapons" that VVAW members had allegedly purchased, leading to headlines like "Bomb Plot Against GOP Probed" (*Atlanta Constitution*, July 19). Such publicity seems to have been floated in order to predispose the public to accept the subsequent cover-up story.

The grand jury and its indictment served the more immediate purpose of supporting the attempt to associate McGovern with more radical opponents of the war. One example is in a piece of GOP campaign literature distributed in Texas, listing "52 Reasons Why McGovern Must Be Defeated":

"32. During the McGovern convention in Miami, plotters were conspiring to blow up the Republican convention. They were arrested and taken to Tallahassee where six have been indicted; but these dynamiters and gun shooters and plotters were glorified with the consent of Mr. McGovern in the convention."

The "glorification" was a resolution passed by the convention on Thursday, July 13, condemning "this blatantly political abuse of the grand jury to intimidate and discredit a group whose opposition to the war has been particularly moving and effective," and describing the grand jury as "an attempt by the Nixon Administration to deny the veterans their most fundamental constitutional rights to express their dissent and opposition to the war in Southeast Asia."

The political motivations for the VVAW grand jury are confirmed by its timing. The VVAW and many other anti-war groups had been planning a series of demonstrations at both of the Miami conventions. But on July 6, three days before the Democratic convention opened, Guy Goodwin sent out the first batch of twenty-three subpoenas. All of those subpoenaed were members of VVAW; almost all were either regional, state or chapter coordinators for the organization. They were subpoenaed from all over the Southern United States on July 6, 7 and 8 to appear in Tallahassee the following Monday, July 10.

The initial defense motions to enjoin the proceeding, on the ground that it was a government effort to interfere with First Amendment rights, were quickly denied by the district court and the Court of Appeals. Most of those subpoenaed were then called before the grand jury, asked preliminary questions (name, address) and eventually excused, after being held under subpoena 500 miles from Miami for the entire week of the Democratic convention. Several were called back for further questioning, and refused to answer after being granted immunity. Four were cited for contempt on Thursday, July 13, without notice of a hearing. That evening the grand jury voted to indict six VVAW members for conspiracy to disrupt the Republican convention, scheduled for late August.

Five days later the Court of Appeals found that the original contempt citations came after a "nonhearing," and remanded the case to the district court for a second contempt hearing, this time with notice, formal reporting of the proceedings and argument—all of which had been disregarded earlier. The hearing was held, and by August 7, the four vets were back in jail for civil contempt, having been denied bail by the district court. They remained imprisoned for a month, until bail was set by Supreme Court Justice Douglas, whose ruling dealt with two issues:

"This application for bail has previously been denied by my brother Powell [after appeal to the Fifth Circuit Court of Appeals failed] and that normally would be enough for my denial. But there has emerged a troublesome question concerning electronic surveillance of petitioners' attorneys on which I think a hearing is required. . . .

'Moreover, I am deeply troubled by the charge that enough evidence had been found to sustain an indictment, making colorable the use of the grand jury for other purposes. . . ."

The six indicted were arraigned in Tallahassee on August 24, the last day of the Republican convention. On October 18, 1972, although none of those subpoenaed had been recalled before the grand jury, a superseding indictment was issued. The subpoenas of those who had been imprisoned for contempt were eventually dropped by the government, after the Court of Appeals reversed their contempt citations due to inadequate government denial of wiretaps of their attorneys. Last September, the trial jury acquitted all of the defendants on all counts. In the course of the trial itself, defense attorneys alleged that they had been bugged. [See "Justice in Gainesville: The Real Conspiracy Exposed" by Fred J. Cook, *The Nation*, October 1.)

CAMDEN AND THE IRISH IN TEXAS

The twin themes of political motivation and oppression are also prominent in the Camden, N.J. grand jury probe. In August 1971, twenty-eight Catholic activists, while engaged in a raid on the local draft board, were arrested by a corps of more than eighty FBI agents. Kept fully apprised for weeks in advance by a provocateur, Robert Hardy, the FBI not only captured the raiders redhanded but had hundreds of photographs of earlier casing activities, dozens of tapes of intercepted walkie-talkie conversations, and boxes of charts and maps confiscated in simultaneous raids on the night of the arrests. Despite this surfeit of evidence, a grand jury investigation was launched after the arrests to obtain intelligence about other "actions" of the Catholic Resistance and perhaps to develop leads for the still unsolved "liberation" of documents from the Media, Pa. bureau office the previous year.

On September 24, 1971, Goodwin's first witnesses, Pat and Bruce Grumbles, appeared before the grand jury. Both refused to answer any questions, citing a variety of constitutional claims. Thereafter, in mid-November, they were granted immunity and later jailed on civil contempt charges for refusing to testify. After the couple had spent more than six months in prison, they sought release in the district court, on the ground that the grand jury had been inactive since their confinement. The government hastily subpoenaed five new witnesses for June 27, 1972, and asserted that the investigation was continuing. Attempts to quash these subpoenas, with objections to the government's use of the grand jury to acquire evidence for the already pending indictment, failed. However, despite the government's assertions, these five were never recalled before the grand jury.

On February 26, after fourteen months in prison, they tried again. The trial of the Camden 28 had begun a few weeks before, but the term of the grand jury was not due to expire until the end of March. It was clear that the Internal Security Division intended to keep the couple in jail until the end of the term, despite the fact that the grand jury investigation had long since ended. The petition for release argued that continued incarceration would simply be punitive. The district court agreed, ruling that a jailing for civil contempt could be cut short when a continued jailing became punitive, rather than an inducement to testify.

Pat and Bruce Grumbles had served four-

teen months, the longest contempt jail term served by any witness before an Internal Security grand jury. The previous record was held by the five witnesses in Tucson in 1971, who were confined for seven months. Upon their release at the expiration of the grand jury term, they were immediately re-subpoenaed. At that point they capitulated and testified, commenting that the government apparently had the power to keep them in jail for life. Mr. and Mrs. Grumbles were somewhat luckier; despite government threats, they were never subpoenaed again.

On May 24, the Camden defendants were, like the Gainesville group, acquitted on all charges, despite the fact that they admitted participation in the raid. The jury's verdict reflected the acceptance of two defense claims. The first was that Hardy, the FBI informer, had with the bureau's approval and funding provocatively implemented a raid plan which had already been abandoned by the defendants. That, of course, is a crude secret police tactic. The defense also charged that the bureau, by refusing to intervene until the draft offices were actually entered and the files destroyed, had deliberately escalated into graver substantive crimes a situation which at best would have rated a conspiracy charge.

Hardy testified that the bureau had agreed to make conspiracy arrests during a "dry run" of the raid a week prior to the actual event, and the bureau did deploy eighty agents at the scene when the raid was in this inchoate form. But the appointed time came and went and no arrests were made. Hardy's control agent, Michael Ryman, said in response to Hardy's protests that someone at the "Little White House" in San Clemente had canceled the arrangements. There could only be one reason for this cancellation—the political need for more serious charges. This conclusion is supported by the fact that, even on the night of the raid, the fully prepared arrest party made no move until the action was completed. Although Ryman sat in the courtroom throughout Hardy's testimony, the prosecution did not put him on the stand, a failure which, the judge told the jury, gives rise to an inference that Ryman was unable to contradict Hardy (the "missing witness" rule).

One proceeding, though not directed against the American Left, has finally served to mobilize liberal opinion against the Nixon Administration's abuse of the grand jury. On June 21, 1972, twelve Irish-Americans were summoned from New York to appear before a grand jury in Fort Worth, Tex. The subject of the investigation was to be the purchase and transportation of Japanese-made arms to the Irish Republican Army by the American-based Irish Northern Aid Society.

It appears that the investigation was undertaken by the Administration on the request of the British Government. According to newspaper reports, British soldiers had seized a cache of weapons used by the IRA and determined that the weapons had come from the United States and Japan.

Seven of the subpoenas were either dismissed or suspended indefinitely before the witnesses were called. Four of these were "high officials" in the Irish Northern Aid Society, the organization allegedly under investigation. The remaining five witnesses had no official connection with the society. Within a week of receiving their subpoenas in New York, the five appeared before the grand jury in Texas. They refused to testify and were given immunity protection. The questions put to them related solely to persons and places in the New York City area, Texas being roped in with blunderbuss queries of the sort that began, "Have you ever known any person in New York, Texas or elsewhere . . .?" Given the intensely political nature of the investigation, the predictably outraged response of the Irish community in New York, and the fact that 1972 was a Presidential election year, it seems reasonable to conclude that the grand jury was convened in Fort Worth because it is not an Irish community and thus would generate little or no local protest.

The five witnesses all refused to testify under immunity and were jailed on civil contempt citations on June 20, 1972. On August 3, their contempts were affirmed by the Court of Appeals, and they remained in the county jail in Texas. The refusal to release the five was surprising in light of the government's admission—made for the first time in its appeal brief—that one attorney for the witnesses had been overheard by electronic surveillance, supposedly conducted pursuant to a court order.

The conversation overheard occurred on June 17, four days after the subpoenas were served, two days before the witnesses were to go before the grand jury and while they were consulting with counsel. Without granting oral argument, without even waiting for a brief on the question from the witnesses, the Court of Appeals affirmed the contempts, refusing to order disclosure of the overheard conversation to the witnesses and their lawyers who charged a violation of the attorney-client privilege and right to counsel.

Another grand jury, also dealing with an aspect of the arms shipment investigation, was convened in San Francisco in the fall of 1972. There, too, a witness, Robert K. Meisel, has been jailed on contempt charges since January, with a short period of freedom on bail, granted by Justice Douglas but later denied by the full Court. It is likely that he will remain in jail until the expiration of the jury's eighteen-month term (which may be extended), even though the grand jury is inactive, having heard only one witness since Meisel's incarceration. Meisel has justifiably charged that the life of the grand jury has been artificially prolonged solely to punish him.

Significant political support had been mobilized for the five Fort Worth witnesses. Senator Kennedy filed an *amicus* brief in the Supreme Court, asking that the five be released on bail. Eight New York members of Congress sent a telegram to then Attorney General Kleindienst, urging him to "wind up this apparently trumped-up proceeding promptly and allow these witnesses to return to their homes and families." A meeting was set up between the Representatives and Justice Department attorneys, but was canceled at the last minute by the department. On September 15, 1972, Justice Douglas ordered that bail be set for the "Fort Worth Five" (Justice Powell had denied a similar motion) because of the government's admission of electronic surveillance. The bail conditions set by the district judge were $100,000 bond, confinement within the district except upon written permission, and lifting of passports. The Fifth Circuit ordered the amount reduced. In finally letting the witnesses out on September 25 for $10,000 or less, the trial judge struck a strong nativist note: "All of the witnesses are foreign born. Three of them are still citizens of foreign countries. The thought occurs that they ought to go back to where they came from if they cannot stomach the fundamental principles upon which this country is founded."

On January 22, the Supreme Court refused to review the Court of Appeals decision upholding the contempt citations. With that denial, bail for the five was revoked and they were returned to jail in Texas. They remained there for more than seven months until again released by Justice Douglas because of additional evidence of government violation of the attorney-client privilege by illegal wiretaps. Finally, on November 7, federal Judge Leo Brewster dismissed the contempt charges against the five. However, federal authorities could recall them to testify before another grand jury. If that happened, the case would probably go to the Supreme Court.

Political support for the witnesses was widespread. Senator Kennedy, Bronx Borough President Robert Abrams, and the families of several of the men held a press conference in New York in February, asking for their release from jail. On March 13, Rep. Bella Abzug held a public hearing on a resolution she had introduced demanding that the Justice Department furnish an explanation of why it had subpoenaed the five men.

Senator Kennedy testified at the hearings and issued the strongest condemnation of the Justice Department's misuse of grand juries yet heard from a public official. His testimony aptly summarizes some of the abuses:

"Over the past four years under the present Administration, we have witnessed the birth of a new breed of political animal—the kangaroo grand jury—spawned in a dark corner of the Department of Justice, nourished by an Administration bent on twisting law enforcement to serve its own political ends, a dangerous form of Star Chamber secret inquisition that is trampling the rights of American citizens from coast to coast."

* * * * *

"[There is now an] all too familiar and mushrooming recent pattern of grand jury abuse and secret inquisition by Justice Department officials around the country, a practice raising serious questions in Congress and the nation about the fairness and legality of the department's current operations and about the very security of our fundamental freedoms and basic liberties."

* * * * *

"And so it goes, as the Special Litigation Section of the Internal Security Division plies its trade, with its small army of grand inquisitors barnstorming back and forth across the country, hauling witnesses around behind them, armed with dragnets of subpoenas and immunity grants and contempt citations and prison terms. These tactics are sufficient to terrify even the bravest and most recalcitrant witness, whose only crime may be a deep reluctance to become a government informer of his closest friends or relatives, or an equally deep belief that the nose of the United States Government has no business in the private life and views and political affiliations of its free citizens."

The Fort Worth case and the high visibility of the grand juries in the Watergate and Agnew investigations have finally stimulated a movement for grand jury reform. One series of proposals calls for a change in the Fifth Amendment's guarantee of indictment by grand jury prior to trial. It would allow Congress to specify certain crimes as indictable, and other crimes which could be prosecuted without indictment, on the basis of an accusation of a prosecutor.

But to limit the role of the grand jury in this way, or to abolish it altogether as other critics urge, would be to throw out the baby with the bath water. We need to reinforce and implement this guarantee of the Bill of Rights and restore to grand juries their proper powers by making it more difficult if not impossible for a prosecutor to usurp the power of the grand jury. Legislation to achieve this purpose has been proposed by the Coalition to End Grand Jury Abuse, an alliance of the National Lawyers Guild, American Civil Liberties Union, Unitarian Universalist Association, National Conference of Black Lawyers, National Emergency Civil Liberties Committee and several other groups. The coalition's proposal calls for the grand jury to vote on whether to issue a subpoena; whether to seek immunity for a witness, and whether to ask for a contempt of court finding if the witness refuses to testify despite his immunity.

Perhaps the single most important provision of the coalition-sponsored bill requires the court to obtain the written consent of

the witness before an immunity order may be signed. Such a provision would allow the witness to continue to assert the Fifth Amendment privilege against self-incriminating testimony, if he so chose.

The bill would also eliminate narrow (use) immunity and re-establish full transactional immunity in the federal system; limit a contempt sentence if the witness has been jailed for contempt once before for refusing to answer questions about the same subject; require judges to instruct the grand jury fully about its power and rights; and strengthen the rights of witnesses in areas such as secrecy, venue and the right to counsel. And, certainly before drastic surgery is performed on the grand jury system, a thorough investigation of the ISD's role in undermining it is vitally needed. Such an inquiry would necessarily encompass an examination of the Administration's politicization of the Department of Justice and its transformation into a ministry of fear. A probe of this kind would not be confined to the past; recent events have demonstrated that the President continues to demand that the Attorney General shall subordinate all other interests to his political needs.

RETIREMENT OF MR. ANDREW E. RUDDOCK, DIRECTOR, BUREAU OF RETIREMENT, INSURANCE, AND OCCUPATIONAL HEALTH, U.S. CIVIL SERVICE COMMISSION

Mr. FONG. Mr. President, it was with regret that I, as the ranking Republican of the Senate Post Office and Civil Service Committee, received the news yesterday that Mr. Andrew E. Ruddock, Director of the U.S. Civil Service Commission's Bureau of Retirement, Insurance, and Occupational Health, will be retiring at the end of this months after 34 years of outstanding service to his country.

Mr. Ruddock is one of the most outstanding civil servants it has been my pleasure to know during my years of service in the U.S. Senate.

He has appeared before the Senate Committee on Post Office and Civil Service as a primary witness on Federal employee retirement and fringe benefit legislation many times. He has always impressed the committee with his candor, great understanding, and compassion for all Federal employees. He has helped the committee in many ways to establish and perfect the numerous bills and laws dealing with Federal employee retirement, health benefits, and life insurance.

Mr. Ruddock first joined the U.S. Civil Service Commission as an assistant messenger in June 1939 after receiving an ASS degree from Blackburn College, Carlinville, Ill. He subsequently was assigned to more responsible positions within the Commission until in September 1959, he was appointed Director of the Bureau of Retirement and Insurance. In 1969 he was appointed Director of the new Bureau of Retirement, Insurance, and Occupational Health.

His outstanding service in behalf of the Federal civil service was evidenced not only by his steady climb up the career ladder of the U.S. Civil Service Commission, but in 1961 he was awarded the Commissioners' Award for Distinguished Service, which is the highest award that the U.S. Civil Service Commission can bestow on its employees.

It is interesting to note that Mr. Ruddock's career reads like a Horatio Alger story within the Federal service. He rose from an assistant messenger, which is below a GS–1 level, to the rank of manager of a multibillion-dollar fringe benefits program for the largest single work force in America, the Federal Government.

The programs he administers cover: First, the retirement of 2.6 million active employees and 1.3 million former employees and survivors who together receive annuity checks totalling $450 million per month; second, a life insurance program for 2.4 million employees and 700,000 annuitants, with an annual payout $338 million in claims; third, a health insurance program for 2.2 million employees, 700,000 retirees and dependents, totalling approximately 8.7 million persons; fourth, an occupational health service of more than 900 health units including oversight of Alcoholism and Drug Abuse programs.

His personal integrity has been and continue to be above reproach.

We will greatly miss Andy's tact; his grasp of the most technical and complex issues; and, his very reliable counsel.

His complete dedication, loyalty, and positive approach to his responsibilities has been most refreshing.

Although I receive word of Andy Ruddock's retirement with regret, I am confident that all of the members of the Senate Committee on Post Office and Civil Service join me in wishing he and his wife Margaret a very happy future after many years of complete and satisfying service. He has served his nation well and all Federal employes and former employees owe him a most grateful thanks for his many, many years of unfaltering service in their behalf.

THE ENERGY CRISIS—CAPITAL GAINS TAX

Mr. FANNIN. Mr. President, I recently introduced S. 2787, a bill designed to make available vast sums of capital needed to solve the energy crisis, to achieve our environmental goals and to create new, more productive jobs for Americans.

This bill would provide for a graduated capital gains tax based on the holding period of assets and it would increase the deduction for capital losses from $1,000 to $4,000.

In October of this year the New York Times printed an article by Robert B. Anderson, former Secretary of the Treasury, entitled, "Capital Gains? Capital!"

Mr. Anderson recommends we repeal the provision of the 1969 Tax Act that increased capital gains tax rates in excess of 35 percent for individuals. He further states it may be necessary to adopt a graduated scale capital gains tax. Mr. Anderson points out that the limit on the deductibility of capital losses demonstrates the lack of fairness of our tax policy toward capital transfers.

Mr. President, I would like my colleagues to have the benefit of Mr. Anderson's fine article setting forth the reasons this Nation needs to accumulate more capital and how our present tax laws have an adverse effect on this objective. I ask unanimous consent that the article be printed in the RECORD.

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

CAPITAL GAINS? CAPITAL!

(By Robert B. Anderson)

WASHINGTON.—My work as Secretary of the Treasury in the Eisenhower Cabinet left me with a strong concern over the massive burden that today's national tax policy places on capital accumulation.

More capital is a necessary steppingstone to further advances in our standard of living. The higher American standard of living as compared with other countries is a direct outgrowth of higher levels of capital investment per worker. America's ability to combat inflation at home and to meet foreign competition is in direct proportion to her ability to accumulate larger capital resources.

In the area of expanding employment opportunities we must be equally aware of the demands for more and more capital. Frederick B. Dent, Secretary of Commerce, recently cited the staggering figure that each new industrial job created in this country requires an average capital input of $25,000. Since my tenure at the Treasury Department we have also witnessed an increase in the demand that our economic system provide the answers for such valid national goals as clean water, pure air and better land use. Americans must realize that how we legislate or control our national stock of capital directly affects our standard of living, our jobs, our environment and our ability to fight inflation.

Unwise tax policies that discourage savings and dampen the psychological climate for investment have an adverse effect on our total national well-being and on all segments of our society. There can be no more important national objective than to increase our capital resources. But we see instead under the guise of tax reform renewed attacks on the sources of capital accumulation.

Of particular importance in this regard is the impact of the Federal tax on profits earned on the sale of an investment—the capital gains tax. In the 1969 tax act Congress increased capital gains tax rates to a maximum of 35 per cent for individuals or even more if minimum tax provisions were taken into consideration. Prior to 1969 the rate was at a maximum of 25 per cent. At the same time the corporate capital gains rate was increased by a flat 20 per cent.

These increases strike at the ability of our citizens to accumulate the capital so vital to our national economic productivity and growth. A successful investment must now be of sufficient magnitude to compensate not only for continuing inflation but for a capital gains tax rate that can reach more than 35 per cent. A reluctance of investors to see their capital stock eaten away by the highest over-all capital gains tax in our history slows the pace of capital transfers.

This slower pace of capital transfers may well lessen, not increase, the Federal tax revenues in the long run.

The essential unfairness of this tax penalty is further demonstrated by the fact that tax provisions limit the taxpayer's ability to write off capital losses, thus allowing the Government to participate fully in the investor's success but only partially in the investor's unsuccessful risk capital venture.

At a minimum we should revert to the capital gains rates in effect prior to the 1969 tax act. The Federal Government would under this proposal take no more than 25 per cent of any capital gain made by a successful investor. Hopefully, the remaining 75 per cent would compensate the investor for the ravages of inflation and for the genuine risks taken. It may well prove necessary to make additional reductions in the capital

gains tax rate to further stimulate capital formation so vitally needed. Such a policy might be accomplished under a long-range plan with phased reductions over a number of years, but let us take the first essential step now. Let us return to the pre-1969 tax rates on capital gains.

ENERGY CRISIS DEEPENS—SACRIFICES MUST NOT BE DISPROPORTIONATE—CONSTRUCTION INDUSTRY CAN AND SHOULD CONTRIBUTE IN DECISIONMAKING PROCESS

Mr. RANDOLPH. Mr. President, the energy crisis continues to deepen. All projections indicate that the worst is yet to come and in the months ahead there will be very severe shortages of fuels.

The Congress has already passed laws providing the executive branch with tools to respond quickly and effectively to the energy crisis. We are continuing to develop additional statutes which, when enacted, will strengthen our ability to assure the equitable use of available energy supplies and to maintain the strength of our country without necessity for disproportionate sacrifices by any segment of our population.

To assist in implementing new policies and procedures, the executive branch is establishing a number of advisory bodies. This is a proper procedure that is consistent with our democratic society. I believe, however, to be fully effective these advisory bodies should be reflective of the wide scope of our population. They should include representatives of organizations with experience in energy matters.

Mr. President, the American construction industry is the largest single industry in our country and one which is dependent upon continued supplies of fuel. I have, therefore, urged that representatives of this industry—both labor and management—be appointed to the advisory bodies being organized by the Department of Commerce and the Federal Energy Administration.

I ask unanimous consent that a copy of my telegrams on this subject to Secretary of Commerce Frederick B. Dent and Federal Energy Administrator William E. Simon be printed in the RECORD.

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

[Telegram]

FREDERICK B. DENT,
Secretary of Commerce,
Washington, D.C.:

It is essential that decisions for fuel allocations be well-founded, drawing on the experience of segments of our economy most affected by the energy shortage. The construction industry is the largest in our country. This single segment of our economy employs millions of workers and its annual business volume is well over ten percent of our gross national product. While the fuel consumption of the construction industry is small in relation to its activity, the industry cannot function without adequate fuel supplies. Therefore, it is vital that both labor and management representatives of the construction industry be included in the membership of the national industrial energy conservation council. Their participation will assist you in grappling with the very difficult problems posed by the energy crisis. These questions are vital to our continued national economic strength and must be resolved with the widest possible involvement of those affected.

Please advise us of your reaction to our request.

Senator JENNINGS RANDOLPH,
Chairman, Committee on Public Works.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is concluded.

MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States were communicated to the Senate by Mr. Marks, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer (Mr. HUGHES) laid before the Senate messages from the President of the United States submitting several nominations, which were referred to the Committee on Labor and Public Welfare.

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

RAIL SERVICES ACT OF 1973

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of S. 2767, which the clerk will report.

The second assistant legislative clerk read as follows:

Calendar No. 575 (S. 2767), a bill to authorize and direct the maintenance of adequate and efficient rail services in the Midwest and the Northeast region of the United States, and for other purposes.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. Time for debate on the bill is limited to 6 hours, to be equally divided between the Senator from Indiana (Mr. HARTKE) and the Senator from Maryland (Mr. BEALL), and 3 additional hours to be under the control of the Senator from Virginia (Mr. HARRY F. BYRD, JR.).

Mr. BEALL. Mr. President, I ask unanimous consent that during the debate on this legislation, as well as during the votes, Arthur Pankopf, Jr., John C. Kirtland, David Clanton, and Malcolmb Sterrett, of the Commerce Committee staff, and Joseph Carter, of my staff, be granted the privilege of the floor.

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

Mr. HARTKE. Mr. President, I ask unanimous consent that the following individuals be permitted to have the privilege of the floor: S. L. Sutcliffe, Tom Allison, Paul Cunningham, Arthur Pankopf, Jr., John Kirtland, Mal Sterrett, and Mr. David Clanton.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, and I shall not object, does the Senator wish to include rollcall votes in his request or to exclude rollcall votes?

Mr. HARTKE. Mr. President, I ask unanimous consent that they be permitted to have the privilege of the floor during the rollcall votes also.

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

Mr. HARTKE. Mr. President, at this time I ask unanimous consent that the Committee on Commerce be discharged from consideration of H.R. 9142 and that it remain at the desk.

The PRESIDING OFFICER. The bill will be stated by title.

The second assistant legislative clerk read as follows:

A bill (H.R. 9142) to restore, support, and maintain modern, efficient rail service in the Northeast region of the United States; to designate a system of essential rail lines in the Northeast region; to provide financial assistance to certain rail carriers; and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Indiana? The Chair hears none, and it is so ordered.

Mr. HARTKE. Mr. President, as the Senate begins debate on S. 2767, the Rail Services Act of 1973, it is important to keep in mind the fact that this legislation represents one of the most significant attempts at industrial reorganization that has ever been attempted in this Nation. A quick glance at a rail map of the midwest and northeast regions graphically illustrates the complexities involved in this reorganization. Is it any wonder that eight railroads in the region are insolvent? How can the thousands of miles of track strung out like spaghetti throughout the region be reorganized so as to produce railroad systems which simultaneously meet the service needs of the people in the region and produce profits for the people who operate the systems?

The Surface Transportation Subcommittee which I chair has been seeking answers to this and related questions for many months. It has been a challenge to define the problem. A solution has been more elusive.

The bill being considered on the floor today (S. 2767) establishes a process designed to solve the problems of rail transportation in the Midwest and Northeast while heading off the development of similar problems in other areas of the country. I cannot assure my colleagues that the bill if passed will provide a final solution, but the bill will begin a reasonable process toward the development of a final solution.

As many Senators know, S. 2767 is said to resemble the House-passed bill (H.R. 9142) of which I have spoken critically. While it is similar to the House bill in its general outlines, it avoids most of the pitfalls of the House-passed bill. H.R. 9142 has several shortcomings:

First, the study and planning phase of the restructuring process is not emphasized in H.R. 9142. Congress, when considering the final system plan, might be without the necessary information to evaluate the plan. Equally as important, H.R. 9142 would allow the planners to design a final system plan from their armchairs rather than getting out on the lines and studying first-hand the problems that confront everyone—the railroads, labor, shippers, and communities;

Second, in attempting to effectuate mandatory transfers of assets in exchange for securities of the new Corporation in the context of a section 77 reorganization proceeding, H.R. 9142 has left the door wide open to the creditors of insolvent railroads who could too easily avoid the legislative reorganization; obviously this would defeat the whole purpose of the bill;

Third, there are significant questions concerning the financial viability of the plan prescribed in the House bill; and

Fourth, finally, I do not think that the problems of abandonment and rail service continuation subsidy are treated adequately.

I am pleased to report that the bill favorably reported out of by the Commerce Committee without a dissenting vote avoids the pitfalls of H.R. 9142. While I am still not convinced that the legislation will produce the optimum solution, I can support the bill as reported as a competent piece of legislation that has a good chance of producing a solution for the Midwest and Northeast rail crisis.

Let me briefly describe for you the extent and nature of the present crisis.

At this time, seven class I railroads, as well as one class II carrier, are in bankruptcy. Class I: Penn Central, Reading, Erie Lackawanna, Lehigh Valley, Central of New Jersey, Boston and Maine, and Ann Arbor. Class II: Lehigh and Hudson River. Their services are not only essential to the prosperity and well-being of the people and industry in the Northeast and Midwest, but they are essential to the well-being and prosperity of the Nation as a whole. Cessation of services on the Penn Central alone would have drastic consequences throughout the United States. For example, it has been predicted that a shutdown of the Penn Central would produce a decrease in the rate of economic activity in the region of 5.2 percent, a decrease in the entire Nation of 4 percent, and a decrease in the GNP for the Nation as a whole of 2.7 percent after the eighth week of such a shutdown.

I am sure that it will be of interest to the Presiding Officer (Mr. BAYH), as it was to me, that a study by the Indiana Department of Commerce predicted that a shutdown of the Penn Central would produce unemployment in that State of 24 percent during the first month. A 60-day shutdown would cause the Indiana industrial economy to suffer a 25-percent reduction in its capacity. In addition, east coast marketing of corn and soybeans, two of Indiana's cash crops, would be hamstrung.

I might point out that, while frequently they talk about this being the northeast railroad system, the second largest State in the system in mileage is Indiana. The first is Pennsylvania.

Forty-two percent of the Nation's population lives in the northeast quadrant, and most of the major centers of the automobile, steel, and machine industries are centered there. The geographic zones served by the bankrupt properties account for more than 50 percent of the Nation's total industrial production.

The entire economy of the United States would suffer drastically if railroads in the Northeast and Midwest shut down operations.

Recent projections of the trustees of the Penn Central Transportation Co. have indicated that Penn Central has a worsening cash crisis; its cash forecast is particularly distressing. In late November 1973, the Interstate Commerce Commission informed the Committee that:

> The continued deterioration of liquid resources as a result of negative cash flows now indicates a cash squeeze developing in the first quarter, 1974, which could *quickly* deteriorate to a full cash crisis.

Cash flow, which is already negative; that is more cash is disbursed than is received, will be made even worse by the need for immediate track repair work so Penn Central can meet minimal Federal Railroad Administration track safety standards, by higher fuel costs and interline payments, and by recent Amtrak legislation, which legislatively specified the manner in which the National Railroad Passenger Corporation is to pay for services performed by Penn Central and other railroads. The immediate cash impact resulting from new FRA safety standards alone is estimated at $620,000 per month, and diesel fuel cost increases are approximated at $28.9 million annually over 1973 levels.

Coal, the largest single commodity handled by the Penn Central, continued its historical downtrend through the first 8 months of 1973, or 9.4 percent from the same period in 1972. The Commission has estimated that, even in light of the current energy crisis, "prospects for any near-term improvement in coal traffic significant to provide financial assistance for the railroad is considered unlikely," although some are more hopeful.

The ability of the Penn Central railroad to maintain operations under reorganization is critically dependent upon its ability to generate sufficient positive cash flow to sustain working capital needs, cover maturing equipment obligations, and pay for essential maintenance and capital expenses. In this most critical area, Penn Central continues to falter. It has been unable to develop a consistent positive cash flow despite court-ordered deferment of payments on debt interest, lease-line rentals, and property taxes, and the railroad's continued deferment of maintenance and capital expenditures. As a result, the Penn Central's liquidity position—the ability to service short-term expenses—continues to wear thinner, with cash balances on the decline and working capital standing at a deficit balance. This continued deterioration of liquid resources as a result of inadequate cash flow increases the prospect for a cash crisis by the first quarter of 1974, which could precipitate a complete shutdown.

The currently developing energy shortage must be seen as part of the background and need for a restructuring and rehabilitation of the railroad system in the Northeast and Midwest. Railroads are almost 4 times as energy efficient as trucks and 60 times as energy efficient as airplanes for purposes of freight carriage. The Federal Government's massive upgrading of the rights-of-way for trucks—through the Interstate Highway System—was not matched by a governmental effort to halt the deterioration of rights-of-way for railroads. Any upgrading or rehabilitation of rail rights-of-way will benefit both freight and passenger service by rail.

Given the current and projected shortage of energy resources, one goal of a rational national transportation policy would be to encourage shipping by the most energy efficient mode to the extent that the quality of service will not be unduly affected. The Senate Commerce Committee, in a staff report on initiatives in energy conservation, estimated that if the modal split for intercity freight traffic in 1985 were hypothetically redistributed as shown in the following table, a savings of 403,000 barrels per day of oil would be achieved:

PROJECTION FOR INTERCITY FREIGHT TRAFFIC PATTERN

[Percentage of total ton-miles]

		1985	
	1970	Current DOT projection	Modified projection to conserve energy
Rail	35.9	31.9	41.2
Truck	15.9	18.9	10.0
Water	28.4	27.1	27.1
Pipeline	19.6	21.4	21.4
Air	.2	.7	.3

By slowing down the rates of growth for air and truck freight traffic (the modified projection still represents almost a tripling of air ton miles and an increase of 14 billion ton miles of truck traffic over 1970 levels), then shifting this traffic to railroads as shown in the above table, 3.2 percent of the overseas crude oil imports needed in 1985 would be saved.

Cessation of rail service in the Northeast and Midwest portions of the United States would have drastic consequences, not only in these regions, but throughout the entire country.

Permit me to describe the way in which S. 2767 proposes to solve the Midwest and Northeast rail crisis. The legislation proposes to achieve this purpose by establishing a nonprofit Government National Railway Association to plan and finance the acquisition, rehabilitation, and modernization of the new system and by establishing a private United Rail Corp. to operate such system. It is further the purpose of the bill to meet the Nation's need for adequate and efficient rail services in all regions and to prevent any recurrence of the Midwest-Northeast railroad collapse in other regions of the Nation by providing loan guarantees which would enable railroads to acquire additional rolling stock, equipment, and facilities and by improving the utilization of existing rolling stock—title V. Loans would also be available to railroads outside the region which are threatened with insolvency in the absence of such loans—section 211. To minimize the economic dislocation that would occur as a consequence of massive abandonments, the bill authorizes rail service continuation subsidies and acquisition and modernization loans to States in the threatened region—sections 402, 403.

The bill is divided into seven titles: Title I contains the table of contents, the findings and purposes of Congress, and the general definitions applicable to the entire bill. Title II established the Government, National Railway Association and the machinery for planning, acquiring, and financing the new rail system for the Midwest and northeast region, including review by Congress and the courts. Title III establishes the for-profit United Rail Corp. to operate the new rail service system, provides for the conveyance of rail properties from the insolvent railroads to this corporation and profitable railroads, and sets forth the procedure for discontinuing and abandoning rail service not included in the new system. Title IV authorizes the Secretary of Transportation to grant rail service continuation subsidies and to help States and local transportation authorities purchase about-to-be-abandoned lines in order to maximize the continuation of local rail services. Title V provides: First, loan guarantees to enable railroads to acquire additional rolling stock, equipment, and facilities, and second incentives to insure better utilization of rolling stock. Title VI authorizes assistance for railroad employees who will lose their jobs or suffer compensation reductions under the reorganization; it also grants railroads certain rights to assure better utilization of railroad employees. Title VII relates the bill to other laws, directs the Secretary of Transportation to monitor and report to Congress on the effectiveness of the association and the corporation in implementing the purpose of the purpose of the bill, and contains certain other general provisions.

The planning and implementation process starts immediately upon the date of enactment of the bill.

Immediately upon enactment the Secretary of Transportation prepares and within 30 days submits "a comprehensive report" containing his conclusions and recommendations with respect to rail services in the region (sec. 204). At the same time, the Interstate Commerce Commission organizes and appoints a director for a special independent office within the ICC, the Rail Emergency Planning Office—section 205. Within 240 days after enactment the Office submits a comprehensive report surveying needs and possibilities for rail services and cost savings in the region and within 300 days it submits its proposal and recommended plan for the new rail system which meets all of the requirements for the final system plan as set forth in the bill—section 206.

Also upon enactment, a completely new entity is established, the Government National Railway Association—or Ginnie Rae—section 201. Ginnie Rae will adopt the final system plan—section 207—which is submitted to Congress for review—section 208; it will finance the implementation of the final system plan through the issuance of obligations—section 210—and the making of loans—section 211—and it will establish, through its executive committee, the new private corporation to operate the new system, the United Rail Corp.—section 301.

The four Government members of the Board of Ginnie Rae—the Secretaries of Transportation and Treasury, the Chairman of the ICC, and the Administrator of the EPA—will incorporate the Association as a nonprofit association and get it started pending the appointment of the other directors by the President, by and with the advice and consent of the Senate. The reports of the Secretary and the Office will be submitted to the Association which will simultaneously be doing its own investigations and studies in conjunction with the Office and the Secretary—section 203. Within 300 days the association must adopt and release a preliminary final system plan—section 207(a). Within 90 days after release of the preliminary system plan, a reorganization court will order a railroad in reorganization in the region to proceed in reorganization under the bill unless it finds: One, that such railroad is capable of income reorganization—if it would be in the public interest—or two, that such reorganization under the bill is not possible on terms which would be fair and equitable—section 207(b). The association, the Secretary, and the Office are all authorized to conduct public hearings on the preliminary system plan during the 60 days following its release. Within 60 additional days—or 420 days after enactment—the President and executive committee of Ginnie Rae will submit to the full Board of Directors the final system plan. Within 30 additional days—or 450 days—the Board must by majority vote of all the directors adopt the final system plan—section 207(c)—and must submit the plan to both Houses of Congress for review—section 208. If either the Senate or the House of Representatives passes a resolution stating that it does not favor the final system plan, it goes back to the association for revision. If neither House disapproves the final system plan within 60 days, it is approved. However, GNRA is not authorized to issue obligations until the Congress approves obligational authority affirmatively by joint resolution. The effective date of the final system plan is the date such financing resolution is approved.

Judicial review of the final system plan is limited to "matters concerning the value of the rail properties to be conveyed under the plan and the value of the consideration to be received for such properties"—section 209(a). Judicial review is to be conducted by a special three-judge district court to be selected by the judicial panel on multidistrict litigation—section 209(b)—and the transferring and conveyancing judgments of the special court are subject to direct appeal to the U.S. Supreme Court—section 303(e).

To keep rail service going in the emergency region pending the development and approval of the final system plan, $85 million is authorized to be appropriated to the Secretary—section 213—in order to provide emergency assistance to the trustees of the railroads in reorganization and the Secretary may direct GNRA—with its approval—to issue up to $150 million in obligations to forestall deterioration of the plant and equipment of the bankrupt railroads pending completion and implementation of the final system plan—section 215.

United Rail Corp.—Uni Rail—will be established within 300 days after enactment as a for-profit corporation with its headquarters in Philadelphia—to guarantee maximum reemployment opportunities for office workers of two of the defunct carriers, the Penn Central and the Reading—section 301. The corporation will operate all of the new rail system, except for those rail properties which the final system plan designates for sale to profitable railroads operating in the region, and which are purchased and operated by those railroads. Within 90 days after the effective date of the final system plan, the Association will deliver a certified copy of the plan and other data to the special court—section 209(c). Within 10 days thereafter, the corporation and the acquiring railroads will deposit with this court the securities of the corporation, obligations of the Association, and compensation from profitable railroads designated in the final system plan—section 303(a)—and the special court must direct transfer of the rail properties to the corporation and to the respective profitable railroads free of any liens or encumbrances—except in the case of secured property, the security interest will thereafter attach to the consideration received and the other assets of the debtor. If the special court finds, following transfer or conveyance, that any transfer or conveyance is not fair and equitable, it can order reallocation of securities or enter a judgment against the corporation or profitable railroad operating in the region so as to make such transfers or conveyances fair and equitable—section 303.

Within 30 days after the effective date of the final system plan, notice is to be given of intent to discontinue rail service on rail properties which are not designated for rail operations in the final system plan and 90 days later, absent local or private intervention, the service may be discontinued—section 304(a). Abandonment may take place 180 days after the effective date of such discontinuance—section 304(b). Such rail service may not be discontinued or abandoned if a shipper, a State, the United States, a local or regional transportation authority, or any other responsible person offers to subsidize continued service, or offers to purchase the properties for continued rail operations—section 304 (c) and (d). Provision is made for Federal assistance in the form of rail service continuation subsidies—section 402—and purchase and modernization loans—section 403.

Annual reports to the Congress are to be submitted by the Association—section 201(d)—and the corporation—section 301(h) and in addition the Secretary of Transportation is directed to report annually "on the effectiveness of the Association and the corporation in implementing the purposes of this act"—section 702.

Although the crisis brought on by the June 21, 1970, filing of a petition in a court of bankruptcy by the Penn Central Transportation Co. affects the midwest and northeast region primarily, the railroad problem is a national one. To date it has only reached disaster proportions in this region.

One of the most intractable aspects of the national railroad problem, one which affects shippers by rail and the consumers of goods and products shipped by rail as well as all of the American railroads, is the extreme shortage of railroad freight cars and other rolling stock. The freight-car shortage has not been, and according to studies, will not be solved by normal commercial financing mechanisms in the absence of Federal financial assistance in the form of guarantees of equipment obligations. The bill establishes an Obligation Guarantee Board in the Department of Transportation and authorizes the Board to provide such guarantees—not to exceed $2 billion—sections 503–506. Since the freight car shortage is caused not only by a shortage of cars but by poor utilization of existing cars, the Secretary of Transportation is directed to establish using appropriations not to exceed $10,000,000 a computerized "national rolling stock information system"—section 507 and to develop a rolling stock utilization index and study—section 508.

In the event of continuing inability on the part of railroads and the private sector to solve the freight car shortage problem, notwithstanding the loan guarantees and the information system, the bill authorizes the problem to be solved directly, following findings by the ICC and the Secretary and an affirmative concurrent resolution of Congress—section 509—through the establishment of a Government corporation, the Railroad Equipment Authority. The Authority, if established, will acquire, maintain, and provide freight cars and other rolling stock, manage this equipment as a pool, and is directed to "employ innovative concepts for equitable distribution and expeditious use of such stock to meet the needs of the national economy and the national defense"—section 510(b). Although the Authority is to be organized by the Federal Government, the bill provides for it to be converted to private ownership—as an equipment supply and management company—"as soon as practicable"—section 513.

The provisions of this bill, while beneficial to the Nation and the consuming public, could have an extremely painful effect on thousands of employees whose jobs could disappear in the process of reorganization and restructuring. Protection is provided for such employees in the form of offers of employment which the corporation must make to every adversely affected employee—section 602—monthly displacement allowances for protected employees deprived of employment or adversely affected with respect to compensation—section 605(b)—moving expenses and other transfer benefits for employees required to change their residence—section 605(g)—and separation allowances to protected employees who resign and sever their employment relationship—section 605(e).

The bill authorizes the appropriation of up to $15,000,000 for the Secretary for the purposes of preparing the reports and performing his other responsibilities. The special office in the Commission is authorized to receive up to $12,500,000. There is authorized to be appropriated up to $26,000,000 for administrative expenses of the association—section 214. In addition, there is authorized to be appropriated $200,000,000 to support continuation of local rail services—section 403; $85,000,000 is authorized to be appropriated for emergency rail assistance prior to the implementation of the final system plan—section 213; $250,000,000 is authorized to be appropriated for labor protection—section 609.

Ginnie Rae is authorized to issue obligations which would be guaranteed by the Federal Government. There would be no cost to the Federal Government if GNRA were able to meet the obligations it issued. If there was a default on any obligations, the Federal Government would be required to pay sums necessary to cover the amount of the default. The limitations on the amount of obligations Ginnie Rae is allowed to issue would determine what the maximum exposure of the Federal Government could be. The bill provides that the architects of the final system plan would establish the recommended limitations on the obligational authority on the theory that the amount of the obligational authority cannot reasonably be determined until the final system plan is known. The limitation which would be approved by Congress with or without modification after the submission of GNRA's recommendation would be binding upon the association.

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

Mr. HARTKE. I am glad to yield.

Mr. CURTIS. The Senator has referred to a provision dealing with Federal assistance in the form of rail service continuation subsidies and has said that lines can be discontinued, absent local or private intervention. Does that mean that if somebody intervenes, it will not be discontinued?

Mr. HARTKE. The abandonment procedure provided by the bill, is not quite that simple.

Perhaps what the Senator is concerned about is whether or not intervention at that point could disrupt the final system plan. The final system plan, in and of itself, would be adopted by Congress. Then there would be portions which are not in the final system plan, which would then be available to be abandoned. For those outside the plan, the intervention of a State or any other responsible authority, in broad terms, would be permitted, with the provision that the State itself would make the final decision as to whether or not they want to participate in such a continuation of service with the funds which would be provided under the Federal subsidy.

Mr. CURTIS. That leads to my next question: Provision is made for Federal assistance in the form of rail service continuation subsidies?

Mr. HARTKE. Yes.

Mr. CURTIS. Does this imply that after the final plan is adopted, there are certain properties to be discontinued, certain services to be discontinued, but if an intervention is made, the abandonment will not take place and a Federal subsidy will be supplied to keep it going?

Mr. HARTKE. First, the fund for subsidy is put into two categories. Twenty-five percent of it is called a discretionary fund, which is held for utilization by the Department of Transportation; but the major portion of the subsidy, which is 75 percent of that fund, is allocated to the States in proportion to the eligible abandoned lines in their State relative to the total number of eligible lines which are to be abandoned.

In other words, after the final system plan is adopted, certain lines will be available to be abandoned. Each State then will have its relative proportionate share allocated to it in that 75 percent for determination as to whether or not they want to make application to continue those lines. The State, itself, would make the determination. Having made the determination that a line that is eligible for subsidy, it can allocate the funds if it will assume 25 percent of the total cost of the subsidy.

Mr. CURTIS. Is not one purpose of the proposed legislation to strip out all the duplication, to strip out the branch lines, and the other properties, and make fewer miles, without duplication, to do the job? Is that not right?

Mr. HARTKE. That is the stated purpose, according to some sources. It is not my idea.

Mr. CURTIS. Is it the idea of the proposer?

Mr. HARTKE. Let me see if I can try to state it. The basic purpose of the bill is to provide for a rationalized system, one which would be financially viable and which would, at the same time, provide service.

The concern that the Senator is expressing about duplication of service is well founded. There is an obvious intent to eliminate duplication. But I do not think any member of the committee would want to say that our purpose is to strip out certain lines with the idea that we are going to cut back the system. There is a difference between abandonment and rationalization. We are trying to come up with a vital financial system which will provide the service necessary for the Midwest and the Northeast.

If I can anticipate the concern of the Senator, he wants to make sure that we are not trying to duplicate service which, in the best interest of the public, should be abandoned. I think we have done that in the bill.

Mr. CURTIS. Does the bill, or does it not, require a material lessening of the total mileage of the rail service involved?

Mr. HARTKE. I think that that is implicit in the bill, but the bill does not specifically say that the mileage shall be reduced. It authorizes a reduction, and it is anticipated that there will be reduced mileage in the system. The estimates of reduction in mileage varies quite considerably. There has not been at this moment, however, a stated number of miles that will be available, although it is anticipated that there will be a cutback of the total mileage.

On page 29, beginning on line 1, we read:

Rail properties are suitable if the cost of the required subsidy for such properties per year to the taxpayers is less than the cost of termination of rail service over such prop-

erties measured by increased fuel consumption and operational costs for alternative modes of transportation, the cost to the gross national product in terms of reduced output of goods and services, the cost of relocating or assisting through unemployment, retraining, and welfare benefits to individuals and firms adversely affected thereby, and the cost to the environment measured by damage caused by increased pollution.

Mr. CURTIS. Allegedly, the bill would create a unified system that can operate on its own eventually.

Mr. HARTKE. That is true.

Mr. CURTIS. But what would happen if, in the course of the next 10 years, there is objection to the abandonment? There is a provision already written in the bill that if a line is to be continued, there will be a Federal subsidy.

How do I know that 10 years from now there will be all the lines in Indiana we have now, and that we will go on paying a Federal subsidy for the unprofitable lines annually from then on?

Mr. HARTKE. I think the Senator can be assured that that certainly is not going to occur.

Mr. CURTIS. What is there in the bill that will assure me of that?

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

Mr. HARTKE. I yield.

Mr. PEARSON. In response to the concerns expressed by the Senator from Nebraska, I share the same concerns. I think it is fair to say that not only is the new system designed to cut down substantially on the mileage, on the grounds of the labor involved, so that the system can become a viable proposition; but there are in the bill some steps. The first is that the authorization is for $100 million for 2 years.

The second is that a petition to go back into operation on an abandoned line has to be a petition to the State, the State agencies of the government, and there has to be made a determination as to whether or not the State will put up the 25 percent. Then it goes back to the Secretary of Transportation who likewise has to make a judgment and determination that the Federal subsidy which is limited in amount and terms of years. So it is limited by the State government and the Department of Transportation. This is giving some flexibility to handling situations outside the central core system to alleviate severe economic dislocation.

Going into Buffalo there are 12 lines. It is not economically feasible to keep that sort of competitive system going, which is overlapping and duplicating. This is a flexibility that the committee felt was advisable, and not to be sort of a loophole where you can go right back in there and have the same sort of duplication, overlap, and overemployment figures as before.

This particular proposal really was first instituted in the Midwestern part of the United States. The Senator from Oklahoma (Mr. BELLMON) was sort of the father of this idea. We have sought to have it incorporated in other bills in connection with Kansas, Nebraska, and other parts of the United States.

Mr. CURTIS. As I understand the Senator there is a limitation in time or years that the operating subsidy can be paid. How long is that?

Mr. HARTKE. Two years.

Mr. PEARSON. I understand 2 years and $100 million for each year.

Mr. CURTIS. Two years from when?

Mr. PEARSON. The passage of the bill.

Mr. HARTKE. From the effective date of the final system plan.

Mr. CURTIS. Those are not the same. The passage date of the bill and the effective date of the final system plan are quite aways apart. When does the 2 years run?

Mr. HARTKE. Let me explain the difficulty. What we are going to have here is about 18 months before there will be this final system plan. Until then no one knows what will be in the system and what will be out of the system.

Mr. CURTIS. Yes.

Mr. HARTKE. So we cannot talk about any lines abandoned under the plan until after the final system plan is adopted. After the final system plan is adopted there is a 2-year period in which the subsidy provision will apply.

Mr. CURTIS. Does the Senator limit this to 2 years?

Mr. HARTKE. Yes; by virtue of the authorization of the bill. It does not say Congress at a later date will not come back and extend that period.

What you are faced with is there going to be abandonment under this bill, much as under Amtrak.

Mr. CURTIS. If there is going to be abandonment why prolong the misery for 2 years and pay a subsidy?

Mr. HARTKE. The thing is that you have certain items which the association may finally determine are not necessary for the total system plan; in order to have a total system plan which may be a financially viable operation. There may be a factory on a branch line. Maybe they run 4 to 5 cars a month. If they want to continue that in view of the cost-benefit ratio situation, they may feel it is necessary to do so. There might be 250 people working there in a community and 250 people may be thrown out of work if rail service is cut off.

We are saying if they are not in the total system plan then the State has to come up with its plan for those railroads which are threatened with abandonment, but the local authority or State authority can make application for subsidy of that line.

Mr. CURTIS. What good is a 2-year subsidy for serving an industry that has to have the railroad anyway?

Mr. HARTKE. It gives them at least during that 2-year period—they continue to operate and try to make adjustments to the transportation problems involved. Also, the State may want to come back at a later date and pick up the whole subsidy. Some States are doing that now. They are subsidizing at least on the passenger level what otherwise would be abandoned lines.

Mr. CURTIS. It seems to me it may be sowing seeds for pressures never to abandon anything.

Mr. HARTKE. No, I do not think that is true.

Mr. CURTIS. Because it might be very popular for a Member of Congress to suggest in a bill that the Federal subsidy be not 75 percent but 90 percent, and you do not know what the subsidy will be. Does it have to be in dollars?

Mr. HARTKE. It has to be in dollars, basically. The general provision is that it probably could be—the manager of the bill is not very happy with the other side of the coin. I do not mind telling the Senator that. Historically my concern has been exactly the reverse of what the Senator from Nebraska is speaking. My concern has been there are going to be too many abandoned lines and too little service.

Mr. CURTIS. Would the Senator support a proposal for the continued subsidy, say at 90–10 instead of 75–25?

Mr. HARTKE. I did not hear the Senator.

Mr. CURTIS. Would the Senator support a proposal for 90–10?

Mr. HARTKE. Yes; but the committee would not.

Mr. CURTIS. That is the point that disturbs me. If we are going to go through the trauma of having the Government inject itself into these railroads involving quite an area of the United States and we are honest in our purpose that what we want to end up with is a system that can operate on its own, and it is stripped of all unnecessary obligations, why not make it once and for all? Why have the subsidies after the new system is set in motion? Why promise them ahead of time they do not have to succeed?

Mr. HARTKE. First as a practical matter there are serious problems. In my State on those highways which are non-Federal we have 11,000 bridges which are one lane and limited to 4 tons. In certain areas of my State unless they have a method to provide for those areas they would have no service at all.

All I can say to the Senator is I think the terms of abandonment are much too strict; but I am willing to abide by the decision of the committee and support the bill as it is. I think abandonment under this will be rather severe. I think the outcry will be rather loud from people who will find no method to get back into service, even with the subsidy. My concern would be on the other side of the coin from the Senator from Nebraska, but I did not prevail in the committee. I am willing to go ahead and tell the Senator that I think those people in the committee who have been concerned with providing a viable, economic system which will provide services to the communities and still provide a method of taking care of those that are not a part of the core system have done a remarkable job of providing a competent, not too expensive method of continuing the services.

The Senator asks, would I give them 90–10 financing? I would say yes. I do not see why we should have only a 25-percent subsidy for the railroads when we have a 90-percent subsidy for roads for trucks. But that is not in the bill. This bill provides for 75 percent from the Federal Government and 25 percent from the participating intervenor that is to be funded by the States, under their plans, under the guidance of the Transportation Department.

I tell the Senator that those abandon-

ment procedures are so much better than the present ones that this is a major change of great significance.

Mr. CURTIS. On the question of abandonments, I do not like abandonments. I have protested them. I have gone to the ICC. I have protested them with respect to the railroads. I want them to serve my area, too, but we have wide areas in Nebraska with no rail service. We have wide areas with very limited service. There was no subsidy program to keep them going, which probably was the right thing. I think that perhaps that is one of the reasons why the roads west of Chicago are in better condition and are not asking for a bailout.

If we are to spend all these millions of dollars for study and ICC has a plan and the Secretary has a plan and they get going and say, "This is it; if we reduce the mileage, if we eliminate the duplication, if we do some other things, if we stop trying to have a railroad within a very few miles of every point, then we will have a system that can operate on its own," certainly, if we do all that, we should not, ahead of time, make a request for failure by saying, "We will still give you a subsidy." It seems to me the subsidy should end when the new operation is ready to go.

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

Mr. HARTKE. I yield.

Mr. BEALL. May I suggest that this is a compromise between the position the Senator from Nebraska is advocating at the present time and the one advocated by the Senator from Indiana a minute ago? We recognize that there are too many lines existing in the northeastern part of the United States. We recognize that for a new corporation to be economically viable, it is necessary that many of those lines be abandoned. At the same time, we recognize that also, in the public interest, for reasons outlined by the Senator from Indiana, where there is no other mode of transportation available, there should be an opportunity for people at the local level to determine whether it is in their interest that the lines be continued. That is why we have the subsidy.

It seems to me it would be unfair if we did not allow them to participate in the continuation of the plan. Further, we recognize that continuation itself imposes a pretty severe financial burden on any subdivision involved. So, for that reason, we provide this 75–25 ratio.

It will be noticed in the next section of the report that we authorize also loans, so that subdivisions may purchase a line that was to be abandoned. Here again, the ratio is 75–25.

So the logical thinking would be that, once they have the opportunity to experiment on an operational subsidy, they can make a determination. If they decide to continue it, they can do it by loan or continue it with a contractual relationship with some railroad.

The point here is that, unlike areas in Nebraska mentioned by the Senator, where there has been no line before——

Mr. CURTIS. Oh, yes, there have been.

Mr. BEALL. Someone here has to determine whether it is economically viable to continue.

Mr. CURTIS. There are many areas in Nebraska where there has been railroad service, or where the track is still there but there is no service. Sizable sums are being asked to be paid by the taxpayers to do what the railroads in these areas should have done years ago, in unification, but they were met with political problems. It seems to me that, at the time of this investment in a unified railroad system that is supposed to do the work, once that point is reached, the time for the subsidy should end.

What areas are there where there is no alterantive means of transportation?

Mr. HARTKE. I would answer the Senator from Nebraska's question by saying a lot of areas.

Mr. CURTIS. Where, for example?

Mr. HARTKE. Perhaps I can help clarify this matter. The association is faced with the problem of coming up with an organization that is financially viable. They come up with a system plan. They say this system plan is financially viable. If we were merely charged with providing necessary services, we might not have to also address this other problem. We are faced with the problem that either we are going to make this corporation financially viable or we are going to put on lines which would not pay their way and should be excluded from the system.

The Senator is saying that the taxpayers are being asked to provide these additional moneys. One thing the taxpayer is not being asked to do is adopt a system plan and a corporation which, on its face, is financially insolvent before we start.

That is the whole thrust of the bill. It is to take a group of bankrupt railroads, put together a system which is financially viable and continue service with the least expense to the taxpayer in the process.

Mr. CURTIS. It seems to me that if this legislation has any purpose, its purpose is to so strip from this program excessive mileage so that it can operate on its own.

Mr. HARTKE. I think that will happen. That will be the end result.

Mr. CURTIS. But the Senator from Nebraska thinks that the offer of a 2-year subsidy to go on, with all the problem operations they have now, is an invitation for political pressure for it to go on always. And if that happens, then we have spent all this effort and planning and money to bring about a system that cannot stand on its own.

Mr. HARTKE. I do not think, under the bill, that will be the result. I think there is no question that the bill is so drafted as far as the central system is concerned, that substantial mileage will be abandoned. I do not think any member of the committee will disagree with that.

Mr. CURTIS. Coming back to my original question of a few minutes ago, what type of area is there where there is no other means of transportation?

Mr. COTTON. Mr. President, on that point, will the Senator yield to me?

Mr. HARTKE. Yes, I will be glad to yield to the distinguished Senator from New Hampshire, who understands this matter.

Mr. COTTON. Mr. President, I would like for the benefit of my friend, the Senator from Nebraska, to show him why this is so necessary in the bill.

It is not possible to have this map printed in the RECORD. However, here is a map of my own State.

As far as this new corporation is concerned, I have reason to believe, based upon indications from the Department of Transportation, that the only service, as far as the State of New Hampshire is concerned, would be from the Massachusetts line to Manchester, and across the southeastern corner of the State, from Massachusetts into Maine, passing near Portsmouth for a total of some 50 miles.

We now have several rail lines, as shown on this map, up and down the State. Most of those lines are in the process of being abandoned.

The State of Vermont faces the same situation. However, the State of Vermont has already acted. It has purchased track to provide freight service all over the State.

As a matter of fact, at the request of the distinguished senior Senator from Vermont (Mr. AIKEN), a provision was agreed to by the committee to enable States, such as Vermont, to continue operations which they have undertaken.

In my own State, this is a sparsely populated area across here. However, it has to have some kind of freight transportation. Our Governor has already recommended, and our legislature is considering, purchasing at least an essential part of this system, which it will then try to get it in operation.

This bill, in title IV, at least leaves that door open.

Perhaps this is an unjust statement, and I do not intend it to be. However, to my mind, the Department of Transportation has exhibited an almost complete indifference to the transportation needs of all areas north of Boston. If it were left to DOT and if we were to depend upon this new corporation, four-fifths of my State would be a desert as far as any kind of rail transportation is concerned. Yet, such transportation is the life blood of the many small industries which we still have, but which we stand to lose without transportation.

Many people in New Hampshire, reading newspaper reports, think this is a good bill and that it will do something for them. If the truth were known, I hate to even vote for the bill. The only thing that the three Northern New England States can hope for, and the only thing that my State can hope for, lies in the subject the Senator is now discussing.

This legislation formerly was called the Northeast rail bill. Now, it is properly called the Northeast and Midwest rail bill. However, as far as the Northeast is concerned, particularly the vast area in northern New England, this bill does not do that much.

Subject to amending certain provisions, I may be compelled to vote for some things in this bill, simply to give my State an opportunity to survive.

Mr. CURTIS. Mr. President, I commend the Senator for his attitude. I do

not think he should have any other attitude than to serve his people.

I am not prejudging the legislation at all. However, I raise the question as to what areas are there in which no alternative can be found for transportation.

Mr. HARTKE. Mr. President, let me say to the Senator from Nebraska that we have two problems. We not only have the problem of area but we also have the problem of material. In some cases, material cannot be found. For example, the big generators for a lot of plants that are proposed cannot be moved in any other way than by rail.

We have in the north central area of Indiana a locality which, because of the peculiarities of the area, is not being served by the Federal highway system.

A bridge is limited to 4 tons. Many of them are limited to 1 ton, with practically all trucks being much heavier than that. There is no way to provide service.

I think that the Senator from Nebraska has raised a very valid point.

Mr. CURTIS. Mr. President, does the Senator from Indiana mean that there are areas where highways and bridges to carry freight cannot be built?

Mr. HARTKE. There could be if we were to build new highways. The State has no such plans. The Federal Government has a plan to provide highways to take care of this transportation.

Mr. CURTIS. Mr. President, in the western part of our country, when they did not have rail service, did they not have to build highways to move about?

Mr. HARTKE. They will probably have to in this case. What the Senator from New Hampshire has said is so true. The Senator from New Hampshire has been very helpful in this legislation. However, because of the fact that the bill does not in its thrust deal with anything except perhaps a maximum of 40 miles potential, the only hope for any type of operation which is necessary up there is contained in this provision. And even that is no guarantee.

Mr. CURTIS. Mr. President, I have always fought vigorously the abandonment of rail service. And I expect to continue to do so. However, I am not satisfied with the statement that there are areas of the country where alternative types of transportation cannot be provided.

I also question how much good we do a State or a locality or individual shippers in making plans for the continuation of service by saying, "You can have a subsidy for 2 years, and that is it."

Right now we have in mind going on from now on with that subsidy, or else we are offering them an impossibility.

Mr. HARTKE. I do not think that is true. I think that there are some situations in which there will be efforts made to continue the subsidies beyond that period.

I say that in all fairness. I do not say that on behalf of other members of the committee. I am not too sure they would agree with that. I do not want to mislead anyone. I do not know what is going to happen.

I think that some parts of the country will be faced with an entirely different situation and an entirely different problem than those the Senator from New Hampshire is talking about. The issue will become not the matter of too much subsidy. People will not understand that there is major surgery being done on rail service. I do not think there is going to be enough money to subsidize the projects that all of the people will be yelling for. There will be an outcry for subsidies.

Mr. CURTIS. Mr. President, I am not too sure it is. What I am wondering is whether we are going to have a very expensive piece of surgery built into the system with the encouragement and pressure to continue the status quo with the subsidy.

Mr. HARTKE. Let me say to the Senator from Nebraska—and I think I am one person on the committee who has a right to say this, because of my basic opposition to the approach used in this bill—though I am willing to concede that it has certain merits—the justification for complaint about the cost of this bill, in my judgment, is not in the subsidy provision. If the Senator from Nebraska is worried about the costs, that in my opinion is not the place where the concern should occur.

That cost, at the maximum as of now, is $200 million. That is the maximum under the bill. But I am saying to the Senator from Nebraska the legislation could be more costly than that.

There is a potential in this bill to pay much more if loans are defaulted upon. I hope that will not happen. The cost problems are not really in the subsidy section.

Mr. CURTIS. Where is it?

Mr. HARTKE. It is in the overall cost of upgrading and putting together a financially serviceable operation using guaranteed loans.

How are they going to replace a railroad system which has deteriorated over the years? How are they going to upgrade the track, build new equipment, make the necessary——

Mr. CURTIS. How does the bill provide for that upgrading?

Mr. HARTKE. I beg the Senator's pardon?

Mr. CURTIS. How does the bill provide for getting the funds to put tracks and rights-of-way in condition, and then have usable equipment to roll over them?

Mr. HARTKE. The theory of the bill is that if you rationalize or reorganize this railroad system to a financially viable operation in the first place, then it has a chance to obtain private capital in the long run. I think that is a fair theory: In other words, if you take off the lines which at the present time are not profitable and provide what amounts to a rationalized system, and say, "Now, here we have a system which, on the basis of our projections, can produce money," you will provide an opportunity for the new corporation, then, to obtain cash from private resources.

In addition, this bill does provide for payment of certain labor protection costs which will be paid by the Government and which will also relieve the corporation of financial burdens. In addition, we have provided for some interim financing, which is, I think, relatively small. But in addition to the $85 million we have already voted in the Senate, the bill provides for an advance from the association of an additional $150 million to begin to hold and update the present rail structure to be paid back by the corporation.

In addition, the bill provides for loan authority to be guaranteed by the Federal Government, and that obligational authority ultimately has to be affirmatively approved by the Congress. This is the change we made; it must be affirmatively approved before the system would go into effect.

So, on the question the Senator from Nebraska has raised, where they are ultimately faced with a severe financial drainage, they will have to come back to Congress after the final system plan is in effect.

I can say to the Senator from Nebraska that in my judgment, most of the Congress is not going to be concerned about the $200 million involved in the potential subsidy.

Mr. CURTIS. Well, now, is it a subsidy for replacing the roadbed, the rails, and equipment, or is it a loan program?

Mr. HARTKE. Is it a subsidy for continuing rail service?

Mr. CURTIS. Yes.

Mr. HARTKE. It is not a direct subsidy.

Mr. CURTIS. Is it or is it not?

Mr. HARTKE. There is no direct subsidy. I think it is only fair to say that when you guarantee any type of obligation, that, in effect, involves a subsidy.

Mr. CURTIS. The $85 million the Senator was talking about to start to upgrade these lines so that they can move a train fast enough, is that a loan or a subsidy?

Mr. HARTKE. The $85 million is a grant, pure and simple, just to try to keep the railroads going so we do not have to have midnight sessions to give them $100 million to meet an emergency, as we did the last time.

Mr. CURTIS. What is the $85 million for?

Mr. HARTKE. To pay the bills.

Mr .CURTIS. What kind of bills?

Mr. HARTKE. To pay for the fuel——

Mr. CURTIS. I am not talking about operations costs. What I am talking about is, does this bill provide for the subsidiation of the improvement of the railroad and the equipment?

Mr. HARTKE. No.

Mr. CURTIS. Not at all?

Mr. HARTKE. Well, let me—here: If you had, for example, a piece of track which washed out in a flood, this $85 million is interim financing to keep the railroads going. It is really basically operating cash, and a Federal grant. It is not intended to upgrade the track; it is just to keep the railroad going during the interim period.

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

Mr. HARTKE. I am glad to yield to the Senator from New Hampshire.

Mr. COTTON. I would like to ask the Senator from Nebraska a question. I think he and I see eye to eye on this situation. The bill, as it now stands, I really fear, may be an entering wedge for nationalization of the railroads. For

that, among other reasons, in the committee I voted with reservations to report the bill. I did so since certain of its provisions are needed to save rail transportation in my State. Thus, I am torn between what I have got to do for my State and what I fear.

But, let me say this to the Senator, if you take away this provision which permits the States, with some Federal aid, to take over rail lines that are being abandoned, then just as sure as night follows day, you will have an outcry from the many sections of the country covered by this bill concerning abandonments by the new corporation that is established. Then this bill will be an entering wedge for sure—a camel's head in the tent—for piecemeal nationalization of the railroads.

Mr. HARTKE. I agree with the Senator from New Hampshire 100 percent. I think he has stated it fairly.

Mr. CURTIS. Let me ask this: Was the action taken by the State of Vermont made with the foreknowledge that this legislation would be enacted?

Mr. HARTKE. Quite the contrary.

Mr. CURTIS. I beg the Senator's pardon?

Mr. HARTKE. Quite the contrary. In other words, what they are trying to do is salvage their situation in Vermont and New Hampshire at the present time, and they are having a rough time trying to do it. In fact, it may be a financial impossibility, for them to succeed the way it is now. I would imagine it is financially impossible for them to do it. The problem is that big.

What the Senator from New Hampshire is saying is that all of us have certain reservations about what we are doing here, but all of us know we had better do something, otherwise we will be meeting in midnight sessions again, doing what we did in March or February of last year, hurriedly putting together something to keep the railroads going. I think last time we voted $125 million.

If we do not, as the Senator from New Hampshire says, we will face the potential of nationalization, and we will have insured nationalization.

Mr. CURTIS. If we ended up with a unified system which could pay its way, and confine it to that purpose alone, would that be a step toward nationalization?

Mr. HARTKE. I think it is a question of interpretation. You can interpret it any way you want to. I would say no, some would say yes, some would say absolutely no.

Mr. CURTIS. The Senator spoke of a compromise here. Are there not rather actually two diametrically opposed theories of transportation involved?

Mr. HARTKE. As far as my position is concerned?

Mr. CURTIS. Yes.

Mr. HARTKE. No, I do not think that. It is not a question of compromise in ultimate end goals, but one of procedure. The substantive question is the same. I would not be for this measure if I did not think, on the substantive side at least, it is a proper approach. All I am saying is, I thought we started at the wrong end, but that is over. We are into this thing now. This is a substantive approach, a procedure which provides for the end result of a rationalized core system hopefully, that can be, financially viable and continue to provide service in this area, without the threat of the court liquidating the railroad. The court said that unless the railroads or someone comes up with a system, they will liquidate. This is the point I made earlier in my statement. On liquidation of the railroads, I do not know what we will have, and I do not think anyone else knows either. But I do know liquidation would be a disaster for the people of this counrty.

Mr. CURTIS. I am not a member of the Committee on Commerce, as the Senator well knows, but it appears to be more qualified than I am in transportation matters. The thought does occur to me, however, that we have got two problems. We have got one problem of trying to work out a system where the business is such that if it is properly organized, the number of miles reduced, the duplication reduced, the featherbedding ended, and the other things, it could go it alone, that because the railroads—and they were restrained by Federal laws, I realize—but because they were unable to effectuate such a unification, the Government is stepping in and doing it. We are spending millions of dollars to get it done. At the end of the road we should be entitled at least to hope and expect that we would have a working, paying, taxpaying railroad corporation when we ended up.

Now the areas that fall outside of it, I am not saying they are not entitled to any consideration, not at all, but I doubt whether the two problems should be mixed. The problem of transportation, whether it takes a subsidy, a guaranteed loan, nothing, or going to highways, or what not, those areas that could support a unified efficient railroad operation, that problem should be dealt with separately and not dilute the main object which, I assume, was to devise a railroad system that will work, and by work, I mean pay its way, pay its taxes, provide employment, and serve the public.

Mr. HARTKE. In effect, that is what we are doing.

Mr. CURTIS. But you are putting it all in one bill.

Mr. HARTKE. We have no choice but to do that. We have to make up our minds what we will do about the other lines. So far as the railroad corporation is concerned, the operating corporation, we must insure that it will be in no way be burdened with the additional problem of the abandoned lines. Ultimately, the question is going to come back to Congress within 2 years, with the final plan, even as to the abandoned lines. So, in effect, we have separated them. They may be in the same bill; but the question of abandonment is separate from that of the viability of the corporation itself.

Mr. COTTON. Mr. President, will the Senator from Indiana yield?

Mr. HARTKE. I yield.

Mr. COTTON. May I say to the Senator from Nebraska that we can go a little further. The Senator from New Hampshire has worked long and hard on this problem. Not only are we not combining two elements that do not mix, like oil and water, in attacking the two separate problems in one bill, but the fact is that the provisions of this bill are insurance. May I again say to the Senator that this is what we want to do and what we hope to be able to do. God knows we cannot guarantee it, but we want a new corporation created which will boil down the present service to the essential part of advanced railroad transportation in the Northeast and the Midwest. It therefore must cut off lines without sufficient traffic in order to stop financial losses and retain, as has been very well phrased by other Senators, "the core." We hope and believe that this can be done so that a system is set up that will pay for itself and that will not constitute a constant drain on the Federal Government. Further, we hope to establish a system which will not constitute a push toward nationalizing the railroads.

However, if we do not act by providing some help so that States, localities, or regions that need freight transportation can keep their industries alive, then perhaps the pressure from constituents—I do not know about Nebraska—will mount to add a few miles here and a few miles there so as not to shut out this county, this locality, or this section. It will constitute such a great pressure that we will be setting up a system which, just as the Senator from Nebraska said so well a few minutes ago, cannot pay its way. The minute we do that, we will be marching right down the high road to piecemeal nationalization of the railroads of this country, which we must avoid.

I can understand what the Senator feels concerning the apparent combination of two divergent elements in the bill. However, actually the bill is a proposition which, on the one hand, will pay for itself, and on the other, by way of insurance, do something to prevent the outside pressure from undercutting the whole proceedings. Otherwise, we might be forced to set up something that will not pay for itself, that will be a perpetual drain on the Treasury and that would lead to nationalization of the railroads.

Mr. PEARSON. Mr. President, will the Senator from Indiana yield?

Mr. HARTKE. I yield.

Mr. PEARSON. Mr. President, I have some concern that the colloquy today, justifiably raised by the Senator from Nebraska as it relates to the Northeast railroads, will have the RECORD give the impression that this is a Northeast problem when, as a matter of fact, the abandonment procedure was title II in the Surface Railroad Transportation Act of last year that died on the calendar. It came about and was adopted by the committee, because of a concern that some of us had in the Midwest part of the United States.

For instance, in the State of Kansas—and I cite it because I feel that our two States of Nebraska and Kansas are so similar—about half, or 48 percent, of the lines in the State of Kansas are branch lines.

It was in anticipation of the abandon-

ment of the branch lines that the Senator made reference to, because he protested, and I have been protesting in the past, that the case lies in developing some sort of mechanism to let the branch lines continue.

It so happens that the ICC rule, which is called the 34 carload rule was adopted and was just upheld by the Supreme Court of the United States 2 weeks ago. That would say that if a line did not produce 34 carloads per mile per year, there was a prima facie case for abandonment. That would translate, in the State of Kansas, to the abandonment of a third or a half of all the branch lines. Those figures can be modified and applied by every State in the United States, particularly Kansas and Nebraska.

Our grain people say that with this quickie abandonment proceeding, in about 6 months we will face a very severe problem in the agricultural belt, in Kansas and Nebraska.

The original amendment that the Senator from Maryland and I propose would apply this abandonment procedure to the entire United States. We abandoned that abandonment procedure, because most of us felt that the Northeast problem was now acute, with the problem of getting this bill on the floor and getting it passed, now that the House has acted, and we are so desperate that we really ought to abandon that and go directly to the Northeast.

But this proposal is going to be back, and I hope the Senator will join me in bringing it back in another bill, in another form, so that we can alleviate a situation that is going to have enormous economic effect on the wheat section of the United States.

Mr. CURTIS. I agree with the Senator, and I commend him for his efforts.

The Senator from Nebraska does not buy the 34-carload rule, because it is a matter that cannot be determined with mathematical certainty. Something may originate on a branch line, but it goes a long way on the main line. There will be a good many main lines. How are the costs and benefits going to be divided? It is not subject to adding a column of figures and saying this is it. It is a matter of theory and an element of judgment and that sort of thing.

The Senator from Indiana said they were legislating with a gun at their heads, and that was the courts. I want to say that those west of Chicago have a gun at our heads. If there are no railroads east of Chicago, there is no place to which we can ship.

To the extent that they would make a unified, efficient, workable railroad plan to take the freight on, you have a national problem. To that extent, and that limited extent, in the opinion of the Senator from Nebraska, it is a national problem. But whether or not some community in Indiana is disappointed that this unified system did not go through their town is a local problem. The national problem must be weighed in connection with its effect upon the national commerce, the flow of the necessary supplies to the very section of the country, the needs for national defense.

I happen to be one of the individuals who fought vigorously against the mail service discontinuing the use of the railroads, because that was the beginning of much of the trouble in our area. So we cannot cite the carrying of the mails as one of the national problems; but certainly the flow of commerce from one section to the other and the national defense needs constitute a national problem.

However, not all transportation problems are national problems. There are cities today that have problems because a railroad cannot run into it and do it profitably, when, as a mater of fact, the local taxation so taxes the rail lines running in there that they do not have to know very much mathematics to realize that nobody can run a railroad into that city.

On the one hand, they have said, "Give us a railroad." On the other hand, they have taxed the right-of-way to such an extent that no business genius could ever run a railroad there.

Some of those things are local problems. Part of this is a national problem. But not every transportation problem that we can think of is a national one.

I thank the distinguished Senator for yielding.

Mr. HARTKE. I thank the Senator from Nebraska for being helpful in this matter.

The members of the committee, and I wish to pay special tribute to Senator PEARSON and Senator BEALL, who have worked hard on the question of abandonments. Our difference of opinion on most of these measures is minor, and it may be a matter of procedure.

I thank the Senator from Nebraska for bringing this matter to our attention, and I can assure him that the 34-carload abandonment rule is going to be facing him very soon. He will have his chance, perhaps even on this bill, to vote on some of these amendments.

We have attempted to minimize the cost to the taxpayer and to maximize the posibilities for the success of a viable railroad system in the Northeast and Midwest, one of which will adequately service the people who are served there.

I have some figures for some of this in Nebraska. Nebraska receives over 97 cars a day from the Northeast, more than 1,165,000 tons a year, and it ships over 145 cars a day to the Northeast.

Mr. CURTIS. Will the Senator give me those figures again? We have wondered who has been stealing our cars all the time. [Laughter.]

Mr. HARTKE. Nebraska receives 97 cars from the Northeast and ships out 145 cars a day to the Northeast.

Mr. CURTIS. We cannot make any money that way. We send you 145 cars, you steal them, we never see them again, and you send us 97. That is what, as the distinguished Senator from Kansas said, is causing so much trouble.

Mr. BEALL. I point out that it is a very favorable balance of trade.

Mr. CURTIS. Our railroads operate efficiently. They pay their taxes. We send the cars and you steal them.

Mr. HARTKE. The Senator from Nebraska points to a different problem, which is covered by another portion of the bill. I sympathize with the Senator.

Mr. CURTIS. We cannot ship on sympathy. [Laughter.] We have tried that, and it will not work. Communities have lost great sums of money and individual farmers have lost great sums of money, because they could not ship out the grain.

Mr. COTTON. Mr. President, the distinguished Senator from Maryland (Mr. BEALL) is managing this bill for the Republican side of the committee. As ranking Republican member, I am most grateful to him. He has done a great deal of work on this bill, and has taken the responsibility of leadership. I shall do all I can to help him.

Mr. President, the bill, S. 2767—the proposed "Rail Services Act of 1973"—represents the work product of many long and arduous hours of work by the Committee on Commerce, on which I am privileged to serve as the ranking Republican member. I therefore joined with my distinguished colleagues on the committee in voting to order the bill reported to the Senate. But, Mr. President, I did so expressing reservations, particularly with respect to the employee protection provisions of title VI of S. 2767.

In this connection, I invite the attention of Senators to the additional views of the distinguished Senator from Michigan (Mr. GRIFFIN), the distinguished Senator from Kentucky (Mr. COOK), and the distinguished Senator from Maryland (Mr. BEALL), who is managing the bill for our side of the aisle, in which I joined, setting forth our mutual concerns with respect to the collective bargaining agreement embodied in the provisions of title VI of this bill, and which must be paid for with the money of the American taxpayer. These additional views are to be found on pages 139–141 of the committee report, accompanying S. 2767.

I anticipate that amendments may be offered to these provisions of the bill, and at such time as such amendments are offered, I shall have more to say in this regard.

Mr. President, the purpose of S. 2767 is to salvage the rail services operated by some seven insolvent class I railroads operating in the Midwest and Northeast region, encompassing some 17 States and the District of Columbia, which are threatened with cessation. It would propose replacing such railroads with a new and viable rail services system. The evolution of such a new and viable rail service system will be both a painful and costly. However, notwithstanding my own personal reservations with respect to the expense of such a restructuring, I must acknowledge the necessity for it and the attendant cost, especially when considering the potential adverse economic impact upon the several States in the affected region, if this necessary remedial action is not undertaken in a prompt and timely fashion.

In view of this restructuring, Mr. President, I invite the special attention of Senators to the provisions of title IV of the pending legislation, S. 2767, entitled "Local Rail Services." Our Committee on Commerce, mindful of the necessity for continued rail service in the several affected States, has sought to

come with a viable solution to enable the States and local or regional transportation authorities, in cooperation with the special office established by this bill in the Interstate Commerce Commission and the Secretary of Transportation, to obtain Federal assistance for the continuation of local rail service. I believe that this is a most important provision of the bill, and one which should meet with the approval of most Senators.

Mr. President, I should like to conclude my opening remarks by expressing one note of caution to my colleagues in the Senate. That note of caution is that the scope of the pending legislation, S. 2767, should, to the extent practicable, be limited in its application to the several affected States in the region. I was aware, and I am sure my colleagues on the committee were aware, of the desires of many Members of the Senate to undertake consideration of remedial legislation dealing with the railroads on a nationwide basis. However, in light of the brief period of time remaining in this session of Congress and the pressing need for this legislation, I believe that prudence dictates that we in the Senate adhere to my proposed limitation on the scope of applicability of the pending legislation. Mr. President, I believe we can more appropriately address other issues of a national character at a later time when we are under less pressure.

Mr. BEALL. I yield myself 10 minutes.

The State of Maryland today has 1,145 miles of rail trackage. Of this 40 percent is operated by bankrupt carriers—carriers whose ability to continue to provide critically needed rail transportation services is in question.

The situation in Maryland is unfortunately not unlike that in 16 other Northeastern States. For example, Connecticut has 80 percent of its trackage operated by bankrupts; the State of Pennsylvania has 79 percent of its rail trackage operated by bankrupt carriers. In New York the percentage is 86. Similar situations exist in New Jersey, Delaware, Rhode Island, and Massachusetts. These are among the most highly industrialized States of the Nation. Rail transportation services are essential both to the economic health of the Northeast region and the well-being of the entire Nation. Our dependence as a nation on efficient rail transportation cannot be overemphasized in periods of normal economic conditions. This dependence is heightened in a period when we are faced with a concurrent energy crisis. If the people are to enjoy the standard of living to which we have become accustomed, then the maintenance of efficient movement of industrial supplies and products is absolutely imperative.

Today there are 13 railroads serving the 17-State Northeastern region. Seven of these carriers are in bankruptcy. The trustees of the largest—the Penn Central—have filed a plan of reorganization which, in the absence of Federal assistance, calls for the liquidation of Penn Central rail assets and accordingly a cessation of transportation service. The Nation needs that service.

The issues which are responsible for these conditions in the Northeast are complex. They run the gamut from poor productivity to governmental economic regulation and managerial inadequacies. Changing economic conditions, the development of the world's best highway system, Federal support for inland water systems—have all had their impacts. A cycle marked by insufficient earnings, deferred maintenance, and poor plant and equipment, has seriously undermined the ability of rail carriers to efficiently and effectively provide needed services. This undermining has produced a further erosion of the rails' market share, further earnings reductions, and the cycle continues. This legislation comes before us none too soon.

Largely through the hard work and long hours which the senior Senator from Indiana has given to the Northeast railroad crisis we have before us today legislation which addresses this most critical of transportation problems. The Rail Services Act of 1973 will replace the bankrupt corporations with a new and more efficient rail services system. We are not attempting to "bail out" existing corporations. In addition, this particular bill resolves many issues raised by the minority members of the committee which were left unaddressed by other versions. This again, I feel, is a tribute to the conscientious and knowledgable manner in which Senator HARTKE approached this complex transportation issue.

The legislation would establish the Government National Railway Association. This nonprofit association will plan and finance the acquisition, rehabilitation, and modernization of a new railroad system throughout the Northeast. Once the new system is developed, it will be operated by the for-profit United Rail Corporation.

The most essential prerequisite to the development of a successful rail system capable of meeting the region's transportation requirements is a considerable measure of plant "restructuring." That is a nice way of saying excess track and other facilities need to be cut. Railroads grew up in the 18th century and at that time their only real competition was the horse and wagon. Competition between the various railroads was keen and as a result railroads tried to serve the maximum number of communities. Railroads only 30 miles apart could be profitable before other modes of competition. The introduction of the motor vehicle and the increase in the capital requirements of rail lines have changed the situation.

Yet, the bill will afford protection to areas which might otherwise lose service by providing for rail service—continuation subsidies. It will also assist States and local transportation authorities in the purchase of lines threatened with abandonment.

It has been noted that this restructuring process will also reduce the labor requirements of the rail industry in the region. That is true and unusual employee protection conditions are afforded under the bill. For reasons I will outline later, I have serious reservations regarding these provisions and the precedent Congress would be establishing.

Thus, State and local communities and labor are insured against detrimental impacts during the transitional period while the region and the Nation will benefit from an improved rail transportation system.

Here is how it will work. First comes the development of a comprehensive analysis of existing and future rail service needs in the region, and a study of methods of achieving economies and the cost of providing necessary rail services. The Rail Emergency Planning Office, to be created within the Interstate Commerce Commission under this act, will evaluate the report of the Secretary of Transportation on rail service needs in the region. This ICC group—in an initial report to the Congress—will identify the rail services system which it believes will best satisfy the region's requirements.

The reports of the Emergency Rail Planning Office will be an input to the Government National Railway Association in preparation of preliminary and final system plans. The final plan, after ICC review, will be submitted to the Congress. The Congress will then have the choice of approving the plan, and sending it back for modification. In addition, the obligational authority needed to carry out the final system plan must be approved by a joint resolution of Congress, thus requiring congressional approval of the funding to be made available to the association for implementing the plan.

Subsequent to congressional approval, the board of the association will create the for-profit United Rail Corporation which will, in turn, acquire the rail assets needed to provide the services designated under the congressional-approved plan. After the transfer of properties the final system plan will be implemented through a program of consolidation and modernization.

The funding mechanism developed under the bill enables the association to provide assistance to the United Rail Corporation for use in acquiring necessary plant, equipment, and facilities. Additionally, for purposes of implementing the final system plan, the association may also provide financial assistance to Amtrak and other railroads in the region. These loans would be guaranteed by the Government.

Since the Nation must have benefit of rail service during the planning phases, the Secretary of Transportation is authorized to grant the seven bankrupt carriers up to a total of $85 million for use in maintaining a stable level of service.

This provision is needed to prevent erosion of the estates of the bankrupt railroads.

The bill also provides that the Secretary, with the approval of the association, may provide up to $150 million in additional interim assistance to the bankrupt carriers for acquisition, maintenance, and improvement above current levels of both equipment and track. United Rail Corporation, when it takes over, will have an operable railroad system.

Passenger service will be dealt with in the plan—an especially critical item in view of the energy crisis. All essential

passenger routes will be maintained. In addition, I am particularly pleased that the Northeast corridor will allow high-speed trains to travel between Washington and Baltimore and will receive such attention. In S. 2767, the Corporation is directed to lease or sell the properties in this corridor necessary to implement the Department of Transportation's recommendations for the Northeast corridor. This will allow development of high-speed ground transportation in the corridor and will also provide needed working capital to the Corporation.

As was stated in the minority views to the earlier Senate version, S. 2188:

> During the hearings on similar legislation concerning the Northeast rail crisis, we expressed concern that the initial Administration plan relied too heavily on economic criteria at the expense of public convenience and necessity.

But, the bill as reported mandates a rail system based solely on public need without consideration of economic viability. We seek a middle ground. Neither the needs of individual users of the system, nor the railroads' profit and loss statements, can be considered the sole test in fashioning a solution to the problems in the Northeast.

Passenger service, of course, is only a portion of the problem addressed by this legislation. Mundane as it may appear, freight service is vital and must be treated as such. Yet while providing vital freight service we are also aware of the social issues and the local needs which deserve full attention in this matter.

The Rail Services Act of 1973 balances the need to develop an efficient rail system in the Northeast against the need to continue rail service of some sort in areas which might be otherwise left out were it not for congressional concern. This is achieved by enabling the Secretary to provide a maximum subsidy of 75 percent of the cost of continued operations on lines in the region that would otherwise be abandoned. The bill provides $100 million for each of the first 2 years once the final system plan is approved by Congress.

Another alternative available to States and local communities to minimize the dislocation resulting from the abandonment of lines is through federally subsidized acquisition. Section 493 provides that the Secretary can direct the association to provide loans not to exceed 75 percent of the purchase and rehabilitation costs of a line which might be otherwise be abandoned.

Thus the legislation would enable a State or local community to continue operation under a subsidy basis for a 2-year period and acquire the line thereafter.

The restructuring necessary to the development of an effective Northeast rail system will naturally cause some labor dislocation. However, the bill provides full protection for those adversely impacted through a formula based on the time employed by a bankrupt carrier and annual wages for a preceding 12-month period.

There are two major provisions of the bill which address railroad problems outside of the Northeast. First, the association can provide loans to railroads outside the region where such assistance is required to prevent financial failure. Second, the bill recognizes the Senate's concern with the freight car problem—already well established with our passage of S. 1149 earlier in this session. That bill is incorporated as title V of the S. 2767.

Although this is a regional bill, it is of critical importance to the Nation as a whole. As it has been pointed out in the committee report:

> A shut-down of the Penn Central would produce a decrease in the rate of economic activity in the region of 5.3%, a decrease in the entire Nation of 4%, and a decrease in the GNP for the Nation as a whole of 2.7% after the eighth week of such a shut-down.

I have selfish concern for my constituents—of course it is essential to my State and its people. For example, it has been estimated that there would be a 40-percent reduction in production at Bethlehem Steel at Sparrows Point facility at the end of the third week. Both the 60- and 160-inch plate mills would close almost immediately resulting in the loss of jobs for 600 to 650 men.

The Port of Baltimore ships exports manufactured throughout the Nation; and similarly brings into the Nation products that are necessary to the health and benefit of people throughout the country. Railroads are essential to development of mineral resources in other parts of my State.

It is also vital that the Eastern Shore farmers have rail service for shipment of their agricultural products. But it is equally essential that your constituents have that rail service in order to bring fertilizer and farm machinery into the area.

In summary, I believe S. 2767 provides a good basis for resolving the Northeastern rail problem. There are differences between the House and Senate bills. These can be addressed in conference committee. The urgent task before this body is to pass the legislation and then make certain constructive changes needed in conference. Time is critical; the Penn Central judge has been patient thus far, but our failure to act in this session could result in a shutdown of service.

The legislation before us today is vital to the national interest.

I strongly recommend its enactment.

Mr. CURTIS. Mr. President, will the Senator yield for a question?

Mr. BEALL. I yield.

Mr. CURTIS. Will the Senator tell us what treatment will be given to shareholders of the bankrupt railroads and those who are not bankrupt, whose business will be taken over by the new corporation? What treatment will they receive and what treatment will the creditors of these railroads receive?

Mr. BEALL. The Senator mentioned the nonbankrupt railroads. I would point out that the nonbankrupt railroads are not affected by this legislation. There is no attempt here to take over the operation of profitable railroads.

Mr. CURTIS. Not even if a unification and elimination of duplication is necessary?

Mr. BEALL. The procedure to be followed is to give profitable railroads the opportunity to pick up the services provided.

Mr. CURTIS. I will modify my question to say that under the bill what treatment will the stockholders of the bankrupt railroads receive and what treatment will the creditors receive?

Mr. BEALL. Stockholders of the Penn Central, a bankrupt, will get the residue of the estate. The creditors will get new common stock in the corporation.

Mr. CURTIS. What is that residue?

Mr. BEALL. It is undetermined at this point.

Mr. CURTIS. What is the status of the nonrailroad property that a bankrupt railroad might have?

Mr. BEALL. The nonrailroad property is not included in the corporation. The bankrupt estates retain title to the nonrailroad property.

Mr. CURTIS. Would the creditors get common stock in the new corporation?

Mr. BEALL. The creditors would get common stock in the new corporation.

Mr. CURTIS. Would they get common stock before they exhausted all the remedies against the nonrailroad property as a bankrupt corporation?

Mr. BEALL. I think the Senator had better ask the question again. I am not an attorney. I cannot answer this particular question.

Mr. CURTIS. If the bankrupt companies are to retain their nonrailroad properties as their own, will not that property first be used to pay their creditors, rather than to let the creditors share in the common stock of the new corporation?

Mr. HARTKE. Mr. President, will the Senator from Maryland yield?

Mr. BEALL. I yield.

Mr. HARTKE. In the first place, I think that a little distinction should be made. This matter is in the courts. In the first place, a decision then has to be made as to the corporation acquiring railroad property. The estate itself, I think, under normal procedure, would permit the secured creditors to participate in the stock of the new corporation. Is that the question the Senator is asking?

Mr. CURTIS. Yes; but would they first be entitled or required to levy on the nonrailroad property of the bankrupt corporation?

Mr. HARTKE. No; that is in the court. The court has that property in reorganization.

Mr. CURTIS. The whole business is in court, and the Senator is basing his premise on taking it out of the court.

Mr. HARTKE. No; we are not interfering with the court procedure or with the reorganization. What we are attempting to pull out of the reorganization court and take from the estate is such part of the business as deals with transportation and a reorganized transportation ssytem.

Mr. CURTIS. Perhaps I do not understand this. I hope that before the debate is over, there will be an opportunity to check into the record and clarify it, because I would doubt very much that the Senator has intended to let a bankrupt corporation end up owning its nonrailroad property clear, and its creditors be-

ing satisfied by receiving common stock in the new corporation.

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

Mr. HARTKE. I am glad to yield.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that following the cloture vote, at approximately 2:10, or thereabouts, if cloture is not invoked at that time, the Senate then return to the present pending business.

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

Mr. MANSFIELD. I thank the distinguished Senator.

Mr. TAFT. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. HARTKE. I yield.

Mr. TAFT. Mr. President, I ask that the privilege of the floor be granted to William Lind, of my staff, during the debate on the bill.

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

Mr. HARTKE. Mr. President, under section 77 of the Bankruptcy Act, the property of the bankrupt railroads is in the estate. What we are doing is taking out the transportation part; we are not dealing with nonrailroad property. That still remains a part of the estate, under the court's jurisdiction. Under the present system, it is anticipated that creditors will acquire payment under due process. They will acquire stock in the new corporation.

Mr. CURTIS. Who determines how much stock they will be entitled to?

Mr. HARTKE. That ultimately will be decided by the court which reviews the recommendation of the association.

The PRESIDING OFFICER. The Senator's 10 minutes have expired.

Mr. CURTIS. I thank the Senator.

Mr. BEALL. Mr. President, I suggest the absence of a quorum, the time to be equally divided.

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

The second assistant legislative clerk proceeded to call the roll.

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

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

Who yields time?

Mr. BEALL. Mr. President, the Senator from Connecticut is about to call up an amendment.

REJUVENATE NORTHEAST RAIL SERVICE

Mr. RIBICOFF. Mr. President, I am pleased to join as a cosponsor of the Rail Service Act of 1973. This bill is desperately needed to save rail freight service in the Northeastern United States.

For years—for too many years—rail service in New England and the other Northeastern States has been deteriorating. Most residents of the area saw the deterioration first in passenger service. The commuters of my own State, Connecticut, have lived with dirty, unheated, unairconditioned, late passenger service for too long. Steps are being made to reverse this trend, but much more remains to be done before they receive the economical, clean, and efficient service they deserve.

Unknown to most Americans, freight service was also getting worse, as freight cars were late, misdirected, and even lost.

The causes are many and varied—inept management, shifting economic conditions, overworked equipment, and thousands of miles of poor track to name a few.

The 1968 merger of the New York Central and Pennsylvania Railroads was hailed as the solution to the Northeast's rail problems. Rather than being the panacea the public was led to expect, the merger only exacerbated the situation. Twenty-eight months after the merger, Penn Central shocked Washington, Wall Street, and the Nation by admitting it was broke.

At the moment the Penn Central and five other class I railroads in the Northeast—the New Jersey Central, Boston and Maine, Lehigh Valley, Reading and Erie Lackawanna—are in bankruptcy proceeding and may cease operations unless Congress acts.

If a cessation of service occurs, it would lead to an economic disaster.

These rail systems handle 45.5 million tons of originating and terminating freight each year—70 percent of that traffic being carried on the Penn Central and Boston and Maine. These two railroads alone service close to 10,000 shippers. The six carriers employ over 120,000 persons—a quarter of the rail employees in the entire Nation. The areas served by the Penn Central include 55 percent of our manufacturing plants and 60 percent of our manufacturing employees. In addition to this private business the Penn Central serves 59 U.S. military installations and is the single largest carrier of mail in the Nation.

These railroads ship an average of 390 cars carrying 19,501 tons of material into my own State of Connecticut each day. The Penn Central accounts for 20 percent of the State's total freight—freight that could not be absorbed by other modes of transportation. The railroad operates 340 miles of track in the State, employes 3,900 men and women, and has an annual payroll of $43 million. In addition, railroad supply industries provide another 1,100 jobs.

Not only would these jobs be lost, the factories and stores dependent on the railroad would also face disaster. Additionally, the current energy shortage would grow worse as coal and other fuels could not be delivered.

Should the Penn Central shut down for 8 weeks, one study has predicted that economic activity in the Northeast would decline at a rate of 5.7 percent. Nationwide the decline would be 4 percent with the gross national product going down at a rate of 2.7 percent.

In a word, Connecticut and the Nation would suffer an instant recession.

The legislation before us today can prevent such economic chaos.

The Rail Services Act would establish a nonprofit Government National Railroad Association to plan and finance a new rail system. A private United Rail Corp. would be established to run the new system.

In the past, the six bankrupt railroads have dropped unprofitable lines regardless of the impact on the local economy. The costs of the economic dislocations resulting from abandonments are, however, often greater than the cost of continuing service on the lines. Thus, this legislation authorizes the Secretary of Transportation to subsidize service on lines that would otherwise be abandoned. This is critically important to Connecticut which has many miles of so-called unprofitable lines that are nonetheless vital to the State's economic stability.

Until now one of the greatest contributing factors in the railroads' decline has been the sorry state of their tracks. Almost 7,000 miles of Penn Central's track do not meet Federal Railroad Administration safety standards. These tracks are often used but the trains must creep along at a slow, unprofitable speed. In order to correct this the bill provides for loan guarantees to enable the railroads to purchase new rolling stock and upgrade their track and roadbeds. If the new rail system we are creating is to succeed, it must have a modern physical plant to meet today's needs.

Simply preserving the status quo through this bill is not enough. We must seize this opportunity to review our transportation priorities and make a firm commitment to expand the role of railroads in our economic life.

We must increase and improve rail passenger commuter and intercity service in our urban corridors. This bill takes a first step by requiring the Secretary of Transportation to implement the Northeast corridor project and begin truly high speed train service between Boston and Washington. We can not rest on that, however. There is no reason why the commuter from Connecticut cannot ride trains as fast and efficient as the ones his counterpart in Europe takes for granted.

We must not only preserve the present freight system but must increase it. At a time of growing energy shortages we must use all of our transportation resources. Railroads are almost four times more energy efficient than trucks and 60 times more than airplanes for purposes of freight carriage.

It has been estimated that if we could raise the railroads' percentage of total ton miles from the current 35.9 percent to 41.2 percent by 1985 we could save 3.2 percent of the crude oil we will need by that date.

We have ignored our railroads for too long. While the Government has been assisting the highway builders and truckers, the airlines and airports, the maritime industry and to some extent mass transit facilities, the railroads have deteriorated.

It is time to restore them to their proper place in our transportation network.

Mr. WEICKER. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The clerk will read the amendment.

The assistant legislative clerk proceeded to read the amendment.

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

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

The amendment offered by Mr. WEICKER is as follows:

On page 21, between lines 5 and 6, insert a new subsection as follows:

(d) Study of Nationalized Rail Passenger Service.—Within 360 days after the date of enactment of this Act, the Secretary shall prepare and submit to Congress a comprehensive report on the feasibility and desirability of nationalization of rail passenger service in the United States. The report shall consider the extent and nature of the Federal commitment to rail passenger service, the long-standing lack of commitment of private railroad companies to rail passenger operations, the current financial crisis of intercity and rail mass transit operations, the potential for coordination of the national rail passenger system, including rail mass transit and subway lines, the implications of including other public transportation modes within the nationalized system, the estimated costs, economic, social, and environmental, of nationalization of rail passenger service, the relative efficiency and transportation effectiveness of nationalization, and such other matters as the Secretary deems relevant.

On page 51, line 21, strike out "$15,000,000" and insert in lieu thereof "$15,250,000".

Mr. HARTKE. Mr. President, I have discussed this matter with the Senator from Connecticut. He has been a strong advocate of trying to improve rail passenger service throughout the United States. I share fully his feelings of apprehension, in addition to anxiety and sometimes of confusion, concerning the field of rail passenger service. We have a situation where it appears that Amtrak cannot at this moment accommodate all the individuals that need to be accommodated.

What the amendment does, in substance, is provide for a study by the Department of Transportation of nationalization of the entire passenger service.

I have discussed the amendment with the ranking minority member of the committee, and we are prepared to accept it.

Mr. WEICKER. Mr. President, I wish to commend both the Senator from Maryland and the Senator from Indiana for being good enough to work with me on this amendment. Basically, they have put a great deal of work, time, and effort into the rail situation, more particularly the crisis which exists in the Northeast, but I think it also behooves us, while we are at the business of constructing a system, to take a look at rail passenger service throughout the United States and also the three types of it, namely, intercity, commuter, and mass transit, related to it.

It is my intention in offering this amendment that the Federal Government for the first time afford serious consideration to the prospects and implications of nationalizing our rail passenger service, the concept of which has been rejected out of hand by many transportation authorities and citizens alike over the years. I believe the only way to initiate rational discussion of the issue is to get some facts on the table. This amendment constitutes a first step toward a rational approach to the subject of nationalization of rail passenger operations.

Mr. HARTKE. Mr. President, I am prepared to accept the amendment.

Mr. BEALL. Mr. President, on behalf of the minority, we are prepared to accept the amendment.

Mr. HARTKE. Mr. President, I yield back my time.

Mr. WEICKER. Mr. President, I yield back my time.

The PRESIDING OFFICER. All time on the amendment having been yielded back, the question is on agreeing to the amendment of the Senator from Connecticut.

The amendment was agreed to.

Mr. HARTKE. Mr. President, I suggested the absence of a quorum.

The PRESIDING OFFICER. Does the Senator from Indiana wish the time to be equally divided?

Mr. HARTKE. Yes.

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

The second assistant legislative clerk proceeded to call the roll.

Mr. BEALL. 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. BEALL. Mr. President, I have an amendment, which I send to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will read the amendment.

The assistant legislative clerk proceeded to read the amendment.

Mr. BEALL. Mr. President, I ask unanimous consent to dispense with further reading of the amendment.

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

The amendment offered by Mr. BEALL is as follows:

On page 32, line 14, delete the word "shall" and substitute in lieu thereof "may".

On page 34, line 12, delete the word "to" and substitute in lieu thereof, "which may".

On page 34, lines 12 and 13, delete "or authorizes them to be offered for sale or lease".

On page 34, line 14, delete "of" and substitute in lieu thereof "or".

On page 43, line 6, change the word "shall" to "may".

Mr. BEALL. Mr. President, this is not the amendment on which I have a 2-hour limitation. I repeat, it is not that amendment.

Mr. President, section 206(c)(2), page 32, starting at line 13, says that the final system plan shall designate which rail properties of profitable railroads operating in the region "shall be offered" for sale or lease to the Corporation subject to paragraph (4) of subsection (d) of section 206. Paragraph (4) of subsection (d) on page 34 says that such designation shall terminate 60 days after the effective date of the final system plan unless a binding agreement with respect to such properties has been entered into and concluded.

The report at page 26 states that this means that negotiations must proceed between the parties as to such properties.

I believe the intent of our committee was clearly to give the planners maximum flexibility in determining what should be in the final system plan. However, it was not our intent to require that profitable railroads operating in the region sell or lease to the new Corporation rail properties designated in the final system plan if they do not want to.

Nevertheless, there is considerable ambiguity because of our interchange of the use of the words "shall" and "may." This may lead to an interpretation contrary to our intent.

For example, section 206(B)(2) says which rail properties of profitable railroads operating in region shall be offered for sale or lease to the Corporation, and which rail properties of profitable railroads operating in the region may be offered for sale or lease to other profitable railroads operating in the region. All of this, of course, is subject to paragraphs (3) and (4) of subsection (D) of this section.

Since I believe the Senator from Indiana will agree that the binding agreement referred to in paragraph (4) of subsection (D) is to be voluntary and that there is no intent to force a profitable railroad to sell a line of the railroad to the Corporation if it did not wish to make a sale, I am hopeful that this amendment will be adopted. This will make certain what I believe the committee intended.

Mr. HARTKE. Mr. President, the Senator from Maryland is correct in his assumption. What we intended to do, was to make a technical change in the bill which is quite acceptable. It does improve the bill. We want the parties to sit down and talk to each other about transfers. However, there is no intention to work a hardship or to provide for a method which has historical or legal connotations which might be contrary to the intention of the act.

The amendment is not only satisfactory to me, but it also improves the bill.

Mr. BEALL. Mr. President, I thank the Senator from Indiana.

Mr. President, I yield back the remainder of my time.

Mr. HARTKE. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Maryland [putting the question].

The amendment was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

Mr. HARTKE. Mr. President, I withdraw my suggestion of the absence of a quorum.

Mr. MONDALE. Mr. President, in a moment I will offer an amendment to the pending bill, an amendment which is cosponsored by my colleague from Minnesota, Senator HUMPHREY, as well as by Senators SCHWEIKER, CLARK, and HUGHES.

Together with another amendment I am sponsoring with Senator HUMPHREY, it is designed to complement S. 2767 by providing for the formulation and im-

plementation of plans to improve and preserve essential rail services throughout the United States.

First, I should like to commend the distinguished floor manager, the chairman and members of the Senate Commerce Committee for their outstanding work in developing legislation to solve the immediate crisis facing the Northeast rail emergency region and to fashion a viable and fully adequate rail system for the future.

The bankruptcy of eight carriers in the Northeast is the most dramatic illustration of the severe rail problems facing our country. Unfortunately, it is not the only such example.

Although it commands less attention than the threatened shutdown of rail service to our major industrial centers, the steady decline in service to rural America is an equally serious national problem.

I am very pleased that the committee has adopted Senator MAGNUSON's proposal to improve the supply and distribution of railroad rolling stock under title V of this bill. With an average daily shortage of nearly 40,000 freight cars, rural communities are currently suffering from the greatest boxcar crisis in history.

This crisis has resulted in enormous losses to our Nation's farmers, local elevators, and to our entire economy. Through loan guarantees provided by the proposed Obligation Guarantee Board and the computerized "national rolling stock information system," or if necessary, through the establishment of a new Railroad Equipment Authority, the supply and availability of freight cars will be increased to keep pace with demand. This provision is an important step toward better rail services for rural America and it has my full support.

But the abandonment of thousands of miles of track still looms as a major threat to the economic well being of rural America.

Over the past 40 years, the railroad companies have abandoned more than 46,000 miles of tracks, primarily lines serving rural areas. At the same time most of the 2-million miles of non-Federal system rural roads have received little or no attention during the past 30 years. While substantial Federal funding has been invested in the Interstate System, this funding has been directed toward the construction of intercity highways and not toward upgrading rural roads.

Local communities have for many years been deeply concerned by the neglect of rural transportation by the Federal Government, but only in recent years has this neglect reached critical proportions. For during the 1970's we have experienced a major increase in the volume of commodities that must be shipped while the abandonment of essential rail services has sharply accelerated.

Since 1970 the number of abandonment cases brought before the Interstate Commerce Commission has nearly tripled from a rate of about 100 per year in the 1960's to a rate of 250–300 per year. In virtually every case that has been decided since 1970, the ICC has granted the railroad's request for a discontinuance of service, resulting in the loss of more than 7,800 miles of track to rural America.

The statistics on abandonment cases broken down by State clearly demonstrate that the Federal Government has nearly always acceded to the wishes of the railroad companies, regardless of protests voiced by rural communities. The ICC since 1970 has decided 15 abandonment cases affecting the State of Minnesota, involving requests for the discontinuance of service along 395.8 miles of track. The ICC agreed to the abandonment of all 395.8 miles of track. In the State of Iowa 27 cases have been decided since 1970. Out of total requests for the discontinuance of 692.4 miles of track, the ICC has approved the abandonment of 633.2 miles. Out of 26 requests in the State of Indiana involving the proposed abandonment of 266.16 miles of track, the ICC granted the requests for all but 2 miles. In Kansas eight cases have been decided since 1970, involving 172.5 miles; and the State of Kansas was able to save only 7 miles of track.

The November 12 court decision, authorizing the abandonment of any lines where the railroad alleges that fewer than 34 carloads of traffic per mile were transported during the preceding year, adds a new and much more serious dimension to the rural rail crisis.

While the ICC's "34 carload" rule was primarily intended to assist the Penn Central and other bankrupt railroads in the Northeast, it will apply nationwide. Unless Congress otherwise directs, representatives of railroad workers have warned that—

> The countryside of this Nation will be stripped of its railroad service within 12 to 18 months.

We must question the wisdom of this policy from a number of standpoints.

First, as a result of increased foreign demand, bad weather, and other conditions, American consumers have been faced with higher prices and shortages of some food products on their supermarket shelves. Rising world population and increased affluence are likely to result in continued heavy demand for food from the United States.

Farmers have responded to shortages and higher prices with fence to fence planting. All available acreage will be brought into production in 1974. Expanded production in turn creates new demand for transportation, fertilizer, seed, machinery as well as for harvested commodities.

Thus, at the very time when agricultural transportation needs are the highest ever in history, railroad companies are proposing to eliminate thousands of miles of track serving rural communities. Unless the inadequacies of America's rural transportation system are remedied, we will be headed for a transportation nightmare in attempting to move commodities over thousands of miles of abandoned track, neglected roads, and clogged waterways.

Second, our Nation is facing an energy crisis. We have an estimated shortfall of 3.5 million barrels of oil a day, according to administration experts. Railroads can move each ton of freight for one-fourth the fuel required by trucks, a significant savings when projected across the Nation. If we are to achieve independence in energy, and I believe that we must, then we will have to conserve petroleum supplies. And one means to help achieve this objective would be to preserve existing rail services.

Third, in many cases, alternative means of transportation do not exist, are more expensive and less efficient for shippers, or involve public costs which greatly exceed any private gain which might result from an abandonment.

In the State of Minnesota, for example, it would cost an estimated $80 million just to provide adequate highways to serve communities that are threatened with the loss of their railroads. For each of these towns there are no alternatives to rail service. Aside from the tremendous costs to taxpayers, there would also be extremely high added costs to businesses which would have to convert their terminals and receiving facilities to accommodate the increased reliance on motor carriers.

Take the illustration of a 41-mile branch line in Minnesota running between St. Clair and Albert Lea. Five communities are located along this line, and local businessmen are fighting the proposed abandonment. They have shown that it would cost $8 million to upgrade local highways to handle 9-ton trucks if rail service is abandoned. In contrast railroad company officials report an estimated cost of $2 million to improve track and roadbed along the existing line.

Many local businessmen would suffer from the abandonment. For example, the manager and part owner of the Farmers Lumber Co., in Pemberton reported that it would cost $40 more per thousand feet to have lumber hauled by truck rather than by rail.

The railroad argues that it is not profitable for them to run this line. Yet area residents believe that more dependable service would enable the company to show a profit.

The St. Clair branch line serves only five communities in Minnesota. But it is illustrative of the dilemma faced by hundreds of other communities throughout the Nation.

Incredibly, the Federal agencies and departments charged with responsibility for decisions that have a profound impact on America's rail transportation system do not know precisely how rail abandonments have affected rural communities, and they do not know what the impact of future abandonments will be. In its report on S. 2188, the Senate Commerce Committee revealed:

> Time and again the Committee has found disturbing the large gaps in basic information about straightforward questions—gaps shared alike by private and public organizations. For example, despite the decades of experience with economic regulation of the railroads by federal and state agencies, and the huge R&D budgets provided to D.O.T., including both the Office of the Secretary and the Federal Rail Administration, nobody could answer the simple question, "What has

happened in the past to shippers, communities, workers and other affected parties when railroads have been permitted to abandon lines?" And what might happen in the future? Perhaps such questions are not esoteric enough to challenge our officials, but it is a matter of fundamental, rock-bottom importance in any serious attempt to ascertain what the public interest demands in dealing with the problem.

The committee is absolutely right that information on the impact of abandonments ought to be uncovered before we proceed full speed ahead on a course which could result in immense costs to our Nation—a course that would be very difficult, if not impossible, to reverse.

Mr. President, I send amendments to the desk.

The PRESIDING OFFICER. The clerk will report the amendments.

The assistant legislative clerk proceeded to state the amendments.

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

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

The amendments are as follows:

On page 27, line 19, on page 28, line 1, on page 28, line 6, on page 28, line 13, on page 67, line 5, on page 67, line 14, on page 67, lines 20–21, on page 68, lines 2–3, on page 68, line 7, and on page 71, line 2 strike out the following words: "in the region".

On page 71, line 18, after "Act" and before the comma insert the following: "or other lawful authority.".

On page 28, line 9, after "Act" and before the semi-colon insert the following: "and those rail properties with respect to which the Commission has issued a certificate of abandonment within 5 years prior to the date of enactment of this Act and which remain in condition for rail service".

On page 29 between lines 11 and 12, insert the following new subsection:

"(g) OTHER STUDIES.—Within 300 days after the effective date of the final system plan, the Office shall, with the assistance of the Secretary and the Association—

"(1) study, evaluate, and hold public hearings on the Secretary's report on essential rail services within the Nation, which is required under section 204(a)(2) of this title, and the Secretary's formulation for a national transportation policy, which is required under section 204(c) of this title. The Office shall solicit, study, and evaluate comments, with respect to the content of such documents and the subject matter thereof, from the same categories of persons and governments listed in subsection (c)(1) of this section but without any geographical limitations; and

"(2) prepare a detailed information survey and detailed and comprehensive studies with respect to States outside the region covering the same material required to be surveyed and studied with respect to the region under subsection (c)(2) of this section, including a comprehensive report to be submitted to the Commission, the Association, the Secretary, and the Congress and to be published in the Federal Register."

On page 70, line 22, strike out "$100,000,000" and insert in lieu thereof "$200,000,000", and after the word "years" insert "including and".

Mr. MONDALE. The amendments which Senator HUMPHREY and I offer today are designed to obtain the answers to these questions and to provide assistance to local communities when the total cost of maintaining rail service is less than the cost of permitting an abandonment.

Our first amendment would expand the duties of the Rail Emergency Planning Office to include an evaluation of the Secretary of Transportation's report on essential rail services within the Nation. The Office would focus on the problem of abandonments and would provide full opportunity for public comment in the preparation of its report. The study would include:

A survey of existing rail services;

An economic and operational study and analysis of present and future rail service needs;

A review of the public costs and benefits of moving traffic by alternative modes of transportation;

A study of methods to achieve economies in rail operations; and

An analysis of the impact of abandonments on railroad workers.

In addition, this amendment would extend local rail services assistance under title IV to include abandoned lines in States outside the rail emergency region. The authorization would be doubled to $200 million per year for each of the 2 years, including and following enactment of the final system plan for the Northeast. Under this section funds would be provided to the States on a 75–25 percent matching basis. Subsidies would be available to continue operations along necessary lines which would otherwise be abandoned. Loans and loan guarantees would also be available to States, local or regional transportation authorities to purchase and restore abandoned rail lines.

In my opinion, this amendment is essential if we intend to continue rail freight services for these communities which need it and will lose it, throughout the country, if we fail to recognize the essential nature of this service, in the light of the food crisis, in the light of the energy crisis, and in the light of the need for having a balanced system of transportation for rural America.

Those of us in the Midwest stand ready to support the committee in its plan for emergency assistance for the Northeast, but what we are trying to do by these amendments is call attention to the fact that we have a similar crisis. It may not receive the same attention as the troubles of the Penn Central Railroad, but without these amendments, which Senator HUMPHREY and I have introduced, thousands of miles of essential rural freight tracks will be lost in a matter of a few months or a few years, and the consequences will be disastrous not only for those of us who live in those areas, but for the country at large.

Mr. President, I hope the committee will accept the amendment.

Mr. HARTKE. Mr. President, this amendment deals with the problem we discussed earlier on the floor of the Senate; that is, whether or not abandonment procedures should be restricted to the northeast and the midwest, or whether they should be extended nationwide. The amendment would make two changes in the bill: First, extension of rail service continuation subsidies nationwide, and second, increasing the funds for such subsidies by $200 million.

In many cases where we have had abandonment of branch lines, it has turned out to be a disaster. Many communities were deprived of essential services. What this amendment does is make a change in title IV of the bill the nature of which I have indicated, and I personally am in favor of the amendment.

I think the Senator from Kansas would have preferred that this position be taken by the committee, but the committee determined otherwise.

I personally am in favor of the amendment.

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

Mr. HARTKE. I yield.

Mr. BEALL. Mr. President, on behalf of the minority, I am prepared to accept the amendment.

I might point out that the Senator from Kansas (Mr. PEARSON) is very much an advocate of this position and has been for quite a while. I believe, as our colloquy indicated earlier, it is in the national interest to protect those areas where railroads are found within the region, in order to provide opportunities for State and local governments to provide the necessary services. I believe if it is in a region's national interest, it will likewise be in the interest of the whole country to do that sort of thing.

Mr. MONDALE. Mr. President, will the Senator yield at that point?

Mr. BEALL. I yield.

Mr. MONDALE. Under this 34-car rule the court has now affirmed, the State of Kansas could lose up to half of its branch lines. It is a rule that may make sense in the context of the Penn Central Railroad, but in terms of rural transportation, it is an utter disaster. That is why we need this legislation.

Mr. HARTKE. I congratulate both Senators from Minnesota for coming forward with this legislation. I think it is a good proposal, and I am prepared to accept it.

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

Mr. HARTKE. I yield.

Mr. HUMPHREY. I have a companion amendment which goes with the amendment introduced by my colleague. My amendment would apply a 2-year moratorium that is now related to the Northeast to the rural areas in general. It ties in directly with the amendment of the senior Senator from Minnesota. So may I suggest, if it is agreeable, that we just consider the amendments en bloc, both amendments, since they are complementary?

Mr. HARTKE. Mr. President, if the Senators from Minnesota want to proceed in tandem, it is satisfactory to me but this is a case where, if they act separately, they might fare better than if they act together. We may have reservations concerning a 2-year moratorium at the moment, though I am sympathetic to the approach.

The amendment before us at the present time is the amendment which deals with the extension of the subsidy provisions of the legislation to the entire nation.

Mr. HUMPHREY. That is what my amendment deals with, too.

Mr. MONDALE. The second amendment which Senator HUMPHREY and I

propose would establish a 2-year moratorium on the abandonment of rail service outside the rail emergency region. This would provide time for study and for the adoption of State transportation plans and subsidy programs to preserve essential rail services.

But while the study is being carried out and while States prepare plans to continue essential rail service, it would be senseless to proceed with the abandonment of many thousands more miles of track.

The moratorium would simply prevent further rail abandonments until we can assure that the economic, environmental, and social needs of our country are met.

Mr. President, these amendments would benefit rural America. They are fully supported by the National Council of Farmer Cooperatives, the National Farmers Union and the National Farmers Organization.

Representatives of railroad workers have urged the Senate Commerce Committee to approve the moratorium, pending thorough study of rail service needs in rural America. They have expressed their complete agreement with these amendments.

Mr. HARTKE. Mr. President, the moratorium provision is a separate matter which, as I understand, is not before the Senate at this moment. If I am wrong in that, the Senator or the Chair can correct me as to whether both amendments have been offered.

Mr. MONDALE. At this time I have called up only the first amendment. May I suggest the absence of a quorum

Mr. HARTKE. Yes; with the time to be charged equally to both sides.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. HARTKE. Mr. President, on the first amendment I am prepared to accept it, and I yield back my time.

Mr. MONDALE. Mr. President, I yield back my time.

The PRESIDING OFFICER (Mr. HASKELL). All time on this amendment has now been yielded back.

The question is on agreeing to the amendment of the Senator from Minnesota (Mr. MONDALE).

The amendment was agreed to.

Mr. HUMPHREY. Mr. President—Mr. President——

The PRESIDING OFFICER (Mr. HASKELL). Under the previous order——

Mr. HUMPHREY. Mr. President, I ask unanimous consent for 2 minutes' extension of time——

The PRESIDING OFFICER. Senator, we have——

Mr. HUMPHREY. Mr. President, I ask unanimous consent—and we can change the world under that——

ORDER OF BUSINESS

The PRESIDING OFFICER (Mr. HASKELL). Under the previous order, the hour of 1 p.m. having arrived, the Senate will proceed to the consideration of S. 1868, the pending question being to invoke cloture on passage of the bill. The clerk will state the bill by title.

However, the clerk will suspend, for the Chair to recognize the Senator from Minnesota.

RAIL SERVICES ACT OF 1973

Mr. HUMPHREY. Mr. President, I ask unanimous consent for 2 minutes extension of time to take up my amendment No. 819 which I have discussed with the managers of the bill.

The PRESIDING OFFICER. Does the Senator ask that we go back to the bill?

Mr. HUMPHREY. That is correct.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Minnesota (Mr. HUMPHREY)? The Chair hears none, and it is so ordered.

AMENDMENT NO. 819

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 66, between lines 6 and 7, insert the following new subsection:

(g) REPORT ON ABANDONMENTS: PARTIAL MORATORIUM.—The Commission shall submit to the Congress within 90 days after the date of enactment of this Act a comprehensive report on the anticipated effect, including the environmental impact, of abandonments in States outside the region. No carrier subject to part I of the Interstate Commerce Act shall abandon, during a period of 730 days after the date of enactment of this Act, all or any portion of a line of railroad (or operation thereof outside the region), the abandonment of which is opposed by any—

(a) passenger, consignor, or consignee served thereby during the 18 months preceding the date of filing of the abandonment application; or

(b) State, county, or municipality served by that line.

TWO-YEAR MORATORIUM ON RAIL ABANDONMENTS

Mr. HUMPHREY. Mr. President, this amendment was jointly authored by my colleague from Minnesota, Senator MONDALE, and I. We are joined by Senators CLARK and SCHWEIKER as cosponsors.

The intent of this amendment is to halt, for a period of 2 years, the abandonment of rail lines and rail services where opposition to such abandonments exists. It applies solely to areas which fall outside of the region covered by the provisions of this legislation.

This is a companion amendment to the previous amendment offered jointly by Senator MONDALE and I today to direct the undertaking of a comprehensive study of the rural transportation crisis. It only makes sense to await the outcome and recommendations of this major study before allowing any action that could irreparably damage our rural rail system.

The abandonment of rail lines and services is not a new problem. In the last 40 years, more than 46,000 miles of railroad trackage has been abandoned, largely in our rural areas. Railroads today are operating with 30,000 fewer locomotives and 840,000 fewer cars than they had in the 1930's. This loss equates to roughly 13 main line railroads, stretching from coast to coast, each located 100 miles apart and each having 2,300 locomotives and 64,000 cars. In fact, total miles of rail in our country actually declined from 236,807 miles in 1938 to 205,202 in 1972.

However, the greatest cause of concern is the rapid rise in abandonments in the last few years and the projected abandonments for the immediate future. Since 1970, the number of abandonment cases brought before the ICC has nearly tripled from a rate of about 100 per year in the 1960's to a rate of from 250 to 300 per year at the present time. In virtually every case that has been decided since 1970, the ICC has granted the railroad's request for a discontinuance of service, resulting in the loss of 7,800 miles of track to rural America. An additional 78,000 miles of rail trackage has reportedly been proposed for abandonment by the Department of Transportation.

We must not allow this wholesale abandonment of our rural rail lines and services to continue to take place. The costs to all Americans is simply too great.

While rural Americans, the farmers, grainhandlers, forest products manufacturers, and other rural businesses, bear the immediate costs of rail abandonments, all Americans pay higher prices for food, fiber and forest products as a direct result.

Last year we saw how valuable the products of our farmlands are to our entire Nation. The billions of surplus dollars earned by agricultural exports provided the margin of resources needed to pay for our rapidly growing energy needs. We also saw just how inadequate our transportation system was in moving these products to market.

To meet growing demand for agricultural products, at home and abroad, our farmers have been urged to bring millions of additional acres of land into production. When I hear this talk about maximizing American agricultural production, I have to seriously wonder how we are going to move what we produce. If the contemplated rail abandonments in rural America are permitted, we will simply be unable to move all this production to market. The result of this failure will be felt in the grocery bill of every family in America. It will also be clearly registered in lost export earnings and increased bankruptcies by farmers and other rural businesses. We cannot let this happen.

Some people may suggest that trucks are the answer to the rural transportation crisis. Perhaps they are, but not for many years, if ever.

First, the rural road system in our country has been virtually ignored for 30 years. Today, less than 15 percent of our rural roads are capable of carrying the heavy loads that would give truck transportation some degree of economic efficiency. Of course, in the springtime, the percentage of our rural roads that could handle heavy trucks would be even less. Our rural road system simply does not provide a viable substitute service for most of the rail lines that would be abandoned. Our roads are not capable of carrying a high frequency of heavy loads.

To this must be added the problem of rural bridges. Our countryside is dotted

with bridges built in the 1920's and before. They are only able to carry loads of from 2 to 4 tons. Today, in 1973, there are nearly 8,000 such bridges in Indiana alone and over 7,000 in both Mississippi and in Arkansas. I am sure that if the data was available it would clearly demonstrate that these States are not exceptions.

Therefore, we must face the fact that, at least until something is done to improve our rural roads and bridges, rail transportation will be essential for many areas in our country.

In this time of great concern over the fuel shortage, a word about its relationship to rural rail service is also in order. Two main points can be made.

First, can we afford to strip our rural areas of the most energy efficient mode of transporting bulk commodities at a time when we are moving into a prolonged period of fuel shortage? I think not. The fact that the same ton of wheat or corn can be moved by train with one-fourth to one-seventh the amount of fuel required by a truck needs to be carefully weighed in any calculation of the future transportation system of our country. The implications for the cost of feeding our families is substantial.

Second, in the short run, even if roads and bridges are available in a rural area, which trucker is going to have gas available this year to service new customers created by rail abandonments? At least until these companies have more gas than in prior years, they will have all they can do to service the needs of their present customers.

Mr. President, it is clear to me that we must prevent what could be a catastrophic breakdown in a critical element in our transportation system. A breakdown that would bring with it tremendous costs to our Nation.

We must approve the moratorium on abandonments of rail service which I propose today in this amendment. It will allow the time needed for a detailed examination of the impact of continued rail abandonments on our economy and time to find out how best to provide an adequate and efficient rural transportation system for the benefit of all of our people.

Mr. President, we have discussed this second amendment with the managers of the bill, and they have agreed to take it, as was the amendment of my colleague (Mr. MONDALE). They are complementary.

Mr. HARTKE. Mr. President, the Senator understands correctly. We will accept the amendment. However, the second amendment provides for a moratorium on abandonments for a 2-year period. We are prepared to accept the amendment and, hopefully, to have the opportunity to discuss its implications before we go to conference.

Mr. President, I yield back the remainder of my time.

Mr. HUMPHREY. Mr. President, I yield back the remainder of my time.

Mr. CLARK. Mr. President, I strongly support both of these amendments. At a time when this country has such a shortage of energy, at a time when there is such a need to reorganize and revitalize much of the railroad transportation system, these amendments to S. 2767—and the bill itself—only make common sense.

The first measure establishes a 2-year moratorium on railroad track abandonment where there is opposition to abandonment. Abandonment is a problem in many areas across the country, but it is especially serious in the countryside where the railroads often provide the only link between the farmer and the consumer. In Iowa alone, more than 500 miles of track have been taken out of service in the last 2 years, almost as much was abandoned in the previous 20 years. And more than a thousand additional miles of track, most of it in the less-populated areas of the State, are threatened with the same fate.

A recent court order placed a temporary nationwide freeze on abandonment, which has been under the jurisdiction and control of the Interstate Commerce Commission—which decided abandonment requests by the railroads on a case-by-case basis and which almost always approved the requests to discontinue service. At the very least, this approach has been shortsighted. It has ignored the danger of a chain reaction, a danger very accurately described in a report by the Iowa Office for Planning and Programming:

> A given segment of branch line is abandoned. Although the amount of shipping generated by that line did not turn a profit, it did add to business on the next segment of track . . . Having lost some, or all, of the business from the abandoned segment, the profitability of the next segment may disappear. This second segment then becomes a candidate for abandonment.

In many States, including Iowa, the State commerce commission will intervene in an abandonment proceeding, but because of financial limitations, these commissions often find themselves limited to the same case-by-case approach.

The legislation before the Senate today—with these amendments—would help solve that problem. The second amendment would establish a new and independent Rural Rail Transportation Planning Commission that will be responsible for conducting an analysis of rural transportation needs and potential, not just in one region, but across the country.

It will evaluate rail lines threatened with abandonment in terms of economic, social, and environmental impact. Then, the Commission will report back to the Congress with recommendations on the best way to continue and improve rural rail service. Until that report is available, abandonment cannot be permitted because it could result in irreparable damage to the rural rail system. Without this moratorium, we might find ourselves abandoning what prove to be essential rail lines.

Mr. President, neither these amendments nor the entire bill offer a panacea for the problems of railroad transportation in this country. But they do represent a very sound beginning. And, as we consider the legislation, it is essential to consider the importance and effectiveness of this country's rail system, especially in light of the energy emergency. Railroads can move more passengers and freight for every gallon of fuel than either airplanes or trucks and automobiles, and the railroads do it with far less damage to the environment.

Iowa and every other agricultural State depend on the railroads to move food from the farm to the supermarket. Hopefully, this legislation will enable that process to become more efficient and more effective all cross the country.

It does little good to produce record crops to feed the country—and people in many other countries as well—if we cannot move that harvest from the farm to the market place. To do that, the country needs better railroad transportation, especially in rural areas not more abandonment. This legislation will help supply it.

The PRESIDING OFFICER. The question is on agreeing to the amendment No. 819 of the Senator from Minnesota (Mr. HUMPHREY).

The amendment was agreed to.

PRIVILEGE OF THE FLOOR

Mr. JAVITS. Mr. President, I ask unanimous consent to have present on the floor during the consideration of the bill Gene Mittelman and Gary Kline.

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

PROHIBITION ON THE IMPORTATION OF RHODESIAN CHROME

The PRESIDING OFFICER. The clerk will now report the bill S. 1868.

The legislative clerk read as follows:

> S. 1868, to amend the United Nations Participation Act of 1945 to halt the importation of Rhodesian chrome and to restore the United States to its position as a law-abiding member of the international community.

The Senate resumed the consideration of the bill.

The PRESIDING OFFICER. Time for debate will be limited to 1 hour, to be divided and controlled by the Senator from Minnesota (Mr. HUMPHREY) and the Senator from Virginia (Mr. HARRY F. BYRD, JR.).

Who yields time?

Mr. HARRY F. BYRD, JR. Mr. President, I yield myself 7 minutes.

The PRESIDING OFFICER. The Senator from Virginia is recognized for 7 minutes.

Mr. HARRY F. BYRD, JR. Mr. President, the pending legislation, S. 1868, would repeal legislation which was enacted 2 years ago. The legislation enacted 2 years ago said that the President shall not prohibit the importation of a strategic material from a free world country if that same material is being imported from a Communist country.

That legislation passed the Senate. It passed the House of Representatives. It was signed by the President. It was tested in the courts. The position of Congress was sustained.

Mr. President, the main strategic material involved in this matter is metallurgical chromite. It is a very important

material. It is essential for many of our military products.

In this connection, the able Senator from Nevada (Mr. CANNON) made a splendid address to the Senate last evening, to which I invite the Senate's attention. It begins on page 40387.

Senator CANNON is an authority on this matter. He is chairman of the Stockpile Subcommittee of the Committee on Armed Services. His speech points out the great importance of chrome as a strategic commodity.

The major chrome-producing countries are three in number; namely, Rhodesia, South Africa, and Russia. The lesser chrome-producing countries are Turkey and Iran.

If we eliminate the importation of chrome from Rhodesia, such as was the situation which prevailed prior to the enactment of the so-called Byrd amendment 2 years ago, then we become dependent on the Soviet Union for the largest part of our chrome imports. We must bear in mind that the United States has no chrome of its own.

I emphasize again that the bulk of the world's chrome is obtained from three sources; namely, Rhodesia, South Africa, and the Soviet Union.

Now if the pending legislation is approved by Congress, it will mean that the United States will be shut off from Rhodesia as a country from which it might import this strategic material.

The Senator from Nevada (Mr. CANNON) in the course of his remarks yesterday said this:

> The United States, to put it plainly, would cut off its nose to spite its face if we refused to buy chrome produced in countries whose policies we do not agree with. We certainly do not refuse to buy from the Soviets in spite of their harassment of the Jews in Russia.

I think that is a significant point, Mr. President.

As a matter of fact, when we take those three countries, Rhodesia, South Africa, and Russia, the majority of the people of this Nation are in disagreement with the governmental policies of all three. The majority of the people of the United States would be in disagreement with the racial policies of Rhodesia. The majority would be in disagreement with the racial policies of South Africa; and I think a majority of American citizens are in disagreement with the Communist dictatorship in Russia.

So, if we are going to cut ourselves off from a vital material because we do not like the form of government, or the policies, rather——

The PRESIDING OFFICER. The time of the Senator from Virginia has expired.

Mr. HARRY F. BYRD, JR. Mr. President, I yield myself 3 additional minutes.

The PRESIDING OFFICER. The Senator from Virginia is recognized for 3 additional minutes.

Mr. HARRY F. BYRD, JR. Then we are in a position where, if we carry that to its logical conclusion, we would not be able to import chrome in any quantities from any source.

The title of the bill, S. 1868, says that its purpose is to restore the United States to its position as a law-abiding member of the international community.

Well, Mr. President, those who feel that this legislation is necessary to restore the United States to its position as a law-abiding member of the international community take, in my judgment, an extreme view.

The chief sponsor said this in debate in the Senate on Friday. I will read the words of the distinguished Senator from Minnesota (Mr. HUMPHREY).

> The fact of the matter is that the United Nations Charter as adopted by the Congress of the United States and ratified by the Senate has the same standing as a provision of our Constitution. It is the supreme law of the land.

Of course, I do not agree with that at all. So far as the legality of the Byrd amendment is concerned, I pointed out that it has been sustained by the courts of the United States.

I might add that one of the cosponsors of that amendment 2 years ago, who supports it today, is the distinguished senior Senator from North Carolina (Mr. ERVIN). I think most of us will agree that Senator ERVIN is perhaps the foremost constitutional lawyer now serving as a Member of the Senate of the United States.

Also, one who testified in behalf of the Byrd amendment 2 years ago was the late Dean Acheson, longtime Secretary of State, one who was generally recognized as an expert on international law, and one who was generally considered, I believe, to have been a constitutional lawyer of unusual eminence.

I ask unanimous consent that the text of the testimony by Secretary Acheson be printed in the RECORD.

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

STATEMENT OF DEAN ACHESON

I am happy to respond to your request to appear and testify on S. 1404, introduced by Senator Byrd. I heartily approve of this bill and urge the subcommittee to recommend that it be approved. I also agree entirely with every statement made by Senator Byrd in his speech in the Senate on March 30, 1971, introducing this bill. Similarly I am in accord with the remarks of Senator Cannon in the Senate on April 29, 1971, in support of S. 1404.

1. Basis of Sanctions Against Rhodesia.

As stated by Mr. John A. Armitage on June 17, 1971, on behalf of the State Department before a subcommittee of the House Foreign Affairs Committee regarding proposals similar to S. 1404:

". . . our policy with regard to Southern Rhodesia is based primarily on that regime's action to deny an effective voice to its African majority in the determination of Rhodesia's future . . . This is abhorrent to this country."

Whether or not this is a correct statement of the purpose or intent of Rhodesia's Unilateral Declaration of Independence or its constitution—and I very much doubt that it is—our Supreme Court's decision in *Baker* v. *Carr*, requiring universal suffrage, is not incorporated in the U.N. Charter, nor is U.S. national policy to enforce it throughout the world. Furthermore, the fact that a foreign country's domestic policy may be abhorrent to us—as, for instance, that in effect in the Soviet Union—has not heretofore led us to declare economic warfare (which to the State Department is a peaceful means of noting displeasure) against that country.

Mr. Armitage further told the House subcommittee that the United States is committed to continue sanctions by Article 25 of the Charter requiring members "to accept and carry out the decisions of the Security Council in accordance with the present charter." To be sure, in quoting the article, Mr. Armitage conveniently omitted the concluding phrase. This makes quite a difference.

The decisions of the Security Council which members agree in the Charter to carry out are to relate to threats to the peace, breaches of the peace, or acts of aggression. None have occurred. The threats have all been made and aggressions originated by others. Rhodesia has merely declared its independence, though without the acquiescence that Britain has granted to her other once connected territories. Rhodesia has threatened no one.

The complaint is over Rhodesia's internal matters in which the United Nations may not intervene by Article 2, Section 7 of the Charter. The answer to this, says the State Department, is that Great Britain has invited intervention and that Rhodesia is not a state because no other state has recognized it as such. The essence of sovereignty is the will and ability to exercise it. Britain has neither in regard to Rhodesia; and has had neither for five years. I venture to say that nothing could induce the British Government to take over responsibility of conducting the internal affairs of Rhodesia, which it has not had for fifty years, if ever. A state comes into being not by form—external recognition (else how did the first state come into being?)—but by taking over, exercising and maintaining the powers of sovereignty.

The sanctions resolution is a nullity. Furthermore, it is a failure; to continue to comply with it will injure our national interests; and the only way to get rid of it is to disregard it.

2. Sanctions Against Rhodesia Are a Failure.

After five years Mr. Armitage found it necessary to inform the House subcommittee that "the U.N. Sanctions program has not yet achieved its goal." In fact, it has been an abject failure. Many nations have ignored it altogether. In 1969 Rhodesia's rate of growth in gross national product exceeded that of the U.S.A. Last year was much less successful due to a bad crop year—what lawyers call "an act of God"—rather than due to the United Nations. "A reduced rate of growth of Rhodesian economy" in that year principally affected employment of black Rhodesians in primary products.

Economic sanctions cannot be expected to force a people to action which they believe contrary to their vital national interests. During World War II, I represented the State Department in our effort to weaken our enemies in Europe by reducing the dealing of the European neutrals with the Axis Powers. Although we and our allies controlled all overseas imports to Europe, I have written of the net effect of these "sanctions":

"A good cause can be made for the argument that economic measures resulted in stopping important exports for military needs from Sweden to Germany about six months before military measures would have done so. Exports from Switzerland and the Iberian Peninsula probably moved in minimum necessary quantities until military measures stopped them."

The conclusion is inescapable that sanctions against Rhodesia have failed and must continue to fail. The State Department will, I suppose, argue that we are the prisoners of the U.N. Security Council and cannot escape from the serious harm being caused our national security unless and until the Secretary Council repeals sanctions. This it cannot do over the veto of the Soviet Union. The USSR is unlikely to permit the repeal of sanctions, which we have made so profit-

able to them. Later, perhaps, the Communist Chinese, whom Ping-Pong diplomacy is working hard to get onto the Security Council will have another veto.

3. Sanctions Are Hurting U.S. National Security.

Chromium is a strategic mineral essential to the production of steel. It is not produced in the United States. A few figures will tell the story of our folly. Senator Cannon, Chairman of the Stockpile Subcommittee of the Senate Armed Services Committee, has supplied them.

In 1965 Rhodesia supplied about 40% of our national requirements of metallurgical chromite. The USSR provided slightly less. Turkey and South Africa made up most of the balance. In 1970, with Rhodesia eliminated by sanctions, the USSR supplied about 60% of our needs. The Soviet price increased from $25 per ton to $72 per ton in 1971, a 188% increase. Yet imports fell in 1970 20% short of consumption. Senator Cannon tells of a pending bill, S. 773, to authorize disposal of 1,313,600 short tons of metallurgical grade chromium from the government stockpile, which constitutes 30% of the total stockpile. "Testimony before my subcommittee," said Senator Cannon to the Senate on April 29, 1971, "left it unmistakably clear that, while the amount of the material to be released could be readily absorbed by the consuming industry and might serve the temporary expediency of holding world chrome ore prices in line, the relief would be shortlived."

The State Department has succeeded in putting the country's head in the bear's mouth and seems to think nothing of it. The country, however, is less complacent.

The problem that has been raised, as Senator Cannon puts it, "We cannot continue to ignore."

4. Broader Aspects of the Sanctions Policy.

Even less can we continue to ignore the broader menace threatened by the emotional and reformist intervention we are supporting, not only in Rhodesia but throughout southern Africa. Problems in all of Africa are enormous. Even to mitigate them will require all the help that mature cultures can give and more primitive ones will accept. In southern Africa there are indigenous white societies quite as established and rooted as their black neighbors. They are willing to help the welfare of the areas far more than overseas countries or the United Nations can do. Those who are not such ideological and mathematical democrats as to be willing to weigh heads as well as count them will further this development. To continue meddling in the internal affairs of Rhodesia, South Africa, and Portuguese Angola will not bring the U.N.'s stated goal of international peace and security, but, on the contrary, the bloodiest warfare and insecurity. S. 1404 is a step, and an important one, back to sanity and good will.

Mr. HARRY F. BYRD, JR. Mr. President, I reserve the remainder of my time.

Mr. HUMPHREY. Mr. President, under the legislation we are seeking to repeal, the United States has now been violating international sanctions against Rhodesia for almost 2 years. The experience of these 2 years has shown that the benefits sanctions were to have brought have not materialized—and the cost of violating sanctions has been even greater than many of us predicted 2 years ago.

In light of this experience, we believe that the Senate must determine whether the United States should continue violating sanctions.

This issue has been fully debated over the past several months. There have been numerous statements made on both sides. As chairman of the Africa Subcommittee, I held extensive hearings on this in which all arguments were heard. These hearings have been available for all Senators since the beginning of October. When S. 1868 was finally brought to the floor, we believed that it had been fully discussed; and we were ready to vote immediately.

But those who seek to continue U.S. violation of sanctions held that the issue had not been adequately debated. For 3 weeks now we have been waiting for these Senators to express their views. Wednesday, November 21, time was available for debate. But it was not used. The Monday after Thanksgiving, November 26, an hour and a half was set aside to debate legislation before the Senate. Yet no one appeared to express his views on S. 1868. And the Senate adjourned for that time. During the following 3 weeks, S. 1868 remained unfinished business on a second track. Any Senator who felt that the bill had not been adequately discussed could have had time set aside to express his views. Yet no one asked for such time to be set aside.

Mr. President, we who seek to restore United States sanctions against Rhodesia felt that the issue had been thoroughly debated before the bill was ever brought to the floor. Many statements have been made by both sides. Hearings were held. Concerned Americans who wanted to restore sanctions and concerned Americans who wanted to continue violating them talked with most Senators about the issue. The facts and the arguments were well known by all. For this reason, we felt the Senate was prepared to vote on this issue the day it was brought to the floor.

It was the opposition who felt that such extensive discussion of this issue was necessary that no time limitation—not 4 hours, not 8 hours, not 16 hours—could be placed on discussion of this bill. It was, therefore, the responsibility of the opposition to discuss it—to use the time that was set aside and to arrange for more time to be set aside. Yet this was not done.

It is obvious that what the opposition wants is not an exhaustive discussion of the sanctions or the United Nations Participation Act or the United Nations itself. What the opposition wants is to keep the Senate from voting on S. 1868.

But we believe that the Senate must be allowed to vote on U.S. violation of international sanctions. Over the past 2 years our violation of sanctions has brought none of the benefits that it was to have brought, and the cost of our breaking sanctions has been tremendous.

It was argued that for national security reasons the United States could not be dependent on the Soviet Union for chrome ore. The importation of chrome from Rhodesia would reduce our dependence on the Soviet Union. Yet, since we began violating sanctions against Rhodesia, our reliance on high-quality Russian chrome has not diminished at all. A greater quantity and the same percentage of our chrome imports—around 55 percent—continues to come from the Soviet Union.

The administration has stated several times that there is no strategic need for Rhodesian chrome ore. It has recently been determined that we have an excess of 3 million tons of chrome in our strategic stockpiles. Mr. Peter Flanigan has stated:

> Access to Rhodesian chrome and other minerals is not an important element in U.S. security or our overall foreign economic policy given: (1) the substantial excess of our stockpile resources and (2) the comparatively minor amounts we actually import from Rhodesia.

Deputy Secretary of Defense Clements pointed out that:

> The metallurgical grade chromite needed by industry to support the Defense Department's steel requirement during the first year of a war amounts to 128,300 short tons, or 2.3% of the quantity held in the inventory as of 31 December 1972.

A second benefit of the violation of sanctions was to have been an improvement in the competitive position of the U.S. ferrochrome industry. This industry processes chrome ore for use in the production of stainless steel. It was argued that the U.S. ferrochrome producers could not compete with foreign producers because they did not have Rhodesian chrome.

Yet our violation of sanctions has seriously hurt, not helped, the domestic ferrochrome industry. It is not benefiting from imports of Rhodesian chrome. This year we are importing only 4 percent of our chrome ore from Rhodesia. But we are importing vast and growing quantities of Rhodesian ferrochrome, which is produced more cheaply than American ferrochrome because of the inadequate wages paid black Rhodesian workers who have no right to strike. Three American ferrochrome plants have already announced they will close, citing competition with southern African producers as a major reason. Through the Ferroalloys Association, the rest of the ferrochrome industry has appealed for protection against foreign competition.

So much for the "benefits" our violation of sanctions was to have brought—the reduced dependence on Soviet chrome which has not materialized and the assistance to the American ferrochrome industry which has backfired. Let us now look at what our violation of sanctions has cost us.

First, our violation of international law has seriously damaged our prestige. The United Nations General Assembly has passed five resolutions appealing to the United States to return to full compliance with international sanctions. The distinguished American Bar Association has appealed to Congress to return to compliance with international law.

My distinguished colleague from Virginia holds that the United States is a sovereign state and can therefore violate international law. This is true. But we must realize that in doing this, in breaking our treaty obligations to the United Nations, we are undermining a system of international justice and order on which we depend. If we are to expect other nations to live up to their commitments to the IMF, the GATT, the various treaty agreements they have

made with us, then we must be willing to live up to our own commitments to the United Nations and international law.

Second, our violation of sanctions against Rhodesia has seriously damaged our relations with the other African States. These States are deeply committed to ending the racial oppression in the southern part of their continent. At their independence, these nations held the United States in high regard because we were committed to human rights and racial equality. But our image in Africa has been badly tarnished by our refusal to stand with the rest of the international community in defense of human rights and racial equality in southern Africa. It appears to them that our commitment to these principles is merely verbal, that they will have to seek other allies in their struggle for justice and equality in southern Africa.

An article which appeared on the front page of yesterday's Washington Post illustrates the problems our violation of sanctions has caused in our relations with the African States. The article points out that our relations with the largest and wealthiest state in Africa—Nigeria—have deteriorated as a result of our stand on white supremacy in southern Africa. It also points out that our investments in Nigeria will soon be greater than our investments in South Africa, and that today Nigeria is our third largest oil supplier, sending us 700,000 barrels of oil a day.

We must realize that we are going to lose the cooperation of Nigeria and the other African States so rich in natural resources if our commitment to racial equality appears to be a shallow one.

Finally, our violation of international sanctions has damaged the credibility of our commitment to the peaceful resolution of conflict. In imposing sanctions on Rhodesia, the international community sought to pressure the white minority regime into negotiations with representatives of the African community. In breaking sanctions, the United States has given considerable moral support to the minority regime in its attempts to suppress all criticism by force.

The violence in Rhodesia has grown steadily and has spread to neighboring countries. Rhodesian land mines have killed 20 Zambians in the past year. The United States now can either continue its moral support of the white minority in their attempts to rule by force; or it can join with the international community and the Africans in Rhodesia who want a peaceful settlement.

We are now seeking the support of other nations in our policy of negotiating settlements to both current disputes and long-standing differences between nations. We must prove the sincerity of this policy by standing with the other nations in their attempt to bring the conflict in Rhodesia to an early and peaceful close.

Mr. President, in light of the tremendous cost of our policy of violating sanctions against Rhodesia, I believe the Senate must be allowed to vote today to reverse that policy and return to full compliance with international law.

Mr. President, I ask unanimous consent that the letter of July 20, 1973 from the Deputy Secretary of Defense, Mr. Clements be printed at this point in the RECORD.

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

DEPUTY SECRETARY OF DEFENSE,
Washington, D.C., July 20, 1973.

Hon. DONALD M. FRASER,
Chairman, Subcommittee on International Organizations and Movements, Committee on Foreign Affairs, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letter of June 8, 1973, regarding chrome ore imports from Southern Rhodesia and its relation to our national security requirements for metallurgical grade chromite.

While the Department of Defense is one of the beneficiaries of the stockpile of strategic materials, we do not control the stockpile. The stockpile is operated by the General Services Administration (GSA) (this function was formerly under the Office of Emergency Preparedness but was recently transferred to GSA) and is designed to protect not only the industrial needs of the Department of Defense during an emergency, but those of the nation, as well.

Metallurgical grade chromite is consumed by industry in the production of alloy and stainless steels after it is first refined into alloying additives, such as high carbon ferrochromium. The quantities of these additives consumed are controlled by specifications for the steel mill products. The DoD does not directly consume chrome ore or the alloying materials. Instead, we look to the steel-making industry to obtain the raw materials needed to produce our steel requirements.

When requested, in connection with stockpiling activities, we provide information regarding our estimated emergency requirements for materials. Because it is so difficult to determine the ferroalloy content of such a broad variety of steel mill products, we provide our estimate of the alloy and stainless steel tonnages which we expect to use during an emergency. GSA obtains the total national ferroalloy usage from industry and through a factoring process arrives at the approximate military demand.

There are some uses of chromium metals, however, that we are able to estimate, for example, special heat resistant components of aircraft engines. These comparatively small direct DoD requirements are reported and are included in the total requirement calculation for stockpile planning purposes. The following direct DoD requirement for chromium based on an assumed three year war were reported during the periods shown:

1963—1,535 short tons; 1968—1,350 short tons; and 1973—1,696 short tons.

According to an estimate prepared in 1973 by OEP, [the metallurgical grade chromite needed by industry to support the Defense Department's steel requirement during the first year of a war amounts to 128,300 short tons, or 2.3% of the quantity held in the inventory as of 31 December 1972.] Thus, it can be seen that the Defense requirement for metallurgical grade chromite is relatively small, and that the bulk of the stockpile inventory would be used by the non-defense industry in the event of an emergency.

I hope the above will assist you in your review of the chrome ore import situation.

Sincerely,

W. P. CLEMENTS, Jr.

Mr. HUMPHREY. Mr. President, I ask unanimous consent that a letter from the Secretary of State to the chairman of the House Foreign Affairs Committee relating to our Government's position on the Byrd amendment be printed at this point in the RECORD.

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

SECRETARY OF STATE,
Washington, D.C., October 3, 1973.

Hon. CHARLES C. DIGGS, Jr.,
Chairman, Subcommittee on Africa, Committee on Foreign Affairs, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Thank you for your letter of October 1, also signed by Congressman Fraser, concerning H.R. 8005, a bill to restore the United States to full adherence to the United Nations' Rhodesian sanctions program.

I am pleased with this occasion to reiterate the assurance I gave in my confirmation hearings before the Senate Foreign Relations Committee September 7, that the Administration supports efforts in Congress to repeal that portion of the Military Procurement Act of 1971 commonly known as the Byrd Provision. Moreover, in a letter of August 2 to Chairman Morgan, Assistant Secretary of State for Congressional Relations Marshall Wright expressed the Administration's strong backing for the enactment of S. 1868/H.R. 8005. You may be interested to know that various agencies within the government were given the opportunity to review that letter prior to its dispatch, and that I had personally approved it as Assistant to the President for National Security Affairs. I am convinced now, as I was then, that the Byrd provision is not essential to our national security, brings us no real economic advantage, and is detrimental to the conduct of foreign relations.

You are, of course, familiar with the evidence that imports of Rhodesian chrome and nickel are no longer necessary for strategic reasons and that a request is currently before the Congress to eliminate our stockpile of nickel and to reduce greatly our stockpile of metallurgical grade chromite. It is also pertinent to note that contrary to the intention of the Byrd Provision, the percentage of imports of chrome from the USSR actually increased during the last two years.

On the other hand, the Byrd Provision has impaired our ability to obtain the understanding and support of many countries including such important African nations as Nigeria, a significant source of petroleum and a country where we have investments of nearly $1 billion.

Thus, I believe the enactment of H.R. 8005 is in the interest of the nation, and accordingly I support your efforts to secure its passage. Thank you for this opportunity to restate my views. I am sending a reply to Congressman Fraser.

Sincerely,

HENRY A. KISSINGER.

Mr. HUMPHREY. I yield myself such time as may be necessary.

Mr. President, one of the points that has been emphasized again and again by the distinguished Senator from Virginia is that the United Nations Participation Act really has no binding effect upon the action of our Government. I just want to state once again that the ratification of the Charter of the United Nations by Congress, by the Senate, as a treaty, stands in the same position as the supreme law of the land. There is no way in which one can ignore the facts of history or the facts of international law. The United Nations Participation Act obligates us to the responsibilities under the charter.

Of course, nations can break treaties,

and they do. In fact, that is what we have done. Nations can break their word. They do. That is exactly what we have done in the instance of the sanctions on Rhodesia. Nations can take the lead for a particular international endeavor and decide later that they wished they had not, and backtrack, and that is exactly what the action of Congress has been in reference to our ignoring the United Nations resolution on sanctions relating to Rhodesia.

I think it would be well to note that the American Bar Association has expressed itself quite forcefully on these matters. When the Senator from Wyoming (Mr. McGEE) addressed the Senate on December 7, he made note of the fact that the American Bar Association's House of Delegates passed a resolution a year ago relating to our commitment under the terms of the Charter of the United Nations. The resolution called upon Congress to put the United States back in compliance with the United Nations sanctions against Rhodesia. The resolution goes on to state that the United States believes that the good-faith fulfillment of treaty obligations is central to the rule of law. That is what we are really talking about here today.

I am not saying that Congress cannot violate the law, because it has. I am simply saying that those of us who believe in constitutional government, those of us who believe in the rule of law, have some obligations to fulfill. The rule of law includes the law of treaties, which includes the Charter of the United Nations. It includes, for example, our North Atlantic Treaty Alliance. That is the law; we ratified it. The rule of law includes the United Nations Participation Act that was passed by Congress. It is just as much a law as the Internal Revenue Code. It is just as much a law as the Fair Labor Standards Act. That does not mean that people do not violate the Internal Revenue Code. They do. It does not mean that people do not violate the Fair Labor Standards Act. They do. But it does mean that when you violate, you are a violator; and we are a violator of our commitments under the charter of the United Nations and under the United Nations Participation Act, insofar as fulfilling our responsibilities of the Security Council resolution relating to sanctions toward Rhodesia is concerned.

The Senator from Wyoming placed in the RECORD, on page 40259, on December 7, the American Bar Association resolution, and it reads as follows:

Whereas, The United States of America considers the rule of law to be the only alternative to the rule of force;

Whereas, The United States believes the good faith fulfillment of treaty obligations is central to the rule of law;

Whereas, All members of the United Nations have a solemn treaty commitment as parties to the Charter of the United Nations;

Whereas, Article 25 of the Charter of the United Nations provides that "The members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present charter";

Whereas, The Security Council of the United Nations has decided in accordance with the Charter to impose economic sanctions against Rhodesia prohibiting the import or export of goods from or to Rhodesia;

Whereas, The Administration of President Nixon has strongly and unequivocally expressed its view that (a) the United States is legally obligated under the Charter to comply and (b) neither economic nor national security considerations are sufficiently compelling to compensate for the adverse foreign policy consequences of a failure so to comply; and

Whereas, The Congress of the United States over the objections of the Administration has approved legislation which has become law and requires the United States to permit the importation of chrome and various materials from Rhodesia,

Therefore Be It Resolved, That the American Bar Association urges the Congress of the United States to repeal such legislation and thus permit the Administration to take all necessary steps to prohibit the importation of material from Rhodesia into the United States in conformity with its international obligations under the Charter of the United Nations.

Further resolved, That the President or his designee be authorized to appear before the appropriate committees of the Congress in support of such action.

We have had the Secretary of State appear before Congress in support of such action. Secretary Kissinger strongly recommends the proposed legislation, strongly recommends that we comply with the economic sanctions toward Rhodesia. The President of the United States strongly recommends it. In fact, our Ambassador to the United Nations, Ambassador Scali, strongly recommends that we comply. President Nixon, in a very forceful statement, as I have said, strongly recommends that we comply with the Security Council resolution, and that we repeal the legislation that was passed here that would put us in noncompliance with the resolution of the Security Council.

Mr. McGEE. Mr. President, will the Senator yield for one moment?

Mr. HUMPHREY. I yield.

Mr. McGEE. As a recall, the Senator referred to Secretary of State Kissinger's strong testimony, both in a letter to the House and testimony before the Committee on Foreign Relations when he was up for approval. As I recall his commitment on this question, it was phrased in very strong language. I wish to quote it precisely. This is the Secretary of State of the United States attesting to what he represents as the President's position, as well as his own, as National Security Adviser and now Secretary of State:

I am convinced now, as I was then, that the Byrd provision is not essential to our national security, brings us no real economic advantage, and is detrimental to the conduct of foreign relations.

How can it be put stronger than that? I really hope that the Senator from Virginia, who is in the Chamber, might well give heed to admonitions of that dimension.

Mr. President, this provision is no longer of any importance to our national security; it is of no economic advantage; and finally, it impedes the foreign policy of our country.

Knowing the Senator from Virginia to be the very astute and far-seeing man that he is, it would seem to me that this would give him pause. We should come to a vote on this matter. Would the Senator agree?

Mr. HUMPHREY. I surely think the statement of the Secretary of State is so unequivocal and forceful that we would be very foolish not to heed what he has to say. That is why this legislation is before us, legislation that puts us in compliance with the charter of the United Nations and the Security Council resolution.

There is no act we could take that would do more to restore our credibility as a nation in international affairs than to repeal the Byrd amendment.

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

Mr. HUMPHREY. I yield.

Mr. CANNON. The Senator referred to a United Nations resolution. Is that the same United Nations resolution that provides:

"No state may use or encourage the use of economic measures to coerce another state in order to obtain from it the subordination of the exercise of any of its rights and to secure advantages of any kind.

Mr. HUMPHREY. I am not sure. If the Senator will excuse me for a moment, I will check the records.

Mr. CANNON. I wondered because we always have great concern about the possibility of the United States not complying fully, and yet we see that this resolution is specifically being violated by the Arab countries now in the withholding of oil to this country.

Mr. HUMPHREY. There is no doubt about it at all.

Mr. CANNON. It seems to me that we go far afield when we say we must lean over backward and not use any efforts of this kind in our dealings and yet we want other countries to abide by them. We have not put any pressure on the Arab countries under this United Nations resolution, as far as I know, to get them to renew their oil deliveries, which is so clearly in violation of this provision.

I might say to my distinguished colleague that this matter gives me a great deal of concern, particularly in light of the fact that we impose an embargo against Rhodesia. Here we would impose that and yet we do not see fit to do anything with regard to the Arab countries that violate this provision of the resolution and we do not do anything with respect to Russia. As a matter of fact, we are improving our détente position with Russia at a time when they have a policy against free emigration. We even are going so far as to have the Jackson amendment considered and offered today in the House with respect to the trade bill because of Russia's policy against emigration; yet we go blithely on our way doing business with Russia and buying a great deal of chrome from them, and they in turn buy from Rhodesia. So it seems to me a rather silly policy to follow this kind of policy with regard to one country and disregard it with respect to Russia.

I wonder if the Senator from Wyoming would address himself to that point.

Mr. McGEE. I would be glad to as soon as I clarify the parliamentary situation. Whose time are we speaking on?

The PRESIDING OFFICER. The time is the time of the Senator from Minnesota.

Mr. McGEE. That is that point I wanted to make clear. I am wondering if the

Senator from Virginia would be willing to share time on this colloquy so that I might respond to the Senator from Nevada.

Mr. HARRY F. BYRD, JR. I share time with the Senator.

Mr. McGEE. I thank the Senator. I will respond to the question.

The PRESIDING OFFICER. The Senator from Wyoming may proceed.

Mr. McGEE. Mr. President, there are a couple of points I wish to make to my classmate of 1958 and my colleague in this body.

We have to remember where we started. Where we started was when Great Britain and Rhodesia had finally abandoned their efforts to work out a set formula for Rhodesia stepping up to independence. There was an impasse with the threat of a bloodbath to achieve their position. It was at that moment that the United States took the lead, quietly behind the scenes in the United Nations, to encourage a U.N. embargo as a time-holding action in order to permit something short of shooting. This was a particular crisis situation at that moment.

The United Nations did so act. We are one of those who voted with it. No effort was made to kill it in the United Nations at that moment. We were the private instigator of that.

Mr. CANNON. How long ago was that?

Mr. McGEE. Oh, this would have been about 1966 or 1967.

Mr. CANNON. Six or seven years ago.

Mr. McGEE. Anyway, when this was instituted in the United Nations we undertook it in a bona fide manner as a member of the United Nations. What we are now saying as a member of the United Nations is that we will breach a commitment to that body and to the charter of that body and our endorsement of the United Nations by unilaterally becoming the only Nation in the world to take us out of that commitment. We are the first power in the United Nations to block a United Nations action of that sort by formal unilateral action. That is the first point the Senator should bear in mind.

The other point is in regard to the Arab nations. I would agree there should be some action pending in that regard, but there is not. God knows that is a tough problem, and I am aware of the inequities in that situation. But it has no relevance to this situation or how we got to where we are on the Rhodesian chrome questions.

What we are contesting is that we should go very slowly in reputing any kind of commitment we have in that body as long as we insist it is one of the agencies and instrumentalities among nations to try to achieve a greater degree of stability. That is what this is all about. Now, we have testimony of the Secretary of State, Dr. Kissinger, in the House and during his approval in the Senate, and in correspondence directly to us here, that there is no economic reason for taking the present stance of the Byrd amendment; that there is no longer a strategic reason for doing that. As a matter of fact, he gave this advice to the President of the United States when he was the security adviser to the President.

Finally, it is intruding into our ability to carry out a constructive foreign policy in the American interest. That is rather overwhelming testimony from the man in charge. We think from that point of view, times have changed since our earlier actions here, and that is why it is being reconsidered in the Senate.

Mr. CANNON. Well, Mr. President, I would simply say and point out to my colleague that, since the imposition of the sanctions, over 100 cases of evasion have been reported to the United Nations by Great Britain. Those represent only the tip of the iceberg. Sanction busting continues to occur on a monumental scale.

South Africa and Portugal ignored the embargo from the very outset.

I might say Portugal was the only one of our European friends to stand by us in the early days of the problem in the Mideast with respect to the Arab-Israeli conflict, being the only country that would permit us to use their bases to fly down to Israel. I would suggest perhaps the Senator would like us to terminate our relationship with Portugal because they continue to do business with Rhodesia.

South Africa and Portugal were soon joined by Eastern European countries and parts of the Middle East. Finally, Western Europe and Japan entered the Rhodesian market with a vengeance. West German, Dutch, Italian, Japanese, and Swiss companies have been blithely ignoring the embargo since 1968.

It does not make sense to go merrily along our way and say we have to abide by this resolution when no one else does, and when it is not in our own self-interest.

I know the distinguished Senator from Wyoming says our Secretary of State says it is in our self-interest and there is no economic justification for it. I do not agree with that. I do not agree with the Secretary on everything he says. That is one of the issues on which I disagree with him. The fact remains that if we followed that embargo, Russia, where we were getting much of our supply of chrome, raised her prices markedly. So, from the economic standpoint, it did increase our economic burden by buying chrome from them at the same time Russia was buying chrome from Rhodesia.

Despite these sanctions, this country with only 6 million inhabitants exported over a quarter of a billion worth of goods last year. So it is obvious that the sanctions have been flagrantly violated. I think very few knowledgeable people would argue its effectiveness.

I would simply say that if we are really trying to improve the lot of the blacks in Rhodesia, if the moral justification for the sanctions resolution was to gain political and economic power for the black Rhodesian majority, then the embargo has backfired. Rhodesians are no closer to self-government today than they were 6 years ago, and they may have actually lost grounds in their struggle for economic equality.

This general observation, however, begs the question: What can the United States do to improve the lot of Rhodesia's black majority? The most practical method for Americans to assist the social and political aspirations of Rhodesian blacks is to provide more rather than fewer jobs to the black majority. It is to become more involved in the Rhodesian social structure rather than allow the Smith regime to rule by default.

I would say that if we disregard the embargo, we are going to provide more jobs for blacks in Rhodesia and we are going to act in our own self-interest itself.

Mr. McGEE. Mr. President, I wonder if under the same reciprocity we have had, I might respond to two points raised by the Senator. Is it agreeable to the Senator from Virginia, as long as we protect each other on time?

Mr. HUMPHREY. The Senator can speak on our side.

Mr. McGEE. Well, the Senator from Nevada was speaking on our side. Thus, we will have both of us speaking on our side and cutting our time down.

I would refer to two points which the Senator from Nevada has suggested.

The first is that Portugal and South Africa have chosen to violate this embargo. Let us separate that. Portugal and South Africa, even though both might have cause to, have not taken any governmental action defying the embargo. Such hanky-panky does go on now under law. As an illustration, we have in this country laws against murder, but that does not stop people for committing that crime. It is no reason to retract the law on murder because some people commit murder. The same principle applies under United Nations actions.

It ill-behooves the United States, as a leader in the world, as an exponent of government under law, in our international relationships, to become one of those who flout the very law we had a hand in instigating.

The other point that those who have broken the sanction on Rhodesia have done so as conspirators and violators, not with government sanction at any time, whether it be Japan, Western Europe, Eastern Europe, South Africa, or wherever. We are still making the case under law.

The PRESIDING OFFICER. The Senator from Virginia asked to be notified when he had 14 minutes remaining, and that time has now arrived

Mr. McGEE. I thank my colleague for allowing me to balance this out.

Mr. HARRY F. BYRD, JR. Mr. President, I yield 2 minutes to the distinguished Senator from Nevada.

Mr. CANNON. Mr. President, this is a rather specious argument to make: that their governments have taken no official action; but they have taken unofficial actions to achieve the same result.

We are the Government of the United States. I do not see any reason why we should not take action that is in our own self-interest. As I have pointed out, we have seen the Arabs completely ignore the United Nations resolution. What have we done? We are not retaliating against the Arabs. The Secretary of Agriculture is going ahead at the present time with the sale of many bushels of wheat to the same Arab Nations which violated a United Nations resolution against us.

So I say it is time that we recognized where our own self-interest lies and do something about getting real results, which everybody else has ignored to date.

I thank the Senator from Virginia for yielding to me.

Mr. HARRY F. BYRD, JR. Mr. President, how much time remains to me?

The PRESIDING OFFICER. The Senator from Virginia has 13 minutes remaining.

Mr. HARRY F. BYRD, JR. I yield myself 3 minutes.

Mr. President, I concur in the statements made by the distinguished Senator from Nevada. The distinguished Senator from Wyoming mentioned the history and background of United Nations sanctions; that Great Britain and Rhodesia could not get together on Rhodesian independence. That brings to mind the issue that Rhodesia unilaterally declared her independence from Great Britain, the same as the United States did in 1776. Yet this country participated in imposing sanctions on Rhodesia, although she did just what the United States did almost 200 years ago.

The Senator from Minnesota mentioned a letter written by Secretary of State Kissinger. I think the able Senator from Nevada (Mr. CANNON) handled that matter quite well, but I would mention it also.

We know from testimony that 2 years ago the late distinguished Secretary of State, Dean Acheson, took exactly the opposite point of view to that of the present Secretary of State. I say that the present Secretary of State is concerning himself, and I guess justifiably so, with what we might call United Nations politics—the politics of the United Nations. That has inspired to a considerable degree his statement today. I think he is an able man, but that does not justify Congress in believing that everything Secretary Kissinger says is true, and neither do I.

Former Ambassador Goldberg said, at the time sanctions were imposed:

> What is happening to Rhodesia now is an effort to perpetuate the control of 6 percent of the population over the other 94 percent.

Is it not a fact that in the Soviet Union the members of the Communist Party, comprising about 1 percent of the population and acting through a few leaders, control the other 99 percent of the people of that nation of nearly 200 million?

Is it not a fact that a handful of men control the destinies of all the people of Albania?

Is it not a fact that a handful of men control all the people in Bulgaria, in Rumania, and in Yugoslavia?

Is it not a fact that Fidel Castro almost single-handed, operating through a small Communist cadre, controls the lives and fortunes of nearly 7 million Cubans?

The PRESIDING OFFICER. The time that the Senator from Virginia has allotted to himself has expired.

Mr. HARRY F. BYRD, JR. Mr. President, I reserve the remainder of my time.

Mr. McGEE. Mr. President, will the Senator from Minnesota yield me 3 or 4 minutes?

Mr. HUMPHREY. Mr. President, I yield 5 minutes to the Senator from Wyoming.

Mr. McGEE. Mr. President, let me suggest to my good friend, the Senator from Virginia, that he is confusing Dean Acheson and Henry Kissinger. While Dean Acheson was once the Secretary of State with a very hard-hitting line and working toward world cooperation, when he testified in the words which the Senator from Virginia quoted, he was appearing in behalf of a client and was representing a chrome-using client in the United States. He was trying to win that client.

Henry Kissinger is the Secretary of State. He is not speaking for any company. He is speaking for no one but the people of the United States. And he is presently saying that the Byrd amendment on the books at the present time impedes the foreign policy of the United States and is no longer in the national interest of the United States.

Deputy Secretary of Defense Clements has said that in terms of chrome, we would need right now 2.3 percent of the present chrome stockpile in the event of war. What he was trying to say to us is that the whole ball of wax has changed and that what he was saying to us at the time has changed.

It is not 3 years ago. It is not 6 years ago. And that is the reason that we need to try to remove this obstacle not only in the national interest, but also in the pursuit of a wise foreign policy.

We have testimony from Nigeria, where the great oil findings are now going on. Nigeria has taken a stance in which it views with some difficulty our relations with the chrome issue and Rhodesia.

We ought to work toward improving our Nigerian relations and access to that oil. Let my good friend, the Senator from Virginia, try to run some of the Rhodesian chrome through his gas tank. All he will get will be a good, clean tank. However, it will be empty.

All of these parts need to be added up, not in terms of chrome interests, not in terms of a steel company or a lawyer arguing for his client, but in terms of the national interests of the United States. And the man in charge of that interest now and trying to pursue foreign policy says that the present law gets in the way, that it impedes the pursuit of constructive American policy and our own national interest.

Mr. HARRY F. BYRD, JR. Mr. President, I yield myself 4 minutes.

I am glad that the Senator from Wyoming brought up Nigeria and said that Nigeria is upset and concerned with the United States because of its policy and because of the enactment by the Congress 2 years ago of certain legislation.

I would point out that the United States has given Nigeria $447 million over a period of time in loans and grants. If that has not satisfied Nigeria, I doubt that changing the law which Congress enacted 2 years ago to permit the importation of chrome from Rhodesia is going to soften Nigeria's attitude.

In any case, it is another effort to buy friendship. I do not believe that works. And it is hypocrisy on our side.

The Ambassador to the United Nations, under the present Secretary of State, vetoed just last month a United Nations proposal to put sanctions against South Africa. South Africa, from the point of view of the African nations, has equally undesirable racial policies as does Rhodesia.

I cite that to suggest that there is a great deal of hypocrisy in this entire matter. The Senator from Nevada pointed out that most of the other countries of the world, practically all of the other countries of the world, with the exception of Great Britain, pay no attention whatever to the United Nations sanctions against Rhodesia. Very recently, Sir Douglas Hume, the British foreign secretary, in a television interview, said that while his government supports trade sanctions against Rhodesia because it had been put on by the previous Labour government, he did not think it was the correct policy.

He said:

> We disagree with the political systems of a number of countries, for example South Africa, but we trade with them and by and large, we don't believe in ostracism and boycott.
>
> We think that contacts are the way to induce countries with which we disagree to change their policies. This is the way to break down prejudice.

Mr. President, so, even Britain, at whose behest the United States entered into these sanctions, feels it is not a correct policy. I, for one, am convinced that it certainly is not the correct policy.

I feel it is important that the United States begin to act in its own interest as the Senator from Nevada has pointed out.

I want to say in my judgment that there is no one in the Congress of the United States who has as fine a knowledge and as detailed a knowledge of the strategic materials of our Nation and of the need for them and of the stockpile process as does the distinguished chairman of the Stockpile Subcommittee of the Armed Services Committee, the Senator from Nevada (Mr. CANNON).

Mr. CANNON. Mr. President, first I want to thank the distinguished Senator for his remarks about me.

I want to point out that no chromite ore has been mined in the United States since 1961.

The Senator from Wyoming pointed out how little we need to rely on what we have in the stockpile.

I simply say that since 1962 the national stockpile of metallurgical grade chromite has declined over 43 percent and is currently at the lowest level in 15 years. The apparent size of the stockpile is further diminished by the fact that 43.1 percent of available inventories are officially classified "non-stockpile grade"—the highest proportion in the past 10 years. These inferior stocks cannot be economically used to produce stainless steel and cannot legitimately be included in total stockpile availability. The administration has recently proposed further liquidation of the high-grade metallurgical stockpile, retaining less than 6 months' supply in the national inventory.

Mr. HARRY F. BYRD, JR. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Virginia has 5½ minutes remaining.

Mr. HARRY F. BYRD, JR. Mr. President, I reserve the remainder of my time.

Mr. HUMPHREY. Mr. President, first of all, let me say with regard to all of the comments of my friends, and particularly those for whom I have the highest regard and respect, the Senator from Nevada and the Senator from Virginia, that I have in my possession a letter from Deputy Secretary of Defense Clements, Jr. The letter is dated July 20, 1973. It is addressed to the chairman of the Subcommittee on International Organizations and Movements of the Committee on Foreign Affairs, House of Representatives, Representative FRASER.

Deputy Secretary of Defense Clements says:

> According to an estimate prepared in 1973 by OEP, the metallurgical grade chromite needed by industry to support the Defense Department's steel requirement during the first year of a war amounts to 128,300 short tons, or 2.3 percent of the quantity held in the inventory as of 31 December 1972. Thus, it can be seen that the Defense requirement for metallurgical grade chromite is relatively small, and that the bulk of the stockpile inventory would be used by the non-defense industry in the event of an emergency.

The OEP to which the letter refers is the Office of Emergency Preparedness.

I spoke to this point earlier. The Government has come in and testified that the stockpile is overstocked.

The Government has testified again and again that there was no basic need for the importation of Rhodesian chrome. The Government has made it manifestly clear that there is no particular defense need, that you cannot justify the Byrd amendment on the basis of national security.

The argument for the Byrd amendment, of course, originally was that if we opened up Rhodesian chrome importation, we would not be so dependent upon the Soviet Union.

What has been the fact since the Byrd amendment was agreed to? The fact is that we are importing more from the Soviet Union now slightly more than we did before. The fact of the matter is that the Soviet Union is a major supplier. The fact of the matter is that the Byrd amendment did not in any way retard or impair that importation from the Soviet Union. The only thing it did was hurt one of our allies, Turkey.

Turkey is an ally. Turkey has chrome, and the supply of chrome furnished from Turkey, which is an ally, is down. The supply of chrome from the Soviet Union is up. And, might I add, if everyone is violating the sanctions, as has been indicated here, why is it that the Government of Rhodesia keeps asking that we maintain the Byrd amendment? If they are doing so well over there in Rhodesia with all of these many countries supposedly violating the Security Council resolution imposing sanctions on Rhodesia, why is it that the Rhodesian Government pleads with us not to change things, to leave it just as it is?

The fact of the matter is that the ferrochrome industry in the United States, our domestic industry, has been injured by the Byrd amendment. The fact is that the United Steelworkers of America, that mine and process this material, have come to the Congress of the United States asking for the repeal of the Byrd amendment. The fact of the matter is that there are but one or two companies in the United States that profit at all from the Byrd amendment. The fact of the matter is that there is no national security justification whatsoever for the Byrd amendment. The fact of the matter is that every responsible office of this Government, the President, the Secretary of State, the Secretary of Defense, those who are responsible for the security of this country, recommend the repeal of the Byrd amendment.

I think that is a rather convincing case. The workers of America who are responsible for mining and processing this chrome in America are for the repeal of the Byrd amendment. They say this amendment takes their jobs. They say this amendment is contrary to their interests.

The Union Carbide Co. is for the Byrd amendment. And our foreign policy must not be made in the interest of one or two corporations.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. HUMPHREY. That is plenty of time. I thank the Chair.

Mr. HARRY F. BYRD, JR. Mr. President, I do not have the time to answer all the statements made by the distinguished Senator from Minnesota as to the accuracy of which I have some questions, but I do want to say a couple of things.

First, let me say that if the President is opposed to the Byrd amendment, he could render it inoperative before the day is over. He could render it inoperative before we get to a vote this afternoon, because the Byrd amendment says that the importation of a strategic material is not prohibited if that same strategic material is being imported from a Communist-dominated country.

Two things can happen: The President can strike chrome from the list of strategic materials, and if the argument of the Senator from Minnesota is correct, he might as well strike it, because it is of no value. But he has not struck it, and it has been on the books 2 years, so it must be an essential material, as the Senator from Colorado has pointed out.

The second thing the President can do is prevent the importation of this same material from Russia. If he does that, the Byrd amendment will be inoperative, and the importation of chrome from Rhodesia will not be permitted. So that can be done by legislation, if indeed the situation is as bad as the Senator from Minnesota would have the Senate believe.

In concluding, let me point this out: If we follow the reasoning of the Senator from Minnesota and the Senator from Wyoming, this is the fix that the Senate and Congress will be in: Whenever a future President, the present President or a future President, acting through his Ambassador at the United Nations, agrees to a Security Council resolution and implements that resolution unilaterally without reference to the Congress, then, if we follow their reasoning, we in Congress are bound by law or, to use the words of the Senator from Minnesota, are bound by the Constitution to that course of action, even though Congress has had no say in the action.

I say that is a very dangerous policy, and that is one reason that I feel it would be very unwise for the Senate to pass S. 1868, because it would tend to give substance to the proposal that whatever the United Nations Security Council does, which subsequently is implemented unilaterally by our President, then Congress and we as individual Members of Congress are bound by that as being, to quote the Senator from Minnesota, the supreme law of the land.

I submit that that is a very dangerous doctrine, and one which I would not want even indirectly to give assent to.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 2½ minutes.

Mr. HARRY F. BYRD, JR. I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Minnesota has 1 minute.

Mr. McGEE. How much time?

The PRESIDING OFFICER. One and one-half minutes.

Mr. McGEE. Let me use that time simply to suggest to my good friend from Virginia that under the United Nations Charter, a condition of that charter was the reservation of the veto power by the United States in the Security Council. That veto power has been used when it was thought to be in contradiction to our national interest.

No substitute has been suggested for that veto power. The President of the United States is the constitutional authority to make that decision at this time. They can repudiate him later, but they cannot take us unilaterally out of the United Nations by an action of this body denouncing the United Nations. That is what the Byrd amendment does, and what Dr. Kissinger challenges as the invalidity of the Byrd amendment.

But the issue here is not really the substance, at this moment, now, of the Byrd amendment. The issue is whether the Senate of the United States ought to have a right to vote on what ought to be the judgment of this body. So far, the Senator from Virginia is denying this body that right. We should have a vote up or down on the Byrd amendment with all its ramifications. Instead, we have this delaying action that has required us to file a cloture motion.

I just want the Senator to know that we are prepared to file cloture motions as long as necessary. We can carry them around by the bagful.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. McGEE. But the issue is invoking cloture right now, rather than the substance of this bill. We think the Senate ought to have a right to vote.

Mr. HARRY F. BYRD, JR. Mr. President, the Senate has for several years

now been trying—or at least I thought it had—to recapture some of the authority has given away to Presidents in the past.

In this particular case, the Senate in 1945 gave away authority to the United Nations. I think it is time that we recapture some of that authority that we have given to the United Nations.

But I am saying that the Senate never gave to the United Nations or to the President or anyone else the right to bind future Congresses. Yet, if we follow the theory of the Senator from Minnesota and the Senator from Wyoming, that is what they would have done.

So I say, Mr. President, if we follow that theory, then whenever the United Nations Security Council acts, and that act is implemented by the President, the hands of Congress are tied.

I do not believe that was the intent in any way, shape, or form of the United Nations Participation Act of 1945. If it was, now is the time it should be changed.

Mr. MONDALE. Mr. President, I rise in support of the motion to invoke cloture on S. 1868. After 3 weeks of debate, it is time to take action on this bill which would reinstate the United States to full adherence to the U.N. Rhodesian sanctions program and thereby restore this country to its position as a law-abiding member of the international community. This month marks the second anniversary of the enactment of section 503 of the Military Procurement Act of 1971, commonly known as the Byrd amendment, which, in effect, has made the United States an international lawbreaker.

Mr. President, one of the fundamental problems with recent American foreign policy is that it has failed to recognize the just values, humane interests, and ethical concerns that I believe are basic to our Nation and to what the American people desire. The United States cannot pursue a foreign policy which ignores the deeply ingrained values of our own people. Rather, we must pursue a foreign policy which is committed to the rule of law throughout the world and which adheres to our international treaty obligations.

But the U.S. violation of international sanctions against Rhodesia has seriously jeopardized some of these foreign policy goals. The issue today is the same as it was last year and in 1971: the United States is breaking a treaty obligation through the U.N. which also hampers our credibility with other African nations, as well as concerned citizens throughout the world who see this country paying mere lipservice against apartheid and minority rule. The United States voted for the imposition of sanctions against Rhodesia with other Security Council members in 1966 when the Council voted to impose selective mandatory sanctions and again in 1968 when it voted unanimously to impose full mandatory sanctions.

The record of the past 2 years indicates that the economic and security reasons which led to the 1971 congressional vote to violate U.N. sanctions are no longer valid—if indeed they ever were.

The proponents of the Byrd amendment argued that chrome is essential during a national emergency and Rhodesia imports would, therefore, reduce American dependence on the Soviet Union. However, despite the importation of chrome from Rhodesia for the past 20 months, our imports from the Soviet Union have not decreased at all but, rather, have increased. On the other hand, imports from our other principle supplier of chrome, Turkey, have decreased substantially. Indeed, U.N. Ambassador John Scali recently testified before the Foreign Relations Committee that—

> Adequate quantities to meet all of the U.S. defense needs are available from Turkey, Iran and South Africa.

Further, the United States has already released from its stockpiles some 900,000 tons of chrome and the Defense Department, the President, and the Department of State have recommended the release of another 2 million tons of chrome from the stockpile. It is clear, therefore, that we have sufficient supplies of chrome to meet our vital defense needs in an emergency.

As Assistant to the President, Peter Flanigan testified before the Foreign Relations Committee:

> Access to Rhodesian chrome and other minerals is not an important element in U.S. security or our overall economic policy given: (1) the substantial excess of our stockpile resources and (2) the comparatively minor amounts we actually import from Rhodesia.

Proponents of the Byrd amendment have also stressed the economic consequences of compliance with the U.N. sanctions. They argue that the price of chrome had risen since the total embargo was placed in 1968 and that the Russians would be able to inflate their prices further. However, a recent Library of Congress study noted that the price of chrome, including that of Rhodesian chrome had increased in recent years. The study concluded that the increase was due as much to an increase in demand for chrome and the general upward shift in raw materials as to the effects of economic sanctions.

It was also argued by supporters of the Byrd amendment that countries such as Japan and West Germany were covertly violating the U.N. sanctions. It was claimed that they were using cheap Rhodesian chrome to make their own cheap ferrochrome and stainless steel industries. But a recent report by the Carnegie Endowment for International Peace entitled, "Irony in Chrome: The Byrd Amendment 2 Years Later," pointed out that:

> This surge of low-cost imports of ferrocrome from Rhodesia has done more harm to American industry than any of the chrome ore-related hardships—real and imagined—that occurred during the period of the sanctions.

This is because our continued reliance on imported ferrochrome, which exceeds imports for chrome both in gross tonnage and in dollar value, has jeopardized the domestic American industry. Since 1971, two of the four principle producers of American ferrochrome have closed because of the competition with low wage imports. Thus, our importation of ferrochrome from Rhodesia has contributed to the loss of hundreds of American jobs and to the threatened extinction of an industry which could be important to our national security.

Mr. President, we have violated U.N. sanctions against Rhodesia in order to secure economic and national security advantages which have not developed. I strongly urge my colleagues to vote to invoke cloture. Immediate passage of this bill will prove our desire to take our place with the rest of the international community in the defense of human rights, racial equality, and self-determination.

Mr. THURMOND. Mr. President, the question of what we in the Senate are going to do on the past. Many pros and cons have been examined and ably discussed at great length and with tremendous conviction. We are confronted with a veritable mountain of facts, figures, and statistics that explore many aspects and ramifications of the question in minute detail.

However, Mr. President, it would seem to the Senator from South Carolina that further elucidation is necessary. We must consider this matter on the basis of commonsense and principle.

Chrome is an essential raw material. It is used in the pharmaceutical, food, dairy, chemical, aerospace, atomic energy, and steel industries. The United States is totally dependent on foreign sources for its supplies of chromium, and the largest high-grade reserves of this strategic material in the free world are found in Rhodesia.

Enactment of this legislation would mean a much heavier reliance on the Soviet Union for chrome ore. Thus, we would be relying on a potential adversary rather than an insured friend for a lower grade of this strategic wartime material at an even higher price. Such a proposition defies reason.

Enactment of this legislation would put American manufacturers at an economic disadvantage due to the stiff competition from nations which will continue to purchase Rhodesian chrome.

Furthermore, repeal would displace thousands of black workers in Africa. The chrome mines themselves have at least five black workers for every white worker. If production is cut, the least-skilled workers, the Africans, will be the first to go. Rhodesia's gross national product is growing by 8 percent each year. She is becoming more self-sufficient and we should do nothing to inhibit this growth, particularly since she takes such a strong pro-Western stand.

Mr. President, simply analyzed, the enactment of this bill would have the following consequences: it would benefit the Soviet Union and other Communist nations while imposing unnecessary burdens on our own domestic industries; it would seriously impair our national defense; and it would show an intention to damage the economy of a growing, friendly nation that has a greater sense of participatory democracy than many states which we are currently embracing.

Mr. President, for these reasons I urge my colleagues to oppose this piece of legislation and to vote against cloture.

CLOTURE MOTION

The PRESIDING OFFICER (Mr. McCLURE). Time for debate has expired. The clerk will report the motion to invoke cloture.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate upon the bill (S. 1868), a bill to amend the United National Participation Act of 1945 to halt the importation of Rhodesian chrome and to restore the United States to its position as a law-abiding member of the international community.

Mike Mansfield, Gale W. McGee, John O. Pastore, Quentin N. Burdick, Jennings Randolph, Clifford P. Case, Henry M. Jackson, Edward W. Brooke, Thomas F. Eagleton, Dick Clark, Hubert H. Humphrey, Mike Gravel, Harold E. Hughes, Philip A. Hart, Alan Cranston, Gaylord Nelson, Floyd K. Haskell, Jacob K. Javits, Edward M. Kennedy, Walter F. Mondale, Lee Metcalf, Edmund S. Muskie, Charles H. Percy.

CALL OF THE ROLL

The PRESIDING OFFICER. Pursuant to rule XXII, the Chair directs that the clerk call the roll to ascertain the presence of a quorum.

The second assistant legislative clerk called the roll, and the following Senators answered to their names:

[No. 569 Leg.]

Aiken	Fannin	Mondale
Allen	Fong	Montoya
Baker	Fulbright	Moss
Bartlett	Goldwater	Muskie
Bayh	Griffin	Nelson
Beall	Gurney	Nunn
Bellmon	Hansen	Packwood
Bennett	Hart	Pastore
Bentsen	Hartke	Pearson
Bible	Haskell	Pell
Biden	Hatfield	Percy
Brock	Hathaway	Proxmire
Brooke	Helms	Randolph
Buckley	Hollings	Ribicoff
Burdick	Hruska	Roth
Byrd, Harry F., Jr.	Huddleston	Saxbe
Byrd, Robert C.	Hughes	Schweiker
Cannon	Humphrey	Scott, Hugh
Case	Inouye	Scott, William L.
Chiles	Jackson	Sparkman
Church	Javits	Stafford
Clark	Kennedy	Stevens
Cook	Long	Stevenson
Cotton	Magnuson	Taft
Cranston	Mansfield	Talmadge
Curtis	Mathias	Thurmond
Dole	McClellan	Tower
Domenici	McClure	Tunney
Dominick	McGee	Weicker
Eagleton	McGovern	Williams
Eastland	McIntyre	Young
	Metcalf	

Mr. ROBERT C. BYRD. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Alaska (Mr. GRAVEL), the Senator from Mississippi (Mr. STENNIS), the Senator from North Carolina (Mr. ERVIN), and the Senator from Louisiana (Mr. JOHNSTON) are necessarily absent.

I also announce that the Senator from Missouri (Mr. SYMINGTON) is absent because of illness.

The VICE PRESIDENT. A quorum is present.

The question before the Senate now is, Is it the sense of the Senate that debate on S. 1868, a bill to amend the United Nations Participation Act of 1945 to halt importation of Rhodesian chrome and to restore the United States to its position as a law-abiding member of the international community, shall be brought to a close?

The yeas and nays are mandatory under the rule, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Mississippi (Mr. STENNIS), the Senator from Alaska (Mr. GRAVEL), the Senator from South Dakota (Mr. ABOUREZK), the Senator from North Carolina (Mr. ERVIN), and the Senator from Louisiana (Mr. JOHNSTON) are necessarily absent.

I also announce that the Senator from Missouri (Mr. SYMINGTON) is absent because of illness.

I further announce that, if present and voting, the Senator from South Dakota (Mr. ABOUREZK) would vote "yea."

The yeas and nays resulted—yeas 59, nays 35, as follows:

[No. 570 Leg.]

YEAS—59

Baker	Hatfield	Nelson
Bayh	Hathaway	Packwood
Beall	Huddleston	Pastore
Bentsen	Hughes	Pearson
Biden	Humphrey	Pell
Brooke	Inouye	Percy
Burdick	Jackson	Proxmire
Case	Javits	Randolph
Chiles	Kennedy	Ribicoff
Church	Magnuson	Roth
Clark	Mansfield	Saxbe
Cranston	Mathias	Schweiker
Dole	McGee	Scott, Hugh
Domenici	McGovern	Stafford
Eagleton	McIntyre	Stevens
Fong	Metcalf	Stevenson
Griffin	Mondale	Tunney
Hart	Montoya	Weicker
Hartke	Moss	Williams
Haskell	Muskie	

NAYS—35

Aiken	Cotton	McClellan
Allen	Curtis	McClure
Bartlett	Dominick	Nunn
Bellmon	Eastland	Scott, William L.
Bennett	Fannin	Sparkman
Bible	Fulbright	Taft
Brock	Goldwater	Talmadge
Buckley	Gurney	Thurmond
Byrd, Harry F., Jr.	Hansen	Tower
Byrd, Robert C.	Helms	Young
Cannon	Hollings	
Cook	Hruska	
	Long	

NOT VOTING—6

Abourezk	Gravel	Stennis
Ervin	Johnston	Symington

The VICE PRESIDENT. On this vote there are 59 yeas and 35 nays. Two-thirds of the Senators present and voting not having voted in the affirmative, the cloture motion is not agreed to.

CLOTURE MOTION

Mr. MANSFIELD. Mr. President, I send to the desk a cloture motion and ask that it be stated.

The VICE PRESIDENT. The cloture motion having been presented under rule XXII, the Chair, without objection, directs the clerk to read the motion.

The assistant legislative clerk read as follows:

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate upon the bill (S. 1868), a bill to amend the United Nations Participation Act of 1945 to halt the importation of Rhodesian chrome and to restore the United States to its position as a law-abiding member of the international community.

Mike Mansfield	George McGovern
Gale W. McGee	Abraham Ribicoff
Hubert H. Humphrey	Harold E. Hughes
Edward W. Brooke	Frank E. Moss
Floyd K. Haskell	Daniel K. Inouye
Jacob K. Javits	Lee Metcalf
Quentin N. Burdick	Dick Clark
Clifford P. Case	Ted Stevens
Alan Cranston	Edward M. Kennedy
Edmund S. Muskie	Jennings Randolph
Philip A. Hart	

The VICE PRESIDENT. The Senate will be in order.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, what is the pending business?

The VICE PRESIDENT. The unfinished business is S. 1868, a bill to amend the United Nations Participation Act of 1945 to halt the importation of Rhodesian chrome; however, under a previous order, the Senate will now return to the consideration of S. 2767, a bill to authorize and direct the maintenance of adequate and efficient rail services in the Midwest and Northeast regions of the United States, and for other purposes, which is the pending business.

Mr. MANSFIELD. Mr. President, for the information of the Senate it is the intention of the joint leadership to have the Senate stay in session until this bill is finished today because we are up against a time limitation in seeking a sine die adjournment. I hope Senators will understand.

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

Mr. MANSFIELD. I yield.

Mr. GRIFFIN. As I understand it, the Senator from Maryland (Mr. BEALL) is going to offer an amendment if he gets recognition. On that amendment there is a 2-hour limitation, and on any amendment after that there is a 1-hour limitation.

Mr. MANSFIELD. The Senator is correct.

Mr. GRIFFIN. The Senator from Maryland has stated he may not use all of his time.

RAIL SERVICES ACT OF 1973

The Senate continued with the consideration of the bill (S. 2767) to authorize and direct the maintenance of adequate and efficient rail services in the Midwest and Northeast region of the United States, and for other purposes.

Mr. MUSKIE. Mr. President, in the midst of the energy crisis, we in the Senate today are considering legislation to deal with a crisis of similar magnitude for our Nation—the crisis in rail transportation. Unless the Federal Government acts, the rail transportation network of the Northeast and near Midwest will collapse in the bankruptcy proceedings now in progress. The bill we consider today, S. 2767, the Rail Services Act of 1973, would prevent that drastic

short-term result. I hope it also leads to a long-term future of sound health for our Nation's rail transportation system.

For years, we have ignored the consequences of the deterioration of our rail network. As with other issues of economic development, our transportation growth has been marred by the lack of a sound transportation growth policy. We have ignored the declining health of the railroads, and ignored the consequences of their difficulties—the effect of diminished rail services on our environment, our population growth patterns, and on the future health of our economy.

Under S. 2767, the reorganization of affected railroads would be in the form of a final system plan setting out which rail properties would be continued and which would be abandoned. The plan would be developed by the Department of Transportation with the commentary of a new Railroad Emergency Planning Office within the ICC, within 300 days after enactment. This final system plan would be adopted by the Government National Railway Association. It would then be submitted for approval within 120 days to a new special three-judge court, before which all rail reorganization suits in the region would be consolidated. Congress would have the right to disapprove the plan. Upon approval of the plan, and financing by the Government National Railway Association, the affected railway properties would be turned over to the United Railway Corp. to be operated. The Government National Railway Association would finance the operation through federally guaranteed debt securities up to a limit to be established by Congress.

In addition to the organization of the United Rail Corp. and the Government National Railway Association, the bill provides for a variety of operating subsidies, equipment improvement loan programs, and other measures to aid the rail system. It provides initial emergency assistance to affected railroads, and in guaranteed loans, to carry those railroads through the formative periods; subsidies for rail operations, to be given on a 75–25 matching basis to States who choose to subsidize rail operations which otherwise would be abandoned under the reorganization; guaranteed equipment improvement obligations, to be administered by a new Obligations Guarantee Board in the Department of Transportation; a computerized National Rolling Stock Information System; and a new Railroad Equipment Authority—established as a new Federal independent agency—authorized to fund new rolling stock. The bill also provides for employee protective provisions, to give liberal support to displaced rail employees. The bill in addition contains a worthwhile provision which directs the ICC and Federal Maritime Commission to impose freight rates favorable to recyclable materials and allows the EPA to intervene in such proceedings.

Mr. President, finally, I give my support to an amendment to this bill which would provide for study of a plan for consolidation of all American railroads under a single private corporation. This innovative plan was first advanced by E. Spencer Miller, president of the Maine Central Railroad. The study hopefully will provide us with evaluation of at least one option for a national solution to our rail transportation problem.

I give my support to the Rail Services Act in the hope that it will create a new era of health for rail transportation.

Mr. TUNNEY. Mr. President, today the Senate is considering the Rail Services Act of 1973, a bill addressing the rail crisis in the Northeast. It is apparent that at no time in the history of the Nation has the rail transportation industry been faced with the difficulties it must now deal with. Serious financial problems have threatened the shutdown of seven class I railroads in the Northeast and Midwest region of the Nation. One hundred years of neglect have forced the railroads into a dangerous economic situation in which they simply cannot perform the services which they were designed to render. As a result of this difficult situation, the Senate Commerce Committee has developed legislation which is a major step in saving those class I railroads in the Northeast and Midwest that are threatened with court-ordered shutdown. The bill is, by no means, a complete solution to a problem that never should have occurred but it is a step in the right direction.

The purpose of this bill is not only to meet the pressing needs of the railroads in the Northeast and Midwest, but to prevent the collapse of railroads in the other regions of the Nation by providing loan guarantees which would allow rail systems to improve existing facilities and equipment.

While the bill was still in committee, I asked that the equipment improvement provision be amended to include refrigerator cars in the definition of rolling stock because a shortage of these particular cars has caused losses to the growers of citrus and other perishable crops in California and many sections of the Nation. These losses have resulted in higher prices to the consumer, losses of revenue to the railroads and higher unemployment.

The California Public Utilities Commission has indicated that in 1949, 110,000 ice bunker cars were maintained for shippers of perishables in the United States. This number had declined to some 51,000 in 1971. Carriers will no longer provide ice and it is impossible for shippers to ice cars on a transcontinental movement. As a result, the only cars that can provide protective service are mechanical refrigerator cars and this number has leveled off at approximately 25,000. The railroads have advised the commission that there are no present intentions of constructing any additional refrigerator cars at this time. The commission has issued service orders finding that an emergency shortage with respect to refrigerator cars now exists and that the situation will become worse during the peak harvest seasons commencing in April or May of 1974.

I feel that the equipment improvement provisions will assist railroads in the elimination of this dangerous shortage of cars by allowing them to purchase enough equipment to service the needs of shippers and consumers.

Additionally, I am cosponsoring an amendment by Senator HATFIELD which would direct the Secretary of Transportation to examine the possibility of expanding present Amtrak routes to provide more extensive passenger service. I feel very strongly that we must utilize our most energy-efficient transportation systems as the energy shortage grows. In view of recent curtailments of service by the airline industry and the dwindling supplies of automobile gasoline some means of offsetting the transportation shortage must be found and expanded rail passenger service would assist greatly filling in the gaps created by the energy shortage.

Mr. HART. Mr. President, the Rail Services Act of 1973 represents many months of hard work by the Committee on Commerce and especially by the distinguished chairman of the Subcommittee on Surface Transportation, the Senator from Indiana. This bill represents many difficult policy choices which we hope will result eventually in a viable rail transportation system in the Northeast and Midwest.

One of the most difficult policy choices which was made by the committee was the decision to exempt the Government National Rail Association from the provisions of the National Environmental Policy Act during the formulation and adoption of the final system plan. The critical nature of the rail transportation problems addressed by the Rail Services Act forced us to insure that the timetable for the designation of the final system plan be maintained as closely as possible. Thus, the committee saw fit to prohibit judicial review and exempt GNRA from the provisions of NEPA during the planning process.

However, the bill also recognizes the need to design a rail transportation system in the Midwest and Northeast which meets several environmentally sound goals, including the achievement in the region of ambient air standards established pursuant to the Clean Air Act and the maximum use of those modes of transportation in the region which require the smallest amount of scarce energy resources and of those modes which can most efficiently transport energy resources. The bill also recognizes that abandonment and reduction of rail services "will adversely affect the Nation's long-term and immediate goals with respect to energy conservation and environmental protection."

Because the committee has recognized the necessity of pursuing these and other environmentally sound goals through implementation of the final system plan, I would think that Congress, when considering the adoption or modification of the final system plan, should have sufficient environmental information upon which to assess the degree to which the plan has achieved these environmental goals. This is doubly important because of the NEPA exemption contained in this legislation.

Therefore, I seek assurance that the NEPA extension provided GNRA prior

to adoption of the final system plan does not exempt the Association from the duty of providing Congress with adequate information upon which to assess the probable environmental effects of implementing that plan.

In order to protect the creditors of the railroads in reorganization, we have attempted to avoid time-consuming lawsuits which would prevent the adoption of the final system plan. It is my assumption that the committee intended that the Association provide the Congress with all the information necessary for Congress to assess the environmental impact of the plan in a manner similar to that required of impact statements required by the provisions of NEPA. Can the Senator from Indiana assure me that my assumption is correct?

Mr. HARTKE. The Senator from Michigan is correct. For the Association to present a plan to Congress without the data necessary to evaluate the probable environmental impact of that plan would be a mockery of the process contemplated by this legislation. I agree with the Senator from Michigan that even though GNRA is temporarily exempt from the provisions of NEPA, such information as it provides Congress should be in a form which would satisfy the requirements of that act.

Mr. MAGNUSON. Mr. President, I want to congratulate my colleagues on the Senate Commerce Committee for the intense examination and intelligent resolution of the many complicated issues contained in the Northeast/Midwest rail crisis. The committee, and particularly the Surface Transportation Subcommittee chaired by Senator HARTKE, has worked on the many problems in rail transportation in the Northeast and Midwest for many months, and the legislative product of those efforts is something of which we can all be proud.

While the Rail Services Act of 1973 is primarily directed at problems facing rail transportation in the Northeast and Midwest regions of the country, it is by no means a regional bill. The health of our nationwide rail transportation system is dependent upon a strong and healthy system in the Midwest and Northeast regions. Furthermore, there are a number of problems, such as the continuing and ever worsening shortage of freight cars, not only in the region primarily treated in this legislation, but in all regions of the Nation.

Mr. President, our rail system is truly a nationwide system. The eight bankrupt carriers in the Northeast and Midwest are vital to the economy of the entire Nation. For instance, the Northeast railroads receive over 300 cars a day from the State of Alabama, over 360 cars a day from the State of Georgia, over 520 cars a day from the State of Minnesota, and over 640 cars a day from the State of California. The State of Louisiana receives over 200 cars a day by rail from the Northeast States, the State of Washington receives over 197 cars per day, the State of Texas receives 679 cars a day, the State of Tennessee receives over 562 cars a day, the State of North Carolina receives over 567 cars a day, and the State of California receives over 810 cars per day. A widespread rail transportation crisis in the Northeast and Midwest would most certainly precipitate economic chaos of major proportions in all these States.

Some indications of the effects of a substantial shut-down were demonstrated last month when the Penn Central withdrew some 1,790 miles of track from service because it did not meet minimum standards issued under the Federal Railroad Safety Act of 1970. While the track was withdrawn from service for only a brief period—before a temporary exemption from the standards was granted—hundreds of shippers were affected and an untold number of carloads were unable to move.

The totally unacceptable consequences of allowing the present situation to deteriorate further is well-illustrated in figures developed by the Surface Transportation Subcommittee. This information discloses that cessation of services on the Penn Central alone would have drastic consequences throughout the United States. For example, it has been predicted that a shutdown of the Penn Central would produce a decrease in the rate of economic activity in the region of 5.2 percent, a decrease in the entire Nation of 4 percent, and a decrease in the GNP for the Nation as a whole of 2.7 percent after the eighth week of such a shutdown.

Not only is it clear that the Nation's railroads are interrelated and vital to the economic health of the country as a whole, it is also clear that the ability of railroads to adequately serve shippers, communities, States, and the entire country has been severely hampered by an increasing shortage of freight cars. This is a problem that has faced the regulatory agencies, the railroads, and the Congress for too long.

In fact, the first case to be brought before the Interstate Commerce Commission—docket No. 1 in 1887—was a complaint by wheat farmers in the Dakota Territory that the railroad upon which they depended did not furnish enough cars to move their harvest.

In recent years the shortages of freight cars has been acute and far more widespread than it was in 1887. Class I railroad ownership of freight cars declined from 1,702,016 cars in 1961 to 1,464,613 cars in 1971 despite an increase in traffic of about 35 percent. The trend to larger cars has not kept pace with traffic increases. Larger cars have resulted in the capacity of the railroad fleet increasing only about 4 percent during the period—from 94.8 million tons to 98.4 million tons. The decline in numbers of cars is most concentrated in general services cars, such as gondolas, hoppers, and box cars. Significantly, despite the decline of general service cars, there has been an increase in railroad ownership of special purpose cars. Also, nonrailroad ownership cars—private carlines and shippers—has increased 38 percent, from 255,296 to 350,254, during the decade of the 1960's.

In 1972 the railroads handled more than 780 billion ton-miles of revenue traffic, the highest in history, and freight car shortages were relatively low. However, in 1973, the Nation is experiencing its greatest freight car shortage in history—for example, an average daily shortage of 33,165 cars in the week ending May 12, 1973, and an average daily freight car shortage for the week ending November 3, 1973, of 38,883 cars. This increased shortage, according to a spokesman of the rail industry, is attributed to a vastly increased traffic volume—19 percent higher than 1972.

The shortage of freight cars is a long standing problem of nationwide scope. Shippers are often unable to obtain sufficient numbers of freight cars to move their products. As a result, grain is piled in the streets of Midwestern towns, manufactured goods stack up on shipper's docks, vital coal stockpiles are diminished, and lumber prices skyrocket, in part, because the products cannot be moved to the location of demand for them. Shippers have turned to Congress and to the Interstate Commerce Commission many times for solution of the freight car problem.

The Department of Transportation forecasted in hearings held by the Senate Commerce Committee in 1971 a one-third increase in rail freight transportation between 1971 and 1980. A need for installation of 617,000 cars of 80-ton capacity to meet the demand was estimated. The Department further estimates that an additional 130,000 cars are needed to meet present car shortages. The Department projects that investment of $2.3 billion is required to eliminate the immediate car shortage and that $8.8 billion will be required to keep up with the demands of the future.

Most of the railroads in reorganization could be earning additional revenues and maintaining profitable traffic — which will otherwise travel by other modes—if they could secure an adequate supply of rolling stock and increase the utilization of that rolling stock. The Penn Central, for example, is presently unable to purchase or lease several thousand cars needed by its customers. The recent increase in demand for rail services, which will intensify if coal shipments are increased to meet the energy crisis, will serve only to increase this shortage. For the period January 1, 1973, through April 27, 1973, alone, the Penn Central Transportation Co., lost an estimated $6.48 million in revenues because of inadequate rolling stock supply and utilization.

In light of the increasing severity of the problem and the failure of voluntary efforts of the railroads and regulatory measures by the Commission, a legislative solution is mandatory.

Because of the need for a legislative solution, the Senate Commerce Committee has twice now favorably reported bills to the full Senate designed to deal with the problem. The Senate has passed this legislation twice, most recently on July 24, when S. 1149 passed the Senate by an overwhelming margin.

Mr. President, title V of the Rail Services Act of 1973 is essentially S. 1149, the Rolling Stock Utilization and Financing Act of 1973. Title V addresses not only the

needs of the entire Nation for more freight cars and better utilization of those freight cars, but it has direct application to the severe problems faced in the Northeast and Midwest, where the inability of carriers to secure adequate rolling stock has been most severe. In the case of the Penn Central, freight car availability has been so low as frequently to jeopardize shippers' production schedules, sometimes even to the point of plant shut-downs necessitated by clogged inventory pipelines. The problems arising from poor car supply are even more acute, as a result of the unreliable delivery performance which makes it impossible for shippers to plan effectively for receipt of raw materials.

Thus, there is a very pressing need to increase the number of and utilization of freight cars if the new Corporation created by the Rail Services Act of 1973 is going to be able to better serve shippers in the region and increase its revenues so as to function effectively as a private Corporation.

The most important factor in increasing revenues for the new Corporation will come about through improved and more reliable service provided shippers and other users of the new railroad. Improved availability of freight cars will be provided through loan guarantees for freight car acquisition and improved utilization under the provisions of title V of this act. Car supply will further be improved through better utilization and general modernization and rehabilitation of railroad facilities.

Not only will shippers, consumers, and the entire Nation benefit from title V, but the chances for the success of the new Corporation will be vastly improved.

Mr. PELL. Mr. President, I am pleased to add my strong support today to S. 2767, the Rail Services Act of 1973.

At the outset I want to commend the excellent work accomplished by the Senate Committee on Commerce under the leadership of Senator MAGNUSON, its chairman, and by the Subcommittee on Surface Transportation, under the leadership of Senator HARTKE, its chairman. I have been in close contact with the committee as this legislation has developed over many months of comprehensive hearings and most detailed and constructive labor. The provisions of this legislation are of landmark proportions as we grapple with a rail crisis which seriously affects not only my own State of Rhode Island but the Nation as a whole.

I am especially pleased that S. 2767—under section 206(a)(3)—calls for "the establishment of improved high-speed rail passenger service," as recommended by the Secretary of Transportation in his report to the Congress of September 1971, entitled "Recommendations for Northeast Corridor Transportation." This detailed report and subsequent studies done in this area by the Department clearly demonstrate the need for this improved service—a concept on which I have been working since the beginnings of my first term in the Senate.

Earlier this year I introduced legislation with these specific goals in mind. These goals were contained in my bill, S. 2080, introduced on June 26. In my statement to the Senate on that day I said in part:

An important provision of the bill is that after designating the primary rail passenger transportation corridors in the United States the Secretary of Transportation must establish a project planning organization for each corridor which will determine the need for and the costs of major improvements to rail passenger transportation.

While national in scope this legislation was especially applicable to the crisis in the Northeast—as is the legislation we are considering today, which is also national in its thrust and meaning, and which also contains most important provisions for planning a restructured and improved rail system and for the designation of costs.

On November 20 of this year I was pleased to cosponsor three amendments to the then pending legislation. Sponsored by Senator KENNEDY these amendments called special attention to the Secretary of Transportation's report of September 1971 and called for its implementation.

I am indeed happy that the "Final System Plan"—as prescribed by S. 2767—will be "formulated in such a way as to effectuate" the implementing of high-speed rail passenger service in the Northeast.

Mr. President, my concern for this improved service goes back more than 11 years. In June of 1962 I introduced Senate Joint Resolution 194 which called for improved rail passenger service in the Northeast corridor. This concept led to the establishment 2 years later of the Northeast corridor transportation project in the Department of Commerce, to the High-Speed Ground Transportation Act of 1965, and to the inauguration of today's Metroliners and TurboTrains. Dr. Robert A. Nelson, now a professor at American University, directed the Department project and earlier studies and research, which created such an important foundation to our present deliberations. His abilities, knowledge and vision merit our praise as we consider today's legislation.

These new trains, however, cannot serve our people effectively unless we place a new emphasis on their improvement and on urgently needed improvement to their rights-of-way and the tracks they travel.

Especially today, in terms of the energy crisis we face and in terms of the need to protect our environment from pollution, improved rail service is of urgent importance. An electrically powered passenger train, per seat mile, consumes up to four times less energy than the automobile or airplane. And in terms of pollution the passenger train emits, on a comparable basis, only one-twenty-seventh of the pollutants involved in highway travel by buses and automobiles.

Moreover, as I pointed out in a statement to the Senate on November 20, improvements in rail passenger service can more than pay for themselves in increased revenues. As Department of Transportation studies show, if we project improvements which would provide 5-stop rail passenger services in 2½ hours between Washington and New York, and 4-stop service in 3 hours between New York and Boston, we can expect a surplus of revenues over operating costs and annualized expenses for the capital improvements involved of approximately $40 million per year by 1985. Projecting a 30-year timespan, that surplus would approximate $75 per year.

In this respect the funds utilized would prove a most sound investment, and I believe this funding should become available at the earliest possible time.

I also wish to address in these remarks title VI of the bill we are considering. This title is concerned with the proper protection of labor in view of the extensive restructuring contemplated in the legislation.

Mr. President, the provisions of title VI are the result of most careful and lengthy deliberations in the Senate as well as in the House. They represent the best views of all concerned. The Senate, in the adoption of these provisions, would not set a precedent which might have unfortunate implications for the future, as some opponents have maintained. As one example, Congress has provided wage assistance and retraining for our coal miners in the past, with such assistance now amounting to a total of more than $2 billion.

Were we to alter the provisions in title VI, were we to limit the time for adjustments to take place, we would indeed be setting an unfortunate precedent. We would be inviting labor-management difficulties at the very time when a well-conceived transition would take place.

This bill has the support of both labor and management. Both sides have deliberated together. Both have reached basic agreements reflected in this legislation.

As one who has long worked for appropriate protection of our working men and women, I endorse those provisions. I believe they are in the national interest. Certainly they reflect the views expressed by my constituents in Rhode Island.

It should be emphasized that the United Rail Corporation, to be established by this legislation, is granted freedom in the possible transfer of employees and allocation of work. In this respect, the representatives of railroad labor who worked with the Congress on the development of this legislation deserve our commendation in their cooperative efforts to give the Corporation added opportunities for success.

I believe that success can be achieved, and that in the future we can look forward to the increase of jobs among railroads, rather than to a diminishing of employment. But it will take time and maximum flexibility is needed.

Mr. President, revitalized and, above all, improved rail service is essential to a well-balanced transportation system. It is in keeping with my own long-expressed beliefs. As an efficient, energy-conserving, relatively safe, relatively nonpolluting, all-year-round mover of passengers and of goods and services, high quality rail transportation will have a key role in our Nation's future.

The realization of this role is implicit in this legislation, and I urge its passage and speedy enactment into law.

Mr. BUCKLEY. Mr. President, for more than 2 years, it has been apparent that Federal legislation is necessary to remove the bureaucratic chains that have prevented major railroads in the Northeast from recovery and reorganization under present laws and through private financial sources. It cannot be denied that bad management has contributed heavily to the present state of affairs. Yet to point out the obvious shortcomings of railroad management is not the same as relieving the Government of its major share of the responsibility for the railroads' troubles. Government intervention created the atmosphere in which managerial competence could flourish while discouraging innovation.

The backbone of our free enterprise system is competition. Such competition between and within modes of transportation is desirable and should be encouraged. But the Interstate Commerce Commission's interference, resistance to rate increases, and resistance to innovation completely thwarted the railroads' attempts to compete. The Federal Government poured billions into fostering overwhelming competition for the railroads through subsidization of the national highway system and the airway system and supporting the inland waterways with $250 million annually. The railroads not only could not compete, but were in effect limited to freight and passengers that other transportation systems did not find it expedient to carry.

There is, Mr. President, irony in the fact that it has become very popular in recent months to view rail transportation as the most efficient and economical transportation available in terms of cost and energy. Most environmentalists assess railroads as the only logical means of satisfying transportation needs while achieving air quality goals.

Those concerned with national security look to railroads as the only transportation capable of coping with massive freight movements in times of national crisis. The energy crisis has alerted the public to the majestic powers of the locomotive in comparison to the fuel consuming diesel tractor trucks. Increased dependence on our abundant coal resources for energy needs has handicapped the need for a healthy system of rail transportation. It is, as I said, ironic, that at the very time it has become clear that rail transportation is crucial to the survival of this Nation, there is a threat that a major portion of the rail service in the Northeast might collapse. The crisis, like so many others, is not due to government neglect, because the Northeast railroads could have survived neglect, but to incentive-stifling government involvement over a period of years.

Through the sixties the U.S. Post Office systematically diverted mail away from passenger trains to the airways and other means. The result of such a policy was that by 1968 the Penn Central's annual revenues were reduced by $32 million. Penn Central attempted to absorb 1,000 mail handlers rather than spend the required $14 million to pay them off, but the U.S. Government did not accept any responsibility for hardship it imposed by its actions. It was not the first or last time the Federal Government would refuse to face squarely the accumulating labor problem of the railroads. The Penn Central was further saddled with millions of dollars worth of useless mail-handling equipment. To add to the dilemma, the Interstate Commerce Commission refused to approve any reductions in the scheduled passenger trains which became unprofitable without the sustaining mail revenues.

Under the guise of protecting the public interest, the ICC studied the feasibility of the Penn-Central merger for 5 years, finally giving approval contingent on the inclusion of the bankrupt New York, New Haven and Hartford in the plan. The New Haven had lost $22 million the previous year even though taxes and credits were suspended under bankruptcy laws. Another $22 million expenditure was forced on the Penn Central because the New Haven's equipment was badly in need of repair. This ultimatum from the ICC not only drastically weakened the possibility of the Penn Central merger producing a viable railroad but was the main contributing factor to the bankruptcy of the Lehigh and Hudson River Railroad, a well-managed class II Railroad that was not encumbered with any mortgages or bonded indebtedness.

The inclusion of the New Haven in the merger made it economically expedient for the Penn Central to divert freight traffic to the New Haven Railroad through the congested terminals of New York City and away from the Lehigh and Hudson's efficient and inexpensive bypass to the metropolitan area.

ICC has delayed decisions on rate increases for at least a year and often longer. The railroads were accustomed to governmental obstruction when seeking increases, but when innovation offered opportunities to reduce rates or increase efficiency, the ICC was even slower to agree. The Southern Railway developed a taller freight car designed to carry larger amounts of grain more cheaply. Final approval from ICC was withheld for 4 years. This bureaucratic sluggishness has made it virtually impossible for railroads to cope with working costs and competition.

Excessive taxation has also taken its toll on the profitability of the railroads. Twenty percent of rail revenues are used for taxes and right-of-ways while other modes of transportation pay 5 percent and less.

Thus, there is overwhelming evidence that makes it clear that government bureaucracy and intervention sapped the strength of the railroads with the very tools which were enacted to protect the public interest. The potential calamity we are attempting to avoid with the legislation now under consideration can be traced ultimately to unwarranted government interference.

It staggers the imagination to contemplate the chaos that would result should the bankrupt railroads in the Northeast and the Midwest cease operation. One can easily appreciate the disastrous effect that a shutdown of General Motors and Ford would have on the Nation. The predicament facing thousands of farmers and commercial and industrial firms in New York that are dependent on shipments by rail is equally great. The "domino effect" would jeopardize many firms and farmers throughout the Nation as well as leaving many profitable railroads stranded. Stoppage of shipments of coal to powerplants would cause whole communities to be without electricity.

The Rail Services Act of 1973, now under consideration, demonstrates that the Congressmen and Senators who have wrestled with this dilemma and who have studied proposal after proposal from nationalization to liquidation, recognize the root causes which sent seven railroads into bankruptcy with four of those seven requesting permission to liquidate. By insisting that the proposed rail corporation operate at a profit and finally take its place as a free, privately owned member of the business community, this bill accepts the premise that the railroad business, like any other business, must be free to function like a business.

If the railroads are to have a chance to survive, however, they must be assured an adequate source of capital. The bankruptcy of the Penn Central dramatized the institutional problems faced by railroads, thereby totally discouraging private investment in all railroads. The 2-year delay in congressional action dried up capital investment in railroads to the degree that loans could not be obtained even when unmortaged equipment was offered as collateral. The Rail Services Act provides guaranteed loans to all railroads threatened with insolvency and encourages an increase in rolling stock. These provisions will not only provide capital but will assist in creating the climate of confidence needed to stimulate a cash flow from a multitude of private sources to the railroads.

This legislation effectively provides an opportunity for threatened communities to present evidence in opposition to abandonment but also sets reasonable time limits on the proceedings. When abandonment is approved, there will be adequate notice before service stops. During that time, it will be possible for individuals, companies, local communities and States to purchase lines which they consider to be essential to the economic welfare of an industry or a community. There is also provision in the Rail Services Act for the buyers to apply to the Secretary of Transportation for a 75 percent subsidy to assist in continued operation of lines abandoned by the new core system.

I am particularly pleased that the Senate Commerce Committee has taken great care to insure that the final core rail system does not impinge on the ability of the Delaware & Hudson to continue its independent existence as a profitable railroad; and now it has provided the Erie Lackawanna and the Boston & Maine, sufficient time to prepare court evidence of their independence to relieve them from participation in the new corporation. The protection of these railways can provide a reasonable

amount of rail competition in the Northeast.

This is legislation that can offer some chance for salvaging a viable privately operated rail system out of the complex of bankrupt railroads, consistent with the free enterprise theories so fundamental to the success of railroads throughout the Nation.

Unfortunately, however, the bill incorporates labor provisions that should be the subject of the gravest concern. The Congress ought not to be legislating labor settlements. Furthermore, the precedent that would be authorized by compensating at full pay until age 65 employees who have as little as 5 years' service will come to haunt us. It has been pointed out that the agreements included in this legislation are less costly and less protective than those which labor demanded from the Penn Central, at the time of the merger. But it must be remembered that Penn Central was prepared to offer generous settlements in return for union support for the merger. It seems to me the Beall amendment offered a responsible alternative. It would have allowed the management of the new corporation and the employees to have reached a settlement, and it would have provided the Federal funding for benefits, up to $250,000,000, required to insulate the new corporation from a crippling overhead cost. But for the urgency of solving the Northeast railroad crisis, and the need to give the new corporation every opportunity to be relieved of excessive financial burdens to insure its ability to become solvent and profitable, I would oppose this bill sheerly on the basis of the proposed employee benefit program.

However, Mr. President, the immediate benefits that will accrue to the people of the Northeast and to the Nation outweigh the obvious drawbacks incorporated into the bill. I, therefore, intend to support the Railroad Services Act of 1973 and urge my colleagues to do the same.

AMENDMENT NO. 823

Mr. BEALL. Mr. President, I call up my amendment No. 823 and ask that it be stated.

The PRESIDING OFFICER (Mr. McCLURE). The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

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

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

The amendment, ordered to be printed in the RECORD, is as follows:

On page 129, line 20, strike all through page 150, line 25, and substitute in lieu thereof the following:

"EQUITABLE PROTECTION ARRANGEMENTS

"SEC. 601. (a) GENERAL.—The Corporation or an acquiring railroad shall provide fair and equitable arrangements to protect the interests of employees affected by the transfer or conveyance of rail properties to the Corporation or such an acquiring railroad pursuant to this Act. The term 'acquiring railroad' means a railroad, except the Corporation, which seek. to acquire or has acquired, pursuant to the provisions of this Act, all or part of the rail properties of one or more railroads in reorganization, the Corporation, or a profitable railroad. The equitable arrangements required by this subsection shall be contained in contracts between the Corporation or an acquiring railroad and the duly authorized representatives of such affected employees and shall be extended to all affected employees who are represented by such duly authorized representatives.

"(b) PRINCIPLES AND CERTIFICATION.—Such protective arrangements shall include, without being limited to, such provisions as may be necessary for (1) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) to such employees under existing collective-bargaining agreements or otherwise; (2) the continuation of collective-bargaining rights; (3) the protection of such individual employees against a worsensing of their positions with respect to their employment; (4) assurances of priority of reemployment of employees terminated or laid off; and (5) paid training or retraining programs. Such arrangements shall include provisions protecting individual employees against a worsening of their positions with respect to their employment which shall in no event provide benefits less than those established pursuant to section 5(2) (f) of title 49, United States Code. No conveyance under section 303 of this Act may be made unless the Secretary of Labor has certified to the Corporation or an acquiring railroad that the labor protective provisions required by this section afford affected employees fair and equitable protection. The Secretary of Labor shall certify that affected employees of a railroad have been provided fair and equitable protection as required by this section prior to the submission of the final system plan to Congress under this Act.

(c) CONSTRUCTION CONTRACTS.—The Corporation shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors and subcontractors in the performance of construction work under any contract or agreement entered into under this title shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. The Corporation shall not enter into any such contract or agreement without first obtaining adequate assurance that required labor standards will be maintained on the construction work. Health and safety standards promulgated by the Secretary of Labor pursuant to section 333 of title 40, United States Code, shall be applicable to all construction work performed under such contracts or agreements, except any construction work performed by a railroad employee. Wage rates provided for in collective-bargaining agreements negotiated under and pursuant to the Railway Labor Act, shall be considered as being in compliance with the Davis-Bacon Act.

"(d) CONTRACTING OUT.—The Corporation shall not contract out any work normally performed by employees in any bargaining unit covered by a contract between the Corporation or an acquiring railroad and any labor organization, if such contracting out shall result in the layoff of any employee or employees in such bargaining unit.

"(e) AUTHORIZATIONS.—The Corporation and acquiring railroads, as the case may be, shall be responsible for the actual payment of all allowances, expenses, and costs, provided protected employees pursuant to the provisions of this title. The Corporation and acquiring railroads shall then be reimbursed for such actual amounts paid protected employees pursuant to the provisions of this title by the Railroad Retirement Board upon certification to said Board by the Corporation and acquiring railroads of the amounts paid such employees. Such reimbursement shall be made from a seperate account maintained in the Treasury of the United States to be known as the Regional Rail Transportation Protective Account. There is hereby authorized to be appropriated to such Protective Account annually such sums as may be required to meet the obligations payable hereunder, not to exceed in the aggregate, however, the sum of $250,000,000. There is further authorized to be appropriated to the Railroad Retirement Board annually such sums as may be necessary to provide for additional administrative expenses to be incurred by said Board in the performance of its functions under this section.".

On page 151, line 2, strike "610", and insert in lieu thereof "602".

On page 151, line 13, strike "611", and insert in lieu thereof "603".

On page 152, line 10, strike "610 and 611", and insert in lieu thereof "602 and 603".

Amend the table of contents on page 3 accordingly.

Mr. ROBERT C. BYRD. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order.

Mr. BEALL. Mr. President, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. BEALL. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator has 1 minute.

Mr. BEALL. For the information of Senators, I do not believe this amendment will take the allotted time. Therefore, Senators may plan their afternoon and govern themselves accordingly.

I yield myself 15 minutes.

As I stated in my earlier remarks, S. 2767 represents urgently needed and carefully conceived legislation. It has my enthusiastic support. The bill is of critical importance not only to the region involved but to the entire Nation. Just as the railroads of the region are inextricably linked with the other railroads of the Nation, I believe the action we take in the Senate on this legislation cannot be viewed in isolation.

I must, therefore, call to the Senate's attention my strong reservations regarding the bill's labor protective provisions and urge the adoption of my amendment. While I agree, as I feel certain my colleagues do also, that it is essential that displaced workers be provided fair and equitable treatment, the labor protective provisions in the Senate bill are unwise from a public policy standpoint, overly generous in terms of their benefits, unprecedented, and discriminatory to other railroad employees and to employees in other industries who lose their jobs.

This bill guarantees any adversely affected railroad employee, with more than 5 years of service, his current income, including fringe benefits and overtime pay, up to $30,000 annually until age 65. The bill also includes an escalator clause so that the guaranteed lifetime wage will be increased to reflect "subsequent general wage increases." Furthermore, protected employees, who secure nonrail positions, would only have to deduct 50 percent of their earnings from such employment.

Thus, Mr. President, if a 26-year-old telegrapher with 6 years of service, who

earns $12,000 annually is displaced in implementing the new system, he would receive an allowance to make up for the full amount of his lost income and fringe benefits up to $1,000 per month. If he were to take nonrail employment, he would only forfeit up to 50 percent of his earned income. Thus, he would receive a Federal allowance, so long as his income from nonrail employment was less than $24,000 annually.

If a mid-management employee, earning $30,000 per year were furloughed, he would still receive an allowance so long as he received less than $60,000 from nonrail employment. These figures incidentally, would increase over years with increases in the cost-of-living and future collective bargaining agreements.

In all fairness, it should be pointed out that many workers who are adversely affected through the natural process of early retirement, attrition, et cetera, would probably regain their former status in a period of 5 to 6 years. At least, this was what we were told in the hearings; however, no one is in a real position to give any assurances that this would happen.

Thus, by any standards, the displacement benefits are generous and extraordinary. The generous benefits provided go far beyond protection available to employees of other industries, and beyond that we have heretofore provided other railroad employees.

First, with respect to other industries. The energy crisis will mean disruption to our economy and displacement of employees. Our response for these employees was to provide an additional 2 years of unemployment compensation, not salary.

What about the Federal employees displaced as a result of the closing of certain military and other Federal facilities?

What about the aerospace industry employees on the west coast and elsewhere displaced as a result of the Federal decision not to proceed with the SST and other aerospace and defense projects?

What about the employees of the major automobile companies being furloughed in Detroit and elsewhere resulting from the change in our economy as a result of the energy crisis?

What about the employees in the heartland of the country laid off because of the lack of fuel for general aviation?

What about the many gas station operators who face not only a reduction of their income, but also the wiping away of a life investment because of gas not being available?

What do they get? The answer for the most part is unemployment compensation. The Federal-State unemployment compensation pays on the average only 50 percent of the displaced worker's pay for periods ranging from 20 to 36 weeks.

Thus, our Federal employee at a Rhode Island defense installation will receive between $82 to $102 maximum weekly benefits.

Our aerospace employee in California will receive a maximum of $90 weekly; in the State of Washington a maximum of $81; our employee with the Nation's motor industry in Michigan a maximum of $56 to $92; our employees with a private aircraft corporation in Kansas a maximum of $73.

In addition, Mr. President, there have been furloughed in my State railroad employees in my home area of Cumberland and elsewhere from the railroads. These employees will fare better than other industries, since railroad employees already enjoy the best statutory job protection in the Nation. Under the Railroad Unemployment Insurance Act, two-thirds of the employee's pay—as contrasted to 50 percent under unemployment compensation—for a maximum period of 52 weeks—as contrasted with 20 to 30 weeks under unemployment compensation—is provided.

These railroad employees and the employees of other industries will receive nothing like the lifetime protection provided under this bill.

It is worth noting that the employee protection provided to railroad employees displaced under title V of this bill differs substantially from the other labor protective provisions provided to employees in the Northeast region.

For the life of me, I do not know how to answer the employees of other railroads and other industries when they say, "why this discriminatory treatment?"

I am aware of the special relationship the Federal Government has with the railroad industry, and it might be useful to explore the previous legislation and agreements in this area.

Over the years the basic protection of railroad employees who were adversely affected by mergers and abandonments was provided in a combination of voluntary agreement known as the "Washington Agreement of 1936" and regulations of the Interstate Commerce Act. The Interstate Commerce Commission is required, under section 5(f)2), before approving a merger, to find that a fair and equitable arrangement, including employee protection for at least 4 years against adverse effects, is included.

The Washington Agreement was a voluntary agreement entered into by all of the railroad unions and most of the railroad industry. It provides for 5 years of protection, but guarantees only 60 percent of lost income. Through a number of court decisions and ICC regulations, the provisions of the Washington Agreement and the ICC regulations were interwoven and made applicable to abandonments as well as mergers. It is true that on occasions individual voluntary agreements have gone further, the most important example of which is the Penn Central merger, which provided lifetime job protection to the existing employees. However, none of the merger rules or agreements involved federal financial contribution, and this is an important distinction to keep in mind.

Where Federal funding has been provided, such as in the urban mass transportation legislation and the Amtrak law of 1970, the approach has been to require fair and equitable protection arrangements to be worked out by the parties, subject to the approval of the Secretary of Labor. Thus, it is obvious that the labor protective provisions in the pending measure go far beyond any provision that the Federal Government has underwritten in the railroad or other fields of endeavor.

The amendment I offer for title VI of S. 2767 will in no way invoke hardship on the employees of the bankrupt railroads who may be displaced by the restructuring process authorized by this legislation. However, my amendment will, if accepted, save the Congress from establishing the very dangerous precedent of legislating detailed collective-bargaining agreements.

Let me take a moment to amplify on the perilous course we will take if the employee protection title of this legislation is passed in its current form. Were it not for the rather unique way in which this title VI was written and then handed to our committee, I believe most of my colleagues would agree that, both as a general proposition and in this instance, it would be desirable for Congress to legislate principles, and leave to the parties in interest the negotiations of the specific terms. In previous instances where we have addressed difficult and complex labor-management issues, we have followed this guideline and have not succumbed to the pressure to imbed every detail into the law. Now we are very close to doing just that in this legislation.

If we pursue this course, what will be the probable outcome?

First, as I have indicated, we will have treated one small group of our society in a much different manner than we treat all of the others. Therefore, we can expect cries of discrimination and, at the very least, increasing pressure to write similar detailed protection provisions into laws covering all other industries. We will find ourselves engrossed in what are rightfully labor-management negotiations in an area in which the Congress is ill equipped to participate. We will find ourselves trying to serve as a continuing mediator in every future negotiation on these matters.

Second, we must recognize that once we have legislated these detailed agreements, which certainly will require amendments in the future, we must be prepared to enact further legislation every time a change is to be made. Thus, Congress will also assume the role of having to act as a continuing arbiter as the parties bring disputes back to us for resolution.

Finally, and this is perhaps the crux of the matter, we will have preempted the right of collective bargaining to ourselves and effectively will have taken that right away from labor and management, where it has resided until now. I do not believe that any responsible member from labor or management would sit still for that to happen.

Why, then, are we about to embark on such a course? Well, it is a very interesting story and is a result of activities which took place entirely outside the framework and debate during the development of this legislation. In this instance, representatives of the rail-labor organizations and representatives of the management of two profitable railroads—the Southern and the Union Pacific—voluntarily got together to work out an agreement on the type of em-

ployee protection which they thought should be included in this legislation. Of course, neither side in this negotiation cared to bear any of the costs of such labor protection and their negotiations were thus freed from the usual cost constraints imposed on a normal labor-management negotiation.

Now, it is not difficult for management and labor to reach agreement if neither party has to pay the bill. This was a two-party agreement, with the third party, the taxpaying public, unrepresented yet footing the bill.

The benefits involved insofar as I know, far exceed that offered by the management of the railroads who negotiated the agreement, or for that matter, any other railroad in the country.

Now, I wish to clear that I believe that Southern's and Union Pacific's presidents, as well as the labor representatives, who negotiated, with the encouragement of the administration, are to be commended for the time and effort they devoted to helping solve the Northeast rail crisis; but I am concerned notwithstanding this good faith effort, that the precedent we would be establishing in mandating the specific settlement by legislation, is an unwise one.

With the agreement signed by these nonrepresentatives of the taxpayer, first the House of Representatives and then our committee were told, in fact virtually ordered, not to change one word of this document, but simply to rubberstamp it into law. And so far, that is what has been done, with the exception of a few minor amendments made by our committee. For some reason, in the haste to produce legislation to solve the Midwest and Northeast rail crisis, we have allowed ourselves to lose sight of the longer term issue of whether it is in the best interest of this Nation to start down the path toward legislated labor agreements. I, for one, hope that today we see the error in this course of action. We can still provide basic guidelines for employee protection in this legislation which would be satisfactory and lead to a fair and equitable agreement for all parties concerned.

I urge you to support the amendment which I will now briefly describe and put us back on the track as legislators, not labor-management negotiators.

My amendment is simply a straightforward substitution of the employee protection language contained in the Rail Passenger Service Act of 1970—Amtrak—plus authorization for a substantial Federal payment of $250 million for payment of protection costs. This funding would be available to cover the costs of whatever protection agreement is finally negotiated by the rail labor organization and the management of the new corporation or an acquiring railroad.

The amendment states that the corporation or an acquiring railroad shall provide fair and equitable protection arrangements to all employees of the railroads in reorganization. It contains guidelines on what shall be included in these protective arrangements, covering several areas, the most important of which is a guarantee that an employee shall not be forced into a worse position than that he holds on the date of enactment of this legislation. Furthermore, no conveyance of rail properties can take place under this legislation until the Secretary of Labor has certified to the new corporation or acquiring railroad that the labor protective provisions negotiated by the parties in interest are fair and equitable.

The remainder of the language of the amendment is identical, to the extent practicable, with the 1970 Amtrak Act; when the Congress dealt with the labor protection issue in 1970 it chose this approach rather than attempting to iron out all of the details in the legislation. I strongly recommend that we choose this same approach in this case. Labor and management can then negotiate an agreement with $250 million Federal support which can be the same as the existing title VI language or better, if they so wish, but the resulting agreement will have been arrived at through the normal collective bargaining process in the private sector, not as a legislated "tablet of stone." The results for the displaced employee can be exactly the same, but the long-term result—as precedent for future Congresses—will be immeasurably better.

In closing, I would like to emphasize that I am very much in favor of fair and equitable employee protection, and in this case, substantial Federal payments of these costs. But I do strongly oppose the contention that the employee protection provisions which were negotiated outside the congressional arena should be written in a Federal statute without change simply because they generally—not entirely—follow established practice in the rail industry.

We are dealing here with a situation where the Nation's taxpayers will be footing the bill, not the shareholders of profitable railroads. If we begin to extend such a practice to other industries, we will soon find ourselves a welfare state, and I fear the incentive to work will be eroded away completely. We should consider what the total bill will be if we had agreed to statutory lifetime income protection at full salary for the aerospace industry, or for a reduction in force by the Federal Government, or for layoffs due to the energy crisis. Our objective should be to set forth basic principles and guidelines for the protection which should result from labor-management negotiations once the new railroad is designed. The Congress should not forsake its responsibility for protecting the interest of the taxpayer by simply accepting without question the overly generous protection package agreed to by parties who have nothing to lose and everything to gain by the commitment of Federal funds for this purpose.

By adopting my amendment, we would be following the general and desirable principle of having Congress legislate general provisions rather than the specific terms of the negotiations. Let us not enact specific agreements that erode the free collective bargaining process. This agreement in the bill would be legislating without the new management's participation; the next agreement could be done without labor's consent.

I believe that the Senate bill for the most part represents improvement over the House provisions. The Senate can also improve the labor provisions, as well as maintaining our position of both charity and independence by adopting the amendment I have offered. I urge the adoption of the amendment.

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

Mr. BEALL. Mr. President, I yield to the Senator from Kansas.

Mr. PEARSON. Mr. President, I would like to join in a colloquy with the distinguished Senator from Maryland and remind him that in the early days when we had identified the problems and were seeking so desperately to find some solution, I think that the Senator from Maryland was one of the first to recognize the responsibility of all of us to provide a framework which would in turn provide for fairness in the matter of labor problems, so to speak. The idea of consolidating the many railroads and, of necessity, arbitrarily setting forth a core system meant a great deal more than just an abandoning of some lines and some freight terminals and some old, dilapidated equipment.

It dealt with a very human problem, and that was the problem of the railroad workers and how we should accommodate ourselves to the many people who had chosen this profession and had served so honorably and well in it for so many years.

In all of those discussions, the Senator from Maryland was in the forefront, seeking fair and equitable labor provisions.

I think, as I understand the point that the Senator is making, it is just as in the amendment that the Senator from Maryland and I submitted in the closing days of July. In that instance, the corporation was not only to negotiate with the Government the acquisition of roadbeds, but also to negotiate a favorable and fair labor determination. I think this is sound policy.

I think the Senator's amendment is most generous—$250 million to go in and to work out a settlement. I think that under those terms it could be even more favorable than the Amtrak agreement.

So I commend the Senator for his work, not only with respect to this amendment, but also in trying to put the pieces together. He has treated with great sensitivity and concern those who are in the railroad unions.

I think this amendment would be better policy. I think that in the long term those affected by it will find this arrangement to be a better means to set a precedent.

All of the industry—all of those who are concerned with this problem—desire not only some solution; but if one would speak to the railroad presidents or those in management, we would find, when we got to the dotting of the "i's" and the crossing of the "t's" of this particular legislation, they were concerned about the sort of precedent we are setting for their problems in the years ahead.

I commend the Senator. I think he has

offered a fair and equitable amendment. I intend to support it, and I hope that the amendment will be adopted.

Mr. BEALL. I thank the distinguished Senator from Kansas for his generous support. The Senator has long been a leader in this particular field. He is very knowledgeable in the problems of the railroads, and particularly knowledgeable about how labor and management should interact on agreements that are satisfactory to both parties.

In this instance, he is most correct. We can, under my amendment, come up with the same provisions as a result of negotiations between the parties. Labor can fare just as well financially for its membership as they have in the bill. In the long run, they will have fared better, because they will have the credit of Congress at the collective bargaining table.

The Senator is correct in saying that we would do an injustice if they had to come back and seek amendments to this particular collective bargaining agreement.

Mr. FANNIN. Mr. President, will the Senator yield 5 minutes to me?

Mr. BEALL. I yield 5 minutes to the distinguished Senator from Arizona.

Mr. FANNIN. Mr. President, first of all, I commend the distinguished Senator from Maryland for offering what I think will be a worthwhile amendment. It will help considerably in correcting some of the inequities in the proposed legislation.

It is extremely important that the Senate and the American taxpayer realize what is being proposed to remedy the critical rail transportation situation with which we are now faced. We are being forced to act with a gun at our head; namely, the breakdown of rail transportation in the Northeast section of our country and a court threat to shut down operations entirely.

The properties of bankrupt railroads are to be put into a new quasi-public railroad corporation at a cost about which no one can now even make an informed guess.

It is claimed that the new railroad corporation will be an economic success. I have not heard any financial expert say that the corporation's stock would be a good buy.

However, my greatest objection to the bill is to title VI, the employee protection sections. Here, the committee has gone into the minutest detail in spelling out the protections and benefits for the displaced employees. They are to be given separation pay, retirement benefits, and working conditions which no profitmaking railroad has in its union contracts. True, the bill contains a ceiling of $250 million, but I am confident that this is only a beginning, and that we will later be asked to double or triple that amount in order to carry out the requirements of this title.

Mr. President, title VI reads like the first demands of a union going into bargaining with an employer.

Take the case of the employee who elects to be transferred: If he changes his residence he is entitled to all expenses of moving his household, transportation for himself and family, and living costs for 10 days. If he owns or is purchasing a home, he will be reimbursed for any loss suffered from the sale of his home. If he is renting a home he will secure the cancellation of his lease. In any event, he does not have to transfer unless it is to a job of his particular skill. Mr. President, these are matters of collective bargaining, and the whole title VI should be eliminated from the bill and left to just that.

Mr. President, I feel that employees who have given a part of their lives to learning their craft and who have been entrusted with the lives of passengers and the movement of freight should not be thrown on the unemployment scrap heap. I fully realize that many of their jobs involve danger and their wages reflect that fact. But there is a limit to how far we should go in permitting a raid upon the public purse, a limit upon what the taxpayer should be required to pay. I just cannot go along with treating the displaced railroad worker better than we treat a retiring member of the U.S. Supreme Court.

Mr. President, I do not know how the Northeast railroads got into their present position of insolvency. I have heard it blamed upon poor management—upon too much competition because of too many duplicating tracks—upon institutional creditors and upon Congress itself. I submit that the railway unions must share a part of the blame. How many years did we hear about the refusals of the unions to permit the elimination of firemen on diesel locomotives? For the past several decades, I have witnessed recommendations of emergency boards named by the President accepted by railroad managements and turned down by the unions. Insistence upon workrules which bear no realistic economic basis has played a part. For many years we saw 100-mile limitations upon train crew operation which made no sense after the speed of trains was greatly increased by improved equipment. Are we now to reward them for their refusals to share in the elimination of uneconomic practices?

Protecting the well-being of the railroad employee should be considered as a social cost payable by the Government rather than a burden upon the new corporation. However, title VI goes far beyond what is necessary to provide adequate labor protection. It places the railroad employee in a far better position than his colleagues in other industries. An employee with more than 5 years' service can receive a monthly displacement allowance for the rest of his working life, in other words, a guaranteed annual income.

As a matter of personal interest, I have checked the law upon retirement of Supreme Court Justices. I find that if a judge resigns after age 70 and after serving 10 years, he receives the salary he was receiving when he retired. If the judge retires after age 65 years, he must have served on the bench for 15 years. If a judge retires under a proven disability and has served less than 10 years, he receives one-half of his salary—United States Code, title 28, chapter 17, section 371.

Mr. President, take an extreme example: A man goes to work for one of these insolvent railroads at age 20. He is laid off at age 25. He is not offered any job by the new corporation. He can receive his monthly compensation for the next 40 years. Of course, if he secures employment elsewhere the amount of his earnings is deductible, but we have surely reduced the incentive for him to look for work.

Take another example: A man in his middle age who has reached the top of his grade skill. The only limitation on his displacement allowance is $2,500 per month, "except that such amount shall be adjusted to reflect subsequent wage increases." Thus, he could receive $30,000 per year and more if there is a wage increase.

Another example, a protected employee decides to resign and the corporation agrees, having no job for him. He then receives a separation allowance in a lump sum not to exceed $20,000. In the same subsection, we find that there are also allowances for employees of less than 5 years.

If he has not less than 3 years of employment, he receives an amount equal to 275 days' pay at his then rate, provisions for allowances for employees with 2 to 3 years' service; 1 to 2 years' service; and less than 1 year's service are spelled out in the bill.

Mr. President, I could go on with examples for an hour but little purpose would be served. I do want to raise the case of the protected employee, who elects to resign. As I read the bill he will be entitled to the bonus up to $20,000 even though he has secured employment elsewhere at a wage higher than he was receiving from the railroad.

Mr. President, I have no amendment to offer at this time. I understand several amendments to title VI will be offered by other Senators. In my opinion, we should strike out title VI in its entirety and leave the matter to collective bargaining with a dollar ceiling upon what the new corporation may spend.

Mr. President, Mr. BEALL the Senator from Maryland's amendment accomplishes that objective and I wholeheartedly support his amendment.

Mr. CLARK. Mr. President, will the Senator from Maryland yield for a very brief question?

Mr. BEALL. I am happy to yield to the Senator from Iowa.

Mr. CLARK. Is there any assurance that this amendment would cost the taxpayers any less than the bill itself?

Mr. BEALL. My amendment provides a flat $250 million. The bill itself authorizes the expenditure of $250 million, but it does not put a limit on it.

In other words, the agreement could cost more, and they could come back in following years, and we would be forced to pay whatever amount of money is required to be paid by this agreement which we are legislating.

My amendment would say, "Here is $250 million; go enter into an agreement that costs no more than that."

Mr. CLARK. So the bill at present, according to the Senator's understanding, does not impose a $250 million limit?

Mr. BEALL. No. It provides an appro-

priation of $250 million, but future expenditures are unlimited.

Mr. CLARK. But it would take further action by Congress to make them?

Mr. BEALL. It would require further authorization and appropriation by Congress, but Congress would have its hands tied, because Congress in this instance would have enacted a collective-bargaining agreement on which it commits itself to fund expenditures should they be required.

Mr. CLARK. I thank the Senator.

The PRESIDING OFFICER. Who yields time?

Mr. HARTKE. Mr. President, I yield myself 2 minutes on this issue.

To clear up the issue, under the bill there is an authorization of $250 million which Congress would require the taxpayers to pick up. I think the Senator from Maryland is correct, that there could be an assessment beyond that, but if there is an assessment beyond that it becomes the obligation of the Corporation and the railroad, and not the obligation of Congress.

Mr. BEALL. Mr. President, I would just ask the Senator from Indiana to show me where in the bill that is.

Mr. HARTKE. Mr. President, I yield myself 5 additional minutes.

I find it very difficult, personally, to disagree with my distinguished friends from Maryland and Kansas, for the simple reason that they have put so much effort and good work into this bill, and so many of the good ideas that are in the bill itself are the result of their initiation and their cooperation that I would prefer not to be opposing this amendment. But I find it necessary to do so.

Really, the complaint here from the sponsors of the amendment and those who agree with them involves a matter of basic policy in regard to the railroad employees. A part of this comes about from the fact that we really have in this country no transportation policy whatsoever, and equally no labor policy whatsoever. We have done very little planning in either field.

I think it is high time we address ourselves to these questions, but I do not think it is appropriate to do so piecemeal in this legislation.

We are a remarkable nation. Maybe we have in fact done what Madison said, we have demonstrated that America is destined to prove the impossible in many fields. We used to be an agricultural nation. We no longer really are, in the sense of the number of citizens employed in agriculture, because even though a large segment of the Nation is devoted to farming, only 5 or 6 percent of the working force at the present time is involved in that business.

Harvey Wheeler, a distinguished student of policy and economic structure from the Center for the Study of Democratic Institutions in California, makes the equally astonishing and I think probably salutary recommendation that 10 percent of the work force is going to be able to produce all the material needs of the United States by 1990, so that what we will have is 5 percent of the people producing the food and 10 percent doing all the industrial and other work, with the net result being that 85 percent of the present work force will have to find some other place to get their livelihood.

The issue, I think, is beyond the purview of this legislation. But I would address myself to the question of collective bargaining.

I do not think Congress is legislating collective bargaining agreements here. This is not, in my opinion, a collective agreement. It is simply a detailed remedy for what will happen to the individuals who lose their jobs and suffer displacement as a result of the massive restructuring of the Northeast and Midwest railway sections. I can understand the assertion that it is a form of collective bargaining and the fact that it does deal with what we will do collectively with people who ultimately will be out of work as a result of this action. But section 604 specifically provides that collective bargaining agreements are to be negotiated and a single implementing agreement is to be consummated.

So this agreement, in this part of the bill, does not deal with collective bargaining agreements whatsoever. In other words, the details of what will happen beyond that are going to have to be established by agreements between the parties themselves.

Taking up the question about the detail provisions which describe what happens to employees disadvantaged by this legislation, these details, as the Senator from Maryland has indicated, were worked out initially by rail labor and management and, frankly, by management which is not even involved directly at the present time in what is going on. To that extent, I think there can be a complaint that the public was not represented in the negotiations. But the House of Representatives knew about it at the time and the Senate Commerce Committee knew about it when it reported this bill. It has not been a secret. It has not been attempted to be kept secret. It is a well-known fact that the work they have provided and the suggestions they have made have been evaluated and have helped us do the best job we can in trying to deal with these problems.

I see no reason to hide the way this came about. The only testimony against the labor protection provisions came from the Secretary of the Department of Transportation. He has made a statement. He accused rail management and labor of giving away the store. It is somewhat ironic to hear Secretary Brinegar say that, when he was the one individual who did encourage the parties to come up with a legislative draft in order to facilitate the actual consummation of the legislative agreements which this legislation worked out. Now he comes forward and has some objections to the provisions.

I will point out that he has no objection, however, to the amount of money involved: The $250 million for labor protection. I think to that extent, that is somewhat of an inconsistency on the part of the Secretary, but not on the part of the sponsors of the bill.

The argument is also made that if Congress is to legislate such an agreement, it should not exceed what is fair and equitable. No one can disagree with that as a statement of general principle. My opinion is that the provisions of title 6 in this bill are fair and equitable.

In the first place, generally speaking, the rights which will be accorded to the employees are not so liberal in their total context as the rights they have at the present time. What we are saying to them is, "We will displace you as a result of Federal legislation but, at the same time, you are going to be asked to take less than you have at the present time."

Let me give you an example, Mr. President. If an employee is available for a job which requires him to transfer, at the present time he can refuse to be transferred, generally speaking. To a great extent now, in this bill, he can be transferred without any restrictions whatsoever.

In the second place, rail management itself has not come forward and objected to this type of legislation as being overly generous. Frankly, they have been uncritical of the whole process that we have put forward here.

There is a point I should like to make that deals with the question of the age limit of 65. The reason the age limit of 65 is in this measure is that 65 cuts off and prevents workers, for example, who are 63 years of age from drawing a displacement allowance past 65 when they are eligible for railroad retirement.

The question arises about the 30-year-old displacement. He is entitled to a monthly displacement allowance but only until the job comes up on a railroad. He is required to take it. He has to go back to work. If he does not take the job available to him, then his displacement allowance is terminated.

The point is that the 30-year-old in most cases will be back at work in probably 1, 2, or 3 years, as other railroad employees retire, and as, hopefully, the corporation gets into full swing as a viable operation and continues its operations as originally structured, and hopefully, even expands. So what we are saying is that, to that extent, the argument about the 30-year-old is probably somewhat exaggerated.

As to the $250 million limit, I think that is the limit of the tax liability. Let me say there is no question whatsoever, and the Senator from Maryland would agree, I am sure, that no matter what, the $250 million is all that is authorized in this bill. Before we could take another step, it would have to be authorized by Congress. The argument can be made that the employees would have the right to come back and insist on equity, that they entered into an agreement which had a $250 million estimate on how much would be needed and that that was not sufficient; but my judgment is that, as I understand the structuring—and I have to admit that the Department of Transportation has so far refused to permit me to see any of the secret tapes on this measure—I am in a position where I cannot really say whether this is excessive or not. My own judgment is that the amount is possibly more than will be necessary to take care of the displacement of employees.

Many present workers will retire. Most of those displaced will go back to work.

In other words, attrition will take care of most of these problems.

Briefly, I want to go back to the whole question. We talk about other employees not receiving benefits like Federal employees. We talk about Government contracts which are terminated, and things of that sort. I agree. What has been said is true. But maybe the efforts are at the wrong end. Maybe there are things done for a railroad employee that should be done for other people. I believe that is something which appropriately belongs in the Committee on Labor and Public Welfare and they should come up with a recommendation. To the extent they have not done so, they have neglected their duties. To the extent that the Labor Department has not done so, or the administration has not done so, they can be criticized for that. But it is unfair to criticize railway labor unions for following a policy which was established in 1936, ratified by law in 1940, and which is the basis for what we are doing here. If we change the provisions, as the amendment of the Senator from Maryland would, we would be undoing what has been the historical attitude of Congress throughout the years.

Now, Mr. President, I should like to yield to the Senator from Pennsylvania (Mr. SCHWEIKER).

Mr. SCHWEIKER. Mr. President, I would like to comment briefly on the employee protection provisions of the pending bill. I wish to emphasize the term "employee protection" inasmuch as this section is designed not only to provide employment security for the labor force of the affected railroads, but also includes management personnel. Thus, it is not accurate to refer to this section of the bill as labor protection. It is employee protection for all the employees.

It also must be emphasized, Mr. President, that the provision contained in the bill is the result of serious negotiations between rail management and rail labor and represents a negotiated package agreed to by all parties. The negotiations were begun at the encouragement of the Department of Transportation as a means to draft the legislative provisions to reduce the inevitable confusion and hardships for employees of the railroads resulting from the cessation of the operation of the railroads in the Northeast. The negotiations resulted in the formula contained in the bill which both rail management and rail labor recommended be adopted by the Congress. Mr. President, in my view the pending amendment would overturn those negotiations and represent an unwarranted intrusion into bona fide labor-management negotiations. Adoption of the amendment could seriously jeopardize the success of the entire rail system proposal represented by this bill. The elimination of the provision created through the negotiations would be a fatal defect in the proposed legislation.

Mr. President, the employee protection proposed in title VI of the bill is generally fair and equitable to all parties concerned—the railroads, including the new Railroad Corporation, the public and the employees involved. Indeed, they grant the new Corporation unprecedented freedom in the transfer and reallocation of work in the utilization of employees in inaugurating its operations. I think this is a very important point, if the administration of this new program is to be successful. I believe this point has been overlooked.

Mr. President, it has been suggested that these provisions set a dangerous precedent. I must point out that Congress went far beyond the employee protections contained in this bill when it enacted the Emergency Transportation Act of 1933, the last legislation in which Congress directly provided for the vast merger of the services and facilities of railroads. In that act Congress prohibited the reduction of the number of employees below that in service during the month before its enactment.

In other words, that act was recognized as a freeze on employment. Further, it is my understanding that these provisions follow a pattern of employee protection dating back to 1936.

As I indicated earlier, the provisions in this bill are recommendations of labor and management representing all organized railroad labor and all railroad management—except the Norfolk & Western, the Chessie lines, and the bankrupt railroads. The president of the Association of American Railroads testified before the Senate Committee on Commerce as to the positive reaction of the industry to the recommended provisions now contained in the bill. The chairman of the industry's negotiating arm, the National Railway Labor Conference, has also indicated approval of the provisions.

In fact, Mr. President, the president of the Association of American Railroads and railroad presidents have stated that the provisions would be less costly than protections now in existence by contract and, most significantly, provide a unique freedom to the new rail corporation to transfer work and employees, a right found nowhere else in the railroad industry.

Mr. President, I urge the Senate not to tamper with the employee protection provisions in title VI of the bill.

Mr. HARTKE. Mr. President, I yield myself 2 minutes to discuss the question of the $250 million limitation.

The provision about which we are talking is on page 150 of the bill. It deals with section 609. The pertinent part of that section is in line 11, which reads "pursuant to the provisions of this title."

This clarifies what I understand the proposed legislation would do. Whether this is what the Senator from Maryland wants it to do is a different matter.

It limits the liability of the taxpayer to $250 million. That is one of the provisions of this title, the limitation of $250 million.

The displacement benefits are to be paid by the corporation or the acquiring railroad, and they are to be reimbursed to that extent, and to that extent only.

In other words, they are acquiring the property and acquiring the employees. To the extent that those are displaced, they will receive their payment in accordance with the provisions of this title. Then, in turn, they make their application to the Treasury to be reimbursed to the extent of $250 million. It is my understanding that if there is any claim beyond that, the Corporation still has that obligation; but they do not have the opportunity for reimbursement under the provisions of this act. If there is any disagreement on that point, I would like to hear it.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BEALL. I yield myself 2 minutes, so that I may disagree with the Senator.

Mr. HARTKE. I yield myself 2 minutes, first, before the Senator disagrees.

The Senator from Maryland may disagree with the idea that the Corporation should not have the obligation to go ahead and take care of this displacement or cost in the event no reimbursement is available from the Treasury; but it is my understanding that it is the obligation of the Corporation under the law, and to the extent that there is an amount which exceeds the $250 million, it would then become the liability of the Corporation, without any right of reimbursement, unless there is subsequent action of Congress.

Mr. BEALL. That is a very important qualification—subsequent action of Congress.

Section 609, "Payment of Benefits," beginning at line 8, reads:

> The Corporation, Association (where applicable), and acquiring railroads shall then be reimbursed for such actual amount paid protected employees pursuant to the provisions of this title by the Railroad Retirement Board . . .

To me, that language means that the Corporation or the acquiring railroads are going to be reimbursed.

Further on, it reads:

> There is hereby authorized to be appropriated to such protective account annually such sums as may be required to meet the obligations payable hereunder, not to exceed in the aggregate, however, the sum of $250,000,000.

All this indicates to me is that we are now authorizing the expenditure of $250 million, but we have still indicated, prior to that time, that the Corporation is going to be reimbursed. Therefore, since we have indicated this reimbursement of the Corporation, I think Congress may be compelled to pass an additional authorization should the expenditures for this provision exceed the presently authorized $250 million.

Mr. HARTKE. I hear the Senator from Maryland. I understand what he is saying. I disagree with his conclusion, by virtue of the fact that in line 11, it says "pursuant to the provisions of this title." "Pursuant to the provisions of this title" has an express limitation. In no case shall it exceed $250 million.

I do not think there is even the slightest indication that there is a requirement by Congress to reimburse them in an amount in excess of $250 million.

Mr. BEALL. We have a difference of opinion. But if the Senator is correct—and I do not think he is—then he is placing a burden on the new corporation which I do not think anybody thinks it should have; because we have received testimony from some that these benefit

could possibly exceed $250 million. If that is the case, the new corporation is being required to shoulder a burden for an agreement to which they have not been party. This is not their doing at all. I do not think we ought to place this kind of financial burden on a new corporation.

Mr. HARTKE. I disagree with that 100 percent. I think this burden should be put on the new corporation. I believe that is a fair interpretation.

With regard to what the Senator is talking about now, I am led back to the question I have had concerning this whole legislative scheme. My objection to this whole bill has been that the start has been made at the wrong end of the process. We do not know what the final system plan will be. Without knowing what the plan is, we cannot know what it is going to cost or how many employees it is going to need. That is my objection to the bill. I lost that argument a long time ago. There is no reason for me to complain about it. To the extent that we are buying a pig in the poke, blindly, to that extent at least, putting the burden of labor costs in excess of the authorization on the corporation and the acquiring railroads puts some financial restrictions on this bill.

In my opinion, we have done a pretty good job of trying to make sure that the taxpayer is not bilked, that the system works the way it is intended to, and that wise minds will prevail in the design of the final system plan.

The argument that the Senator from Maryland is making is that he does not know what the ultimate cost is going to be. Not knowing what the ultimate cost is going to be, he is fearful against whom that ultimate cost is going to be assessed. As I interpret the bill, it says that any cost beyond $250 million will be on the corporation, but the Senator from Maryland is not in agreement with me on that. I think it should be, and that is my interpretation. I think that the authorization limitation of $250 million is very clear, and the Senator from Maryland says it is not. That is a difference of opinion in which I am sure I am not going to be convinced differently, and I do not think I am going to convince the Senator from Maryland.

The PRESIDING OFFICER. The time of the Senator has expired.

Who yields time?

Mr. BEALL. I yield 5 minutes to the Senator from Michigan.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 27 minutes remaining.

Mr. GRIFFIN. Mr. President, unless the Beall amendment is agreed to the pending bill would make welfare reform obsolete for over 100,000 employees of the bankrupt Penn Central and 6 other bankrupt railroads in the Midwest and Northeast. It would guarantee, at taxpayers' expense, the current salaries of 80 percent of these employees, up to a maximum of $30,000 per year, until age 65, even though they do not work.

But this does not tell the full story. The guaranteed salaries include fringe benefits and overtime pay.

The guaranteed salaries will be determined in such a way as to make it possible for an employee to get more money under this bill than he was previously making.

The guaranteed salaries will be reduced by only 50 percent of earnings from a nonrailroad job.

And these guaranteed benefits will be adjusted upwards to reflect subsequent general wage increases.

Thus, it is quite easy to see that Christmas will come early for the employees of the Penn Central and the other bankrupt lines in the Northeast.

What Congress is being asked to do in this legislation is to ratify an agreement negotiated by rail management and labor without any taxpayer representation, despite the fact that the agreement will drain the Federal Treasury by at least $250 million, and by as much as $500 millon or more.

This is truly a sweetheart agreement. Railway labor had everything to gain by a generous settlement, and the railroad management involved in the negotiations had nothing to lose, particularly since the taxpayers will have to foot the bill.

As several of my colleagues and I pointed out in additional views to the Commerce Committee report on S. 2767—

> There is not even any quid pro quo for the expenditure of at least $250 million, of taxpayers' funds, such as modernization of antiquated and costly railroad labor work rules, which have been, at least in part, responsible for the current crisis.

In a report to Congress on March 26 of this year, the Interstate Commerce Commission concluded that—

> If the problems of the Northeastern railroads are to be resolved . . . traditional practices governing utilization of the work force must be changed.

However, the pending bill saddles the proposed new rail corporation at the outset with existing work rules and provides no method of resolving prolonged disputes on this and many other issues.

The question facing the Senate today is not whether protection should be afforded to rail employees affected by this legislation, but how much protection should be afforded? The benefits provided in this bill far exceed anything Congress has ever done before for any other segment of organized labor.

Workers who lose their jobs because of foreign imports only get unemployment benefits, and perhaps job retraining assistance. The same holds true for workers who are laid off because of the closing of military installations or because of the discontinuance of a Federal program such as the SST.

Even under the emergency energy bill, recently passed by the Senate, workers who lose their jobs because of Government action would only be eligible for unemployment compensation.

Hundreds of thousands, even millions, of workers can be affected by a work stoppage of just one railroad—the Penn Central—without the benefit of any assistance except 26 weeks of unemployment benefits. The 1-day Penn Central strike early this year forced the shutdown of several auto plants involving almost as many workers as will be affected by this legislation.

If that strike had lasted only a week, the entire auto industry would have ground to a halt, directly affecting about 900,000 workers.

In the past 12 years there have been 10 crippling nationwide transportation strikes, yet legislation which I have introduced to provide a reasonable resolution of these disputes languishes in committee.

Where is the concern for workers affected by these strikes? Clearly the answer is not to be found in this legislation.

The argument is made that the railroads in the Midwest and Northeast will stop running without this legislation. There is no question that this legislation is urgently needed. The Penn Central and other bankrupt railroads serve an area including 55 percent of America's manufacturing plants and 60 percent of its manufacturing employees.

But the price for keeping this service going is high and there is no guarantee against future work stoppages in the new rail system.

In order to correct this inequitable situation, I joined with several of my colleagues in supporting an amendment offered in committee by the distinguished junior Senator from Maryland (Mr. BEALL). This amendment would have taken Congress out of the business of legislating collective bargaining agreements. Instead, the new United Rail Corporation would negotiate with labor equitable protective arrangements for displaced employees, subject to approval by the Secretary of Labor.

Some Federal assistance would, of course, be required, but there would be a much better opportunity for arm's length bargaining to protect not only the interests of railroad employees but also the interests of the American taxpayer. Congress adopted a similar approach in having Amtrak take over the passenger trains. Employees affected under that legislation can receive benefits for up to 6 years.

Mr. President, if such an amendment is not adopted, what will we say to millions of other workers throughout the country who will ask for equal treatment?

The only sensible course is to make sure that we do not unfairly discriminate in favor of one group of workers and against all other workers in America. The Beall amendment is not antilabor, anticonsumer, or antianything else.

I am very keenly aware of the importance of keeping the Penn Central going in the Midwest, and I am aware of what it means to the automobile industry. But surely this provision in the bill which the amendment of the Senator from Maryland would seek to correct should be remedied. It is inequitable. It robs the Treasury in a way that is absolutely unconscionable.

I hope enough Senators will vote for the Beall amendment to see that it is adopted.

I yield back any time I have.

Mr. BEALL. I yield to the Senator from Michigan for his statement.

The PRESIDING OFFICER. Who yields time?

Mr. BEALL. I yield to the Senator from Maine.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Mr. HATHAWAY. I thank the Senator. As I gather from listening to the debate, under the proposal of the Senator from Maryland the corporation and the union representing the employees could negotiate an agreement that was identical to the one that is now in the bill before us except there would be a ceiling of $250 million on how much could be spent to carry out the provisions of that agreement. Is that correct?

Mr. BEALL. That is correct.

Mr. HATHAWAY. That seems to me to be a wise provision. I assume the Senator is advocating that because the corporation was not a party to the negotiations that brought about the agreement that is now incorporated in the bill. Is that correct?

Mr. BEALL. That is one of the reasons.

Mr. HATHAWAY. Are there others?

Mr. BEALL. I do not think Congress should legislate a collective bargaining agreement. I do not think we should be enacting a collective bargaining agreement into law. That is not one of our responsibilities. This is the responsibility of labor and management, to negotiate these agreements. It is a terrible precedent for us to follow, specifically, to enact this kind of agreement in the law. My amendment says, "Go ahead and do it yourself and here is the money to do it."

Mr. HATHAWAY. I thank the Senator.

Mr. BEALL. We are setting a very dangerous precedent for other Federal employees. Why should we not do the same thing for other employees, no matter what the complaint? What defense do we have from these people who say, "You have done this for the railroads. There is no reason why it should not be done for the shipyards that might be closed and other people who are out of work. Why not give them a displacement allowance?" Who knows where the end of the line is?

Mr. HATHAWAY. In the proposal made by the Senator from Maryland, we are authorizing $250 million and they can come up with an identical provision as that in the bill and the same people could come to us and say, "Why did you not do it for us?"

Mr. BEALL. We feel an obligation in this instance because we are not putting a precedent on the new corporation. There is a successor corporation, and we do not think they should pay this bill.

Mr. HARTKE. Mr. President, I wish to point out first that this is not a collective bargaining agreement. Here we are dealing with individuals who are being displaced as a result a railroad reorganization. The Federal Government is going to take over these railroads and displace certain people with vested employment rights.

What we are saying to them is to give up the rights they have now, take less, and under the amendment of the Senator from Maryland it would take them back even further, but not save any money.

The crux of the problem and why you cannot solve the problem as the Senator from Maine would like to solve it is that you are starting out to restructure a system with $250 million in the kitty for labor displacement. This is the first time I have seen an operation where you are going to restructure a whole corporaton on the basis of labor cost and the sad fact is that labor here, instead of getting a bonanza is stepping backward unless you make the corporation assume the current liability they have to these employees. Labor, instead of getting a bonanza here, has been asked to come in under a $250 million limitation under an agreement in whch they can move these employees, which they cannot do at the present time, move their homes, and otherwise change their employment rights. They could not do that today.

In essence, what we have here is a measure which is morally right, legally proper, and legislatively necessary if we are to solve the railroad problem.

Mr. HATHAWAY. I understand that under the amendment of the Senator from Maryland $250 million is simply the Government's obligation. The new corporation and the unions could work out something that would cost in excess of that. The Federal Government is not committed to more than that amount, whereas under the committee bill it is open ended. If it runs over $250 million, we have to pick up the tab.

Mr. HARTKE. That is not true. If the Senator would be kind enough to look at section 609 on page 150, beginning on line 4, if displacement benefits are to be paid by the corporation or the acquiring railroad, then the corporation or acquiring railroad is to be reimbursed. Then, on line 11 it is stated:

> Pursuant to the provisions of this title by the Railroad Retirement Board upon certification to said board by the corporation, association, and acquiring railroads of the amounts paid such employees.

If the Senator will then turn to line 21, he will find that under the provisions of this title there is a limitation of $250 million.

The fact is that that is the total exposure of the taxpayer. If there is a system which costs more than that in displacement then somebody should be obligated to pay the employees for being displaced. That is all I am saying.

What the Senator from Maryland is saying is that there cannot be a system, no matter how well devised or how it is marked up, which is going to cost more than $250 million in labor costs. That, in and of itself, I think is not only a great disservice to existing employees but is contrary to legal principles.

Mr. BEALL. Mr. President, I yield myself 2 minutes

The Senator from Maryland is not saying that. He is saying there ought to be a labor agreement between labor and the corporation, and we think the problem has an obligation. We are willing to put into it up to $250 million. If they want to agree to more than that in an agreement between each party, that is fine, but we cannot go into it more than $250 million.

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

Mr. BEALL. I yield.

Mr. HATHAWAY But reading the language on page 150, it does seem to limit the Federal Government's agreement up to $250 million.

Mr. BEALL. I disagree with that. If we look at line 8 of that page, it says:

> The Corporation, Association (where applicable), and acquiring railroads shall then be reimbursed for such actual amounts paid protected employees pursuant to the provisions of this title by the Railroad Retirement Board upon certification . . .

My argument is that should the expenses run higher than $250 million, they will be back here to Congress and we will have an obligation to reimburse the Retirement Board so that they can reimburse the corporation as a result of legislating this very specific collective bargaining agreement.

Mr. HARTKE. Mr. President, I yield myself 1 minute.

We are in 100 percent disagreement on this point, but if the Senator from Maryland is concerned about this, and if it would help the Senator from Maine, I would be willing to insert in the bill the language "and acquiring railroads shall then be reimbursed for such actual amounts paid protected employees pursuant to the provisions of this title by the Railroad Retirement Board upon certification to said Board by the Corporation, Association, and acquiring railroads of the amounts paid such employees, not to exceed $250 million."

So it is very clear what we want done, if that would help the Senator.

Mr. HATHAWAY. That would be extremely helpful to me.

Mr. HARTKE. At the appropriate time, I will so move. This is not an amendment to the amendment of the Senator from Maryland; therefore, it would not be in order at this time.

Mr. BEALL. The Senator is correct.

Mr. HARTKE. But I would be willing to make such a technical change, because that is the intent of this legislation as I understand it, and it would clarify any disagreement that exists at this moment between the Senator from Maryland and myself. It would not enter into the final policy decision as to who is going to take up the balance.

Mr. HATHAWAY. What the Senator is saying is that the Federal Government would not be obligated more than $250 million at any time for this labor protection agreement.

Mr. HARTKE. Yes. Let me say it is impossible to bind a subsequent Congress to anything.

Mr. HATHAWAY. I agree.

Mr. HARTKE. But with that exception; yes.

Mr. HATHAWAY. Does the Senator from Maryland think that would correct or alleviate the apprehension he has?

Mr. BEALL. It may correct some apprehension I may have about the provision, but we still have the fact that we have legislated and placed on a new cor-

poration a burden brought about by this legislation, and, secondly, we have legislated a precedent of paying somebody $30,000 a year for not working. All those things are involved here, it strikes me, to make it an unattractive matter.

Mr. HATHAWAY. I thank the Senator for yielding.

Mr. HARTKE. Mr. President, I yield myself 1 minute.

Let me assure the Senator from Maryland that, in the event the amendment of the Senator from Maryland is defeated, which I hopefully and charitably expect, I assure the Senator I will then offer the amendment to make that clarification.

Mr. HATHAWAY. I thank the Senator from Indiana.

Mr. THURMOND. Mr. President, the bill we have before us, S. 2767, sets an unwanted precedent for employee protection. These provisions, without question, place a fiscal burden on the American taxpayer that should not be his responsibility.

Under title VI of S. 2767, the Federal Government will pay up to $30,000 per year until age 65 to an employee of the railroad who is adversely affected as to his compensation. The only requirement is that the so affected employee accept employment by the new corporation when employment is offered to him.

Such action in no way influences these employees to seek employment in another profession. Even if he should find other employment, his displacement allowance would only be reduced by one-half of his new salary. Therefore, an adversely affected employee could be making $50,000 per year and still receive $5,000 per year from the Government.

I do not feel that it is the responsibility of the Federal Government to provide such liberal protection. A better approach would be for the management of the Corporation to negotiate with labor representatives for a fair and equitable settlement.

The amendment being offered by the Senator from Maryland is extremely liberal, providing $250 million for employee protection. It does, however, allow the Corporation to negotiate reasonable payments to employees who suffer a reduction in their income due to reorganization of the railroads.

I consider the Beall amendment the lesser of two evils; therefore, I vote in its favor.

Mr. HUGH SCOTT. I have one matter on which I would like to have the Senator's assurance, although I am satisfied that the bill really leaves no doubt on the point. Assume first, that a railroad presently in reorganization has leased, for a term of years, a line of railroad from a nonrailroad company which is not in bankruptcy or reorganization, and which is not affiliated in any way with a railroad; second, that the lessee railroad is now conducting authorized operations over the lines; and third, that the present lessee railroad entered into the lease subsequent to going into reorganization and with the approval of its reorganization court and prior to the enactment of this legislation. If the new United Rail Corporation were to acquire the leased line in question, am I correct in my belief that the new Corporation would thereby acquire the rights and obligations which the lessee carrier had with its lessor?

Mr. BEALL. The Senator is correct in his understanding.

Mr. HUMPHREY. Mr. President, with respect to the question of the Senator from Pennsylvania and the answer that the Senator from Maryland has just given, I would like to make reference to one particular situation that has been brought to the attention of the Committee on Commerce. For this purpose, I ask unanimous consent that there be inserted in the RECORD at this point the letter of Mr. T. R. Anderson, president of the Lehigh Coal & Navigation Co., which was sent to Chairman MAGNUSON on November 21, 1973, and which details how the act would apply to certain railroad properties that are owned by nonrailroad companies. An identical letter of the same date was sent to the ranking minority member of the committee, Mr. COTTON. This letter has been included as part of the record of the committee's hearing on this legislation.

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

THE LEHIGH COAL & NAVIGATION CO.,
Bethlehem, Pa., November 21, 1973.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce, U.S. Senate, Washington, D.C.

DEAR CHAIRMAN MAGNUSON: The purpose of this letter is to bring to the attention of the Committee on Commerce certain provisions of H.R. 9142, the "Regional Rail Reorganization Act of 1973", as passed by the House of Representatives, and the corresponding provisions of the Committee's Working Paper No. 1, dated November 11, 1973, entitled the "Rail Services Act of 1973", as they may affect non-railroad, non-bankrupt companies such as The Lehigh Coal and Navigation Company (LC&NC).

LC&N is not itself a "railroad" as defined in section 102(11) of H.R. 9142 or section 103(10) of Working Paper No. 1, nor is LC&N controlled by, or affiliated with, through stock ownership or otherwise, any railroad. LC&N does have, however, an interest in certain "rail properties" as defined in section 102(10) of H.R. 9142 and section 103(9) of Working Paper No. 1. LC&N's interest is in a line of railroad, commonly known as the Lehigh & Susquehanna System (the "L&S"), running about 132 miles in total length in Northeastern Pennsylvania. This line provides an important connecting link for substantial amounts of rail freight traffic moving over such railroads as the Lehigh Valley, Reading, the Delaware & Hudson, Penn-Central, Erie-Lackawanna, and the Central Railroad Company of New Jersey.

As a result of a transaction consummated in 1962 and approved by the Interstate Commerce Commission in *Reading Company-Purchase-Lehigh & Susquehanna Railroad System*, 317 ICC 633 (1962), Reading Company, now in reorganization under section 77 of the Bankruptcy Act, acquired from LC&N the fee simple title to the L&S, subject, however, to LC&N's right to receive the income from such properties for a period of thirty-five years. At the present time, LC&N is exercising those rights through a lease with the Lehigh Valley, also a railroad in reorganization. This lease was entered into by the Trustees of Lehigh Valley, approved by the Lehigh Valley's reorganization court, and filed with the Interstate Commerce Commission. Lease payments in the amount of $575,000 per annum are presently being made by the Trustees, as an expense of administration, under the terms of the lease. In addition to its leasehold rights, Lehigh Valley also has the option to purchase LC&N's interest outright for $7.5 million, less a credit for a portion of rental payments already made. The L&S lines have been operated profitably and successfully by Lehigh Valley, and sworn testimony on behalf of the Lehigh Valley's Vice President, J. W. McDonnell, at a June 7–8, 1973, hearing in Philadelphia before Lehigh Valley's reorganization court, testified that net income arising from the L&S for the last nine months of 1972 *after* rental payments to LC&N amounted to $1,962,000. Lehigh Valley's rent to LC&N for the L&S during this period under the court-approved lease and option-to-purchase agreement amounted to $343,750.

It is LC&N's understanding that in acquiring rail properties from a "bankrupt railroad" under the mandatory conveyance scheme contemplated by H.R. 9142, Federal Rail Corporation will be able to acquire only that property interest which the bankrupt railroad has. Where a bankrupt railroad is the lessee of property belonging to a lessor that is neither a railroad nor controlled by, or affiliated with, a railroad, the Corporation can acquire only the bankrupt railroad's leasehold interest, and not the lessor's interest as well, as the bill does not reach the acquistiion of property owned by persons who are not railroads. Under these circumstances, Federal Rail Corporation would supplant the bankrupt railroad as the lessee of the property, and all the rights and obligations between lessor and lessee specified in the lease would survive. The same analysis is equally applicable in the context of Working Paper No. 1, where the mandatory conveyance scheme allows Federal Rail Corporation to take rail properties only from "railroads in reorganization."

Thus, assuming that the interests of Reading and Lehigh Valley in the L&S are "rail properties" that are designated by the Final System Plan for mandatory conveyance to Federal Rail Corporation, it is our understanding that the specific results would be as outlined below.

First, both the fee interest of the Reading and the leasehold interest of the Lehigh Valley would be acquired by Federal Rail Corporation for such recompense as the Final System Plan may ultimately provide based upon a determination of "fair and equitable value" or "just compensation".

Second, since Federal Rail Corporation can acquire from Lehigh Valley only that interest that Lehigh Valley has—the right to use the L&S properties so long as all the terms and conditions of the lease with LC&N are observed—acquisition of the Lehigh Valley's leasehold interest would necessarily carry with it (1) the obligation on the part of Federal Rail Corporation to observe all the terms and conditions of the lease, including the payment to LC&N of the specified rent in cash, and (2) the right of Federal Rail Corporation, as the new lessee, to exercise the option to purchase LC&N's interest in the L&S for $7.5 million in cash less the credit allowed by the terms of the lease.

Thus, it seems clear that Federal Rail Corporation could not acquire LC&N's interest in the L&S under the mandatory conveyance provisions of either H.R. 9142 or working Paper No. 1, which provisions cover only rail properties of "bankrupt railroads" or rail properties of "railroads in reorganization".

On LC&N's behalf, I wish to assure the Committee of our earnest desire to work with the Lehigh Valley, other railroads, shippers, and the proposed Federal Rail Corporation to preserve and to improve the vital link supplied by the L&S in our national railroad system. It is for this reason that we are calling our situation to the Committee's

attention so that the matter is fully understood and the record clear.

We would appreciate having a copy of this letter included in the record of the Committee's hearings on this subject.

Sincerely,

T. R. ANDERSON,
President.

Mr. BEALL. Mr. President, I am ready to yield back the remainder of my time if the Senator from Indiana is ready to do the same.

Mr. HARTKE. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time on the amendment having been yielded back, the question is on agreeing to the amendment of the Senator from Maryland. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Alaska (Mr. GRAVEL), the Senator from Louisiana (Mr. JOHNSTON), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

I also announce that the Senator from Missouri (Mr. SYMINGTON) is absent because of illness.

The result was announced—yeas 37, nays 59, as follows:

[No. 571 Leg.]

YEAS—37

Allen	Dole	Hruska
Baker	Domenici	Mathias
Bartlett	Dominick	McClure
Beall	Ervin	Packwood
Bellmon	Fannin	Pearson
Bennett	Fong	Roth
Brock	Goldwater	Saxbe
Buckley	Griffin	Scott, Hugh
Byrd, Harry F., Jr.	Hansen	Scott, William L.
Cook	Hatfield	Taft
Cotton	Hathaway	Thurmond
Curtis	Helms	Tower
	Hollings	

NAYS—59

Abourezk	Hartke	Muskie
Aiken	Haskell	Nelson
Bayh	Huddleston	Nunn
Bentsen	Hughes	Pastore
Bible	Humphrey	Pell
Biden	Inouye	Percy
Brooke	Jackson	Proxmire
Burdick	Javits	Randolph
Byrd, Robert C.	Kennedy	Ribicoff
Cannon	Long	Schweiker
Case	Magnuson	Sparkman
Chiles	Mansfield	Stafford
Church	McClellan	Stevens
Clark	McGee	Stevenson
Cranston	McGovern	Talmadge
Eagleton	McIntyre	Tunney
Eastland	Metcalf	Weicker
Fulbright	Mondale	Williams
Gurney	Montoya	Young
Hart	Moss	

NOT VOTING—4

Gravel	Stennis	Symington
Johnston		

So Mr. BEALL's amendment was rejected.

AMENDMENT NO. 824

Mr. HATFIELD. Mr. President, I call up my amendment No. 824.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

On page 21, lines 5 and 6, insert a new subsection:

"(d) RAIL PASSENGER TRANSPORTATION.—Within 180 days after the date of enactment of this Act, the Secretary shall prepare and submit to Congress a comprehensive report on the feasibility and desirability of expanding service by the National Railroad Passenger Corporation. The report shall consider the current and projected shortage of refined petroleum products, curtailment of alternative modes of travel, availability of additional equipment for the provision of rail passenger service (whether domestic or foreign), the economic feasibility of additional service on existing routes and expansion of service to new routes, and such other matters as the Secretary deems relevant. The National Railroad Passenger Corporation shall cooperate fully with the Secretary in the preparation of this report.".

On page 51, line 21, change "$15,000,000" to "$15,100,000".

Mr. HATFIELD. Mr. President, I ask unanimous consent that the names of the Senator from Wyoming (Mr. HANSEN), the Senator from Utah (Mr. BENNETT), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Ohio (Mr. TAFT), and the Senator from California (Mr. TUNNEY) be added as cosponsors.

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

Mr. HATFIELD. Mr. President, I yield to the Senator from Alaska.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. STEVENS. Mr. President, I ask unanimous consent that my staff assistant, George Nethercutt, Jr., be permitted the privilege of the floor during the consideration of the pending bill.

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

The Senate will be in order. Senators conducting conversations will please retire to the cloakroom.

The Senator from Oregon may proceed.

Mr. HATFIELD. First, Mr. President, I want to express my appreciation for the hard work of the Commerce Committee in putting together this complex bill. As a former member of the committee, I am aware of all the ramifications that are included, and I know the bill represents a great deal of work by members of the committee.

During my service on the Commerce Committee, much of my efforts were directed toward enactment of legislation to correct the chronic freight car shortages. Without going into the statistics I cited during floor debate earlier this year when the Senate approved the freight car bill, I want to commend the committee for including the freight car legislation as a part of this bill. The statistics of the need are staggering and dramatic. The impact of freight car shortages touches all businessmen, all consumers—they affect the price of many of the goods we purchase.

The amendment I have proposed is very simple and easy to explain. I believe that the energy crisis offers us an opportunity to revitalize our rail passenger system. As airline flights are curtailed and as gasoline supplies continue to dwindle, greater pressure is going to be put on the Amtrak system.

In checking on the Oakland to Seattle Amtrak route, officials told me that traffic this past October was up some 102 percent over passenger traffic in October 1972. I am sure that November reports will reflect a continued growth. In fact, Amtrak is sure to experience a rapid rate of growth on existing lines—to the degree that, I am told, Amtrak is not even taking names for waiting lists on many routes for tickets during the holiday season.

This is good news to those of us who would like to see a prosperous rail passenger system in this country. In view of the energy crisis, I believe the opportunity exists to expand Amtrak operations and to add lines where there is a demonstrated need and a reasonable chance for good ridership.

Congress should consider expansion of the Amtrak system. It would not be prudent, however, to talk about adding one line here and another one somewhere else without first looking at the problem in view of the energy crisis.

The amendment calls for a report to be submitted to Congress within 180 days of enactment that would examine carefully the possibility of expanding rail passenger routes under Amtrak. While Congress is criticized at times for setting up a study as an answer to a problem, I think this is the best approach here in view of the changing situation in which we find ourselves. Let us find out just what routes might be added with a reasonable chance of economic vitality. In addition, this report would consider such matters as the oil and gas shortage and its impact on alternate modes of travel. Where before there might not have been a demonstrable need for Amtrak service at its inception in some area, if air service there was reduced significantly, then there may be a greater potential pool of train riders to draw from. Other routes between cities fairly close together may well be able to draw new riders from automobile travelers who feel the gas pinch.

Before Congress takes any further steps, however, I think we need more facts. Could added trains secure enough fuel themselves? I also am aware that there is a lag developing in delivery of new Amtrak passenger equipment. Could we secure enough equipment to operate new train routes?

I really do not think there needs to be a great deal more said about this amendment. It is very simple. It simply says let us get some facts before us on the possibility of expanding Amtrak, in light of the energy crisis and the curtailment of other modes of travel. There would be authorized for this study $100,000, and in light of other sums we are talking about in this Chamber, not just in this bill, but on the other energy legislation, that is not much.

In conclusion, I urge my colleagues to support this amendment. Out of all the gloomy news caused by the energy crisis lies this one hope of restoring rail passenger service to what it once was. We should see what needs to be done, what the realistic prospects are, and then at that time, we will be in a position to act.

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

Mr. HATFIELD. I yield.

Mr. CHURCH. I wonder if the Senator would be good enough to add my name as a cosponsor of his amendment.

Mr. HATFIELD. I am happy to do so.

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

The question is on agreeing to the amendment of the Senator from Oregon. Is time yielded back?

Mr. HARTKE. Mr. President, let me say that I have discussed this matter with the Senator from Oregon. I think during all the time we have been dealing with the question of Amtrak rail passenger service and even before the creation of the present system, I have thought we should have done more. So I compliment the Senator for his action. In fact, on every rail passenger bill that has come before this body I have advocated more rail passenger service. To my mind, quality and quantity are inseparable. It is unlikely that many passengers will be lured back permanently unless we improve the service.

I have expressed my doubt in the past as to whether the Department of Transportation is dedicated to the improvement of passenger service.

Now we are faced with an emergency where they are not even able to take care of what they have, at least in a decent fashion. They cannot find the cars necessary to take care of their passengers. So I think the amendment is very timely.

I am prepared to accept the amendment and yield back the remainder of my time.

Mr. PACKWOOD. Mr. President, I rise today to commend my distinguished colleague (Mr. HATFIELD) and to urge my fellow Senators to support his amendment.

When I visited Oregon last week, I found a tremendous interest in resuming rail passenger service to eastern Oregon. My constituents see hundreds of millions of dollars going to Amtrak, but they have the distinct impression that the majority of that money is being spent in the East while the less populated areas of the Nation are left out in the cold. I am thinking in particular about the communities of Pendleton, Baker, La Grande, and Ontario, Oreg.

The Hatfield amendment directs the Secretary of Transportation to study the feasibility and desirability of expanding Amtrak service to areas that heretofore have been neglected. I am confident that the Department of Transportation and the National Rail Passenger Corporation will pay more than lipservice to this proposal. Far too often we see Federal studies lost in a maze of bureaucratic redtape. Rural Americans deserve more than a perfunctory evaluation of their transportation needs. At a time of gasoline shortages and airline cutbacks, it is all the more imperative that we provide Americans with sufficient mass transportation opportunities.

I hope my colleagues will support this amendment. Its passage will be warmly received by eastern Oregonians and other rural residents throughout the Nation.

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

Mr. HATFIELD. I yield.

Mr. BEALL. I would say to the Senator, on behalf of the minority, that I think his amendment is very timely, and we are willing to accept it.

The PRESIDING OFFICER. Is time yielded back?

Mr. BEALL. I yield back the remainder of my time.

Mr. HATFIELD. I thank both Senators for their comments, and I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. MCCLURE). All remaining time having been yielded back, the question is on agreeing to the amendment of the Senator from Oregon.

The amendment was agreed to.

Mr. MOSS. Mr. President, I send to the desk an unnumbered amendment, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. MOSS. Mr. President, I ask unanimous consent that the further reading of the amendment be dispensed with. I will try to explain the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered. The amendment will be printed in the RECORD.

The amendment ordered to be printed in the RECORD is as follows:

Beginning on page 159, line 6, strike all through page 164, line 6 and insert the following:

SEC. 703. (a) RATE POLICY.—In view of existing and anticipated shortages of critical natural resources, the Transportation Commissions, within the scope of their respective jurisdictions, are hereby directed to effect with the least practicable delay such lawful changes in the rate structure of the country as will promote the freedom of movement by common carriers of recyclable materials at the lowest possible lawful rates compatible with the maintenance of adequate transportation service: *Provided*, That no investigation or proceeding resulting from the enactment of this section shall be permitted to delay the decision of cases now pending before either of these commissions and involving rates on recyclable materials, but such cases shall be decided in accordance with this section.

(b) INVESTIGATING RATES.—The Transportation Commissions, within the maximum scope of their respective statutory jurisdictions, shall, within 36 months after the date of enactment of this Act and on a continuing basis thereafter—

(1) investigate and formally identify all rates charged by transportation carriers subject to their respective jurisdictions for the transportation of recyclable materials and shall, in each case, after a hearing has been afforded, determine whether the rates charged and the terms and conditions of transportation for such materials are reasonable or whether they unjustly discriminate against the movement or shipment in interstate or foreign commerce of recyclable materials and in favor of competing virgin natural resource materials or commodities;

(2) issue appropriate orders in all cases where the rate charged or terms and conditions of transportation applicable to recyclable materials are found to be unreasonable or discriminatory pursuant to which such rates and conditions of transportation will be effectively canceled and repealed and replaced by rates, tariffs, and conditions of transportation which are found to be fair, reasonable, and nondiscriminatory; and

(3) file annual reports with the President and the Congress on the 10th day of December of each year and such terminal reports as shall be appropriate to reflect all actions commenced or completed under the Act during the reporting period to eliminate unreasonable and unjustly discriminatory rates for the transportation of recyclable materials.

(c) INTERVENTION.—The Administrator of the Environmental Protection Agency shall take such steps as are necessary to insure that the directives of subsections (a) and (b) of this section are carried out as expeditiously as possible, including the initiation of and intervention in proceedings before the Transportation Commissions. Such Administrator shall have such standing in proceedings before these commissions as is necessary to comply with this subsection. Attorneys appointed by such Administrator may appear for and represent him in any such proceedings.

(d) UNREASONABLE AND DISCRIMINATORY RATES.—(1) In addition to all other obligations imposed by law, a Transportation Commission shall not approve, authorize, or allow to go into effect any rate or charge increase for the transportation of recyclable materials which is unreasonable or unjustly discriminatory when such increase or existing rate for such recyclable materials is compared with the increase approved, authorized, or allowed to go into effect or with the existing rate demanded or collected by the railroad or carrier for the transportation of virgin natural resources which compete with such recyclable material.

(2) In addition to all other obligations imposed by law, it shall be unlawful for any railroad, common carrier by water, motor carrier, or any group, conference, or association of railroads or carriers, or for any officer or agent thereof to (1) file with the Transportation Commission or (2) demand, charge or collect any rate or charge, schedule of rates or charges, proposed rate or rate increase, classification or tariff for the transportation of recyclable materials which is unreasonable or unjustly discriminatory when compared with any rate or charge, schedule of rates or charges, proposed rate or rate increase, classification or tariff already on file or filed or charged or demanded by such railroad, carrier, group, conference or association of railroads or carriers for the transportation of virgin natural resources that compete with such recyclable materials; and before any such rate, charge, rate increase, schedule, tariff, or classification is accepted for filing, the filing party shall be required to furnish such evidence as shall be necessary to establish that the same is not unreasonable or unjustly discriminatory.

(e) COMPLAINTS.—Any person may file a complaint with a Transportation Commission which alleges that rates, charges, or tariffs or proposed rate increases for the transportation of recyclable materials within its jurisdiction and not already under investigation are unreasonable or unjustly discriminatory or both. Upon filing of any such complaint, the affected Commission shall forward a copy thereof to the railroads or other carriers whose rates or proposed rate increases are challenged. Such carriers shall be offered a reasonable opportunity to answer such allegations in writing. The affected Commission shall thereupon investigate and, after a hearing has been afforded, determine whether such rates, charges, tariffs, or proposed rate increases are unreasonable or unjustly discriminatory when compared with the rates, charges, or tariffs charged or filed by responding railroads or other carriers for transportation of competing virgin natural resources. If such rates, charges, tariffs, or proposed rate increases are found to be unreasonable or unjustly discriminatory, the affected Commission shall issue an appropriate order which effectively cancels such rates, charges, or tariffs or denies such rate increases, and replaces them with rates, charges, tariffs, and conditions of transportation found to be reasonable and nondiscriminatory, and the respondents shall be ordered to comply with the affected Commission's rulings.

(f) PROCEEDINGS.—(1) In any proceeding under this section, the railroads or carriers

whose existing or proposed rates are under investigation shall establish by a preponderance of the evidence on the record, subject to cross-examination, that such rates are reasonable and nondiscriminatory.

(2) The Transportation Commissions shall make specific findings based upon appropriate references to the record with respect to all determinations made by it in accordance with this section. If either Commission wishes to rely on its own experts in making these findings, such experts shall place all evidence in the record, subject to cross-examination.

(3) With respect to determinations required under this title, facts and conclusions offered in evidence by other Governmental agencies having specific expertise in such matters as functional equivalence, substitutability, or environmental impact and the degree thereof, shall be presumed to be true unless rebutted by a preponderance of the evidence.

(4) Because of the important environmental interest involved in such proceedings, the Transportation Commissions shall give full preference to the hearing and decision of such questions and decide them as speedily as possible. In any such case, a Transportation Commission may by subpoena compel the attendance of witnesses and the production of books, papers, documents, and such other evidence as may be required. Attendance of witnesses and production of evidence in response to subpoena may be required from any place in the United States to any designated place of hearing. Persons acting under subpoena, except employees of either such commission, shall be entitled to the same fees and mileage as are paid for appearances in the courts of the United States. Obedience to any such subpoena shall, on application of the affected Commission, be enforced by any district court of the United States having jurisdiction over the parties or witnesses involved. In such cases, depositions, written interrogatories, and other discovery procedures shall be available to the extent practicable and in conformity with the rules applicable to civil proceedings in the district courts of the United States.

(g) REVIEW.—Orders issued by a Transportation Commission pursuant to this section shall be subject to judicial review or enforcement by any court with appropriate jurisdiction in accordance with the provisions of the Interstate Commerce Act (49 U.S.C. 1, et seq.) and the Shipping Act of 1916 (46 U.S.C. 801, et seq.).

(h) PRESUMPTION OF DEFINITION.—For the purposes of this section—

(1) A recyclable material which is functionally or technically equivalent to or substitutable, in any industrial or manufacturing process, for any virgin natural resource material shall be presumed to be competitive with such virgin natural resource material unless this presumption is rebutted by a preponderance of the evidence.

(2) "Recyclable material" means any material such as scrap metal, discarded textiles, rubber, plastic, glass, and others which still have useful physical or chemical properties after serving a specific purpose and can, therefore, be usefully recovered from solid waste sources such as garbage, refuse, or trash or from industrial, commercial, and agricultural operations for reuse or recycling.

(3) "Transporation Commission" means, to the extent of their respective jurisdictions, the Federal Maritime Commission and the Interstate Commerce Commission.

(i) REGULATION.—The Transportation Commissions are authorized to prescribe such regulations as may be necessary to carry out the provisions and purposes of this section.

(j) PENALTIES.—Any person who violates subsection (d) of this section shall be subject to a civil penalty of not more than $5,000 for each such violation. Such civil penalty shall be assessed by the Transportation Commission which has jurisdiction over the violation. Such penalty may be remitted or mitigated upon such terms as the affected Commission shall deem consistent with the purposes of this section.

FREIGHT RATES FOR RECYCLABLES

Mr. MOSS. Mr. President, I offer the amendment to section 703 of the Rail Service Act of 1973. The amendment would not alter the fundamental intent of section 703, which is to provide more equitable freight rates for recyclable materials.

The amendment would simply bring greater precision of language to this section, and would place in the bill a provision for a 3-year study of the present rate structure. When Senator COOK and I presented section 703 in committee it was our intention to include such a provision for a study, but through a misunderstanding, it was not included in the final draft of the bill.

Allow me to describe briefly the importance of section 703, which is entitled "Freight Rates for Recyclables." In my opinion, this section embodies one of the most important and compelling pieces of legislation to come before the Congress this session. Clearly the Senate Commerce Committee, its distinguished chairman, Senator MAGNUSON, and Senator HARTKE, are to be congratulated for the actions they have taken to support the proposal that these provisions be enacted into law before the Congress adjourns this year.

If, as the committee intends, section 703 is enacted, and if it is fairly, expeditiously, and vigorously administered, it will have a dramatic, beneficial impact on the following areas of vital importance to our Nation:

First, conservation of dwindling supplies of critically short natural resources;

Second, increased recycling and recovery of these same resources from our country's growing mountains of solid waste;

Third, conservation of vast amounts of energy by industrial users throughout the United States;

Fourth, alleviation of our imperiled balance-of-payments position; and

Fifth, assistance to our cities and States in their constant struggle against the expanding problems and spiraling costs of solid waste disposal.

Moreover, we will gain these benefits with no cost to the American consumer or the Federal Treasury.

Mr. President, the record before the Commerce Committee shows that since 1968, agency after agency of the executive branch has urged the Interstate Commerce Commission and the Federal Maritime Commission to correct the unreasonable, discriminatory transportation rates for recyclable commodities such as scrap metals, waste paper, and textile wastes.

The Secretary of the Interior, the Department of Commerce, the Director of the Office of Emergency Planning, the General Services Administration, the Council on Environmental Quality, the Environmental Protection Agency, the Citizens Advisory Committee on the Environment, the National Materials Policy Commission, and the National Science Foundation have all called for the elimination of the unreasonable and discriminatory freight rates which have impeded effective recycling and have drained our scarce stock of critical natural resources.

At the local level, the National League of Cities, the U.S. Conference of Mayors, the Council of State Governments, and the League of Women Voters have sought the same relief from the Federal Government contending that unreasonable, discriminatory freight rates for the transportation of recyclables are discouraging recycling and making it more and more difficult and costly for local governments to manage and dispose of their expanding volumes of solid waste materials.

Unfortunately, the Interstate Commerce Commission has not responded to this broad range of pleas. The Federal Maritime Commission has made some slight effort, but it has proceeded at a snail's pace and has failed to come to grips with the magnitude of the problem. For the most part, the ICC has actually moved backward in this area. They have approved six straight percentage increases in nationwide rail transportation rates for recyclables in the last 5 years, thereby aggravating and increasing the discrimination already firmly imbedded in the basic rate structure.

The record before the Commerce Committee shows:

First, that in 1959, nonferrous metal ores and concentrates were carried by the railroads at an average rate per hundredweight at 51.7 cents while competing nonferrous scrap metals had to pay 65.1 cents per hundredweight, or a net difference in rates of 13.3 cents;

Second, that in 1971, after ICC licensed some of the annual percentage rate increases mentioned above, the disparity had grown to 17.7 percent; that is, a rate of 70.3 cents was then being charged for the virgin ores, while a rate of 88 cents per hundredweight was charged for competing recyclable materials;

Third, that in 1959, virgin woodpulp was carried by the railroads at an average rate per hundredweight of 17.4 cents, while wastepaper was compelled to travel at an average rate per hundredweight of 31.3 cents, or a net difference in rates of 13.9 cents.

Fourth, that by 1971, however, the rates for woodpulp had risen to only 24.4 cents per hundredweight, while waste paper rates had increased to 43 cents and the net disparity in rates had grown to 18.6 percent.

These rate statistics were derived from those published by the Interstate Commerce Commission itself, and in spite of the clarity of the rate problem presented for rectification, the ICC has stubbornly refused to act.

At this point, I wish to refer briefly to present rail freight rate comparisons which indicate the discriminatory nature of the present rate structure:

First, in the eastern territory of the United States, waste paper is carried by rail at rates which result in revenue per car to the railroads of $344, while com-

peting woodpulp is carried at rates which return only $254.84 per car;

Second, in the southern territory, waste paper is carried at rates which return a revenue per car to the railroads of $216, while the competing woodpulp is carried at revenue per car of only $145.95;

Third, in the western territory, waste paper is carried at revenues per car of $315, while the rates for competing woodpulp return a revenue per car of only $172.15 to the railroads;

Fourth, similarly, virgin alumina and bauxite is carried from Mobile to Los Angeles by rail at a rate of only $16.73 per ton or a revenue per car of $669.20, while scrap alumninum is forced to bear a rate of $45.80 per ton or a revenue per car return to the railroads of $1,374.

Given the past failures of the ICC and FMC to take corrective action, section 703 of S. 2767 has been drafted to compel the Interstate Commerce Commission, the Federal Maritime Commission, and the Environmental Protection Agency to join hands to eliminate all unreasonable rate disparities governing the transportation of recyclable materials without any further delay. In this day of critical national shortage and dwindling supplies of precious natural resources, recyclable materials which are substitute for virgin resources should be paying the lowest possible transportation rates, not the highest.

Thus, section 703(a) directs the two Commissions and the Environmental Protection Agency "to effect with the least practicable delay such changes in the rate structure of the country as will promote the freedom of movement by common carriers of recyclable materials at the lowest possible rates compatible with the maintenance of adequate transportation service."

This means that if any commodity can be carried economically by a railroad or an ocean carrier at a rate of 24.4 cents per hundredweight, no recyclable should pay any more than that rate for a comparable transportation service. It means also that if a containerized natural resource material can be carried at a rate of $16.50 per ton, the competing containerized recyclable material should be carried at the same rate, or at a lower rate if other containerized commodities are transported over the same transportation route at a lower rate per ton.

In other words, various commodities such as agricultural products, forest products and the like are already carried at the "lowest possible rates compatible with the maintenance of adequate transportation service." In some cases, this has been done because Congress directed that it should be done in the national interest. In 1973, and in the years ahead, the national interest clearly directs that recyclable commodities receive the same transportation equality and advantages.

Section 703 directs the two Commissions to cancel all such existing rates and replace same with reasonable, nondiscriminatory rates within a period of 3 years.

And under section 703 the carrier whose rate is challenged shall have the burden of proof to show that the said rate is not unreasonable or unjustly discriminatory as just indicated.

In order to make it abundantly clear why the three Government agencies charged with the administration of section 703 must proceed in the national interest expeditiously and decisively to accomplish the statutory goals just described, let me refer briefly to the following crucial considerations:

First, studies prepared for the Environmental Protection Agency and various industrial sources prove that hundreds of thousands of trillions of Btu's of energy can be saved during the next 10 years if we simply increase industrial utilization of solid waste materials by 50 percent. These reports stress that this energy saving will be achieved only if we promptly eliminate economic impediments to recycling such as discriminatory transportation rates. The studies demonstrate that paper manufacturers and aluminum smelters, for example, use only 5 percent of the energy required for the processing of virgin raw materials when they switch to substitutable recyclable commodities.

Second, studies prepared for the National Geological Survey and the Bureau of Mines indicate that, by 1985, the United States will have to depend on foreign imports for more than one-half of our supplies of the nine most basic raw materials—iron, lead, zinc, nickel, tin, and so forth—and that by the year 2000 we will have to look to foreign imports for more than one-half of 13 of our most basic raw materials. This means that the negative impact on our balance-of-payments position will grow from $5 billion in 1970 to $36 billion in 2000—unless we promptly take all actions necessary effectively to remove all economic impediments to increased recycling.

Third, in a joint report issued in March 1973 entitled "Cities and the Nation's Disposal Crisis," the National League of Cities and U.S. Conference of Mayors stated:

> The disposal of wastes and the conservation of resources are two of the greatest problems to be understood and solved by this nation in the latter third of the country. With almost half of our cities running out of current disposal capacity in from one to five years, America's urban areas face an immediate disposal crisis. The cities' management of solid waste will have to be conducted in the face of two critical trends:
>
> 1. The sky-rocketing volume of solid waste.
> 2. The sharp decline of available urban land for disposal sites . . .
>
> Cities cannot recycle wastes on a large scale until recycling becomes economically profitable on a large scale. The Federal Government should adjust its discriminatory freight rates . . . to provide positive incentives for increased utilization of recycled materials . . .
>
> . . . Recycling and resource recovery as a solution is potentially the most environmentally cost effective and responsible approach . . .

In conclusion, I want to emphasize that I do not believe that its adoption and the subsequent reduction in rates for the transportation of recyclable materials will be costly to our railroads or ocean carriers. At the present time, these commodities account for only 2 percent or less of the railroads' total annual revenues, and even less in the case of ocean transportation. Moreover, the whole purpose of section 703 is to increase the volume of recyclable traffic, and thereby more than offset any loss involved in the structure.

I believe the transportation industry can look forward to the day when the recyclable industry and those who use recyclable materials will be among their very best and most dependable and desirable volume customers.

For all of these reasons, Mr. President, it is crucial to the national interest that the section on freight rates for recyclables be included in this legislation.

I move the adoption of the amendment.

Mr. COTTON. Mr. President, will the Senator yield for a question?

Mr. MOSS. I yield for a question.

Mr. COTTON. The Senator's amendment was not presented to the committee, and it is not printed. Do I correctly understand the Senator—and I have every confidence in whatever he recommends—that his amendment fixes rates?

Mr. MOSS. No, it does not fix rates; it simply provides that there shall not be discrimination between virgin materials and used or recyclable materials. For instance, scrap iron would now move at the same rate as newly poured iron or even other iron products. Wood pulp would not move more cheaply than does paper. There is great discrimination now.

Mr. COTTON. Is that discrimination perpetrated by the decisions of the Interstate Commerce Commission or by law?

Mr. MOSS. I am sorry; I did not understand the question.

Mr. COTTON. The Senator has indicated that there are discriminations now. Are those discriminations the result of decisions by the Interstate Commerce Commission?

Mr. MOSS. They have been carried forward for a considerable period of time. Advantage has been given to virgin materials on the theory that we at one time thought we needed to encourage the making of paper and the mining of ore.

Mr. COTTON. The force of the Senator's amendment is that times have changed and that we should now, as far as possible, utilize recycled materials and not dig into our basic resources.

Mr. MOSS. The Senator is correct. That is the whole purpose of the amendment.

Mr. COTTON. I thank the Senator. With that information, I would favor accepting the amendment.

Mr. HARTKE. The amendment of the Senator from Utah basically is to correct some elements of the original amendment adopted in the committee itself. We are prepared to accept the amendment.

Mr. BEALL. We are prepared to accept the amendment.

Mr. HARTKE. I yield back the remainder of my time.

Mr. MOSS. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Utah.

The amendment was agreed to.

Mr. MOSS. I move to reconsider the vote by which the amendment was agreed to.

Mr. BEALL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. HARTKE. I merely desire to submit an amendment.

Mr. COTTON. Mr. President, I send to the desk an amendment.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. COTTON. Mr. President, I ask unanimous consent that the further reading of the amendment be dispensed with. I shall explain it.

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

The amendment ordered to be printed in the RECORD is as follows:

On page 141, line 1, after the word "section", delete all through "and," on line 3 and insert in lieu thereof the following:

"(1) in the case of a protected employee with five or more years service on the effective date of this Act, shall continue for six years after the date of conveyance of rail properties under section 303 of this Act, except that for such employee who has also reached age fifty on the effective date of this Act such allowance shall continue until the attainment of age sixty-five; and (2)".

On page 141, line 5, delete "such date" and substitute "the effective date of this Act".

Mr. COTTON. Mr. President, the Senate has just rejected the Beall amendment which would have taken out of the bill the labor arrangement that was written into it, that would guarantee wages and increases and so forth to all protected employees until they were 65. Now that arrangement was written into the bill by the House and is now in the Senate bill. Much as I desire to support this bill, having worked long and hard with the other members of the Commerce Committee, I do not believe I can bring myself to vote for a bill that sets this kind of precedent and that writes into law as drastic a labor agreement. The Beall amendment would not have legislated an agreement, but would have left it up to the parties, as was done in the Amtrak legislation.

The amendment I am offering is a fair and reasonable compromise and would at least put the question into the conference, provided the Senate passes the bill. It is a fair and reasonable compromise, although I want to make it plain that I still do not believe we should be legislating labor agreements. To that extent, I am inconsistent in offering this amendment.

But, my amendment simply provides that in the case of protected employees with 5 or more years of service on the effective date of this act, their compensation shall be continued for 6 years, which is the same arrangement agreed to as a result of the Amtrak legislation. It further provides that all protected employees 50 years of age or over on the date of passage of this bill shall be protected and guaranteed their wages until they become 65 years old.

Now, no one has come up with reliable figures, and I do not know that we could, but I doubt there are many cases of 30-year-old employees, under the bill in its present form, who would be drawing pay plus increases and, in some cases, additional pay when otherwise employed for the whole period of 30 to 65 years of age. Probably that would be the exception rather than the rule. But this would give the same protection that was given in the Amtrak legislation on wages for all the younger employees who have had 5 years of service, but for those 50 years or over where it becomes more difficult, of course, for displaced employees to find employment, they shall have the guarantee of the protection already written into this bill up to the age of 65.

That is a very simple explanation. It is a simple and plain compromise. It can have the advantage at least of allowing us to have something in conference before we pass such a drastic labor arrangement. This is not unfriendly to labor. It is fair. I would have no desire to deprive the protected employees of their fair and reasonable compensation. I can appreciate the feelings of the many Senators who voted against the Beall amendment, and who may have been apprehensive because it left it up to the parties to negotiate. Any Senator who voted for the Beall amendment could not go home and say, "I made sure that protection was specifically written into the bill for you." Something, I might add, which has not been done in the past.

Therefore, I had hoped that my amendment would be accepted. However, I understand that the Senator from Indiana (Mr. HARTKE) cannot accept it.

Mr. President, I ask for the yeas and nays.

There was not a sufficient second.

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

The PRESIDING OFFICER (Mr. ROTH). The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. COTTON. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. HARTKE. Mr. President, let me say that the distinguished Senator from New Hampshire (Mr. COTTON) has been very helpful on this measure. He spent long hours, expended diligent effort, and contributed immeasurably to the success of this legislation, as did the distinguished Senators from Maryland and Kansas (Mr. BEALL and Mr. PEARSON). I find it rather unpleasant, therefore, to oppose this amendment, but I have to, on several grounds.

To make the analogy with Amtrak, to make the analogy of a situation negotiated after the fact; that is, that there was a situation where employees of the railroad were given the opportunity to go with Amtrak, but if they chose not to go with Amtrak, they still retained employment with the railroad. It was not mandatory to transfer. Under this legislation, there will be no such opportunity afforded those displaced employees either to accept the employment given to them or if there is an offer made and they do not accept it, then they are entitled to absolutely nothing.

Second, this is not really, as I have said repeatedly, a labor collective bargaining agreement. This is a labor protection device, under a special set of circumstances, where the court has assumed jurisdiction over the operation. The individuals at the present time, by virtue of their prior contract, have benefits which are really substantially better than those being put forth in this bill. In effect, what we do is vitiate the contractual arrangements made by the individual to force them in many cases, maybe to leave their homes and be transferred.

I am in no position to discuss the actuarial effects, any more than is the Senator from New Hampshire, because we frankly do not know. He said he did not know. I admit he did not know. But no one else knows, either. That is one of the real difficulties about the bill.

As to how many people would be affected adversely by this amendment, I have no idea, because we are dealing with unknown factors. We do not know the number of miles. We do not know the number of employees. We do not know how many individuals would be affected below 30 years of age.

Mr. COTTON. Those who worked 5 years would not be affected adversely, any of them, for 6 years.

Mr. HARTKE. I know, but they would be after the 6 years. It would be fatal to a man anticipating that he had his protection for a lifetime. Under the present contract which has been negotiated with Penn Central, it is not even a 65-year age limit.

There is no requirement that he accept transfer. I will agree that until the 6th year, under the amendment, there would be no difference. But in the 7th year, that employee could be spinning out in orbit.

As I said before, I disagree with the amendment. I think the provisions of the bill are correct. The Senator from New Hampshire is correct in the other assumption that unless some changes are made in this title, it will not be in conference.

Mr. COTTON. Also, would the Senator agree that as the bill now reads, payment to all of these employees until they are 65 years of age may well run far beyond the $250 million authorized in the bill to meet the obligations? Does not the Senator agree with that?

Mr. HARTKE. Let me say that I do not disagree with it, which is not necessarily a distinction, but it is a different statement.

The fact is that I do intend to offer the amendment, which I promised the Senator from Maine I would offer, limiting the tax liability under this bill to $250 million. I intend to offer that amendment, even though I did not persuade the Senator from Maine to go along against the amendment of the Senator from Maryland.

The liability in this bill, as it is to be passed, will be $250 million, subject to only one condition—that is, that Congress itself would, at some future date, make a decision to add to that amount.

There is no explicit or implicit recognition of any further liability by the taxpayers.

Mr. COTTON. The Senator has been talking about a contract. If at some future time we find that $250 million has not taken care of all of this guarantee to protect employees until they are 65 years of age and that another $100 million or $150 million is necessary, Congress has to appropriate it.

Mr. HARTKE. I do not think Congress has to do so at all. I believe that liability should be assumed by the corporation. This is the discussion I had with the Senator from Maryland, and he and I disagree as to who should assume that obligation. I think the obligation to reimburse the people who are displaced is incumbent upon someone, and the question is not whether they should be paid but who is going to pay.

Mr. COTTON. Even with all the trouble this Nation is in, the Federal Government is likely to be more solvent than the corporation we are contemplating. The Senator is depending on its having clear sailing, paying its way and being a profitable corporation, at least one that can meet its obligations. But, there is a moral obligation on Congress to make up the difference and to see that the employees are protected—all of them, even if they were only 30 years of age at the time of the effective date of this act until they are 65 years of age.

Next year, the Portsmouth Naval Shipyard in my State of New Hampshire may be discontinued. It is the largest single employer of labor in my State. If so, all those who have worked there for years will just be out in the cold. If this kind of protection is to be granted by law, I want those people also protected until they are 65 years of age. I want those who are out of jobs in the Boston Navy Yard, which was abolished a short time ago, or in any Government installation, given the same protection. If we are going to do it for the railroads, we ought to do it for our own employees. Therefore, this is an irresponsible situation.

I thought I was offering a very favorable amendment which would go at least nine-tenths of the way toward what is sought in the bill as it now reads.

Mr. HARTKE. The proposal of the Senator from New Hampshire in this regard does not take cognizance of the fact that it has been the established policy of the United States, in accordance with the law of 1940, with modifications, under the agreement made in 1936, that railroad employees do have this different type of arrangement on displacement.

I do not find it conducive to the benefit of the Senate to have any further discussion, because I think it is just a difference of opinion. I am not in any way unsympathetic with the Portsmouth Naval Yard employees or anyone else. I feel that what is justified here is to treat these employees at least half-way or substantially as well as they are treated under their present contracts, since we are the ones who are taking their jobs and forcing displacement from their employment.

Mr. BEALL. Mr. President, the Senator alluded to the 1936 agreement. I believe the 1936 agreement provides 5 years' protection and 60 percent of the income for employees who lose their jobs through merger.

Mr. COTTON. So my amendment would be more liberal.

Mr. BEALL. The amendment of the Senator from New Hampshire is more liberal than what has been the established practice since 1936.

Mr. COTTON. In view of that, I again appeal to the Senator from Indiana to accept this amendment. I fail to see how he can fail to do so after it has been shown that my amendment is more liberal than the present guarantee the railroad employees have.

Mr. HARTKE. It is not more liberal in its philosophy. The political decision has been made. The Railroad Retirement Fund is funded by the Government. The railroad situation has been handled differently all through its history, and I do not propose at this time to change that situation.

If the Senator from New Hampshire or the Senator from Maryland or others want to come up with a national labor policy, a national transportation labor policy, I will join them.

Mr. BEALL. It is not a matter of changing policy. The history has been that when labor and management negotiated, they decided in the 1936 agreement on 5 years as the kind of protection that should be offered. But when labor and management sit down, with the Federal Government paying the bill, they decide that lifetime protection is the kind that should be offered.

When they are paying the bills themselves, they decide one thing; but when the taxpayer is paying the bill and the same taxpayer is not a party to the negotiation, they feel that the sky is the limit.

Mr. HARTKE. The taxpayer is paying the bill in order to avoid the closing down of the railroads. If the Senator from Maryland can find somebody else to pick up the bill, I would be more than glad to do it.

This was negotiated by the Penn Central, in the merger. These employees received their benefits at that time. Now the Senator is saying to them that that has failed—we had long hearings on that—that the Penn Central merger has failed; that the private enterprise system in that regard has failed. The Government has to come in now and try to bail them out, without nationalizing the system. We are at least going to provide in the reorganization and restructuring that these employees will have some of the benefits they had under the privately negotiated settlement.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New Hampshire. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Mississippi (Mr. STENNIS), the Senator from Louisiana (Mr. JOHNSTON), and the Senator from Maine (Mr. MUSKIE) are necessarily absent.

I also announce that the Senator from Missouri (Mr. SYMINGTON) is absent because of illness.

The result was announced—yeas 40, nays 56, as follows:

[No. 572 Leg.]

YEAS—40

Allen	Dominick	Hruska
Baker	Eastland	Javits
Bartlett	Ervin	McClellan
Beall	Fannin	McClure
Bellmon	Fong	McIntyre
Bennett	Goldwater	Packwood
Brock	Griffin	Percy
Buckley	Gurney	Saxbe
Byrd, Harry F., Jr.	Hansen	Scott, William L.
Chiles	Haskell	Taft
Cook	Hatfield	Thurmond
Cotton	Hathaway	Tower
Curtis	Helms	Weicker
	Hollings	

NAYS—56

Abourezk	Hart	Nunn
Aiken	Hartke	Pastore
Bayh	Huddleston	Pearson
Bentsen	Hughes	Pell
Bible	Humphrey	Proxmire
Biden	Inouye	Randolph
Brooke	Jackson	Ribicoff
Burdick	Kennedy	Roth
Byrd, Robert C.	Long	Schweiker
Cannon	Magnuson	Scott, Hugh
Case	Mansfield	Sparkman
Church	Mathias	Stafford
Clark	McGee	Stevens
Cranston	McGovern	Stevenson
Dole	Metcalf	Talmadge
Domenici	Mondale	Tunney
Eagleton	Montoya	Williams
Fulbright	Moss	Young
Gravel	Nelson	

NOT VOTING—4

Johnston	Stennis	Symington
Muskie		

So Mr. COTTON's amendment was rejected.

Mr. HARTKE. Mr. President, I move to reconsider the vote by which the amendment was rejected.

I move to lay the motion on the table.

The motion to lay on the table was agreed to.

Mr. COTTON. Mr. President, I send to the desk a second amendment.

The PRESIDING OFFICER. The clerk will read the amendment.

The assistant legislative clerk read the amendment, as follows:

On page 148, between lines 2 and 3, insert the following new subsection:

"(i) Any employee of a naval shipyard who is deprived of employment because of any Government action or the lack of fuel supplies shall be entitled to the same benefits as are provided in this section. The Secretary of Labor shall certify the eligibility of employees under this subsection. There is authorized to be appropriated such sums as may be necessary.

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

Mr. COTTON. I yield.

Mr. HARTKE. The amendment which the Senator from New Hampshire is offering is not germane to the bill. I am prepared to listen, and I hope the chairman of the Committee on Labor and Public Welfare will hear what he has to say, as well as those concerned with the problem of unemployment which is going to occur in the future. As I have said, I will be glad to listen.

Mr. COTTON. I thank the Senator. I understand that, undoubtedly, the Chair will rule that this amendment, under the unanimous-consent agreement, is not germane. But, I appreciate the Senator's courtesy in withholding objection, because I would like to have 2 or 3 minutes to present the reasons for the suggested amendment.

Mr. President, I do not want to have it go out to my people living in New Hampshire, where we are living in constant fear of losing our naval shipyard, as other States have lost theirs—I note the Senator from Rhode Island is present—and I do not want it to go out to the 7,000 people employed in the Portsmouth Naval Shipyard, which is the largest single employer in my State, that we have passed a bill down here that guarantees pay to displaced employees of railroads until they are 65 years of age, together with any salary increases. But, that if the U.S. Government through the Secretary of Defense or the President of the United States decided, a month or a year from now, to close down our naval shipyard, 6,000 or 7,000 people would be thrown out of work there, some of them after many years of work there, and that we would not give them the same consideration that this bill gives to displaced railroad employees.

He said this is a matter of political philosophy. Certainly, he was 50 percent right. It is political. But, I do not say anything about the kind of philosophy it is.

If it is going to be the political philosophy of this Congress and of this government, in trying to save rail transportation, to guarantee to all workers of all ages—even those who may be only 30 years of age—who may have worked only 5 years, and pay them, until they are 65 years of age, giving them all the raises in the meantime, then I think we should also do it in the Senate. I think any Senator who has served here 5 years, if he is displaced—and he is liable to be next year—should be assured that he will receive his full salary as a Senator until he is 65 years of age. What is fair for the goose is fair for the gander. Nobody could criticize that. But, certainly we ought to treat our own displaced Federal Government employees in the same manner as others, and that is the reason for this amendment.

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

Mr. COTTON. I yield.

Mr. COOK. I wonder why he has been so exclusive in naming a naval yard. We do not have a naval yard in the Commonwealth of Kentucky. We are in the central part of the United States, but the condition of the defense budget calls for 15,500 civilian employee jobs to be lost.

Mr. COTTON. Does the Senator want to add that to this amendment?

Mr. COOK. It should be any facility.

Mr. COTTON. I accept the amendment.

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

Mr. COTTON. I yield.

Mr. GRIFFIN. I thank the Senator from New Hampshire for the fairness and equity involved in the amendment. I hope he will not concede the point of order and press the amendment. I would like to point out that there are hundreds of thousands of automobile workers in Michigan who, because of Government action, are presently unemployed. I wonder if the Senator would be willing to have his amendment modified to include such employees?

Mr. COTTON. I will be glad to accept that modification.

Is there anyone else who wants to include somebody else?

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

Mr. COTTON. I yield.

Mr. DOLE. Just in the last 2 weeks in general aviation industry about 2,500 workers have lost their jobs in Wichita because of indirect Government action and the lack of fuel. If we could provide for them as well as the farmer who are unable to get fuel, I would like to have them included.

Mr. COTTON. I will be glad to add them.

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

Mr. COTTON. I yield.

Mr. CURTIS. I would like to say a word for the taxpayer. Would the Senator include them? [Laughter.]

Mr. COTTON. No, I cannot. That would not be germane.

I would suggest, however, that concerning this philosophy that we are discussing, we should make sure that everybody has an opportunity. All labor should be treated alike under this new political philosophy.

Now, having offered the amendment and accepted these modifications——

Mr. COOK. Mr. President, if the Senator will yield, I would just like to say to the Senator that I would like to have the privilege of asking unanimous consent that the rule of germaneness not apply to this amendment, so Members of the Senate would have an opportunity to vote on it on its merits.

Mr. COTTON. I would be happy for the Senator to do so.

Mr. COOK. I just want to hear who objected, I will say to the Senator from New Hampshire.

Mr. COTTON. I do not plan to appeal from the ruling of the Chair when our new Vice President is in the chair for almost the first time.

I therefore would ask unanimous consent that an exception be made with respect to the rule of germaneness adopted in the present unanimous-consent agreement as it applies to my amendment.

Mr. HARTKE. Mr. President, reserving the right to object, and I do intend to object.

The VICE PRESIDENT. Does the Senator from Indiana reserve the right to object?

Mr. HARTKE. Yes, I reserve the right to object. The Senator from New Hampshire has made a unanimous-consent request.

Mr. COTTON. Mr. President, I have made a unanimous-consent request. The Senator from Indiana has been very courteous in allowing me to present arguments for my amendment. The political philosophy has been clearly put before the Senate. And, I hope, even though my term of service in the Senate is almost over, that before I leave the Senate, we can have this kind of measure adopted.

If the political philosophy is going to be that we should take care of everybody until the age of 65, I want to see to it in my last days in the Senate that indeed everybody is taken care of, including Members of the Senate.

Mr. HARTKE. Mr. President, reserving the right to object, what is the parliamentary situation? Is there a unanimous-consent request.

The VICE PRESIDENT. A unanimous-consent request is pending.

Mr. HARTKE. Mr. President, reserving the right to object, and I do intend to object, I want to say that I am very interested in the discussion by the Senator from New Hampshire. If it were made in seriousness, I would be glad to go ahead and debate it on the floor. I think there is a great deal of merit in the measure and would like to discuss it. However, I did not use the term "political philosophy." I said that is the philosophy adopted by the Government. It is not a new one. It started in the 1940's. I was not here then. I believe that perhaps the Senator from New Hampshire was a Member of Congress at that time.

Mr. COTTON. I was not here then.

Mr. HARTKE. Mr. President, I feel, all of the discussion having been had, that I must object. I raise a point of order upon the amendment itself.

The VICE PRESIDENT. Objection is heard.

Mr. HARTKE. I raise the point of order under the unanimous-consent agreement that the amendment is not germane.

The VICE PRESIDENT. Does the Senator from New Hampshire yield back his time?

Mr. COTTON. I am waiting for the ruling of the Chair before I yield back my time.

The VICE PRESIDENT. The point of order is not in order until the Senator from New Hampshire has yielded back his time.

Mr. COTTON. I congratulate the Vice President for having mastered the rules of the Senate in such a short time. How would it be if I yielded back my time if the Chair would rule that my amendment would not do anything? [Laughter.]

Mr. President, I yield back the remainder of my time.

The VICE PRESIDENT. The Chair rules that the point of order is sustained.

MODIFICATION OF AMENDMENT NO. 824

Mr. HARTKE. Mr. President, I ask unanimous consent that in the amendment offered by the Senator from Oregon (Mr. HATFIELD), amendment No. 824, that the figure on page 51, line 21, be changed from $15,250,000 to $15,350,000. That was the intent of the amendment, and this is merely to correct the amendment accordingly.

The VICE PRESIDENT. Is there objection to the request of the Senator from Indiana? The Chair hears none,

and it is so ordered. The amendment is accordingly modified.

RECONSIDERATION OF VOTE NO. 571

Mr. CHILES. Mr. President, I move that the vote by which the Beall amendment legislative roll call No. 571, was rejected be reconsidered.

Mr. GRIFFIN. Mr. President, I ask for the yeas and nays.

The VICE PRESIDENT. Is there a sufficient second? [Putting the question.] There is a sufficient second.

The yeas and nays were ordered.

The VICE PRESIDENT. The question is on agreeing to the motion to reconsider the vote by which the Beall amendment was rejected.

Mr. BEALL. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator will state it.

Mr. BEALL. Mr. President, is this a debatable motion?

The VICE PRESIDENT. The answer is in the affirmative.

Mr. BEALL. How much time do we have on the motion?

The VICE PRESIDENT. There will be 20 minutes on the motion, 10 minutes to each side.

Mr. CHILES. Mr. President, I voted against the Beall amendment. My reason for voting against the amendment was that I had an understanding that this was an agreement that labor and management had worked out and that they thought it was fair and equitable. Upon hearing that, I decided that I would vote against the Beall amendment. To tamper with an agreement that labor and management had worked out did not seem to me to be too wise a course to take. However, now that I find that labor and management had worked out this agreement, primarily because the taxpayer was going to pick up the bill and that we were going to do something in this amendment that I do not think that we have done in any other matter here which dislocated people, I would like to change my vote.

When we discussed the question of the SST and there was a great deal of unemployment in Washington and in California and other States, nowhere in that measure did we say that we would pay these people who were unemployed until they reach the age of 65 years. However, suddenly for the first time we are making this kind of agreement here. I do not understand how we could justify that vote and provide that the taxpayers would pick up that bill.

It is one thing if the corporations themselves were going to pick up the bill. If they worked out an agreement between labor and management and if the companies in the Northeast were going to pick up the obligation, that would be one thing. However, I understand that the taxpayer is going to be responsible for picking up the bill. And at a time that we are making defense cuts and cutting Navy shipyards and cutting allocations, I do not see how we can justify such a vote. I know that we have increased the unemployment compensation a little in such cases.

However, I know of no agreement that we will proceed to pay a person until he reaches 65 years of age up to $30,000, as I understand it.

I think the junior Senator from Florida cast a wrong vote on that measure. I want to reconsider the motion. I want to cast an affirmative vote. I would like to ask the Senator from Maryland if he would allow me to ask him a question or two on his amendment. I am trying to inform myself better on the subject.

Mr. BEALL. I am most happy to let the Senator ask me a question.

Mr. CHILES. Mr. President, what did the Senator from Maryland say in regard to that measure? Did the Senator strike out the entire provision that the workers would receive some kind of unemployment benefits?

Mr. President, may we have order?

The VICE PRESIDENT. The Senate will be in order.

Mr. BEALL. Mr. President, my amendment is a very straight-forward substitute for the committee language now in the bill. As I pointed out in my introductory remarks, I do not think it is proper for the Congress to legislate a collective bargaining agreement in this respect.

The Senator is very correct about the specifics of the matter.

I do suggest that the employees who would be displaced as the result of this merger should be protected. My amendment says first that the new corporations and the labor unions involved should get together and bargain collectively to come up with employee displacement benefits. The amendment specifically guarantees them the present rights they now have. They should proceed with a collective bargaining agreement similar to the one with their present employers.

I suggested that there is an obligation on the Federal Government to proceed so that the new corporation should abide by any benefits negotiated. And I provide $250 million in my amendment.

That, very briefly, is what my amendment does. Importantly, we avoid the precedent that the Federal Government would establish if we enacted the bill as presently written.

Mr. CHILES. The Senator did provide for benefits for workers who were displaced?

Mr. BEALL. Most certainly. I think that they need benefits.

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

Mr. CHILES. I yield.

Mr. COOK. Mr. President, I say to the Senator from Maryland that the parties negotiating with the $250 million topside level could conceivably negotiate this very same agreement.

Mr. BEALL. They could negotiate the same agreement in the bill if they wanted to. However, at least they would negotiate.

Mr. CHILES. Mr. President, would the Senator explain again how they are protected under the bill?

Mr. BEALL. The Senator wants to know under my amendment how they would be protected?

Mr. CHILES. The Senator is correct.

Mr. BEALL. Mr. President, my amendment says that labor and management should sit down with a new corporation which, of course, has never participated in any of these negotiations. My amendment says that labor and the new corporation should sit down and come up with a collective bargaining agreement similar to those in that area. And the Secretary of Labor should certify that it is fair and equitable.

We further say that in the negotiations, they should keep in mind some principles. We say, first of all, they should preserve the rights, privileges, and benefits that employees now have under the existing collective bargaining agreements. We say, second, they should continue the collective bargaining rights; third, they should protect such individual employees against a worsening of their positions with respect to employment; fourth, that they should give assurances of priority of reemployment of employees terminated or laid off; and fifth, that they should have paid training and retraining programs.

Then we provide $250 million with which to do the job.

Mr. HARTKE. Mr. President, if I may have the attention of the Senator from Florida, in the first place, this is not a collective bargaining agreement that is provided for in the bill. Very simply, it deals with an entirely different situation than Lockheed.

What we have is the railroad corporations which are under the jurisdiction of the court. What we are saying to the court is that we are providing a way to prevent the liquidation of the railroads. In that process, we are saying certain people will be displaced. They have no choice in the matter whatsoever, if we pass the legislation. They cannot accept a job at reduced compensation; they are just thrown out. What we are saying is, "We are not going to throw you to the wolves."

Mr. CHILES. If the Senator will yield at that point, the people working on the SST did not have any choice.

Mr. HARTKE. On what?

Mr. CHILES. That they were going to be displaced. When Congress voted that we were not going to fund the SST, we did not give those workers any choice.

Mr. HARTKE. Mr. President, does the Senator know what the existing rights of these rail employees are? If the Senator wants to take them away from them, that is his prerogative. If you vote for the amendment, you may be voting to take existing rights away from those employees which they have today.

Mr. CHILES. Will they have those rights if Congress does not provide the funds for this?

Mr. HARTKE. They certainly will.

Mr. CHILES. They will, when the railroad is bankrupt?

Mr. HARTKE. It is possible that they could go back in at the time of taking over by the corporation, and there could be a deficiency judgment issued against the United States. They might be able to go into a court of claims with their claim and receive more money than is provided in this bill. Their rights are broader in their present agreement than they are in this bill, and if we vote this way, we could create a situation whereby any one of those employees could go into court and force the court to issue a de-

ficiency judgment against the United States because the United States had taken away existing contractual rights without affording just compensation.

If Senators want to do that, we can agree to the Beall amendment. It will be no cheaper, and it will not void the agreement. The Amtrak situation is not analogous, because the employee had the right to go to Amtrak or stay with his present employment. If he wanted to go to Amtrak, he had to take the Amtrak contract, but it was his choice.

Here he has existing rights under the Penn Central merger agreements. We can complain about the prior railroad loans or the collective-bargaining agreement that was made by Penn Central and the rest of these railroads; but we did not consummate those agreements. If this amendment is adopted we are saying to these employees, "You are going to have to take less than you had before, or some of these employees are going to have to be turned out." But they can appeal.

Mr. CHILES. But the taxpayers did not make that agreement with Penn Central, either.

Mr. HARTKE. Oh, on that question, there is no difference between the Beall amendment and the committee's bill.

Mr. BEALL. There is a substantive difference.

Mr. HARTKE. The amount is $250 million in each case, and the taxpayer is going to pick it up. Anyone who says the taxpayer is not going to pick it up in either case is mistaken.

Mr. BEALL. Mr. President, will someone yield? I do not have time.

Mr. CHILES. I yield to the Senator from Maryland.

The VICE PRESIDENT. Does the Senator from Florida yield? The Senator from Indiana has the floor.

Mr. HARTKE. Mr. President, there is plenty of time on the bill.

Mr. BEALL. I yield myself 5 minutes on the bill.

The VICE PRESIDENT. There is time on the amendment.

Mr. BEALL. To answer the question of the Senator from Florida, my amendment provides $250 million as a top limit, because I believe that the Federal Government is entering into a situation where we have bankrupt railroads, and the Federal Government should not impose on the new corporation an undue burden that it cannot shoulder.

It cannot possibly be successful if the new corporation is going to have to pay the costs of any labor benefits that they may be obligated to pay as a result of preexisting agreements. This, I think, the Federal Government has some obligation to pick up as costs. In the bill as now written, there is no cap on the $250 million; it authorizes $250 million to pay for the expense of these agreements, but it also does not say there shall be no more paid. It says, in effect, that if the agreements cost more than that, "Come back next year and we will have to appropriate some more," because we are committing ourselves, in this bill, to provide up to $30,000 lifetime guaranteed income to anyone who loses his job, plus any increases in salary that may come to those who continue to work. In other words, there is no limit, under the Senator's proposition which now exists in the bill.

In my proposition, there is a $250 million contribution to help defray the costs which might be incurred between the new corporation and the labor union.

Mr. HARTKE. Mr. President, I want to address myself to that proposition, to clear up the situation.

In the first place, there is not a $30,000 lifetime guarantee. It is a maximum of $30,000 per year, and there will not be many people in that category.

Under the Penn Central agreement at the present time there is no $30,000 limit. The difference is that it is not a lifetime agreement under this bill, it is limited to age 65. It is a lifetime agreement under their present labor contract. We are taking this and transfer protection away from them.

Under the amendment I have proposed, the Senator from Maryland will agree, there would be a cap of $250 million of taxpayers' liability. Under the amendment which is proposed by the Senator from Maryland, there is a $250 million immediate tax liability. There is no question that both of them involve the taxpayer exposure.

Under the Beall amendment, if the parties agree to a contract costing $400 million, then we are $150 million shy. All I am saying is that that $150 million, under his arrangement, has to come from somewhere, or we have to go ahead and say a contract has been negotiated which nobody is going to pay.

That gives you a strike, because if you have people who have a contract and they cannot get their money, then the employees are going to walk out. Then we will be back in midnight sessions, to put in the other $150 million.

Under the bill as it is now written, the $250 million is the extent of the liability of the taxpayers. Any excess over that will be on the corporation or acquiring railroad, and I want it there. The Senator does not. I want it there because it puts pressure on the Department of Transportation to design a system that does not reduce the mileage so much as to raise labor protection costs substantially above $250 million. I want the emphasis on service. The Senator wants the emphasis on money and a shrunk system. That has been the argument from the beginning.

Mr. HASKELL. Mr. President, with the indulgence of the Senator from Florida, I would like to ask two practical questions. Under the Beall amendment, is it not true that 5 years' service with the railroad, without regard to age, is sufficient to guarantee full pay for the rest of your life?

Mr. BEALL. That is correct.

Mr. HARTKE. No, that is not correct.

Mr. BEALL. Until 65.

Mr. HARTKE. Until 65, with certain conditions.

Mr. HASKELL. And the conditions are?

Mr. HARTKE. It is a guarantee, but if he is offered a job even if it involves a transfer, he can be required to take it or lose his monthly displacement allowance.

Mr. HASKELL. Does he then lose his entire railroad pay?

Mr. HARTKE. If he accepts it, he has to forfeit everything?

Mr. HASKELL. No, if he takes the job, does he lose his entire railroad pay?

Mr. HARTKE. Did the Senator say a nonrailroad job?

Mr. HASKELL. Assuming he takes a nonrailroad job, and he goes to work for a filling station, and assuming he gets the same amount from the filling station, will he then lose?

Mr. HARTKE. No, he will lose a percentage.

Mr. BEALL. Fifty percent.

Mr. HARTKE. Fifty percent is right. So he could make, now, $20,000 on the railroad, but if he is not paid on the railroad any more, he can go out and get a job not on the railroad, so he would only lose $10,000 of his railroad pay, so he would be making $30,000, but the cost of employee protection would be reduced by $10,000.

Mr. BEALL. That is correct. Another condition exists that should be mentioned. If an employee has to take a job at a lesser pay than, he is getting now, on the railroad, the Federal Government will supplement his pay to make up the difference between what he had been paid by taking a lesser job and is now getting, plus any raises in the meantime.

Mr. HASKELL. I thank the Senator.

Mr. COOK. If the Senator will yield, I would like also to point out it is very interesting that if any railroad were to go out on strike, I say to the Senator from Colorado, if any railroad were to go out on strike, the striking railroaders would receive their strike benefits under their respective unions, but under this program, would continue to draw full salary in relation to the terms of the bill, so that the individual who was employed on the railroad which is then going out on strike, would receive whatever strike benefits his union might authorize, but the individual who had his job abolished would receive his full payment from the corporation during that period without any diminution of the amount received, although the striking employee would be receiving strike benefits only.

Mr. HARTKE. Mr. President, all these arguments concern the philosophy of government and the collective bargaining agreements that have been previously negotiated. How can we now abrogate those contracts. I am not going to stand here and try to abrogate any collective bargaining contracts and force a possible deficiency on the Government or a deficiency suit in the Court of Claims.

It is not my policy to argue for something that is unjust. I did not make the rules. The collective bargaining agreements with Penn Central were made by people in the private enterprise system. They negotiated the contract. Under this amendment we will vitiate that contract without knowing the replacement terms. I do not know a court in the land—and I know my law pretty well—that will not go ahead and say he is entitled to that

contract if you displace him by the action of Government. There is a possibility that under the due process clause or impairment of contract clause, when a man has been denied the benefits to which he is entitled to claim, he can come back into the Court of Claims. And he has a lifetime claim, exactly what those who support the Beall amendment are opposing. They cannot shut off his employment or make him leave town under the amendment—those terms are unknown. They cannot force him to transfer.

Your complaint with this bill is really a complaint about the history of railroad labor protection. As a practical matter, if I were out there on a working arrangement, I would not want to surrender that right. If you challenge that right, this corporation will never fly.

The trouble with this bill—and I am going to make my reservation statement later—has been from the beginning that we started at the wrong end. That is the trouble with the Beall amendment because it says if we shrink that railroad line to conform to the $250 million of labor benefits, and you say no, where are you going to get the extra money? You are not going to get it out of the surplus oil you have in America.

Mr. COTTON. Mr. President, I have elaborated a long time to the Senator from Indiana about this, and I am amazed and surprised at the statement he has just made.

Let us put the cards on the table. The Beall amendment specifically—and I hope the Senator from Indiana will correct me if I am wrong, as I do not have it before me—preserved all the collective bargaining labor agreements with the railroads involved.

It did not vitiate those agreements. All the employees that could possibly be affected by this bill would have had their rights preserved by the Beall amendment.

Now let us put the cards on the table. What happened was that representatives from two of the most prosperous railroads in this country negotiated the agreement embodied in this bill. The Union Pacific was one of the railroads represented; and the other was the Southern, both of which are solvent and prosperous. And, I might add, neither of which would want this agreement to apply to their employees.

Yet, the House committee took this agreement, negotiated by two of the most prosperous railroads in the country, and incorporated that labor agreement in its entirety into this bill.

While I am sure that the Senator from Indiana was most sincere in what he had to say, when he says that the Beall amendment nullified existing agreements, that could not possibly be true because it specifically does not. Prior agreements would be respected under the Beall amendment.

Second, the Senator from Indiana states that this bill is only embodying in the bill agreements at the collective bargaining table already made. He is talking about agreements made by two prosperous railroads, neither of which are affected by this bill nor do they have to pay—the taxpayer does.

So that the logic of the Senator from Indiana is beyond the power and comprehension of the Senator from New Hampshire, even though he has great respect for his expertise in this area. But this simply could not be.

Mr. HARTKE. Let me clarify the matter on the question of the Beall amendment. What happens there simply is that if you negotiate a matter and there is not sufficient cash to pay for it out of the $250 million, that employee displaced then has the right to go ahead and make his claim some place, because the action of the Government precipitated the situation. The question, so far as he is concerned, is that the action of the Government has, in effect, vitiated his contract without his consent. Since it vitiates his contract, he has a right to displacement under the new bill. Under that bill, it provides simply that he is entitled to his benefits.

Now, the net result is, you either have to get the money from the corporation or from the Treasury, and if the corporation goes bankrupt when he comes on back in which is a distinct possibility, and makes a case in the Court of Claims, he gets his money. You have no advantage under the Beall amendment; but there is an advantage in the bill. I am prepared to vote.

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

Mr. HARTKE. I yield.

Mr. HARRY F. BYRD, JR. I want to attempt to get a breakdown on the cost of this legislation——

Mr. HARTKE. Does the Senator want to do that now, or let us have a vote now on the motion to reconsider the Beall amendment, as we are ready to vote?

Mr. HARRY F. BYRD, JR. All right. I will be glad to wait.

The VICE PRESIDENT. The Senator from Indiana has 1 minute remaining.

Mr. HARTKE. Mr. President, I graciously yield back that 1 minute. [Laughter.]

The VICE PRESIDENT. The question is on agreeing to the motion to reconsider the vote on the Beall amendment.

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Louisiana (Mr. JOHNSTON), the Senator from Maine (Mr. MUSKIE), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

I also announce that the Senator from Missouri (Mr. SYMINGTON) is absent because of illness.

Mr. GRIFFIN. I announce that the Senator from South Carolina (Mr. THURMOND) is necessarily absent because of death in his family.

The Senator from Ohio (Mr. SAXBE) is detained on official business.

If present and voting, the Senator from South Carolina (Mr. THURMOND) would vote "yea."

The result was announced—yeas 41, nays 53, as follows:

[No. 573 Leg.]

YEAS—41

Allen	Domenici	Mathias
Baker	Dominick	McClellan
Bartlett	Eastland	McClure
Beall	Ervin	Nunn
Bellmon	Fannin	Packwood
Bennett	Fong	Pearson
Brock	Goldwater	Roth
Buckley	Griffin	Scott, Hugh
Byrd, Harry F., Jr.	Hansen	Scott, William L.
	Haskell	
Chiles	Hatfield	Sparkman
Cook	Hathaway	Taft
Cotton	Helms	Tower
Curtis	Hollings	
Dole	Hruska	

NAYS—53

Abourezk	Hart	Moss
Aiken	Hartke	Nelson
Bayh	Huddleston	Pastore
Bentsen	Hughes	Pell
Bible	Humphrey	Percy
Biden	Inouye	Proxmire
Brooke	Jackson	Randolph
Burdick	Javits	Ribicoff
Byrd, Robert C.	Kennedy	Schweiker
Cannon	Long	Stafford
Case	Magnuson	Stevens
Church	Mansfield	Stevenson
Clark	McGee	Talmadge
Cranston	McGovern	Tunney
Eagleton	McIntyre	Weicker
Fulbright	Metcalf	Williams
Gravel	Mondale	Young
Gurney	Montoya	

NOT VOTING—6

Johnston	Saxbe	Symington
Muskie	Stennis	Thurmond

So the motion was rejected.

EMPLOYEE STOCK OWNERSHIP PLAN

Mr. HATFIELD. Mr. President, let me again express my appreciation to the members of the Commerce Committee for including within this bill my amendment for an employee stock ownership plan. I believe this will be a most significant step toward expanding the base of ownership in society. By attaching this amendment to the Northeast rail bill, we will establish the railroads as a model for demonstrating the effectiveness and viability of employee stock ownership plans. I ask unanimous consent that information explaining ESOP be printed in the RECORD at this point.

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

U.S. SENATE,
Washington, D.C. November 5, 1973.

DEAR COLLEAGUE: Soon the Senate will begin consideration of legislation to revitalize the bankrupt rail systems of the Northeast. I believe this offers an opportunity for a full discussion of possible alternatives to nationalization.

Increasing federal subsidies are not sufficient to prevent continued deterioration and future labor-management conflicts. Federal solutions, in their present form, are an open invitation to bailouts of other ailing railroads and industries. Our railroad crisis is merely one more in a growing parade of examples where a bankruptcy in leadership and vision has led to a vacuum in our corporate sector which, not surprisingly, has been filled by increasing government powers and controls and new and more costly bureaucracies.

I am, therefore, proposing an amendment to whatever bill passes the Senate. This amendment would signal a healthy, new direction for the proposed Northeast Rail Corporation and the Federal National Railway Association, as proposed by the Pearson-Beall amendment, by adding a provision to the financing and labor relations sections of this bill which would explicitly mandate "to the

maximum extent practicable" the use of an Employee Stock Ownership Plan for financing transfers of corporate assets and future expansions of the reorganized system. Enclosed is a copy of this amendment, together with a comparison of ESOP financing with conventional debt financing and a one-page summary of how this amendment would benefit taxpayers, workers, railroad users, and the public generally if applied to the future system under projections of the Department of Transportation.

The Employee Stock Ownership Plan is, in my opinion, the most important innovation in investment finance developed in recent years. The ESOP would spread stock ownership systematically among all employees, at no personal risk to themselves and without reducing their take-home pay or other benefits. And by building a vested and growing property stake and rising dividend incomes into each member of the corporate team, anyone—management, union officials, and blue collar workers alike—would share * * * of interest in the growth and profitability of the Northeast Rail Corporation, if this is the approach adopted by the Congress. Technological improvements, now viewed as a threat to workers, become a growing source of each worker's retirement and preretirement income under an ESOP. Thus, by offering significant equity opportunities to its work force, the new rail corporation would not only begin on a more viable footing, but, through its ESOP, can offer taxpayers some hope for an efficient, unsubsidized and relatively strike-immune rail system in the Northeast corridor.

From a taxpayer's standpoint, this amendment would add no Federal costs to the present railroad proposals now being considered. In fact, the ESOP is, I feel, our only hope for converting what is today a significant tax loser into a future, tax-paying member of the corporate community. The ESOP's advantages for meeting this crisis and other kinds of economic problems have received extensive treatment in many business and scholarly journals and in several important books in the future of the American economy. A growing number of labor leaders have recognized the ESOP as offering new horizons for democratic unionism. And from a moral and political standpoint, we have nothing to lose and everything to gain by adding an ESOP provision to the Northeast Rail bill.

When all factors are considered, including the cost and relative inadequacy of most alternative private retirement systems (for which the ESOP becomes a substitute), the probable costs and losses to the corporation resulting from (i) the inevitable demands of employees or progressively more pay in return for progressively less work input where they have no opportunity to accumulate significant capital ownership over a reasonable working lifetime; (ii) the shrinkage of markets for the corporation's products or services from the otherwise inevitable inflation of its product prices; and (iii) the added costs to the employer from alienation and demotivation of employees not enabled to acquire capital ownership in an economy where capital is a chief productive factor, etc., the cost of capital under Model II ESOT financing over the long term, i.e., beyond the financing period, is no greater, and will normally be less than the cost of capital resulting from any of the techniques discussed under Model I above.

REORGANIZED NORTHEASTERN RAILROAD SYSTEM BENEFITS TO BE DERIVED UNDER EMPLOYEE BUYOUT THROUGH ESOP FINANCING

THE U.S. ECONOMY IN GENERAL

An efficient, unsubsidized, strike-immune rail system in the Northeast corridor.

A dramatic example of how a sick industry can be revived by creating a unity of interest between management and organized labor through widespread access to corporate ownership and dividend incomes among all employees . . . without affecting traditional jurisdictional prerogatives of management vis-a-vis union leadership.

A positive alternative to nationalization and current trends toward nationalization and taxpayer bail-outs of our railroads.

Cuts government costs and reduces pressures on almost bankrupt present railway workers retirement system . . . yet raises the tax base.

WORKERS EMPLOYED AFTER REORGANIZATION

No reductions in present pay levels, present retirement contributions, and other present employee benefits.

An opportunity to buy and pay for a sizeable chunk of stock in the new company ($10,000 on the average per worker), and to own this stock in the same way as America's wealthiest families accumulated their property holdings: through access to corporate credit, with personal risk cut off by the insulation given under law to a corporation.

No taxes paid on any worker's property acquired through the ESOP, on any appreciation in value of a worker's holdings, or dividends, as long as these assets remains "sheltered" within the ESOP.

In addition to wages, a second income from dividends on stock held by the ESOP for each employee during his working years (an estimate supplement of almost $3,200 per year for the average employee after 5 years, based on conservative profit projections of the U.S. Department of Transportation). Dividend checks received by workers on-the-job or upon their ultimate retirement or displacement by automation are, of course, subject to personal taxes, the same as paychecks.

An opportunity to share with his fellow workers additional company stock and diversified holdings of other companies or real estate, acquired through future financings by the ESOP, as the new corporation expands, adds new and more efficient equipment, or otherwise seeks new sources of income.

A better answer to automation than demoralizing featherbedding, make-work, spread-work, etc.

A personal stake in cost-cutting and higher corporate profits, thus enabling the industry to become more competitive, to grow faster, to expand into new territories, and generate new jobs.

An inflation-proof capital estate to pass on to one's heirs.

AMENDMENT PROPOSING CONSIDERATION OF AN EMPLOYEE STOCK OWNERSHIP PLAN IN FINAL SYSTEM PLAN

On page 5, between lines 23 and 24 insert the following new subsection and renumber accordingly:

"(5) 'Employee stock ownership plan' means a technique of corporate finance that uses a stock bonus trust or a company stock money purchase pension trust which qualifies under Section 401(a) of the Internal Revenue Code in connection with the financing of corporate improvements, transfers in the ownership of corporate assets, and other capital requirements of a corporation and which is designed to build beneficial equity ownership of shares in the employer corporation into its employees substantially in proportion to their relative incomes, without requiring any cash outlay, any reduction in pay or other employee benefits, or the surrender of any other rights on the part of such employees."

On page 26, between lines 2 and 3 add the following new paragraph and renumber accordingly:

"(8) improving employee motivation and raising employee incomes and productivity by maximizing opportunities of railroad employees to participate as stockholders in their employer corporations."

On page 31, between lines 23 and 24 insert the following and renumber accordingly:

"(1) the manner in which employee stock ownership plans shall, to the extent practicable, be utilized for meeting the capitalization requirements of the Corporation, taking into account (a) relative cost savings compared to conventional methods of corporate finance; (b) labor cost savings; (c) potential for minimizing strikes and producing more harmonious relations between labor organizations and railway management; (d) projected employee dividend incomes; (e) impact on quality of service and prices to railway users; and (f) otherwise promoting the objective of this Act creating a financially self-sustaining railway system in the Midwest and Northeast region which also meets the service needs of the region and the Nation;

On page 44, line 19 after the word "Act." insert the following:

"In making loans the Association shall consider whether the applicant has an employee stock ownership plan and shall give preference to applicants who have such a plan."

The VICE PRESIDENT. The bill is open to further amendment.

The Chair recognizes the Senator from Indiana.

Mr. HARTKE. Mr. President, I send to the desk an amendment which I previously offered and ask that it be stated.

The VICE PRESIDENT. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 150, line 10, after the word "employees" insert the words ", not to exceed the aggregate sum of $250,000,000,".

Mr. HARTKE. Mr. President, this is an amendment which was discussed earlier in regard to making clear this provision with respect to labor protection. It clarifies the point. I am sure the other side has no objection.

Mr. BEALL. It is useless to object. It moves the burden from the taxpayer to the new corporation, but the taxpayer is going to pay for it one way or another.

The VICE PRESIDENT. The question is on agreeing to the amendment.

The amendment was agreed to.

Several Senators addressed the Chair.

The VICE PRESIDENT. The Senator from New York is recognized.

Mr. HARRY F. BYRD, JR. Mr. President, will the Senator yield so that I may complete a colloquy I started with the Senator from Indiana?

Mr. JAVITS. I yield for that purpose.

The VICE PRESIDENT. How much time does the Senator yield?

Mr. HARRY F. BYRD, JR. Mr. President, I yield on my own time.

The VICE PRESIDENT. The Senator from Virginia is recognized.

Mr. HARRY F. BYRD, JR. I wish to ask the distinguished manager of the bill, the Senator from Indiana (Mr. HARTKE), a few questions in order to get an understanding on the course of this legislation.

The VICE PRESIDENT. The Senate will be in order.

Mr. HARRY F. BYRD, JR. The organizational and administrative ex-

penses of the Secretary of Transportation, ICC and GNRA will be $43.5 million in this bill.

Mr. HARTKE. The Senator is correct.

Mr. HARRY F. BYRD, JR. And the interim operating cost is listed at $85 million.

Mr. HARTKE. The Senator is correct.

Mr. HARRY F. BYRD, JR. And the subsidies to help maintain unprofitable lines, supplementing State, local, and private funds is $200 million.

Mr. HARTKE. That is $200 million in the bill, but I wish to point out that occurs until there is a subsidy coming.

It is not an immediate expense. Furthermore, it is increased to $400 million by the amendment of Senators MONDALE and HUMPHREY.

Mr. HARRY F. BYRD, JR. The subsidy was increased to $400 million. The labor provision is $250 million.

Mr. HARTKE. The Senator is correct.

Mr. HARRY F. BYRD, JR. The guarantees of obligations of the association, as I understand it, are unlimited in the Senate bill.

Mr. HARTKE. No, that is not true. The House bill has a limitation of $1 billion. We changed that and required the association to come to Congress and make a recommendation as to the obligations needed to restructure and improve rail service. Under the bill, Congress must act affirmatively by resolution for it to become effective. It is not specific as to the ultimate obligational authority, if the Senator means that.

Under the bill at this moment there is no obligational authority at all. There will be none until the final system plan is approved and a recommendation is affirmatively acted on by Congress.

Mr. HARRY F. BYRD, JR. The House bill has $1 billion.

Mr. HARTKE. Yes.

Mr. HARRY F. BYRD, JR. And the Senate version eliminates that.

Mr. HARTKE. The Senate bill has an entirely different approach.

Mr. BEALL. If the Senator will yield, that was my amendment in committee. The Senate bill originally had a $1 billion figure, as far as the authority for the guarantee.

We thought it best to take it out and have them go to Congress with the figure they need. We are saying, "Tell us what you think is right, and we will make a determination at that point whether we should give you the authority that we retain in Congress."

Mr. HARTKE. So that the Senator from Virginia is not misled, there is obligational authority in the bill which allows the association to guarantee up to $150 million worth of loans in order to upgrade or to prevent deterioration of the railroad in the interim period. That is $150 million from the association. That has to be approved by the Secretary of Transportation.

Mr. HARRY F. BYRD, JR. For equipment improvement that is $2 billion.

Mr. HARTKE. Yes; that has been passed by the Senate in another form and the same amount is in this measure.

Mr. HARRY F. BYRD, JR. That is the same as S. 1149, which passed the Senate on July 27.

Mr. HARTKE. That is right.

Mr. HARRY F. BYRD, JR. And that is to acquire rolling stock?

Mr. HARTKE. Basically it is called the freight car bill.

Mr. HARRY F. BYRD, JR. The Senate passed three pieces of legislation this year dealing with the matter under discussion. I understand one bill was S. 1149, and that is incorporated in this proposal.

Mr. HARTKE. S. 1149 is the so-called freight car bill, and it is incorporated in all of its substantive forms in the bill.

Mr. HARRY F. BYRD, JR. The Senate also passed S. 1925, which authorizes the ICC to continue essential rail transportation. Is that part of this bill?

Mr. HARTKE. Yes; the purpose of this is to give authority to the Secretary of the ICC to authorize utilization of other tracks.

Mr. HARRY F. BYRD, JR. That is a part of this bill?

Mr. HARTKE. Yes; it is in this bill.

Mr. HARRY F. BYRD, JR. On July 27 the Senate considered the bill, S. 2060, to assure continuation of rail service in the Northeast. That bill authorized $210 million. Is that incorporated in this bill?

Mr. HARTKE. That is the one the Senator from Virginia and I had a discussion on. It increased by $85 million a prior authorization, putting a total ceiling of $210 million on it. That is in this bill.

Mr. HARRY F. BYRD, JR. Is $210 million in the bill or $85 million?

Mr. HARTKE. It is $85 million.

Mr. HARRY F. BYRD, JR. So it is not $210 million?

Mr. HARTKE. It is not; that is right.

Mr. HARRY F. BYRD, JR. But the other bill called for $210 million?

Mr. HARTKE. It did not and it did, depending on where one started. If one starts with the $125 million we had in the previous authorization, this bill calls for the same amount originally passed. This is $85 million in additional money, and that is a grant; it is not a loan.

Mr. HARRY F. BYRD, JR. But the bill which the Senate passed had a figure of $210 million?

Mr. HARTKE. The problem there is that we had a combination with the $125 million. We took the $125 million that had been authorized and appropriated at a prior time and added the $85 million in order to come up with $210 million. But in this bill the net result is the same, since the $125 million had been approved by the House and the $85 million had not; the $85 million is in this bill.

Mr. HARRY F. BYRD, JR. The House has not approved the bill for $210 million?

Mr. HARTKE. No. It was an authorization going to $210 million. That is $85 million for interim financing, the $125 million having been approved by both Houses and signed into law. It was necessary to include this. That $125 million is gone.

Mr. HARRY F. BYRD, JR. That goes back a year or so, or several years. Is that right?

Mr. HARTKE. That is right.

Mr. HARRY F. BYRD, JR. What I am trying to understand——

Mr. HARTKE. The $125 million was in 1970.

Mr. HARRY F. BYRD, JR. That is correct.

Mr. HARTKE. But the authorization totaled $210 million, because that was included in the original amount of the bill which passed the Senate, for the purpose of giving the total amount involved in the Penn-Central bailout. They have drawn down $109 million of the $125 million already out of the Treasury, but the Treasury would have a total of $210 million available. Out of that, $109 million has been drawn down by the Secretary. If this bill with the $85 million is passed, we will have a balance of the $125 million less $109 million, which is $16 million, and $85 million, which makes a total availability of $101 million.

Mr. HARRY F. BYRD, JR. In the colloquy we had on July 27 I put this question to the Senator from Indiana:

> Will the $125 million loan guarantee be paid from the $210 million?

Which was the amount sought at that time—

> Mr. HARTKE. Yes.
>
> Mr. HARRY F. BYRD, JR. It is correct, I gather from the Senator's assertion, that the Department sought only $85 million, yet we are giving them $210 million?
>
> Mr. HARTKE. Yes. They had to pay off the loan. As I said, we came up with a figure of $62.5 million. I do not agree on the $85 million figure.
>
> Mr. HARRY F. BYRD, JR. Why do we not change the legislation and make it $85 million?
>
> Mr. HARTKE. We cannot because the railroads could not then pay the $125 million loan.

Yet we come in here today and the figure, as I understand, is not $210 million, but $85 million.

Mr. HARTKE. That is right, but that is a different type of assistance. The $125 million is a loan. The $85 million is a grant. If a railroad now goes into default, the $125 million becomes due and is an obligation of the Government. We are dealing with a total of $210 million.

Mr. HARRY F. BYRD, JR. What I am trying to understand is, has the bill, S. 2060, which authorized $210 million, been scrapped?

Mr. HARTKE. Yes, it has been scrapped, basically.

Mr. HARRY F. BYRD, JR. It has been scrapped?

Mr. HARTKE. It is fair to say that.

Mr. HARRY F. BYRD, JR. And $85 million of that $210 million is incorporated in this bill?

Mr. HARTKE. Yes, that is correct.

Mr. HARRY F. BYRD, JR. I thank the Senator, and I thank the Senator from New York for yielding.

Mr. JAVITS. Mr. President, at the suggestion of the managers of the bill——

Mr. McGEE. Mr. President, will the Senator yield me 30 seconds?

Mr. JAVITS. Let me get this started, and then I will be happy to yield.

At the suggestion of the managers of the bill, I send five amendments to the

desk and ask unanimous consent that they may be considered en bloc, and I will explain each one.

The PRESIDING OFFICER (Mr. STEVENSON). Is there objection? Without objection, it is so ordered.

Mr. JAVITS. Mr. President, I ask unanimous consent that the reading of the amendments may be dispensed with, and I will explain them.

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

The five amendments to be considered en bloc are as follows:

On page 14, line 12, delete "402 or".

On page 58, line 2, by changing the period to a comma and adding the following: "but subject to such leases and agreements as shall have previously burdened such properties or bound the owner or operator thereof in pursuance of an arrangement with any State, regional, or local transportation authority under which financial support from such State, regional, or local transportation authority was being provided at the time of enactment of this Act for the continuance of rail passenger service or any lien or encumbrance of no greater than 5 years' duration which is necessary for the contractual performance by any person of duties related to public health or sanitation.".

On page 61, line 15, after the word "discontinued", insert the following: "to the extent such discontinuance is not precluded by the terms of the leases and agreements referred to in section 303(b)(2)".

On page 63, between lines 18 and 19 insert a new paragraph (B) and redesignate accordingly:

"(B) a rail service continuation subsidy which is payable pursuant to a lease or agreement with a State, regional, or local transportation authority under which financial support was being provided at the time of the enactment of this Act for the continuance of rail passenger service.".

On page 30, line 2 delete the semicolon, add a comma and the following: "and preservation to the maximum extent practicable of existing railroad trackage in any area in which fossil fuel natural resources are located.".

On Page 60, between lines 19 and 20, insert the following new paragraph:

"(5) Upon making the findings referred to in this subsection, the special court shall order distribution of the securities, obligations, and compensation deposited with it under subsection (b) of this section to the trustee or trustees of each railroad in reorganization in the region who conveyed right, title, and interest in rail properties to the Corporation and the respective profitable railroads under such subsection. Any excess securities, obligations, or compensation shall be returned to the Corporation or any applicable profitable railroad.".

Page 68, line 7, after the words "to a State", insert the words "local or regional transportation authority".

Mr. JAVITS. Mr. President, I ask unanimous consent that I may yield to the Senator from Wyoming without losing my right to the floor.

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

USE OF FRANKING PRIVILEGE BY MEMBERS OF CONGRESS—CONFERENCE REPORT

Mr. McGEE. Mr. President, I submit a report of the committee of conference on H.R. 3180, and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated by title.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3180) to amend title 39, United States Code, to clarify the proper use of the franking privilege by Members of Congress, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Is there objection to the consideration of the conference report?

There being no objection, the Senate proceeded to consider the report, which reads as follows:

CONFERENCE REPORT (H. REPT. 712)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3180) to amend title 39, United States Code, to clarify the proper use of the franking privilege by Members of Congress, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 1, 2, 4, 5, 6, 7, 15, 17, 18, 26, and 27.

That the House recede from its disagreement to the amendments of the Senate numbered 8, 10, 13, 14, 16, 19, 20, 22, 23, 24, 25, 30, 32, 33, 34, 35, 36, 38, 39, 40, 41, and 42, and agree to the same.

Amendment numbered 3: That the House recede from its disagreement to the amendment of the Senate numbered 3 and agree to the same with an amendment as follows: Strike out the matter proposed to be inserted in the House engrossed bill by Senate amendment numbered 3 and, on page 2, line 15, of the House engrossed bill, strike out "by a Member of Congress".

And the Senate agree to the same.

Amendment numbered 9: That the House recede from its disagreement to the amendment of the Senate numbered 9 and agree to the same with an amendment as follows:

In the matter proposed to be inserted in the House engrossed bill by Senate amendment numbered 9 strike out the word "a" and insert in lieu thereof the following: "such".

And the Senate agree to the same.

Amendment numbered 11: That the House recede from its disagreement to the amendment of the Senate numbered 11 and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted in the House engrossed bill by Senate amendment numbered 11 insert the following subparagraph:

"(D) any mass mailing when the same is mailed at or delivered to any postal facility less than 28 days immediately before the date of any primary or general election (whether regular, special, or runoff) in which such Member or Member-elect is a candidate for public office. For the purpose of this clause (D), the term 'mass mailing' shall mean newsletters and similar mailings of more than 500 pieces in which the content of the matter mailed is substantially identical but shall not apply to mailings—

"(i) which are in direct response to inquiries or requests from the persons to whom the matter is mailed;

"(ii) to colleagues in Congress or to government officials (whether Federal, State, or local); or

"(iii) of news releases to the communications media.

The House Commission on Congressional Mailing Standards and the Select Committee on Standards and Conduct of the Senate shall prescribe for their respective Houses such rules and regulations and shall take such other action, as the Commission or Committee considers necessary and proper for the Members and Members-elect to conform to the provisions of this clause and applicable rules and regulations. Such rules and regulations shall include, but not be limited to, provisions prescribing the time within which such mailings shall be mailed at or delivered to any postal facility to attain compliance with this clause and the time when such mailings shall be deemed to have been so mailed or delivered and such compliance attained.

And the Senate agree to the same.

Amendment numbered 12: That the House recede from its disagreement to the amendment of the Senate numbered 12 and agree to the same with an amendment as follows: In the matter proposed to be inserted in the House engrossed bill by Senate amendment numbered 12, strike out "February" and insert in lieu thereof the following: "April".

And the Senate agree to the same.

Amendment numbered 21: That the House recede from its disagreement to the amendment of the Senate numbered 21 and agree to the same with an amendment as follows:

In the matter proposed to be inserted in the House engrossed bill by Senate amendment numbered 21 strike out the word "February" and insert in lieu thereof the following: "April".

And the Senate agree to the same.

Amendment numbered 28: That the House recede from its disagreement to the amendment of the Senate numbered 28 and agree to the same with an amendment as follows:

Eliminate the matter proposed to be inserted by Senate amendment numbered 28 in the House engrossed bill, restore to its former place in the House engrossed bill the matter proposed to be eliminated from the House engrossed bill by Senate amendment numbered 28, and, immediately after the word "privilege" in such matter so restored, insert the following: "by any person listed under subsection (d) of this section as entitled to send mail as franked mail".

And the Senate agree to the same.

Amendment numbered 29: That the House recede from its disagreement to the amendment of the Senate numbered 29 and agree to the same with an amendment as follows:

On page 7, line 3, of the Senate engrossed amendments, insert immediately after "privilege", the following: "by any person listed under subsection (a) of this section as entitled to send mail as franked mail."

And the Senate agree to the same.

Amendment numbered 31: That the House recede from its disagreement to the amendment of the Senate numbered 31 and agree to the same with an amendment as follows:

In lieu of the provisions of Senate amendment numbered 31, on page 15 of the House engrossed bill, strike out line 6 and all that follows down through the period in line 10 on page 16, and insert in lieu thereof the following:

"(a) The equivalent of—

"(1) postage on, and fees and charges in connection with, mail matter sent through the mails—

"(A) under the franking privilege (other than under section 3219 of this title), by the Vice President, Members of and Members-elect to Congress, the Secretary of the Senate, the Sergeant at Arms of the Senate, each of the elected officers of the House of Representatives (other than a Member of the House), and the Legislative Counsels of the House of Representatives and the Senate; and

"(B) by the surviving spouse of a Member of Congress under section 3218 of this title; and

"(2) those portions of fees and charges to

be paid for handling and delivery by the Postal Service of Mailgrams considered as franked mail under section 3219 of this title; shall be paid by a lump-sum appropriation to the legislative branch for that purpose and then paid to the Postal Service as postal revenue. Except as to Mailgrams and except as provided by sections 733 and 907 of title 44, envelopes, wrappers, cards, or labels used to transmit franked mail shall bear, in the upper right-hand corner, the sender's signature, or a facsimile thereof, and the printed words 'Postage paid by Congress'.

"(b) Postage on, and fees and charges in connection with, mail matter sent through the mails under section 3214 of this title shall be paid each fiscal year, out of any appropriation made for that purpose, to the Postal Service as postal revenue in an amount equivalent to the postage, fees, and charges which would otherwise be payable on, or in connection with, such mail matter.

"(c) Payment under subsection (a) or (b) of this section shall be deemed payment for all matter mailed under the frank and for all fees and charges due the Postal Service in connection therewith.

And the Senate agree to the same.

Amendment numbered 37: That the House recede from its disagreement to the amendment of the Senate numbered 37 and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted in the House engrossed bill by Senate amendment numbered 37, insert the following:

SEC. 12. (a) Chapter 32 of title 39, United States Code, is amended by adding at the end thereof the following new section:

"§ 3219. Mailgrams

"Any Mailgram sent by the Vice President, a Member of or Member-elect to Congress, the Secretary of the Senate, the Sergeant at Arms of the Senate, an elected officer of the House of Represntatives (other than a Member of the House), or the Legislative Counsel of the House of Representatives or the Senate, and then delivered by the Postal Service, shall be considered as franked mail, subject to section 3216(a)(2) of this title, if such Mailgram contains matter of the kind authorized to be sent by that official as franked mail under section 3210 of this title.".

(b) The table of sections of such chapter 32 is amended by adding at the end thereof the following:

"3219. Mailgrams.".

And the Senate agree to the same.

GALE W. MCGEE,
JENNINGS RANDOLPH,
H. L. FONG,
TED STEVENS,
Managers on the Part of the Senate.

T. J. DULSKI,
DAVID N. HENDERSON,
MORRIS UDALL,
CHARLES H. WILSON,
EDWARD J. DERWINSKI,
ALBERT JOHNSON,
Managers on the Part of the House.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3180) to amend title 39, United States Code, to clarify the proper use of the franking privilege by Members of Congress, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

TECHNICAL AMENDMENTS RELATING TO SENATE AMENDMENT NUMBERED 3

Amendments Numbered 1, 2, 4, 5, 6, 7, 15, and 17: These technical amendments, which make certain purely minor and technical changes in language, punctuation, and paragraph and subsection and subparagraph designations, are eliminated as inappropriate because of the action taken by the conference committee on Senate amendment numbered 3. The Senate recedes.

MAIL MATTER FRANKABLE BY MEMBERS AND MEMBERS-ELECT OF CONGRESS

Amendment Numbered 3:

House bill

Section 3210(a)(3) of title 39, United States Code, as set forth in subsection (a) of the first section of the House bill listed specific categories of mail matter, included in all of those categories of mail matter, mailable by a Member of Congress or a Member-elect to Congress under the franking privilege.

Senate amendment

Senate amendment numbered 3 inserted on page 4, after line 2, of the House engrossed bill, language in a new paragraph (4) intended to emphasize that certain categories of mail matter frankable by a Member of Congress are also frankable by a Member-elect.

Conference agreement

The conference agreement reflects the effect and intent of both Senate amendment numbered 3 and the applicable provisions of the House engrossed bill with an amendment which clarifies the application of the sending of mail matter by Member of, and Members-elect to, Congress under the franking privilege.

HOLIDAY GREETINGS

Amendments numbered 8 and 9:

House bill

The House bill, in the form in which it passed the House, contained no specific provisions prohibiting a Member of or Member-elect to the Congress from sending a card expressing holiday greetings. However, the provisions of section 3210(a)(4) of the House passed bill contained a general prohibition against any public official using the frank for mail which, in its nature, is purely personal to the sender and is unrelated to the official business, activities, or duties of the official.

Senate amendments

Senate amendment numbered 9 amended the provisions of the House bill to provide a specific prohibition against a Member of or Member-elect to the Congress using the frank to mail a card expressing holiday greetings.

Senate amendment numbered 8 is a technical amendment to conform the provisions of the House bill to the changes made by Senate amendment numbered 9.

Conference agreement

The House recedes from its disagreement to the technical amendment made by Senate amendment numbered 8 and recedes from its disagreement to Senate amendment numbered 9 and agrees with a further amendment which is purely technical to include the clarifying word "such" before the words "Member or Member-elect".

MASS MAILINGS

Amendments numbered 10, 11, and 35:

House bill

The House bill did not restrict mass mailings. It did, however, direct the House Commission on Congressional Mailing Standards to study and evaluate problems relating to mass mailings and postal patron mailings. The House bill also directed the Commission not to recommend that mailings, whether mass or individual mailings, be prohibited more than 30 days before an election.

Senate amendment

Senate amendments numbered 10 and 11 added a new clause (D) to section 3210(a)(5) to prohibit mass mailings mailed less than 31 days before a primary or general election (whether regular, special, or run-off) when the Member or Member-elect is a candidate for public office. "Mass mailing" includes newsletters and similar mailings of more than 500 pieces when the content is identical but exempting mailings in direct response to direct inquiries or requests. Senate amendment numbered 35 repealed the provisions of the House bill on studying and evaluating mass mailings and postal patron mailings as no longer necessary because of the specific prohibition against mass mailings before elections and the prohibition in Senate amendment 18 against postal patron mailings.

Conference agreement

The conference agreement provides that mass mailings shall not be delivered to the postal facility less than 28 days before a primary or general election in which the Member of Congress is a candidate for public office.

The term "mass mailing" is defined to include newsletters and other similar mailings of more than 500 pieces when the content is substantially the same, except for mailings—

(1) in direct response to inquiries or requests;

(2) to colleagues in Congress or to Federal, State, or local officials; and

(3) of news releases to the communications media. The House Commission on Congressional Mailing Standards and the Senate Select Committee on Standards and Conduct are to promulgate rules and regulations necessary to carry out clause (D), including rules and regulations to determine when mailings are considered to be mailed at or delivered to a postal facility.

EXPIRATION OF FRANKING PRIVILEGE

Amendments numbered 12, 21, 22, 23, 24, 30, 32, 33, 34, 39, 40, 41, and 42:

House bill

Section 3210(b) of title 39 in the House bill authorized the use of the frank by the various officials until the 30th day of June following the expiration of their respective terms of office.

Senate amendments

Senate amendment numbered 12 limits the authority for such officials to use the frank until the first day of February.

Senate amendment numbered 21 adds a new section 2 to the bill amending section 3211 of title 39, United States Code, relating to the sending of public documents under the frank and makes two changes. First, the amendment deletes from the provisions of existing law reference to the Clerk of the House of Representatives and the Sergeant at Arms of the House of Representatives and inserts in lieu thereof "each of the elected officials of the House of Representatives (other than a Member of the House)". Secondly, the amendment changes the provisions of existing law which permits the use of the frank for sending public documents until the 30th day of June following the expiration of their respective terms of office to the first day of February.

All of the other Senate amendments referred to above are technical amendments to conform the provisions of the bill to the changes made by Senate amendments numbered 12 and 21.

Conference agreement

The conference agreement provides for the use of the frank until the first day of April following the expiration of the terms of offices of such officials. The conference agreement also adopts the changes contained in the Senate amendment numbered 21 relating to the mailing of public documents.

The House recedes from its disagreement to all of the technical conforming amendments.

LEGISLATIVE COUNSEL OF THE SENATE

Amendments numbered 13, 14, 16, and 38:

House bill

Section 3210(b) of title 39 in the House bill, relating to the basic authority for the use of the frank, did not extend the privilege to the Legislative Counsel of the Senate. The last sentence of section 1303(d) of the Revenue Act of 1918 (2 U.S.C. 277) authorizes the Legislative Counsel of the Senate to use penalty mail.

Senate amendments

The Senate amendments numbered 13, 14, and 16 made the necessary adjustments under section 3210(b) to extend the privilege of the frank to the Legislative Counsel of the Senate. Senate amendment numbered 38 repealed the last sentence of such section 1303(d).

Conference agreement

The conference substitute adopts the language of the Senate amendments on this subject.

POSTAL PATRON MAIL

Senate amendment numbered 18:

House bill

Section 3210(d) of title 39 in the House bill authorized Members of the House to send mail with a simplified form of address for delivery within the area constituting the congressional district from which he was elected. The simplified form of address does not require a specified addressee or address to be placed on the mail matter.

Senate amendment

The Senate amendment numbered 18 struck out the provision of such section 3210(d).

Conference agreement

The Senate recedes from the amendment.

FRANKING COST AS POLITICAL CONTRIBUTION

Senate amendments numbered 19 and 20:

House bill

The House bill contained no provision relating to the cost of franked mail as a political contribution.

Senate amendments

Senate amendment numbered 20 added a new subsection (f) to section 3210 to prohibit the cost of preparing or printing frankable matter from being considered as a contribution to or an expenditure by the Vice President or a Member of Congress for the purpose of determining any limitation on expenditures or contributions with respect to any such official imposed by any Federal, State, or local law or regulation in connection with any campaign of such official for election to any Federal office.

Senate amendment numbered 19 is a technical amendment to conform the provision of the bill with the change made by Senate amendment numbered 20.

Conference agreement

The House recedes from its disagreement to Senate amendments numbered 19 and 20.

ADMINISTRATIVE PROCEDURE ON FRANKING PRIVILEGE COMPLAINTS

Senate amendments numbered 25, 26, 27, 28, and 29:

House bill

The House-passed bill established a House Commission on Congressional Mailing Standards to provide guidance, assistance, advice, and counsel through advisory opinions or consultations in connection with franking mailings upon the request of any Member of the House or Member-elect, Resident Commissioner, or Resident Commissioner-elect, Delegate, or Delegate-elect, surviving spouses of any of the foregoing or other House official entitled to use of the frank.

Provisions were also included for complaints to be filed with the Commission that a violation of any of the franking requirements is about to occur or has occurred with the requirement that the Commission conduct an investigation of the complaint and make written findings of fact. Such findings of fact are binding and conclusive for all judicial and administrative processes. A provision was included that any judicial review of such decision if ordered on any ground shall be limited to matters of law. The Commission if it finds that a "serious and willful" violation has occurred or is about to occur may refer its decision to the Committee on Standards of Official Conduct of the House of Representatives for appropriate action.

Senate amendments

Senate amendment numbered 25 added the words "by any person" to clarify who could file the complaint of a violation. Senate amendment numbered 27 struck out the words "serious and willful" in connection with the provision relating to the type of violation which the Commission would refer to the Committee on Standards of Official Conduct.

Senate amendments numbered 26 and 28 struck out the provision of the House bill that made the findings of fact by the Commission final and binding on the courts.

Senate amendment numbered 29 added a new section 6 to the bill to provide that the Senate Select Committee on Standards and Conduct would provide guidance, assistance, advice, and counsel to Members and Members-elect of the Senate. This amendment provided that the appropriate courts would not have jurisdiction to entertain any civil action relating to a violation of the franking laws or an abuse of the franking privilege until a complaint has been filed with the Select Committee and the Committee has rendered a decision thereon.

Conference agreement

The House receded from its disagreement to amendment numbered 25 so that the words "by any person" is included to clarify the application of the complaints that may be filed with the House Commission on Congressional Mailing Standards.

The Senate receded from its amendment numbered 27 so that the words "serious and willful" are retained in the House provision relating to the type of violation that would be referred to the Committee on Standards of Official Conduct of the House of Representatives.

The Senate receded from amendment numbered 26 relating to the finality of the findings of fact by the House Commission.

The House receded from its disagreement to amendment numbered 28 with a further amendment that clarifies the application of the provisions of section 5 to violation of the franking privilege by officials of the House only.

The House receded from its disagreement to amendment numbered 29 which added section 6 to the bill and agreed to the amendment with a further amendment which makes it clear that the provisions of such section 6 relate only to the mailings under the frank by Members of the Senate.

MAILGRAMS

Amendments numbered 31 and 37:

House bill

The House bill, in the form in which it passed the House, contained no provisions permitting the sending of Mailgrams as franked mail.

Senate amendments

Senate amendment numbered 37 permits the frank to be used for the sending of Mailgrams and other items transmitted by electronic means.

Senate amendment numbered 31 provides for payment for the handling and delivery of Mailgrams as franked mail.

Conference agreement

The House recedes from its disagreement to Senate amendment numbered 37 and agrees with a further amendment which deletes the authority to send items transmitted by electronic means under the frank except Mailgrams.

The House recedes from its disagreement to Senate amendment numbered 31 with further technical amendments to reflect the agreement of the conferees on Senate amendment numbered 37.

FRANKED MAIL BY SURVIVING SPOUSES OF MEMBERS

Amendment numbered 36:

House bill

The House bill in the form in which it passed the House contained no provisions modifying the privilege granted to the surviving spouse of a Member to send franked mail relating to the death of such Member under section 3218 of title 39, United States Code.

Senate amendment

Senate amendment numbered 36 amended section 3218 of title 39, United States Code, by restricting the type of mail which the surviving spouse of a Member may send under the frank to "nonpolitical" mail relating to the death of such Member.

Conference agreement

The conference agreement adopts the Senate amendment.

GALE W. MCGEE,
JENNINGS RANDOLPH,
H. L. FONG,
TED STEVENS,
Managers on the Part of the Senate.

T. J. DULSKI,
DAVID N. HENDERSON,
MORRIS UDALL,
CHARLES H. WILSON,
EDWARD J. DERWINSKI,
ALBERT JOHNSON.
Managers on the Part of the House.

Mr. McGEE. Mr. President, I have the agreement of the ranking minority member of the committee (Mr. FONG), who is in the Appropriations Committee with my proxy voting there, while I vote his here, and accordingly I move the adopton of the conference report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The report was agreed to.

Mr. McGEE. I thank the Senator from New York.

RAIL SERVICES ACT OF 1973

The Senate continued with the consideration of the bill (S. 2767) to authorize and direct the maintenance of adequate and efficient rail services in the Midwest and Northeast region of the United States, and for other purposes.

Mr. JAVITS. Mr. President, I yield myself 5 minutes.

The first amendment, No. 821, which is printed, will permit the acquiring rail corporation under this bill to take the property which it acquires subject to the leases with State, regional, or local transportation authorities which presently exist. This is a necessary amendment if we are to insure that vital commuter service be preserved.

The amendment also provides that short-term, under 5 years, leases which involve the performance of duties related to the public health and sanitation are

to be preserved in any transfer. The need for this amendment is to deal with transportation authorities who have such agreements with Penn Central and other railroads or are in the process of negotiating such contracts and to deal with contracts for the transportation of sanitation or garbage in order that these, too, might be preserved in the takeover.

The second amendment, No. 822, which is printed, also relates to the continuation of the vital commuter rail service within the system. It amends section 304, which is entitled "Termination of Rail Service," in order to insure that once these rail properties are conveyed to the United Rail Corp., the commuter service cannot be discontinued if to do so would violate the terms of a lease referred to previously with a governmental transportation authority.

The third amendment I offer is a technical amendment relating to the way in which the special court appointed under the bill deals with properties and the proceeds of those properties which are transferred to the new United Rail Corp. There is a gap in that process because the section fails to direct the special court to convey the consideration deposited with it to the trustee or trustees of each railroad or reorganizaion in the region, and also fails to tell the court what to do with any surplus. This amendment endeavors to deal with that problem.

The fourth amendment, Mr. President, is one that represents nothing more than oversight by the comimttee. In section 402(b)(2), which provides for discretionary rail service continuation subsidies, the Secretary is only authorized to provide assistance to a State. The amendment will make such assistance available to local or regional transportation authorities as well, which are often the body to which such assistance is necessary.

Mr. President, I have one further amendment that deals with a different point. It modifies the goals section, 206 (a), to further coordinate this bill with the aims of our national energy policy. It states that one of the goals of the system, and only to the maximum extent practicable, is to preserve trackage in areas where fossil fuel natural resources are located. This will not require that service on such trackage be continued where otherwise it would not be consistent with the other goals; it merely provides that such trackage be preserved where possible. We should not be too quick to rip up such trackage when we may need it in an emergency at some future time. Transportation of energy resources must be protected. This is one of the lessons we have learned from the present energy crisis. This amendment will help to prevent it from happening again.

Mr. HARTKE. Mr. President, I compliment the Senator from New York for the improvements he has made in the bill. I think that his amendments do improve the bill. I think that they are necessary to make the bill better legislation.

Mr. President, we are prepared to accept the amendments.

Mr. JAVITS. Mr. President, I thank the Senator from Indiana.

Mr. President, I yield back the remainder of my time.

Mr. HARTKE. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendments of the Senator from New York [putting the question].

The amendments were agreed to.

Mr. JAVITS. Mr. President, I move that the vote by which the amendments were agreed to be reconsidered.

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

The motion to lay on the table was agreed to.

Mr. JAVITS. Mr. President, I would like to clarify two points in this bill that vitally affect small, viable railroads in the Northeast that in all probability will not become a part of the United Rail Corp. These railroads, even if not in the new corporation itself, may be a vital part of the total Northeast system, and I would like to make clear at least two ways in which the bill helps to insure that these railroads, if they are included as part of the overall system plan, are protected.

The first way relates to the loan section of the bill, section 211. This provides that loans may be made by the association, "to other railroads in the region, for purposes of assisting in the implementation of the final system plan." I would like to ask the distinguished chairman of the subcommittee whether this means that a profitable railroad, that is a part of the system plan, will be entitled to a loan if that is necessary, for it to provide the service that the plan anticipates. I should point out that it would be a real inequity if the United Rail Corp. could obtain loans for rehabilitation, equipment, or other necessary purposes, when other railroads, equally important to the overall system, could not.

The other point relates to preservation of existing through routes. If a small independent railroad is included in the final system, it is there for a purpose. The whole point of that purpose would be defeated if the United Rail Corp., which might surround a small independent, could route traffic less efficiently around that independent for its own gain. I therefore want to make clear that my interpretation of this bill and I inquire whether this coincides with the interpretation of the committee, would require the United Rail Corp. to continue, to the full extent practicable, the routing of traffic that is envisioned by the final system plan.

Mr. President, may I note that these questions are particularly applicable to the Delaware & Hudson Railroad, one of the few that is still operating a private enterprise railroad in the State.

I ask the chairman to state whether that is his interpretation as well.

Mr. HARTKE. Mr. President, the case is well taken about the situation on the Delaware & Hudson. I think that the Senator from New York correctly expressed the interpretation of the committee.

I fully agree with Senator JAVITS regarding the purpose of section 211 of the bill. Under the provisions of the bill, a railroad in the region can receive loans under section 211 if it would tend to effectuate the goals of the final system plan. Because the Senator is correct that it is highly likely that some of these railroads will continue in existence as part of the restructured system in the northeast, I am sure that they will qualify for loans under this section.

I also agree with the Senator's remarks regarding through routes. The redesigned system in the Northeast and Midwest will route traffic in the optimal manner. It is the intent of the committee that the new United Rail Corp. follow the routes that are devised in the final system plan. It is certainly not the intent of the committee to arbitrarily route traffis around remaining small railroads to their detriment unless such routing makes sense in terms of the final system plan.

Mr. JAVITS. Mr. President, I thank the Senator from Indiana very much.

There is a provision in the bill regarding the stimulation of employee stock ownership plans by the United Rail Corp. That provision is contained in section 206(e)(3).

Mr. President, I thoroughly favor such plans. And I am pleased that such a provision is included. I gathered that the real initiator of this idea was the Senator from Louisiana (Mr. LONG).

The only thing that troubles me is that if one reads the definition of an employee stock-ownership plan, as it is contained in section 103(5) of this bill, the only plan which can be put into effect is a plan popularly known as the Kelso plan, because its main advocate is Louis Kelso, an economist with an investment house in San Francisco.

I think it is most unwise to limit the choice of the United Rail Corp. to that type of employee stock ownership plan.

I would hope that the provision could be expanded to encompass other varieties of employee stock ownership plans, especially since this provision was not explored in hearings before the Commerce Committee. This bill is going to conference. Proper modifications can still be made. I would hope that the provision could be expanded to include profit sharing and stock bonus plans and trusts which qualify under section 401(a) of the Internal Revenue Code of 1954, are financed by employer contributions, employee contributions, or both, and which permit investment in or purchase of the employer corporation's shares for the benefit of the participating employees.

Mr. President, the initiator of this idea feels that if I offered an amendment to this effect it would be an unfriendly gesture. So, I will not do it. However, I express my honest opinion to him and compliment him on his fine initiative in which he was joined by the Senator from Oregon (Mr. HATFIELD).

I would hope, however, that these comments would be a prelude to an acceptance of an enlarged proposal. I have been working on a generic bill with re-

gard to employee stock ownership, and based on my experience in regard to this matter, I think it unwise to lock the rail corporation into one option. For example, we can take the Sears, Roebuck profit-sharing plan where the employees have benefited enormonsly from the fund and have acquired control of the company. It is not a Kelso-type of plan. It is a contribution-type plan in which the employer's stock is acquired by the trust. There are other fine plans as well of the contribution type. The Sun Oil Co. employee stock plan is a well-known example as is the Westinghouse Employee Stock Purchase plan.

I wish the RECORD to show that I hope very much that when this legislation finally emerges, it will show the benefit of all the thinking on this subject and that the statute will give the rail corporation a number of options rather than confine them to one idea.

Mr. TAFT. Mr. President, if the Senator will yield, I wanted to ascertain something. One of the amendments the Senator is offering relates to the city of New York and authorizes them to deal with any waste disposal.

Mr. JAVITS. That is the garbage disposal amendment. It is No. 821 and has been agreed to.

Mr. TAFT. It is coming to Ohio. And it sounds as if it will be well taken care of when it gets there.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I wonder if I could find out how many more amendments will be offered this evening. I note that there will be about four or five.

Mr. KENNEDY. Mr. President, I think that my amendment will be accepted. It will only take 5 or 6 minutes.

Mr. TAFT. Mr. President, I believe that one of mine will be accepted. The other amendment may take 15 minutes.

Mr. BROCK. Mine will be accepted. It should not take too much time.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senator may yield to me without losing from the time allotted to him under the bill.

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

Mr. MANSFIELD. Mr. President, may I suggest the absence of a quorum and ask the attachés on both sides to ask as many Senators as possible to come to the floor?

The PRESIDING OFFICER. 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.

SPECIAL PROSECUTOR LEGISLATION

Mr. MANSFIELD. Mr. President, last week the Senate gave permission for a time limitation on Calendar No. 573, S. 2611, a bill to insure the enforcement of the criminal laws and the due administration of justice and establish an independent special prosecutor, by Mr. HART and others, and Calendar No. 574, S. 2642, a bill to establish an independent special prosecution office, and for other purposes, by Mr. TAFT.

Mr. President, I ask unanimous consent that the time limitation granted by the Senate be vitiated.

Several Senators addressed the Chair.

Mr. MANSFIELD. I think the Senators would be doing the Senate a favor by not objecting, because there was no date at which this measure would be called up, and I would like to make a further explanation.

Mr. BAKER. Mr. President, do I understand the unanimous-consent request is simply that the time limitation agreement be vacated, as distinguished from the pendency of the measure?

Mr. MANSFIELD. The Senator is correct.

Mr. PERCY. Mr. President, I would ask the majority leader, because the unanimous-consent agreement was reached after a great deal of consultation among the Members of the Senate, and we all seemed to be in accord with it, for what reason is this request now being made? Would the majority leader explain?

Mr. MANSFIELD. Mr. President, I will be glad to answer the question, and I withdraw my request.

A good many of us have been thinking about the situation evident at this time, and whether or not it was desirable at this particular moment to bring up these two bills, both of which were reported by the Judiciary Committee without recommendation.

I personally have been tremendously impressed with Mr. Leon Jaworski. I think he has been doing an outstanding job as the Special Prosecutor, the successor to Archibald Cox. I think he has shown independence, flexibility, and determination, and in talking with some of my colleagues, I raised the question that I personally did not see what could be gained at this time by bringing up these measures.

I make that statement even though I wholeheartedly and without reservation support the Hart-Bayh-Kennedy bill, which seeks to have a Special Prosecutor appointed by the court.

That, in brief, is the reason why I am taking this responsibility and making this statement at this time. I yield to the distinguished Republican leader.

Mr. HUGH SCOTT. Mr. President, I want to thank the distinguished majority leader, who has just before this announcement advised me that he had in mind making a statement on the subject. I am glad to learn the views of the distinguished majority leader.

I think there is a common interest involved here, no matter what bill or bills one favors or opposes, and that is in getting on with the duties of the Special Prosecutor. Not only should they not be impeded by the President of the United States, as we have often demanded, but they should not be impeded by the Senate of the United States, which also has a responsibility in the premises.

In order that we may give Mr. Jaworski a fair chance to continue to demonstrate, as he has so brilliantly demonstrated so far, his complete independence, his integrity, and his determination to proceed to unearth the truth no matter where the paths may lead him, that the Senate would be acting wisely and responsibly if it were, for the present, to leave this matter in the hands of Mr. Jaworski, all of us being well aware that should a condition arise where we would feel the need to change our minds, or our point of view, or to seek additional legislation, we are certainly free to do so. But I do say that I agree, as I said earlier this morning at the time the Senate convened, Mr. Jaworski has done an excellent job. He deserves a fair chance. He should not be required to be in court to defend his writ, nor should he be required to be defending the competitive assertions of some future person competing for an office which he is so well performing.

So that I do hope the wishes of the distinguished majority leader will prevail. I would be most appreciative if, on my own side of the aisle, the same viewpoint, the same expression of confidence in Mr. Jaworski will surface as a result of what the Senator from Montana has just said to the Senate.

Mr. MANSFIELD. May I say that I think the Senator from Pennsylvania speaks for his side of the aisle as I think I speak for mine. I do not know of a man in Government who has as much confidence in him and in his capacity to do his job as does Mr. Jaworski. I think I can speak for every Member of the Senate, both Republican and Democrat, in that respect.

May I say that, on the basis of what I have said, neither of these resolutions will be called up this session. They will remain on the calendar. The time limitation will stand. If any further action is taken, I want to assure my associates in this body that I will, first of all, contact the distinguished Republican leader—as is our custom—so that he and his colleagues will be aware; I would also notify the distinguished Senator from Illinois (Mr. PERCY), the distinguished Senator from Ohio (Mr. TAFT), the distinguished Senator from Michigan (Mr. HART), the distinguished Senator from Massachusetts (Mr. KENNEDY), the distinguished Senator from Indiana (Mr. BAYH), the distinguished Senator from Illinois (Mr. STEVENSON), the distinguished Senator from Tennessee (Mr. BAKER)—and all other of the 100 whose names I have not mentioned, so that we will all know at about the same time.

I just wanted to make this statement to indicate, in light of the circumstances, the great confidence we have in Mr. Jaworski and the fact that anything we might do at this time might be misinterpreted.

So, to repeat, these bills will not be called up this session, but will remain on the calendar, and so will the allocated time.

Mr. PERCY. Mr. President, will the distinguished majority leader yield?

Mr. MANSFIELD. I yield.

Mr. PERCY. Mr. President, I have great respect for the joint leadership

and for what they have said on this matter; but I feel also that some of us have a responsibility to a principle which we have been attempting to enunciate for many months now. This is not a government of men. It is a government of law. What we are trying to do is to embody in law the principles by which we should undertake the most important investigation—the executive branch of the Government—that has ever been undertaken in this country.

All I would ask is that—and I would feel compelled to object on this short notice on this request—the sponsors of certain legislation be given an opportunity—some of them are not here present who are sponsors of that legislation—to think it through this evening and then raise the subject tomorrow morning or at any time the leadership would suggest to bring it up again, and give them a considered judgment, because this action, setting aside an important piece of legislation that we are committed to bringing up tomorrow by unanimous consent, which has been worked out harmoniously and cooperatively—and on which the Senator from Illinois has read an editorial this morning in the Washington Post. I share the judgment and opinion of the leadership and the country, really, in the integrity of Mr. Jaworski. So there was nothing in the legislation that was being proposed that would in any way remove or hinder him, but just build a body of law and statute in order to protect that office.

I do realize, as the editorial points out very clearly—and perceptively, I think—if I could read just a sentence——

Mr. MANSFIELD. If the Senator will yield before he gets to the editorial—which I have not even read—there was no agreement that we would bring it up on Wednesday. The leadership stated it would endeavor to bring it up on Wednesday and tentatively schedule it for that date. The leadership has certain responsibilities. The leadership has to be given a certain amount of confidence and cooperation by the Senate if it is to carry out its duties which you expect us to undertake.

So I want to repeat for the third time that these two bills will not be taken up in this first session of the 93d Congress. They will remain on the calendar. They may be called up in the second session of the 93d Congress, but not unless the leadership on the other side and the interested parties, including the distinguished Senator from Illinois, all are notified in the first place.

So I would hope that the Senator would not enter an objection because, in the first place, there is no unanimous-consent request pending. And, understand that what is being done is an attempt to face up to a situation which we think would be most fortuitous for all concerned.

Mr. BAYH. Mr. President, will the Senator from Montana yield?

Mr. PERCY. If the Senator will yield further, I would merely like to have adequate time to consult with my colleagues who have worked for months on this legislation. If there is not sufficient time to give us overnight this consideration, could we, later in the day—we are going to be here for a while—come back to this subject on the floor?

Mr. BAKER. Mr. President, will the Senator from Montana yield at that point——

Mr. MANSFIELD. I yield.

Mr. BAKER (continuing). So that I might inquire as to the parliamentary situation? Did I understand the distinguished majority leader to say that the unanimous-consent request dealing with the taking up of the Special Prosecutor bills, or dealing with the Special Prosecutor bills, related only to the allocation of time?

Mr. MANSFIELD. Yes.

Mr. BAKER. My understanding is that the unanimous-consent order did, in fact, make it the pending business on Wednesday.

Mr. MANSFIELD. The Senator is correct, in the latter aspect. I had forgotten that. It was my intention to ask unanimous consent that we turn to other business so that we could occupy our time, prior to adjournment, on things which are better suited for consideration.

Mr. BAKER. Mr. President, if the Senator will yield further, I shall not prolong this much longer except to say that I have great respect for the joint leadership. I recognize and I believe I have some understanding of their responsibilities to bring order out of the plural undertakings of several Members of the Senate. They perform an indispensable service to the Senate and I respect the responsibility and the obligation that they have. But if, in fact, unanimous consent is requested to vacate the order to make this the pending business on tomorrow, at this point the Senator from Tennessee will be constrained to object.

On the other hand, Mr. President, if the distinguished majority leader—if the joint leadership—would be willing to wait until tomorrow and discuss this matter further, then it may be we can reach some sort of accord. But it was only just a few minutes ago that I first learned there might be a request for unanimous consent to vacate the order making this the pending business on tomorrow.

I reiterate I have great admiration and respect for the joint leadership, and I entirely agree with the assessment of the joint leadership as to the confidence in Mr. Jaworski and his ability to perform effectively. But, very frankly, Mr. President, I am not prepared at this point to say that that kind of confidence should substitute for the force of facts in a desirable statute of law. So might I ask if the joint leadership would be inclined to lay aside and refrain from making that unanimous-consent until the opening of business tomorrow.

Mr. MANSFIELD. I shall be glad to do so.

Mr. BAYH. Mr. President, will the Senator from Montana yield?

Mr. MANSFIELD. I yield to the Senator from Indiana.

Mr. BAYH. Mr. President, I appreciate the Senator's willingness to wait until tomorrow to make that request. I share the feelings of all of us with respect to the leadership. It has not been and will not be the position of the Senator from Indiana to tie up the Senate on this issue. But I think it is imperative that we not make a hasty decision, that we take a few minutes at least on tomorrow to discuss the pros and cons of whether we should even consider it.

In my judgment, with the respect I have for the leader, I think we are making a tragic mistake here.

I read the article in the Washington Post this morning, and I concurred in every assessment it made relative to the job Leon Jaworski is doing and the general state of the prosecution now. But the reason I think we are making a mistake is that any of us who sat on the Judiciary Committee about 6 months ago and went through the hearings of Elliot Richardson and had Archibald Cox and went through the tedious business of putting together those guidelines could have said exactly the same thing a week or so after that, when Archibald Cox was doing a good job.

I do not want to lessen the effectiveness of Leon Jaworski. I want him to be as effective as he can. But I think we have a responsibility not only to give him the environment of openness but also to give him the legal support of openness; so that at some future day, when the President, with motives that are good and pure and just to him, or anybody else who might be sitting in the Presidency, is tempted to remove Mr. Jaworski and thus to throw this country into the kind of mood the likes of which I cannot remember, we will have given to the President and to the country the legal safeguard against that kind of thing ever happening.

In taking a general sampling of some of my colleagues, I probably find myself in the minority. But I would like to have the chance tomorrow—I think all of us should have the opportunity tonight—to pause and reflect for a moment and not take the easy way out, or at least think about the possibility that today it looks this way, just the way it did when Archibald Cox was operating.

Mr. MANSFIELD. Mr. President, if the Senator will yield, he will have that time tomorrow. But I wish he would not say that we are taking the easy way out, because what I am doing is contrary to my personal feelings on the matter, and the Senator knows it. Tomorrow we will discuss that matter.

Mr. BAYH. I did not mean to direct that personally to the leadership, certainly not to the Senator from Montana personally. But, in my judgment, if the Senate does not stand up and take a position on this, we will not be fulfilling our responsibility, and I think each of us in entitled to make that judgment for himself.

ORDER FOR CONSIDERATION OF APPROPRIATION BILLS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that at an appropriate time tomorrow, it be in order to take up the supplemental appropriation bill.

The PRESIDING OFFICER. Is there objection?

Mr. PERCY. Mr. President, reserving the right to object——

Mr. MANSFIELD. This will not interfere with the talk we are going to have tomorrow.

Mr. PERCY. If that is understood, I have no objection.

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

Mr. MANSFIELD. I should like to get the schedule outlined for the rest of the week, first.

The PRESIDING OFFICER. Is there objection?

Mr. BAKER. Mr. President, reserving the right to object, do I correctly understand that the assurance given to the senior Senator from Illinois is that unanimous consent to take up this measure will in no way jeopardize the debate on or the consideration of the Special Prosecutor measure?

Mr. MANSFIELD. That is correct. It will be available for the first 2 hours, as the Senator knows, under the rules of the Senate.

Mr. HUGH SCOTT. But the Senator will understand that we affirm the 5-hour time limit, or whatever it is. It is simply that any motion can be made at the end of the morning hour.

Mr. MANSFIELD. Yes.

Mr. BAKER. And that opportunity will be given to make such motion prior to the discussion of the supplemental bill. Is that correct?

Mr. MANSFIELD. Yes.

Mr. BAKER. But it in no way vitiates any of the actions previously taken by unanimous consent.

Mr. HUGH SCOTT. That is my understanding.

Mr. MANSFIELD. That is true. As the Senator requested, I put over the unanimous consent until tomorrow, and the Senator knows the parliamentary rules of what can be done at that time.

Mr. BAKER. I am fully grateful for it, and I understand what the consequences can be.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana? The Chair hears none, and it is so ordered.

Mr. MANSFIELD. Mr. President, I again ask unanimous consent of the Senate that it be in order to take up the defense appropriation bill at an appropriate time on Thursday next.

The PRESIDING OFFICER. Is there objection?

Mr. PERCY. Mr. President, reserving the right to object, could the majority leader once again clarify what this would do to the existing unanimous-consent agreement?

Mr. MANSFIELD. We are going to finish this unanimous-consent matter affecting these two Special Prosecutor bills tomorrow. This is the next day. That will be out of the way.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that at an appropriate time on Monday, the foreign aid appropriation bill be laid before the Senate.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

ORDER FOR CONSIDERATION OF LEGAL SERVICES CORPORATION ACT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that at the conclusion of the pending business, the Senate return to the consideration of S. 2686.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. HUGH SCOTT. Is there to be a vote on the cloture motion tomorrow?

Mr. MANSFIELD. No. There is to be a vote on the cloture motion on Thursday.

Mr. President, I yield to the Senator from Ohio and then to the Senator from Massachusetts (Mr. KENNEDY), and then I hope we will get back on the bill.

Mr. TAFT. The Senator has answered my inquiry.

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

Senator MANSFIELD. I yield.

Mr. HART. Mr. President, as one who is interested in the Special Prosecutor being wholly independent, and as one who has had conversation during the course of the day with the majority leader on the subject, I rise simply to say that no one in this Chamber—and that includes the Senator from Michigan—more sincerely believes in the independent Special Prosecutor bill that 55 of us have sponsored than does the Senator from Montana. I have never had the experience of leadership, and do not seek it, and I am sure that the position he suggests we adopt tomorrow reflects his understanding of the leadership responsibility, too.

Mr. MANSFIELD. I thank the Senator.

Mr. BAYH. Mr. President, will the Senator from Montana yield for a point of clarification?

Mr. MANSFIELD. I yield.

Mr. BAYH. I hope the Senator realizes the intent of the suggestion of the Senator from Indiana. It was certainly not directed personally.

Mr. MANSFIELD. Of course.

Mr. BAYH. I have had lengthy conversations with the distinguished leader, and I know that if there is anybody who is above some of the pettiness to which some of us might be tempted from time to time and who has the desire of the Senate at heart, it is he. I think we all have a responsibility, when we are gathered together, to determine the policy of the Senate and to speak out, so that at some later date we might feel a bit better about it.

Mr. MANSFIELD. The Senator is correct. I did not take it personally, but I thought the implication ought to be clear. Hence, I spoke for the record.

Mr. PERCY. Mr. President, I should like to explain to the majority leader my own deep concern.

I recognize the theory that it is possibly best to leave this matter in suspense for a while. But the Senator from Illinois would like to determine—and the Senator from Tennessee and the cosponsors of our bill—what jeopardy we place the country in and what jeopardy we place the Senate in if, over the period of a month or so that we may be gone, we could once again go through the tremendous experience, the emotional experience, this country had on the so-called Saturday massacre. Is it possible that by leaving this matter in suspension now, we could once again go through an experience that did more to destroy the confidence of people in government and the processes of law—and I would not want that on my conscience—if we would have any chance of figuring out a way to prevent it? I recognize that it is not a likely possibility, taking into account the country's reaction, but it is a possibility.

Mr. MANSFIELD. I will be glad to answer.

I do not expect any more Saturday night massacres in any way, shape, or form.

Further, when the Senate adjourns sine die, hopefully toward the end of next week, it will do so on the same basis as during the month's recess last August. It will be subject to recall by the minority leaders of both Houses, or by the majority leaders of both Houses, or by the President pro tempore and the Speaker of both Houses, or as is always applicable, by the President of the United States. So that I think we have to keep in mind there are such matters as the energy crisis which may call us back suddenly, the situation in the Mideast which may call us back, and there are other matters, but I certainly do not expect to be called back on the basis of another "Saturday night massacre."

Mr. HUGH SCOTT. Mr. President, will the Senator yield a that point?

Mr. MANSFIELD. I yield.

Mr. HUGH SCOTT. If we are called back in the event Mr. Jaworski should be fired I will join the majority leader in recalling Congress.

Mr. MANSFIELD. I point out in that case the two bills are on the calendar.

That is it.

Mr. PERCY. Mr. President, will the Senator yield further so that I may read for the RECORD the material I wanted to bring to the attention of the Senate from this morning's Washington Post editorial?

Mr. MANSFIELD. Excuse me. I did not mean to interrupt the Senator.

Mr. PERCY. I agree with the term improbable, but we have to deal with the impossible and certainly we should give consideration to this matter. The editorial states:

> And we think that very large body of congressmen and senators who have committed themselves to the creation of a court-appointed prosecutor, along with those who are committed to the passage of less drastic measures, should be seeking ways to leave these votes in abeyance for the moment. Traditionally, after all, Congress is known for a certain skill at putting off and putting over what it does not wish to bring to a final vote. Finding ways to do just that in this matter should not strain its inventiveness.

Certainly, that has been portrayed. The motivation can be of the highest motivation and it may be and many

times is the better part of judgment not to do something if it would be ill-advised to do it. The only consideration the Senator from Illinois requests on behalf of other colleagues is that we have a chance to consider this overnight.

Mr. MANSFIELD. That will be done. I have the utmost confidence in Mr. Leon Jaworski. Up to this time he has done a magnificent job. He has filled the shoes of Mr. Cox ably. He has gone into areas which Mr. Cox did not enter as Special Prosecutor. I look upon what the Senate may do if it follows the suggestion of the joint leadership as a vote of confidence in Mr. Jaworski and the independence he has shown in carrying out his investigatory authority.

RAIL SERVICES ACT OF 1973

The Senate continued with the consideration of the bill (S. 2767) to authorize and direct the maintenance of adequate and efficient rail services in the Midwest and Northeast region of the United States, and for other purposes.

Mr. HARTKE. Mr. President, we have done the best we can to expedite this matter and if everything works out as we expect we should be finished with the bill and ready to vote final passage by 7 o'clock.

Mr. KENNEDY. Mr. President, I send to the desk an amendment and ask that it be considered and I ask unanimous consent for Mark Schneider of my staff to remain on the floor during consideration of this bill.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 30, between lines 10 and 11, insert the following paragraph:

"(8) the minimization of job losses and associated increases in unemployment and community benefit costs in areas presently served."

Mr. KENNEDY. Mr. President, I have had an opportunity to discuss this matter with the manager of the bill and I believe the minority member has been notified, as well.

All this amendment would do would be to add one more goal to be reached by the final system plan.

I want to commend at the outset the distinguished chairman of the Transportation Subcommittee and the distinguished chairman of the full committee and the committee members for the long hours that have been expended in preparing this legislation.

I intend to comment further at a later date on the specific provisions of the bill which I believe are most noteworthy, including the recognition of the vital importance of improving rail passenger service and including provisions similar to amendments I had introduced to require the implementation of the Department of Transportation recommendations for high-speed passenger service in the Northeast Corridor.

The amendment I am offering now would insert as an additional goal in the establishment of the final system plan the same provision contained within the House bill, 9142.

This provision is "the minimization of job losses and associated increases in unemployment and community benefit costs in areas presently served."

To a degree the bill already assumes this subject as a goal with its inclusions of provisions providing for subsidy to state and local entities which desire to continue service on lines which may not be included in the core system.

Thus, there is a clear recognition that while some branch lines may be abandoned, after adequate hearing, those lines may still provide essential transportation services to a given community.

I think we all share the view that any final reorganization of the Northeast railroads to provide for a restructured viable system should be done with recognition for the local negative impact on jobs and on the local economy.

In Massachusetts and in New England there are numerous small communities served by railroads affected by the plan which could be wiped out economically if service were to be terminated.

I can give some striking examples of the potential damage when one discusses the possibility of cutting rail services to communities without taking into account the consequences.

In Irving, Mass., there is one major employer, the Irving Paper Co. That firm employs some 700 persons. If the B. & M. rail line, the only one into the community, were shut down, the impact would be the loss of at least 300 jobs and possibly the entire 700.

In South Middlesex, of some 26 firms sampled, 3,569 jobs would be lost, if service were discontinued.

In North Adams, 613 jobs of a total of 3,891 employed would be lost in the firms surveyed.

In the Gardner, Mass., some 5,000 jobs would be lost without rail service.

These estimates by the New England Regional Commission show the magnitude of the impact of abandoning rail service to these and other communities. What we are seeking in this amendment is to ensure that the goal of minimizing the job loss and economic disruption be maintained throughout the establishment of the final system plan and its implementation.

This amendment, as did the House measure, merely makes this an explicit part of the bill by including it as one of the goals of the final system report.

I would hope it would be accepted.

Mr. HARTKE. Mr. President, I congratulate the Senator for offering the amendment. This language should be in the bill; it is in the House bill. We should give consideration to minimizing the job loss and the dislocation that will result in trying to modernize the railroads of this Nation.

Mr. BEALL. Mr. President, on behalf of the minority, I wish to thank the Senator for offering the amendment. It covers ground that should have been included in the bill initially.

Mr. KENNEDY. I thank the Senator.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Massachusetts.

The amendment was agreed to.

Mr. KENNEDY. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be read.

The assistant legislative clerk proceeded to read the amendment.

Mr. KENNEDY. Mr. President, I ask unanimous consent that further reading of the amendment be discontinued. I shall explain the amendment.

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

The amendment ordered to be printed in the RECORD is as follows:

On page 155, line 18, delete all after the words "no later than" and insert "6 years after the date of enactment."

On page 155, line 19, after paragraph (2) add the following: "The Secretary shall begin the necessary engineering studies upon enactment."

Mr. KENNEDY. Mr. President, on this amendment also I have spoken with the floor manager as well as with the ranking minority member.

The purpose of the amendment is to reduce the total amount of time that will be necessary for the completion of the Northeast corridor passenger service from 9 years to 6 years and to begin the studies to carry it out.

The proposed legislation, at page 155, states:

Nine years after the effective date of the final system.

This amendment would reduce the total time period to 6 years. I have been informed that those who are familiar with the Northeast corridor project feel that this plan could be achieved in from 3 to 5 years. So this proposal adds only one more year beyond what the key planners in the formulation of the plan thought was essential to develop a plan.

I think the amendment is in the interest of the passengers of the Northeast area.

Thus, this amendment merely would reduce the number of years provided for competing the Northeast corridor passenger service from 9 to 6 years from passage of the act and provide authority to the Secretary to begin engineering studies for the purpose immediately.

Both House and Senate versions of the legislation recognize the critical need for improving rail passenger service in the corridor where some 20 percent of the Nation's population resides. The energy crisis makes this an even more pressing matter.

G. A. Lincoln, former chief of the U.S. Office of Emergency Preparedness has compared the fuel usage of modes of transportation. The cross-country passenger train is nearly three times more efficient than the automobile, and four times more efficient than the jet plane. The commuter rail system is nearly seven times more efficient than the auto.

As to pollutants, the U.S. Department of Transportation shows that commercial jets emit 2.7 times as many of pollutants per million passenger miles as high speed trains, buses 21.8 times, and private autos 27.3 times.

The Metroliners already have shown their potential attractiveness to passengers with the Washington to New York

route increasing its ridership some 18 percent a year ago and increasing its share of the combined air and rail ridership from 25 to 27 percent. At the same time, the Metroliner routes have been showing a profit.

The recommendations of the Department of Transportation report would upgrade the system sufficiently to provide two-hour service from Washington to New York and 2¾-hour service between New York and Boston. This service would include Boston, Providence, New Haven, New York, Newark, Philadelphia, Wilmington, Baltimore, and Washington, D.C. The increasing ridership would not only be paying off the cost of the original capital improvements but ultimately would show a substantial profit.

By 1985, DOT estimates the high speed corridor route would be pumping an estimated $40 million in net revenues into Amtrak coffers.

I believe we would be doing ourselves a major disservice if we did not utilize the opportunity presented by the need for revamping of the rail industry in the Northeast to produce not only improved freight service but improved passenger service as well.

I would add that this proposal has the full support of the New England Governor's Conference.

I would note that I want to commend the committee for the adoption of provisions insuring the realization of this long-sought after program and for achieving this in a way that also adds to the financial viability of the overall plan as well.

I would emphasize that in no way does this measure require any expenditure of additional appropriated funds for the acquisition of modernization of the corridor rights-of-way. All of these funds would be obtained through loans from the private market, some government guaranteed.

However, the financial viability of this measure is estimated by the Department of Transportation to enable it not only to cover a substantial portion of the actual expenditures for improvement during the 3 to 5 years estimated as necessary to complete the program but will be paying in as profit an estimated $40 million a year by 1985. Even those estimates are considered to be conservative given the current heightened attractiveness of rail passenger service during the energy crisis.

I believe that the amendment I have offered will further the committee intent stated in the final system goals: "the establishment of improved high-speed rail passenger service, as recommended by the Secretary in his report of September 1971, entitled 'Recommendations for Northeast Corridor Transportation.'"

I want to express my particular appreciation for the committee inclusion of the provisions contained in amendments I submitted to the bills which were before the committee in its considerations of this measure. I know both the chairman of the subcommittee and the chairman of the committee have been strong supporters of efficient and modern high-speed rail service in the corridor. I believe the provisions of the bill, along with the amendment I am offering today will see that we can reach that goal at the earliest possible time.

I hope that the able manager and the ranking minority member will be agreeable to accepting it.

Mr. HARTKE. Mr. President, in my judgment, 6 years is too long even though it shortens substantially the time in the bill. That is my only criticism of the amendment. I hope that this proposal places a reasonable expectation on the time for completion. It would be nice if we could celebrate the achievement of this transportation proposal in 1976. Perhaps the Senator from Massachusetts can reduce the time for completing the last leg of the plan by 4 years.

I am prepared to accept the amendment.

Mr. BEALL. The minority also is willing to accept the amendment.

Mr. KENNEDY. The 9 years in the legislation, plus 18 months to 2 years, would bring the plan up to 11 years. This amendment would cut the time back almost in half, to a 6-year period. That is the time which the Department of Transportation thinks would be reasonable for completion and we also would authorize an immediate start of the necessary engineering studies.

I want to commend the committee itself for the attention they have devoted to the Northeast corridor problems. I think it is a tribute to the able manager and the minority members that they have been sensitive to our needs. I wish to commend both of them for the time they have given to the problems of the Northeast.

I ask unanimous consent finally that the statement on the New England Governors Conference endorsing action on high speed rail service in the corridor be printed in the RECORD.

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

NORTHEASTERN RAILROAD PROBLEMS

A modern, efficient rail transportation system is essential to the continued health and growth of the nation's economy. Fuller and more advantageous utilization of our existing rail plant will not only contribute materially toward the realization of a balanced national transportation system but will serve also to enhance our environment by permitting more efficient land use, by reducing air and noise pollution, and by conserving our precious and threatened energy resources.

Significant segments of the New England economy are heavily dependent upon rail transportation for their continued existence. Loss of service will result in widespread and irreparable harm in terms of lost jobs, reduced employment opportunity, displaced industry and disruption of planned business and industrial development and expansion. Even the present, and in some instances long-standing threat of rail service loss or curtailment is having deleterious effects upon our economy.

The crisis is made more acute to New England in light of our region's changing economic base, a badly deteriorated rail physical plant, and the bankruptcy of two of New England's major railroads—the Boston and Maine and Penn Central. Penn Central poses an immediate threat to the region and, indeed, to the nation, in view of its bankruptcy court's directive that the railroad's trustees either file a plan of reorganization or a plan for liquidation by early July on the one hand, and on the other, the trustees' stated position that reorganization is not possible without immediate substantial Federal financial assistance.

It is abundantly clear that the financial dimensions and geography of the region's rail transportation system, and most significantly its interdependence with and reliance upon the balance of the nation's rail network, demand that the Federal government assume a decisive and leading role in revitalizing and in fostering and insuring the growth of this presently seriously troubled industry.

It is imperative that the Congress of the United States act with all deliberate speed in setting up a process for formulating and implementing long-term permanent solutions to the Northeastern Railroad Problem. Essential elements of this process must include (1) thorough and systematic analyses of the specific rail carriers, of the freight transportation industry as a whole, and of the economic and social impacts of the rail industry upon the regions it serves, (2) acceptance of a Federal financial role in the continuation of essential rail freight service, (3) identification of appropriate state and local government parts in assuring freight transportation service, and (4) recognition of and attack on the problems of all railroads, both profitable and bankrupt.

It is long overdue for the Congress to develop, to establish and to implement a national transportation policy of which rail is a fundamental part. Public investment priorities and other transportation decisions must reflect this policy. Just as the Northeastern railroads must be dealt with as parts of a larger integrated national rail system, so too must this system be viewed within the framework of a national intermodal transportation system.

There are immediate problems facing individual railroads and groups of railroads which must be confronted and resolved. There is a compelling and overriding public interest in continuous uninterrupted rail service. The system or any vital part of the system must not be permitted to shut down as the process of developing and implementing longer term remedies goes forward. The Congress must set up a mechanism, which might include short-term operating subsidies, to enable all existing rail freight service to continue.

Rail service abandonments should be halted until adequate consideration has been given to the effect each will have upon the whole rail system. To continue on the present piecemeal course may be counterproductive in terms of the economic effects on the system, may be illogical and inconsistent with the overall policy which is to be developed, may cause undue and grave harm to users and the public, and would serve only to occupy the time, energies and resources of persons and public and private agencies which could be more advantageously employed in dealing with the broader problem.

Implementation of high speed rail passenger service in the Northeast Corridor must take place without further delay. With twenty percent of the United States' population living on a land area comprising some two percent of the nation, with intercity traffic unsurpassed in terms of volume by any other area, with demand for intercity activity to continue to rise particularly between major urban centers, with alternatives to solving existing modal problems becoming increasingly restricted, there is no reasonable basis for continued Federal failure to finance and to acquire and construct the necessary facilities and equipment required for the realization of this priority project. The rail system in the Corridor has the capacity to carry a substantially greater number of intercity passengers while taking almost no land, creating little air and noise pollution, minimizing energy consumption,

and providing a high level of safety. The program constitutes the best and least costly method of meeting some of the major intercity transportation needs of the Northeast with necessary and appropriate Federal financial assistance. It remains a high pay-off program that will yield important and enduring results at low risk to the Federal government. The States of Connecticut, New York, and Massachusetts have already acted in advancing the project through their acquisition of approximately one hundred miles of the four hundred and fifty mile right-of-way between Boston and Washington. Resolute and prompt Federal action on the Northeast Corridor Project will also contribute materially to solving the Northeast Railroad Problem.

Gov. THOMAS J. MESKILL,
Chairman, Connecticut.
Gov. THOMAS P. SALMON,
Vice-Chairman, Vermont.
Gov. KENNETH M. CURTIS,
Maine.
Gov. PHILIP W. NOEL,
Rhode Island.
Gov. FRANCIS W. SARGENT,
Massachusetts.
Gov. MELDRIM THOMSON, Jr.,
New Hampshire.

Mr. HARTKE. In acknowledging that commendation, let me point out that rail passengers in Northeast corridor will not be the only beneficiaries; the proposal will materially contribute to the Corporation's financial success. I think that some people have lost sight of what we are doing in this respect.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Massachuetts.

The amendment was agreed to.

Mr. BROCK. Mr. President, I have an amendment at the desk which I ask to have considered.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. BROCK. Mr. President, I ask unanimous consent thaat the further reading of the amendment be dispensed. I will explain the purpose of the amendment.

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

The amendment ordered to be printed in the RECORD is as follows:

On page 48, on lines 12 through 15, delete the following: "the current average yield on outstanding marketable obligations of the United States with remaining periods to maturity of such loans," and substitute in lieu thereof: "the prime rate as determined by the Secretary of the Treasury".

Mr. BROCK. Mr. President, the amendment is directed at a problem where the original language would have required or allowed, in effect, a subsidized rate of interest on direct loans at a Treasury rate which I think is extended. I have tried to reach more toward the prime rate, as in the Lockheed loan, directing, in the discretion of the Secretary of the Treasury, the establishment of U.S. practice for the prime rate for direct loans.

I am hopeful it would be acceptable to the manager of the bill.

Mr. HARTKE. Mr. President, I have discussed this amendment with the Senator from Tennessee. As originally drafted, it was found to be too open ended and at that time interest rates could have approximated as much as 15 or 18 percent. As the amendment is now drafted, I am prepared to accept the amendment.

Mr. BROCK. Let me say I do appreciate the suggestions of the Senator from Indiana, because I have no interest in going to that high a rate. I think the suggestions the Senator from Indiana made were constructive. I think we seek the same objectives in this respect, and I thank him for his support.

Mr. HARTKE. Mr. President, I yield back my time.

Mr. BROCK. Mr. President, I yield back my time.

The PRESIDING OFFICER. All time having been yielded back on the amendment, the question is on agreeing to the amendment of the Senator from Tennessee.

The amendment was agreed to.

Mr. TAFT. Mr. President, I call up an amendment which I have at the desk amending language on page 47.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read the amendment, as follows:

On page 47, line 11 after the word "railroads" insert the phrase "(including a railroad in reorganization which has been found to be reorganizable under section 77 of the Bankruptcy Act pursuant to section 207(b) of this title."

Mr. TAFT. Mr. President, this amendment has been discussed with the distinguished chairman of the committee. Its purpose is to make it abundantly clear that a railroad which is in a 77(b) reorganization under the bankruptcy law would be eligible as a borrower under the authorizing sections. This particularly applies to the Erie-Lackawanna Railroad, which believes that type of reorganization can be used in its case, but would need the assistance offered other bankrupt roads under the legislation, and I think would well be entitled to such consideration.

Mr. HARTKE. Mr. President, I have discussed this amendment with the distinguished Senator from Ohio. It addresses the question of the Erie-Lackawanna, which perhaps can be reorganized on a cash basis. With this amendment it could make itself viable with some loans from the association if it is indeed reorganizable.

I think the Senator has worked out an acceptable amendment in trying to deal with this peculiar situation.

I am ready to accept the amendment and yield back the remainder of my time.

Mr. TAFT. Mr. President, I yield back my time.

The PRESIDING OFFICER. All time on the amendment having been yielded back, the question is on agreeing to the amendment of the Senator from Ohio.

The amendment was agreed to.

Mr. TAFT. Mr. President, I have another amendment at the desk which amends the Interstate Commerce Act, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will read the amendment.

The assistant legislative clerk proceeded to read the amendment.

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

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

The amendment is as follows:

At the appropriate place in the bill insert the following:

SEC. 2. Part I of the Interstate Commerce Act is amended by striking out section 13a and inserting in lieu thereof two new sections as follows:

"ABANDONMENT OF LINES

"SEC. 13a. (a) Except as provided in subsection (b) and subject to the requirement of subsection (c) of this section, and notwithstanding any other provision of this Act, after ninety days following public notice and notice to the Secretary of Transportation, any carrier by railroad subject to this part may abandon any line of railroad (including any part thereof), notwithstanding the constitution or laws of any State or the order of any State agency or court.

"(b) (1) If the Secretary of Transportation finds, after receiving any notice pursuant to subsection (a), with or without public hearing at the discretion of the Secretary, that the continuance of the line proposed to be abandoned, is essential to the national or any regional economy or to the national defense, he shall prior to ninety days following such notice (A) order the continuance of such line without change, and (B) contract with such carrier to make payments to such carrier in the amount necessary to reimburse the carrier for losses suffered as a result of such continuance ordered by the Secretary. Any such contract may be made for such period or periods, and may be renewed, as the Secretary determines. At any time the Secretary determines that such continuance is no longer essential under the provisions of this subsection he shall terminate such payments, and authorize such abandonment, effective on a date which is at least ninety days after public notice is given of such abandonment.

"(c) No employee's employment with a carrier shall be terminated as a result of an abandonment authorized in subsection (a), but a carrier may, after any such abandonment, reduce by attrition its total number of employees by an amount equal to the number of employees made unnecessary by such abandonment, discontinuance, or change.

"(d) (1) The Secretary of Transportation shall administer the provisions of this section and shall promulgate such regulations as may be necessary for such administration.

"(2) The district courts of the United States shall have jurisdiction upon complaint of the Secretary of Transportation, or any party in interest, alleging a violation of any provision of this section, to issue such writs of injunction or mandamus as may be necessary to restrain violations of, or compel obedience to, the provisions of this section.

"(e) There are authorized to be appropriated such amounts as may be necessary to make payments contracted for by the Secretary of Transportation pursuant to subsection (b).

RATES, FARES, AND CHARGES FOR THE TRANSPORTATION OF PROPERTY

"SEC. 13b. (a) Any provision of this Act which is inconsistent with the provisions of this section shall not apply after the effective date of this section to carriers by railroad subject to this part or to rates, fares, charges by, or activities of, any such carrier which are established or carried out pursuant to this section. After such effective date rates, fares, and charges established pursuant to this section shall be just and reasonable charges for the purposes of this Act.

"(b) Any carrier by railroad subject to this part may establish or revise rates, fares, or charges, and classifications applicable there-

to, for the transportation of property, subject to the following requirements:

"(1) No such proposed rate, fare, charge, or classification, or revision thereof, shall be made effective until after thirty days following public notice thereof and notice to the Secretary of Transportation, and all effective rates, fares, charges, and classifications by each carrier shall be maintained in print and open for public inspection.

"(2) No discrimination shall be practiced in such rates, fares, charges, and classifications with respect to the identity of the shipper, the direction of the shipment, the value of the property shipped or for any other reason other than may be expressly authorized by the provisions of this section or other provisions of this Act.

"(3) No rebates shall be made to shippers.

"(4) No agreements shall be made between carriers with respect to rates, fares, charges, or classifications.

"(5) Rates, fares, or charges may be varied, or classifications may be made, on the basis of—

"(A) bulk shipments and general merchandise shipments;

"(B) weight;

"(C) cubic volume;

"(D) the need for special equipment to transport the property;

"(E) special switching services necessary to transport the property, or to originate or terminate the shipment;

"(F) distance;

"(G) providing a lower weight to mileage rate for longer than for shorter shipments, for trailer or container or flatcar shipments, for unit train shipments, and for multiple car shipments; and

"(H) an amount actuarily calculated to cover claims for damage and loss of high value shipments.

"(c) Any carrier by railroad, or any officer or other agent thereof, who knowingly violates the provisions of paragraph (2) or (3) of subsection (b) of this section shall upon conviction thereof be punished by a fine of not more than $10,000 for each violation.

"(d)(1) The Secretary of Transportation shall administer the provisions of this section and shall promulgate such regulations as may be necessary for such administration.

"(2) The district courts of the United States shall have jurisdiction upon complaint of the Secretary of Transportation, or any party in interest, alleging a violation of any provision of this section, to issue such writs of injunction or mandamus as may be necessary to restrain violations of, or compel obedience to, the provisions of this section."

SEC. 3. The amendment made by this Act shall be effective after ninety days following the date of enactment of this Act.

SEC. 4. Nothing in this Act is intended to amend the provisions of the Rail Passenger Service Act of 1970.

Mr. TAFT. Mr. President, this amendment is in approximately the same form as legislation which I introduced back on February 5, 1973, to deal with the Interstate Commerce Act. There have been no hearings on that particular measure up to the present time, but I note particularly with regard to his legislation that the committee report notes in several places that among the factors contributing to the bankruptcy of the Northeastern railroads was the abandonment and rate regulation policy of the Interstate Commerce Commission.

In fact, the ICC policies have resulted in a national railroad rate of return on investment of just slightly over 2 percent. So low a rate of return has destroyed railroad credit; as a result, billions of dollars of Federal money must now replace private funding. The ICC has combined policies of setting overly low rates in some categories with forbidding low rates in other categories, so as to prevent effective competition with trucks. At the same time, the ICC has forced the railroads to continue service, at railroad expense, over thousands of miles of unprofitable branch lines.

In sum, the ICC has effectively prevented the railroads from responding to market conditions, and the taxpayer is now paying for this mistake.

The committee report notes this situation, but the bill, S. 2767, provides only temporary relief, for a few railroads, from ICC regulation. I, therefore, offer the amendment which:

First, makes the Government bear the losses suffered in unprofitable branch line operations which the Government has ordered continued, and

Second, gives the railroads the right to set rates and fares in response to market conditions, subject only to such regulation as is necessary to prevent discrimination and collusion.

Mr. President, the problem we are facing here today did not spring up overnight. It is the inevitable end result of 70 years of discriminatory and incompetent regulation of the Railroad Industry by the Interstate Commerce Commission.

The ICC, set up to protect the average citizen from the railroad, is now about to cost the average citizen hundreds of millions of tax dollars because it has been a major factor in the ruin of the railroads.

The committee report on S. 2767 notes, parenthetically, in several places that the ICC is one of the factors—in my view, one of the major factors—behind the collapse of the Northeast Railroads. Yet the bill before us does nothing, except on a temporary basis, to correct this problem.

The magnitude of the problem is perhaps best realized from the fact that, across the Nation, railroads earn on the average only slightly better than 2 percent on their investments. That is less than a person can earn on tax-free municipal bonds. Is it any surprise that railroads find it almost impossible to borrow money? Who would invest in an industry with this return rate? Even the most profitable railroads, such as the Southern, earn only about 7 percent, not a high rate of return in terms of competing for capital.

The choice before us is whether we want to let the railroad industry respond to market conditions so it can again be healthy and rely on private capital for its growth and modernization, or whether, in the name of regulation, we want to create a situation where the railroads are maintained and perhaps even operated at taxpayer expense.

There are two ICC practices which must be altered if we are to make the former choice. First, we can no longer demand, via the ICC, that railroads operate uneconomical branch line service at their own expense. Ideally, if a branch-line is unprofitable, the railroad should have the right to go to the shippers on that line, show them the books, and set a freight rate covering the actual expenses of operation plus a reasonable rate of return. If this rate is higher than that offered by other forms of transportation, then the shippers can make arrangements with those other transportation organizations, and the railroad can abandon the branch line.

I recognize, however, the political pressures on the Government not to let branch lines be abandoned. Very well: But the Government does not have the right to make the railroad pay the expenses of these political decisions. According to my amendment, if the Government orders continued service on an unprofitable line, the Government will pay the bill. That is, in all justice, the only way that this can be done.

Let me note that, as we see here today, if the taxpayer does not pay the initial price in such cases, he pays it later on anyway.

Second, the railroads must be allowed to set rates and fares according to market conditions, subject, of course, to such regulation as is needed to prevent discrimination and collusion. To deny this right to the railroads is simultaneously to increase expenses to the general public, by preventing free competition, and to ruin the railroads, by setting too low a rate of return.

I believe my amendment is the only genuine solution to a major factor of the problem facing us today. Anything that ignores the role of the ICC increasing the mess before us now is only a band-aid solution: One that will come loose in no time. I call on my distinguished colleagues to join me in assuring that the future of America's railroads will be both a bright one and one of private ownership and private capital, not continuing expense to the American taxpayer.

Mr. HARTKE. Mr. President, I have discussed this amendment with the Senator from Ohio. Unfortunately, it does not fit within the overall purview of what we intended in this measure. There is no question that the Senator has pointed his finger at one of the problems of the railroad industry. However, it is directly contrary to one provision we have already adopted.

I hope that the Senator from Ohio would take the assurance of the committee that we will go into this matter thoroughly next year. It will be on the agenda for us to act upon. We will certainly give the Senator a clear opportunity at that time to present his case and do it in a fashion that would be much more appropriate than dealing with it in this important measure.

The Department has asked us not to include regulatory changes in this measure. The majority and minority agree that to deal with this measure without hearings and without committee consideration would cause a definite flurry which could not be sustained.

Mr. TAFT. Mr. President, if the Senator will yield, I appreciate the remarks of the distinguished Senator from Indiana. A bill on this very subject has been pending for almost a year now.

I recognize also that we would be in a hearing then and that the distinguished chairman might have the comments that may be coming from the Department or the administration. There will be some recommendation in this general area.

We expect to hold hearings on them

early in the next session of the Congress. I would request that consideration be given at that time to S. 756, which will, of course, still be pending at that time along with any other legislation that might be pending.

Mr. HARTKE. Mr. President, I assure the Senator from Ohio that we will schedule hearings on his bill in the early part of the next session of the Congress.

Mr. BEALL. Mr. President, I agree with both Senators. I think that the Senator from Ohio is pointing his finger at a very important problem that is facing the railroads historically. That pertains to regulation and lethargic regulation. I think that deregulation should be considered.

I agree with the Senator from Indiana that we would be remiss if we were to handle this matter in the pending bill. This is a matter that deserves some hearings. I can assure the Senator from Ohio, speaking for the minority, that the matter will receive attention next year.

We have assurances from the administration that the proposal will be in our hands later this year and no later than when Congress reconvenes next year.

Mr. TAFT. Mr. President, I thank the Senator for his remarks.

Mr. President, in view of the remarks of the two Senators, I withdraw my amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. HELMS. Mr. President, the distinguished Senator from South Carolina (Mr. THURMOND) is unable to be present because of a death in the family. On his behalf I call up his first unprinted amendment at the desk and ask that it be reported.

The PRESIDING OFFICER. The clerk will report the amendment.

The second assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS), on behalf of the Senator from South Carolina (Mr. THURMOND), offers the following amendment:

On page 141, line 13, before the period insert a comma and the following: "or for any period during which the employees of the Corporation are on strike, whether or not the protected employee is an active participant in such strike".

Mr. HELMS. Mr. President, if the distinguished Senator from South Carolina (Mr. THURMOND) were present, he would present the following statement in support of his amendment, which I shall read, as follows:

Mr. President, It has come to my attention that, under S. 2767, employees of the Corporation will retain their right to strike.

Under the provisions of title VI, any person receiving a monthly displacement allowance would continue to receive that allowance during the period of a strike.

My amendment is intended to stop all allowances paid to those protected employees and adversely affected employees during the period of a strike.

Should these payments continue while a strike was in progress, the Federal Government, in effect, would be subsidizing one side of a labor dispute. This situation should not exist, and this amendment allows the government to remain neutral during a strike.

Mr. President, I urge the adoption of the amendment.

Mr. HARTKE. Mr. President, I would like to say briefly that this amendment is not in the best interest of the legislation. It really gives us a problem. I understand what the Senator from South Carolina is concerned about. The problem is that if we have an individual displaced by virtue of this law which we pass and there is then a strike without any concern for the employee, he is thrown to the wolves and loses money not by virtue of the strike, but by virtue of the fact that he is displaced.

It would create a new situation in the labor-management relations.

I cannot see any way in which this could be any part of the legislation.

Mr. HELMS. The employee would be entitled to a raise.

Mr. HARTKE. There is no question about that. Those raises do pass through. The Senator is penalizing the wrong people.

Mr. HELMS. Mr. President, I yield back the remainder of my time.

Mr. HARTKE. Mr. President, I yield back the remainder of my time.

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

Mr. HARTKE. Mr. President, I ask for a voice vote.

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

Mr. HARTKE. Mr. President, let me say again that I find this amendment is unacceptable.

Mr. BEALL. Mr. President, may I say that I agree with the Senator from Indiana. The amendment is unacceptable at this time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from South Carolina. (Putting the question.)

The amendment is rejected.

Mr. HELMS. Mr. President, on behalf of the distinguished Senator from South Carolina (Mr. THURMOND), I call up his next unprinted amendment which is at the desk and ask that it be stated.

The PRESIDING OFFICER. The clerk will report the amendment.

The second assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) on behalf of the Senator from South Carolina (Mr. THURMOND) proposes the following amendment:

On page 141, line 13, before the period insert a comma and the following: "or for any period during which such employee does not work because of his participation in a strike".

Mr. HELMS. Mr. President, the statement prepared by the Senator from South Carolina (Mr. THURMOND) which he would present at this time, were he able to be present, reads as follows:

Mr. President, my previous amendment would have stopped the payment of the monthly displacement allowance during the period of a strike against the corporation.

The amendment I now propose would stop payment of the allowance to an adversely affected employee who participates in a strike. An adversely affected employee is actively employed by the corporation and receiving a displacement allowance due to a reduced salary.

Should payments continue to such an individual during a strike, the Federal Government would be actively supporting one side of a labor dispute. My amendment will allow the government to remain neutral by cutting off the displacement allowance while a strike is in progress.

Mr. President, I urge the adoption of the amendment.

Mr. HARTKE. Mr. President, this is basically the same proposition. As I said before, the difficulty is that while it is attempting to correct a difficulty, the amendment is aimed at the wrong people.

The man who is out of work is not out of work because he participated in the strike.

I do not think that this amendment has a proper place in the bill.

I oppose the amendment.

Mr. HELMS. Mr. President, this hypothetical individual is working for the railroad, and while on a strike he would be drawing payments from the Government.

Mr. HARTKE. That is correct. However, he would be drawing them not because of anything that had to do with the strike.

Mr. President, I yield back the remainder of my time.

Mr. HELMS. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from South Carolina. (Putting the question.)

The amendment was rejected.

Mr. STEVENS. Mr. President, I call up an amendment that is at the desk.

The PRESIDING OFFICER. The clerk will state the amendment.

The assistant legislative clerk read as follows:

On page 21, between lines 5 & 6, insert the following: A new Section 205 and redesignate subsequent Sections accordingly:

CONSOLIDATION STUDY

SEC. 205 (a) ESTABLISHMENT.—There is established an American Railroad Consolidation Commission.

(b) BOARD.—(1) The Consolidation Commission shall consist of nine members appointed to serve at the pleasure of the President, two representing railroad management, two representing railroad labor organizations, and two representing appropriate Government departments and agencies, and three other qualified individuals.

(2) The President shall designate a Chairman and a Vice Chairman from among the members of the Consolidation Commission. Any vacancy in the membership of the Consolidation Commission shall not affect its powers and shall be filled in the same manner in which the original appointment was made.

(3) Five members of the Consolidation Commission shall constitute a quorum, but a lesser number shall constitute a quorum for the purpose of conducting hearings.

(4)(a) A member of the Consolidation Commission who is otherwise an officer or employee of the United States shall serve without additional compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of duties of the Consolidation Commission.

(b) A member of the Consolidation Commission from private life shall receive $100 per day when engaged in the actual performance of duties of the Consolidation Commission, and shall receive reimbursement for travel, subsistence, and other necessary

expenses incurred in the performance of such duties.

(c) FUNCTIONS.—The Consolidation Commission shall

(1) After investigation and study, formulate a plan for the consolidation of all class I, privately owned, common carriers by railroad, including their railroad subsidiaries and affiliated terminal companies, in the United States, exclusive of Alaska and Hawaii, and excluding lines wholly owned and operated by Canadian National and Canadian Pacific Railways, into one private corporation and to assess and determine the value of such railroads as a whole, the value of each separate component and proper capitalization of the entire system and distribution of securities to its components.

(2) Study of railroad diversification into businesses not traditionally considered part of railroad operations. The study will consider, among other things, the contribution of diversification to deterioration in rail passenger service and in the efficient movement of freight, to lack of growth of railroad operations, and to the direct or indirect diversion of railroad revenues, assets and management attention from railroad operations into such other businesses. The study shall set forth and evaluate various measures which may be taken to correct adverse conditions attributable to diversification.

(3) After adoption and authorization of such plan by Act of Congress, take initial steps as are authorized by such Act, to carry out such plan.

(d) POWERS.—(1) The Consolidation Commission may for the purpose of carrying out this Act—

(a) Appoint and fix the compensation of an Executive Director and such additional staff personnel as he deems necessary without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates, but at rates not in excess of the maximum rate for GS–18 of the general sechedule under section 5332 of such title;

(b) Procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed $100 a day for individuals; and

(c) Request and accept from any executive department or agency, or congressional committee, any information and assistance deemed necessary to carry out its functions under this Act, and each such department and agency is authorized, to the extent permitted by law and within the limits of available funds, to furnish information and assistance to the Consolidation Commission.

(2) (a) The Consolidation Commission, or at its direction, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this Act, hold such hearings, sit and act at such times and places, administer such oaths, and require by subpena or otherwise the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers, and documents as the Consolidation Commission or such subcommittee or member may deem advisable. Any member of the Consolidation Commission may administer oaths or affirmations to witnesses appearing before the Consolidation Commission or before such subcommittee or member. Subpenas may be issued under the signature of the Chairman or Vice Chairman and may be served by any person designated by the Chairman or Vice Chairman.

(b) In the case of contumacy or refusal to obey a subpena issued under paragraph (1) of this subsection by any person who resides, is found, or transacts business within the jurisdiction of any district court of the United States, such court, upon application made by the Attorney General of the United States, shall have jurisdiction to issue to such person an order requiring such person to appear before the Consolidation Commission or a subcommittee or member thereof, there to produce evidence if so ordered, or there to give testimony touching the matter under inquiry. Any failure of any such person to obey any such order of the court may be punished by the court as a contempt thereof.

(c) REPORT.—Not later than one year, unless said period is extended by order of the President, the Consolidation Commission shall report to the President and the Congress the plan formulated pursuant to this Act, together with its recommendations for such legislation as is necessary to adopt and carry out such plan.

On page 52 between lines 15 and 16 insert new subsection:

(d) CONSOLIDATION COMMISSION.—There is authorized to be appropriated such amount, not to exceed $500,000, as is necessary to carry out the provisions of this Act.

Mr. STEVENS. Mr. President, I am today introducing an amendment to S. 2767 at the suggestion of my distinguished colleague from Ohio (Mr. SAXBE) to provide for a study of the concept of consolidating all class I common carriers in the United States, except Alaska and Hawaii, into a single private corporation. My sponsorship of this amendment is based on the fact that as an Alaskan Senator, I represent a State which is not directly affected by railroad legislation which seeks a satisfactory solution to the Northeast and Midwest railroad situation. I am hopeful that a study of the concept of adopting an overall transportation plan for our Nation's railroads will receive favorable support, and therefore provide an appropriate method of analysis and study of this important transportation issue.

Mr. President, the American rail system as it is presently constituted, is faced with a disaster. In the East a great number of roads are in bankruptcy. In the Midwest they are operating without producing the profit necessary to invest in capital improvements. In the far West the deteriorating situation in the rest of the country has produced confusion in the attempts to effectively schedule the rolling stock.

Earlier this year Senator SAXBE introduced a bill to provide for the nationalization of the seven bankrupt railroads in the Midwest and Northeastern corridors. His aim at that time was to provide a stimulus for a detailed analyzation of the American railroad system. Since then we have determined that nationalization in any form would be in our worst interests. For this reason, I am today introducing an amendment that might serve as a solution to the cancer which is invidiously consuming an industry which enjoyed robust economic health not too many years ago.

This legislation is the first in a two-step process which would provide for the establishment of a plan for the consolidation of all class I common carriers in the United States into a single private corporation similar in structure to the Bell Telephone System.

The bill presently before the Senate provides for much needed immediate action, but might only briefly retard this growing cancer which is destroying our rail network. We must develop a plan that will be a workable alternative to the inevitable nationalization of our railroads and cost the Federal Treasury billions of dollars. This amendment, by dealing with the problem on a national scale, avoids the pitfalls of regional approaches to the current rail crisis. Without looking at the national picture, regional legislation even as effective as S. 2767 will only serve to delay the day of reckoning for the American rail industry.

The objective of this amendment is to establish an American Railroad Consolidation Commission which will, after investigation and study, formulate a plan for the consolidation of all class I, privately owned common carriers by railroad, including their railroad subsidiaries and affiliated terminal companies in the United States, exclusive of Alaska and Hawaii and excluding lines wholly owned and operated by the Canadian National and the Canadian Pacific Railway, into one private corporation. After 1 year the American Railroad Consolidation Commission will make their legislative recommendations to Congress which will then be able to vote for a well planned solution to not only the problems of a few railroads, but those of the entire Nation.

The Commission will assess and determine the value of our domestic rail system as a whole and the value of each individual railroad company and the proper capitalization of the entire system in conjunction with a plan to distribute securities to the holders of debt and equity securities of the component parts.

The deterioration of our railroads is not confined to the seven bankrupt lines that are presently getting so much attention. It is a growing affliction destined to spread throughout the entire rail industry if preventive measures are not taken immediately. The Rock Island line is teetering on bankruptcy, the C. & W., the Milwaukee and Katy have been saved by abnormal grain movements and other lines are experiencing difficulties which make their future operation questionable at best. The point is that the malaise of the northeast and midwest lines is not local, but is only the predecessor of nationwide problems.

Presently, all American railroads operate as one system in the interchange of track usage, cars, tankers and traffic. Thus, even though there are many separate and distinct lines, they are integrated for operational purposes. The several plans advanced so far have incorporated a core-system theory, but there has been no study which could firmly demonstrate whether the core-system could do the job, and more importantly, the effect, which might be disastrous, in its end connections and on the presently solvent lines which would parallel it. If events continue on their present course, we can anticipate a deepening rate of chaos and no solution to the problems of car service, car availability, circuitous and uneconomic routing and a host of other problems which we have been unable to solve. We must also recognize the

fact that at a time when this country is in the midst of an energy crisis of the first order, we must further develop the most economic means of transportation possible which is often represented by a fully integrated rail system.

We realize that the lines that are presently prosperous will at first feel that upon consolidation there would be a monetary flow from their railroads to counteract the losses being sustained by the eastern lines during reorganization. This concern will most assuredly be offset by adequate recognition of the prosperous carriers through security allocations in the private corporation. Therefore, although there may be short term disadvantages, consolidation, of necessity, will produce a tremendous long term gain through the enormous economic advantages such as the elimination of duplicate tracks and facilities in the congested East where multiple lines now serve the same communities and shippers. On the other hand, preservation of the status quo most certainly looks toward a long term loss for even the most prosperous lines as the whole railroad system continues to decay.

The proposed American Railway Consolidation Commission will have 1 year in which to develop a fair and impartial plan to consolidate all U.S. railroads. The Commission's findings and recommendations will be submitted to Congress together with its proposal for legislation necessary to adopt and carry out this proposal. During this time we will have an opportunity to analyze the entire question and what would be the most rational solution for all concerned.

As is evidenced by S. 2767, Congress can no longer afford to sit on its hands, or to rely on limited programs to keep the railroads operating. Halfhearted solutions will only lead to further complications at a later date. This amendment provides a reasonable and practical alternative to disaster on the one hand, or full nationalization on the other.

I have discussed this amendment with the Senator from Indiana. I might say for the record that my statement was primarily the statement that would have been made by our colleague from Ohio if he were not involved in the hearings on his own confirmation.

Mr. HARTKE. Mr. President, this is a study request. If it were a substantive request, asking that it be adopted with the bill, I certainly could not approve it, and I am certain that the distinguished Senator from Maryland (Mr. BEALL), the ranking minority member of the subcommittee, could not approve it. It contains a substantive change, in that it provides for studying the possibility of creating one unit to run all the railroads of the Nation and hopefully thereby avoid nationalization.

The effect of such a procedure would be to substitute a form of quasi-nationalization. But in view of the fact that we have, under Senator HART's amendment adopted by the committee, a requirement that the Department of Transportation give thorough study to all types of transportation policy, including nationalization of passenger service as suggested by the Senator from Connecticut (Mr. WEICKER), I am prepared to take the amendment at this time, with the understanding that we will discuss it to see whether or not it is in conflict with other provisions, with no assurance that we can come out of conference satisfactorily with it.

Mr. STEVENS. Mr. President, I am hopeful that I will be a member of that conference committee, and I can discuss the matter with the floor manager further at that time.

It would seem to me that the concept of studying an alternative to nationalization in the form of a national railroad corporation is something that should be considered.

Several Senators addressed the Chair.

Mr. STEVENS. I yield first to the Senator from Maryland.

Mr. BEALL. I yield to the Senator from Illinois.

Mr. PERCY. Mr. President, I would like to ask a question of the Senator from Alaska as to the length of time that the nonprofit Government national railroad corporation, Ginnie Rae, would be in being. Is this a permanent structure? Is there any provision at all for moving it out of the Government structure at any point in the future?

Mr. STEVENS. It is a nonprofit corporation. We hope it will prove out, but there is no specified time for it to prove out.

Mr. PERCY. I ask this question because it would be extremely important, I should think, if a study is to be undertaken, that we again take a look at what other alternatives there may be. If it was possible to move the post office out from under the Government, in effect, and set it up separately, we continually, I should think, should be looking to see whether or not there is any way within the private sector to take this out of Government and have it set up in some other way, and I would hope, if we were going to have a study, we would give careful consideration to those possible alternative methods.

Mr. HARTKE. Yes. Let me say to the Senator from Illinois that this is an entirely different question than that in the amendment of the Senator from Alaska. In the measure before us today there is a provision that the Department of Transportation must constantly review the situation and report back to Congress with the idea that the Corporation will eventually go public.

The bill creates a system with a financing association, and therefore, has a different function than the Corporation itself. The Corporation itself will issue stock, and possibly work itself back by virtue of its own operation into a completely private, nongovernmental operation.

Mr. PERCY. So that is a continuing responsibility of the Department of Transportation?

Mr. HARTKE. That is right.

Mr. PERCY. That answers the question of the Senator from Illinois.

Mr. BEALL. Let me ask the Senator from Alaska, does his amendment provide for the expenditure of any funds?

Mr. STEVENS. It does provide for authorization for expenditure of funds.

Mr. BEALL. How much?

Mr. STEVENS. $500,000.

Mr. BEALL. I would say to the Senator from Alaska that while I would reluctantly agree to take the matter to conference, the bill already provides for a study of transportation policy by the Department of Transportation, and it provides for study both within as well as outside the region involved in this transportation policy.

I would hope we would all understand it is taken to conference only for the purposes of further discussion.

Mr. HARTKE. Mr. President, let me say that I have also reluctantly accepted the amendment. I do point out there is some value in taking it to conference. That puts it in the form of one of a number of items possible to be included in the report for further consideration.

Mr. STEVENS. I think that is acceptable. I understand what both the Senator from Indiana and the Senator from Maryland are saying. We want a study of the concept of a national railway corporation as one of the alternatives for the future of the American railway system, for further study.

I was in error about Alaska; I will get to that some other time. Alaska is not included in this amendment. But as a matter of fact, we already have the Hart amendment covered by the provisions of this bill, requiring a study by the Department of Transportation. We want one of the facets of that study to be a study of this alternative to nationalization. I will be prepared to argue that at a later time with both Senators. I think it advisable to have it in the bill, so that we can mark it up in the conference and come out with some comprehensive requirements as far as this study is concerned.

I ask unanimous consent to have printed in the RECORD at this point an article entitled "Looking Down the Track," published in today's Wall Street Journal, and an article entitled "Norton Simon's Do-It-Yourself Railroad Plan," published in Business Week of November 17, 1973.

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

[From the Wall Street Journal, Dec. 11, 1973]

LOOKING DOWN THE TRACK

Congress is hammering out a plan for reorganizing bankrupt Northeast railroads that will at best be only a beginning for sorting out the Nation's transportation mess. At worst, depending on the final wording of the bill, it could further impede the process by tangling all the Nation's railroads in new red tape.

Probably the best realistic hope for restoring a private, unsubsidized rail system—which is both desirable and feasible—will rest with: (1) The wisdom of the directors of a proposed new government agency which will conduct the reorganization; (2) Whether Congress next session will follow up with even more urgent legislation to put the Interstate Commerce Commission on a siding and allow railroad managements to do more of their own thinking.

As to the first point, it is not altogether impossible that the new agency will come up with a workable solution. Under both the House and Senate plans, which have not yet been reconciled in conference, the new agency will set up a new quasi-private corporation which will issue securities for the viable properties of the bankrupt roads.

It will have a mandate to create a finan-

cially self-sustaining rail service system in the Northeast. However, the ICC, state and local governments and sundry other parties will have a voice in designing this system, which raises some doubts about whether a really viable network can be created in the year Congress plans to allot. And just in case the system isn't self-sustaining, "Ginnie Rae" (Government National Railway Association) or whatever the final name of the creating agency, will have federal backing for bonds it will sell to raise funds for the operating company.

If that backing is not under federal budget control the President is threatening a veto. A veto also is threatened, quite properly, if the final bill still contains an extraneous section that would put the government into the business of owning and leasing rolling stock.

It is Point 2, however, that most likely will determine whether the proposed new Northeast corporation can ever unhook from "Ginnie Rae" and become a fully private, self-sustaining entity. In fact, the ability of all the nation's railroads to survive as private entities may well rest upon regulatory reform. The happiest outcome would be if the Northeast properties could, some three to five years hence, be redivided and merged with private roads to form viable, competing private transcontinetal North-South and East-West systems.

An impressive blueprint for this kind of reform has just been completed—alas, too late to figure heavily into the drafting of the Northeast bill—by a "Task Force on Railroad Productivity" for the National Commission on Productivity and the President's Council of Economic Advisers. Congress and the future Ginnie Rae planners would do well to read it carefully.

In addition to the end-to-end mergers—which would reduce the time, bookkeeping, and "lost car" costs that now occur as rail cars move from one system to another—the task force also recommends such specific operating procedures as shorter trains (to reduce whiplash damage) and further containerization (to increase rail-truck-ship compatibility). But most importantly it recommends a reduction in government regulation of rates, service offerings and almost all other aspects of transportation management. By some estimates, according to the task force study, the inefficiency and idle resources waste caused by transport regulation cost consumers and shippers some $4 billion to $10 billion a year.

The report argues that less regulation is necessary for permitting other reforms to occur. John R. Meyer and Alexander L. Morton, both of Harvard and the National Bureau of Economic Research and the prime movers of the task force study, observe in a forthcoming Harvard Business Review article that "It is unfortunately true that the existence, or simply the specter, of regulation has all too often inhibited innovation and experimentation, especially in marketing. In short, less regulation would give rail managements real scope to manage."

We say amen to that. But whether the Northeast rail bill will permit movement in the direction the task force recommends still remains in doubt. The only thing that is not in doubt is there is only one right way to go, and that is towards private, competitive, deregulated transportation.

[From Business Week, Nov. 17, 1973]

NORTON SIMON'S DO-IT-YOURSELF RAILROAD PLAN

With the House's passage last week of the Shoup-Adams bill to revive ailing Northeast railroads and the anticipated Senate passage of a similar bill, it might seem that, barring a veto, the vexing railroad problem might now be laid to rest. Actually, the problems are just beginning, particularly for the two new corporations—the Federal National Railway Assn., which will consolidate and finance the Northeastern system, and the Federal Railroad Corp., which will operate it. Someone will have to make some hard decisions on what is needed to make the Northeast once again a viable segment of the national railroad network.

Last week, a well-known maverick offered a dissenting opinion. Norton Simon, the 66-year-old industrialist who five years ago left the billion-dollar conglomerate that bears his name to pursue educational and cultural interests, hired a hall to tell the public why he felt the railroad-rescue bill was inadequate.

There hadn't been anything quite like it in railroading since Robert R. Young tilted at the monolithic railroad industry in the early 1950s. Young won his battle—a bruising proxy fight for control of the New York Central RR—but he lost his war. The Central, a decade after Young's death, merged with the Pennsylvania RR to become the ill-fated Penn Central Transportation Co. Simon may already have lost his battle to get his views considered in the Shoup-Adams bill [BW, Nov. 10, p. 170], but the war to determine the future of U.S. railroading is far from over.

The bill provides for a three-man committee to rearrange the rail map, and that committee could be influenced by any future effort Simon might make to get his ideas accepted. In its present form, the bill also proffers up to $1-billion in government-guaranteed loans—in Simon's view, the wrong solution to the problem.

LONG-RANGE

Simon says, and many railroad authorities agree, that further guaranteed loans are simply a "Band-Aid, a temporary bailout," likely to result in either nationalization or indefinite subsidization. He thinks the wealthier railroads of the country, whose fate is inexorably tied to that of the bankrupts, should provide interim funds to keep the entire network going. "I don't believe you can have one bankrupt railroad without having a bankrupt system," Simon told several hundred rail watchers, gathered at the Waldorf-Astoria to hear his views.

A long-time director of Burlington Northern, Inc., and a predecessor line, Simon, speaking as an individual, said: "We've got enough money on the BN to give them help. If the pressure is on the other roads and they had money in it, they'd see to it that they got together and got the solution."

The Shoup-Adams bill grew out of a proposal originated by Frank Barnett, chairman of the Union Pacific. It would indirectly help the solvent roads in the national network as well as the bankrupt lines which need subsidies, Simon said. "It will let the railroad conglomerates like the Union Pacific concentrate on drilling for oil in the North Sea when they should concentrate on running the railroad," he claimed. Sources close to the Administration who would like to see the Shoup-Adams bill amended agree. "The way it is now, it bails out the banks," one critic says.

CHANGES AND SOLUTIONS

Simon's ideas will hardly endear him to fellow railroad board members. But Simon would like to see some changes in railroad boards, also. Noting that of the 75 board members of six large railroads, all but five are over 50, more than half are associated with banking interests, and none are women, he calls for open dissent and discussion by board members with minority views.

Simon's own views range from criticism of the number of derailments, even on healthy railroads, to the archaic nature of Interstate Commerce Commission regulation and what he calls "the credibility gap which has arisen as a result of bad accounting and irresponsible reporting of financial results." As an avowed capitalist who wants to see the free enterprise system continue, he says he is "troubled by the piecemeal approach now being pressed for in Congress, by many of the old time bureaucrats in the ICC, in the executive branch of government, and in the railroad industry."

Simon's solution, which he admits needs refinement, has several parts. He would amend the rail-rescue bill to form a new independent commission to study the railroad industry. He would like to see a single national system under private ownership and thus stop the wasteful squabbles for division of rates. Some critics who agree in principle part company here; they would like to see at least two national competitive systems.

Along the way, Simon would overhaul or replace the ICC, which he sees as a 19th Century institution ill-equipped to deal with 20th Century realities. And he would bring rail accounting into line with modern accounting principles.

He noted that in 1954 he had told Alfred E. Perlman, then 53 and president of a healthy Western line, that he would be out of his mind to join Robert R. Young in attempting to save the New York Central. Simon noted that Perlman, again head of a Western line, had recently returned the compliment. "What you are trying is impossible," Perlman said, to which Simon retorts: "I don't think that it is impossible at all. I think that it takes a rising up of the American public to solve the problem."

Simon's proposal is a reminder that the rail crisis carries with it a rare opportunity: for the second time since the ICC was created in 1887 (the first was with the creation of the United States Railroad Administration during World War I), there is a realistic possibility of changing the railroad structure. Many critics are disenchanted with the status quo; Simon's proposals for cutting out inter-railroad waste, for accurate accounting, and for modernized regulation are attractive primarily because they are a significant departure from traditional thinking.

Mr. STEVENS. I yield back the remainder of my time.

Mr. HARTKE. I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. BIDEN). All remaining time having been yielded back, the question is on agreeing to the amendment of the Senator from Alaska.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. HART. Mr. President, I call up an amendment which I have at the desk, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. HART. I ask unanimous consent that further reading of the amendment be dispensed with.

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

Mr. HART's amendment is as follows:

On page 15, line 25, and page 16, lines 1–8 redesignate paragraphs (8) and (9) as paragraphs (9) and (10) and substitute new paragraph (8) as follows:

"Consult on an ongoing basis with the Chairman of the Federal Trade Commission and the Attorney General to assess the possible anticompetitive effects of various proposals and to negotiate provisions which would, to the greatest extent practicable in accordance with the purposes of this Act and the goal set forth in Section 206(a)(5) of this Act alleviate any such anticompetitive effects. For the purposes of carrying out their responsibilities under this paragraph the

Chairman of the Federal Trade Commission and the Attorney General shall have the same access to information as the Secretary, the Office, and the Association have under Section 203 of this Act. The Chairman of the Federal Trade Commission and the Attorney General shall prepare reports to be published and transmitted as attachments to the preliminary and final system plans which reports shall set forth their views as to whether each plan contains provisions having potentially anticompetitive effects and whether the goal set forth in Section 206(a)(5) has been met. The report shall also set forth proposed amendments, modifications or deletions to such plans designed to alleviate any anticompetitive provisions found therein or to achieve such goal."

On page 37, line 9, after the word "office," insert the words "the Chairman of the Federal Trade Commission, the Attorney General".

On page 152, line 14, delete "(3)" and substitute "(2)".

On pages 152 and 153, delete paragraph (2) of Section 701(a) and redesignate paragraphs (3) and (4) as paragraphs (2) and (3).

Mr. HART. This amendment will remove difficulties posed by the provisions of the bill mandating a study of the antitrust consequences of the preliminary system plan. As reported, section 701(a) makes the antitrust laws inapplicable to transactions taken in compliance with the requirements of the final system plan. To minimize the potentially anticompetitive effects, the subsection also provides for a joint review by the Federal Trade Commission and the Attorney General of the preliminary system plan within 60 days after its release. Their evaluation and proposed amendments are to be submitted to the Association, the Office, the Secretary, and the appropriate congressional committees.

The Department of Transportation has suggested that the contributions of these agencies could be enhanced if they are empowered to work along with the Association as it formulates the preliminary and final system plans rather than wait until a preliminary plan is released for public response. The amendment would produce this result. They leave untouched the basic antitrust exemption.

A new section 202(a)(8) requires the Association to consult with the Chairman of the Federal Trade Commission and the Attorney General during the planning process, to eliminate as much as practical any possible anticompetitive effects. The Commission and the Attorney General will retain the same access to information previously granted. They will also be required to prepare reports evaluating the preliminary and final plans for anticompetitive aspects. These reports will be published and transmitted with the respective plans. The Department agrees that these amendments will meet their objections.

I hope very much that the amendment can be agreed to.

Mr. HARTKE. Mr. President, the Senator from Michigan has offered an important addition to the planning process provided in S. 2767. By initially providing for review of the antitrust implications of the preliminary system plan, the committee intended to provide a check to an otherwise open-ended antitrust exemption for actions necessary to comply with the final system plan. As I understand it, this amendment will provide that review during the design and also upon completion of the preliminary and final system plans. This review is to be provided in consultation with the association by the two Federal agencies most concerned with stimulating market competition. However, the agencies will retain their independence during the planning process, thus providing the Congress and the association with a more objective evaluation than might be provided by a member of the association board. On behalf of the committee I accept this amendment.

I yield back the remainder of my time.

Mr. BEALL. Mr. President, we accept the amendment. After checking with the Department of Transportation, everyone seems to agree that the amendment is acceptable.

Mr. HART. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All remaining time having been yielded back, the question is on agreeing to the amendment of the Senator from Michigan.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. HARTKE. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk proceeded to read the amendment.

Mr. HARTKE. I ask unanimous consent that further reading of the amendment be dispensed with.

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

Mr. HARTKE's amendments are as follows:

On page 32, line 24 after the word "poration" insert the phrase: "by a profitable railroad,".

On page 34, line 11 after the word "properties" insert the phrase: "of railroads in reorganization in the region, of railroads leased, operated, or controlled by railroads in reorganization, or".

On page 43, line 2 after the word "region" insert the words "or railroads leased, operated, or controlled by such railroads in reorganization".

On page 47, line 13 after the word "plan" insert the words "or pursuant to section 403 of this Act".

On page 57, line 9 delete the words "designated in the final system plan".

On page 57, line 20 after the word "and" insert the following: "shall itself convey all right, title, and interest in the rail properties".

On page 59, delete lines 13 through 19 and renumber accordingly.

Mr. HARTKE. Mr. President, I yield back any time I have on this amendment.

Mr. BEALL. Mr. President, on behalf of the minority the technical amendments appear to be in order.

I yield back my time.

The PRESIDING OFFICER (Mr. BIDEN). All time on this amendment has been yielded back.

The question is on agreeing to the amendments of the Senator from Indiana.

The amendments were agreed to.

Mr. HARTKE. Mr. President, I send to the desk an amendment which I ask be stated.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

On page 52, between lines 15 and 16, insert the following new subsection:

"(d) Temporary Availability of Funds.—(1) Appropriations of the Department of Transportation may be expended for necessary expenses of carrying out the Secretary's functions under this Act in an amount not to exceed $15,000,000: *Provided*, That funds so expended shall be reimbursed to the appropriations from which expended out of any appropriations subsequently made for the purpose of carrying out such functions.

"(2) Sums appropriated to the Department of Transportation may be transferred by the Secretary to the Government National Railway Association to enable the Association to carry out its functions under this Act in an amount not to exceed $26,000,000: *Provided*, That funds so transferred shall be returned to such department and reimbursed to the appropriations from which provided out of any appropriations subsequently made for the purposes of carrying out such functions.

"(3) Appropriations of the Interstate Commerce Commission may be expended for necessary expenses of the Rail Emergency Planning Office under this Act in an amount not to exceed $12,500,000: *Provided*, That funds so expended shall be reimbursed to the appropriation from which expended out of any appropriations subsequently made for the purposes of carrying out such functions.".

Mr. HARTKE. Mr. President, this amendment provides for the temporary availability of funds out of existing appropriations so that the Secretary of Transportation and the ICC can begin immediately the planning and emergency funding tasks assigned. This amendment has been requested by the Department of Transportation. The Appropriations Committee has been consulted. To the best of my knowledge all parties are in agreement.

Mr. STEVENS. Mr. President, this matter was just discussed in the Appropriations Committee and I want to make certain that the appropriated items for which there was no budget request, like navigation aids, air safety, are not included in the funds that can be used for this. These moneys should come out of the surface transportation money available to the railroad agencies and available to the highway funds. If these are used in Department of Transportation funds, they are liable to be put aside. These moneys to be made available for necessary navigation aids, were not requested by the administration, so that they might like to put it into this pot instead of what we want it to be used for.

Mr. HARTKE. I am not in a position to make that determination for the Department of Transportation, but I assure the Senator from Alaska that I will be more than glad to make a recommendation to the Secretary that he not utilize the funds the Senator is referring to.

Mr. STEVENS. Would the Senator be willing to put it into this amendment? There is plenty of money in the highway

bill and in the Federal railroad administration for this purpose.

Mr. HARTKE. I certainly would be inclined to agree with that, if it did not present such a complicated matter. I am fearful if we started out on that, we would be here all night, because everybody would want the opportunity to make sure that his pet project was not interfered with.

In view of the necessity to begin this reorganization at the earliest possible moment, we want to provide the necessary funds, which are not very much in their totality—certainly not very much in the interim period—so that we can proceed with the planning. In other words, I want to get the railroads on the track.

Mr. President, I yield back my time.

Mr. BEALL. Mr. President, I yield back my time.

The PRESIDING OFFICER. All time on the amendment has been yielded back.

The question is on agreeing to the amendment of the Senator from Indiana.

The amendment was agreed to.

Mr. KENNEDY. Mr. President, I rise to support the legislation now before the Senate and to urge its adoption.

I also want to commend the distinguished chairman of the Transportation Subcommittee and the chairman of the Commerce Committee, and the members, for the vast amount of time that preceded the final drafting of this measure.

In that regard, I believe the bill before us provides both for vitally needed emergency relief to maintain rail service in the Northeast along with a national process for achieving a long-term solution to the Northeast rail crisis.

Currently eight railroads in the Northeast and Midwest region of the Nation are in bankruptcy. These rail services are essential—more so now during the period of the energy crisis—for the economic security of the region and of the Nation.

The magnitude of the predicament facing us is demonstrated in innumerable ways. Taking the Penn Central alone, one finds that there are 3,286 employees in my own State. Those employees receive some $34.6 million in salaries and wages. The Penn Central itself purchased nearly three-quarters of a million in goods from Massachusetts industries in 1972, and its industrial investment was estimated by Penn Central officials at some $24.5 million.

Shutting down the Penn Central would plunge my State into a severe recession. In the entire Northeast and Midwest, the termination of Penn Central would produce a 5-percent decline in economic activity. In the Nation, the impact would be a 4-percent decline in economic activity and a 2.7-percent drop in ENP within 8 weeks of the shutdown.

Those statistics relate merely to the direct impact of the termination of services of one of the eight railroads now in bankruptcy.

It must be recognized that the legislation we are considering is not a special interest measure focused on only one region. Some 42 percent of the Nation's population resides in the Northeast and Midwest States covered by these rail lines and more than 50 percent of our industrial production is located within those same boundaries.

For that reason, it is essential that we move speedily to approve this measure which will establish the mechanism for the creation of a rational, coherent, and efficient core rail network within the region.

It should be noted that the bill provides specific protection for the rail lines which may be excluded from the final core system including substantial Federal subsidies which rival those which have been received by other transportation modes for over a decade and a half.

With greater rail services not only environmentally preferable but far more efficient in terms of its energy usage, a strong Federal stance of support for the maintenance of a healthy rail network appears to be in our national interest.

RAIL PASSENGER SERVICE

Mr. President, I particularly want to take note of the inclusion in the measure of concepts regarding the stimulation of rail passenger service that I and other Senators, including the distinguished chairman of the subcommittee and the distinguished Senator from Rhode Island (Mr. PELL) have introduced as deparate legislation in the past.

In my testimony before the committee on November 15, I strongly urged the inclusion of these provisions and I am pleased to see the committee has incorporated them into the bill.

I believe that the problem of rail transportation in the Northeast cannot be dealt on either a freight only or a passenger only approach. Therefore, I believe it is critical that this bill include both in its goals and in operating provisions the view that development of an efficient and modern rail transportation system in the Northeast is essential, a system including both passenger and freight components.

I believe this measure is essential to the health and economy of the Northeast and Midwest and a I urge its adoption.

Mr. HARTKE. Mr. President, I ask unanimous consent that an editorial from today's Wall Street Journal entitled "Looking Down the Track," be printed in the RECORD prior to passage of the bill.

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

LOOKING DOWN THE TRACK

Congress is hammering out a plan for reorganizing bankrupt Northeast railroads that will at best be only a beginning for sorting out the nation's transportation mess. At worst, depending on the final wording of the bill, it could further impede the process by tangling all the nation's railroads in new red tape.

Probably the best realistic hope for restoring a private, unsubsidized rail system—which is both desirable and feasible—will rest with: (1) The wisdom of the directors of a proposed new government agency which will conduct the reorganization; (2) Whether Congress next session will follow up with even more urgent legislation to put the Interstate Commerce Commission on a siding and allow railroad managements to do more of their own thinking.

As to the first point, it is not altogether impossible that the new agency will come up with a workable solution. Under both the House and Senate plans, which have not yet been reconciled in conference, the new agency will set up a new quasi-private corporation which will issue securities for the viable properties of the bankrupt roads.

It will have a mandate to create a financially self-sustaining rail service system in the Northeast. However, the ICC, state and local governments and sundry other parties will have a voice in designing this system, which raises some doubts about whether a really viable network can be created in the year Congress plans to allot. And just in case the system isn't self-sustaining, "Ginnie Rae" (Government National Railway Association) or whatever the final name of the creating agency, will have federal backing for bonds it will sell to raise funds for the operating company.

If that backing is not under federal budget control the President is threatening a veto. A veto also is threatened, quite properly, if the final bill still contains an extraneous section that would put the government into the business of owning and leasing rolling stock.

It is Point 2, however, that most likely will determine whether the proposed new Northeast corporation can ever unhook from "Ginnie Rae" and become a fully private, self-sustaining entity. In fact, the ability of all the nation's railroads to survive as private entities may well rest upon regulatory reform. The happiest outcome would be if the Northeast properties could, some three to five years hence, be redivided and merged with private roads to form viable, competing private transcontinental North-South and East-West systems.

An impressive blueprint for the kind of reform has just been completed—alas, too late to figure heavily into the drafting of the Northeast bill—by a "Task Force on Railroad Productivity" for the National Commission on Productivity and the President's Council of Economic Advisers. Congress and the future Ginnie Rae planners would do well to read it carefully.

In addition to the end-to-end mergers—which would reduce the time, bookkeeping, and "lost car" costs that now occur as rail cars move from one system to another—the task force also recommends such specific operating procedures as shorter trains (to reduce whiplash damage) and further containerization (to increase rail-truck-ship compatibility). But most importantly it recommends a reduction in government regulation of rates, service offerings and almost all other aspects of transportation management. By some estimates, according to the task force study, the inefficiency and idle resources waste caused by transport regulation cost consumers and shippers some $4 billion to $10 billion a year.

The report argues that less regulation is necessary for permitting other reforms to occur. John R. Meyer and Alexander L. Morton, both of Harvard and the National Bureau of Economic Research and the prime movers of the task force study, observe in a forthcoming Harvard Business Review article that "It is unfortunately true that the existence, or simply the specter, of regulation has all too often inhibited innovation and experimentation, especially in marketing. In short, less regulation would give rail managements real scope to manage."

We say amen to that. But whether the Northeast rail bill will permit movement in the direction the task force recommends still remains in doubt. The only thing that is not in doubt is there is only one *right* way to go, and that is towards private, competitive, deregulated transportation.

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.

Mr. HARTKE. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 9142.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

H.R. 9142. A bill to restore, support, and maintain modern, efficient rail service in the northeast region of the United States; to designate a system of essential rail lines in the north region; to provide financial assistance to certain rail carriers; and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

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

Mr. HARTKE. Mr. President, I move to strike all after the enacting clause in H.R. 9142 and substitute the text of S. 2767, as amended, in lieu thereof.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Indiana.

The motion was agreed to.

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

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

Mr. LONG. Mr. President, will the Senator from Indiana yield?

Mr. HARTKE. I yield. We have plenty of time.

Mr. LONG. Mr. President, I have great hopes for this measure. I believe it will succeed when the employees become aware of the fact that the bill provides for a stock ownership plan by the employees, which will give them and should give them a tremendous incentive to make the railroads succeed.

I ask unanimous consent to have printed in the RECORD the language in the bill which relates to the goals insofar as the employee stock ownership plan is concerned, which appears on page 35 and page 36 of the bill.

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

(3) the manner in which employee stock ownership plans shall, to the extent practicable, be utilized for meeting the capitalization requirements of the Corporation, taking into account (A) the relative cost savings compared to conventional methods of corporate finance; (B) the labor cost savings; (C) the potential for minimizing strikes and producing more harmonious relations between labor organizations and railway management; (D) the projected employee dividend incomes; (E) the impact on quality of service and prices to railway users; and (F) the promotion of the objectives of this Act of creating a financially self-sustaining railway system in the region which also meets the service needs of the region and the Nation.

Mr. LONG. Mr. President, I ask unanimous consent that the language defining the stock ownership plan which appears on page 6 of the bill be printed in the RECORD.

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

(5) "Employee stock ownership plan" means a technique of corporate finance that uses a stock bonus trust or a company stock money purchase pension trust which qualifies under section 401(a) of the Internal Revenue Code of 1954 (26 U.S.C. 401(a)) in connection with the financing of corporate improvements, transfers in the ownership of corporate assets, and other capital requirements of a corporation and which is designed to build beneficial equity ownership of shares in the employer corporation into its employees substantially in proportion to their relative incomes, without requiring any cash outlay, any reduction in pay or other employee benefits, or the surrender of any other rights on the part of such employees.

Mr. LONG. Mr. President, I proposed in the committee that this language should appear in the bill. Much of my interest in the matter was aroused by a Senator from Oregon (Mr. HATFIELD) and I ask unanimous consent to have that letter printed in the RECORD.

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

U.S. SENATE,
Washington, D.C., November 29, 1973.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee, Washington, D.C.

DEAR WARREN: Tomorrow, I will offer an amendment to Working Paper Number 1 of the Rail Services Act of 1973, which would enable all employees of Northeast and Midwest rail systems now undergoing reorganization to acquire ownership of up to 100 percent of the newly issued common stock of the new system through an employee stock ownership plan. A description of the employee stock plan and how it would affect the Northeast rail situation is attached. My proposal essentially follows that proposed by Senator Hatfield in his "Dear Colleague" letter of November 5, 1973.

This, in my view, is *the* solution to our present rail crisis. As explained in the attached materials, this amendment would hurt no one. Existing creditors would be made more secure. Since these railroads have not paid taxes in years, there would be no additional tax loss to the Treasury by adopting this amendment to the present bill now being considered by the Commerce Committee. Employees of the new rail corporation, through this highly effective financing innovation, would gain stock ownership without any cash outlay or loss of other present benefits on their part. To the relief of our taxpayers and railroad users, the ESOP is the only logical alternative to nationalizing our railroads. And to rail union officials, the ESOP opens a wholesome new era of broader bargaining potential in behalf of their members. No one stands to lose anything. Everyone will benefit by affording our railroad workers an effective opportunity to become more self-sufficient through expanded capital ownership.

I urge your support of this vital new thrust in American economic policy.

With every good wish, I am
Sincerely yours,

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PROPOSED STRATEGY FOR EMPLOYEE ACQUISITION OF REORGANIZED NORTHEAST AND MIDWEST RAILROAD SYSTEM THROUGH AN EMPLOYEE STOCK OWNERSHIP PLAN

The Employee Stock Ownership Plan (ESOP) is the most important innovation in investment finance developed in recent years. The ESOP uses a stock bonus trust or a money purchase pension trust that qualifies under section 401(a) of the present Internal Revenue Code as a mechanism for financing the transfer or growth of corporate assets, while building substantial and growing ownership stakes into all corporate employees without requiring any cash outlay on their part or exposing them to personal investment risk. It is a means for providing access to corporate credit and the normal self-liquidating logic of corporate finance to new owners. It does no more than to place corporate employees in the same position that has enabled America's wealthiest families to become rich, but does so without depriving anyone of his existing property rights. As applied to the reorganized rail system, it would spread ownership of up to 100 percent of the newly issued common stock into all employees (existing stock of the bankrupt rail corporations have been rendered valueless) while providing existing creditors to the extent of net liquidation value, newly issued preferred stock or refinanced debt obligations.

Over 40 highly successful U.S. corporations have already adopted ESOP's, some more than 15 years ago. Tax savings available to corporations that have adopted ESOP's offer added inducements for employers, besides the benefits derived through the ESOP in the area of employee motivation, productivity expansion, labor-management harmony and expanded corporate profits.

Instead of loans being made directly to the corporation the loan is made to a specially designed ESOP that qualifies as a tax-exempt employee stock bonus trust under section 401(a) of the Internal Revenue Code. Such trusts normally cover all employees of the corporation and their relative interests are usually proportional to their relative annual compensation—however defined—over the period of years that the financing is being paid off. The trusts are normally under control of a commitee appointment by management and its membership may include representatives of the employees. Voting power on stock held by the trust may be passed through to the employees or may remain with the trustees.

The trust committee invests the proceeds of the loan in the corporation by purchasing newly issued stock at its current market value.

The trust gives its note to the lender, which note may or may not be secured by a pledge of the stock. If it is so secured, the pledge is designed for release of proportionate amounts of the stock each year as the installment payments are made on the trust's note to the lender and the released stock is allocated to the participant's accounts.

The corporation issues its guarantee to the lender assuring that it will make annual payments into the trust sufficient to enable the trust to amortize its debt to the lender. Within the limits specified by the Internal Revenue Code (15 percent of covered payroll presently), such payments are deductible by the corporation as payments to a qualified deferred compensation trust. Thus the lender has the general credit of the corporation to support repayment of the loan, plus the added security resulting from the fact that the loan is repayable in pre-tax dollars. (In contrast, under conventional financing the repayment of principal on any loans is always in after-tax dollars.)

Each year, as a payment is made by the corporation into the ESOP, there is allocated proportionately among the accounts of the participants in the trust a number of shares of stock proportionate to the participant's allocated share of the payment. Special formulas have been designed to counteract the relatively high proportion of early amortization payments used to pay interest and the

relatively high proportion of later payments used to pay principal.

As the financing is completed and the loan paid off, the beneficial ownership of the stock accrues to the employees. Most trusts are designed to permit the withdrawal of the portfolio in kind, subject to vesting provisions, either at termination of employment or at retirement. However, it is desirable to so design the trust that any dividend income on shares of stock that have been paid for by the financing process and are allocated to the employees' accounts, be distributed currently to the employee-participants, thus giving them a second source of income.

Diversification of the trust can be achieved after a particular block of stock has been paid for by exchanging the stock, at fair market value, for other shares at equal market value. Since the trust is a tax-exempt entity, such diversification is without tax impact.

Through the use of ESOP financing, the corporation can obtain low-cost capital and save the additional expense of a public offering. Once installed, the ESOP becomes a permanent part of the corporation's financial machinery, combining within a single package a mechanism for comprehensive, long-range planning and resolving of basic corporate problems—financing, employee motivation, compensation, and retirement benefits—which in the past have been handled on a piecemeal, generally unplanned, and often disruptive basis. Although there will be a *temporary* earnings dilution from the issuance of new stock in future financings through the ESOP, that dilution is soon restored by the productivity increases, the tax savings compared to conventional borrowing, and the yield of such cash flow gains that are retained in the corporation.

The ESOP financing method properly uses the qualified trust to give the employees a means of legitimately buying and paying for capital as a function of enabling the corporation to finance its growth and acquisition of assets, and motivating its employees. It is not a giveaway. What the employee receives is not compensation in the sense of pay for his labor. Through ESOP financing, he is being provided with a means of buying stock through the device of a deferred compensation trust, coupled by a commitment by the corporation—usually to a third party—to pay what amounts, in economic theory, to a tax-free preferential dividend to the employee-buyers who are being so financed. From the standpoint of the corporation, the justification for making such an economic preferential dividend is that it wishes to make employees into full owners in order to motivate them, not only to work harder, but to insist on their fellow workers also working harder and to use every effort to achieve cost savings and maximum profitability for all stockholders. By the ESOP financing technique, the employee, in short, is put in a position where what he does, and what his fellow workers do, affects the value of his capital holdings. No better motivational device can be conceived.

What are some of the benefits we can expect if the ESOP proposal is incorporated in the Rail Services Act of 1973?

THE U.S. ECONOMY IN GENERAL

An efficient, unsubsidized, strike-immune rail system in the Northeast corridor.

A dramatic example of how a sick industry can be revived by creating a unity of interest between management and organized labor through widespread access to corporate ownership and dividend jurisdictional prerogatives of management vis-a-vis union leadership.

A positive alternative to nationalization and current trends toward nationalization and taxpayer bail-outs of our railroads.

Cuts government costs and reduces pressures on almost bankrupt present railway workers retirement system—yet raises the tax base.

WORKERS EMPLOYED AFTER REORGANIZATION

No reductions in present pay levels, present retirement contributions, and other present employee benefits.

An opportunity to buy and pay for a sizable chunk of stock in the new company ($10,000 on the average per worker), and to own this stock in the same way as America's wealthiest families accumulated their property holdings: through access to corporate credit, with personal risk cut off by the insulation given under law to a corporation.

No taxes paid on any worker's property acquired through the ESO, on any appreciation in value of a worker's holdings, or dividends, as long as these assets remain "sheltered" within the ESOP.

In addition to wages, a second income from dividends on stock held by the ESOP for each employee during his working years (an estimated supplement of almost $3,200 per year for the average employee after five years, based on conservative profit projections of the U.S. Department of Transportation). Dividend checks received by workers on-the-job or upon their ultimate retirement or displacement by automation are, of course, subject to personal taxes, the same as paychecks.

An opportunity to share with his fellow workers additional company stock and diversified holdings of other companies or real estate, acquired through future financings by the ESOP, as the new corporation expands, adds new and more efficient equipment, or otherwise seeks new sources of income.

A better answer to automation than demoralizing featherbedding, make-work, spread-work, etc.

A personal stake in cost-cutting and higher corporate profits, thus enabling the industry to become more competitive, to grow faster, to expand into new territories, and generate new jobs.

An inflation-proof capital estate to pass on to one's heirs.

Mr. LONG. Mr. President, in approaching our consideration of S. 2767, a bill designed to establish a planning framework within which the reorganization and revitalization of our Midwest and Northeast rail services can be carried out, it is indispensable that we ask ourselves a basic question. Why did one of the most important railroad systems in the world, located in one of the most highly populated and highly industrialized areas of the world, possessing a labor force that was more than adequate both in numbers and in skills, fall into shameful disrepair and finally bankruptcy?

One must of necessity conclude that the causes lie within the institutional arrangements—the financial designs—of the railroads themselves, and within the institutional relationships between the railroads and governments, both Federal and State.

It is not the task of this Congress to restore the losses of stockholders of the bankrupt system. Rather, while protecting the property rights and values that still remain, it is the task of this Congress to so guide the organization and restructuring of the railroad enterprises and of their relations with Government, that they will in the future run efficiently and economically, will take full advantage of our internally available fuel supplies, and will provide a model of enterprise to which we can look for answers to the industrial malaise that mars other areas of our economy.

When the railroads were built, the United States was in the midst of accomplishing the most decisive economic revolution in history up to that time: It was, through the direct intervention by Government, engaged in broadening its capital ownership base with a view to making the then most important form of capital—land—available to every citizen who sought it. Though we were struggling to become industrialized, we were still primarily an agricultural nation. We understood the importance of broad, private ownership of the means of production only in terms of ownership of land.

Accidentally, in the 30 years following the Civil War, we stumbled upon the formula for simultaneous rapid economic growth, full employment, and gentle deflation or increase in the purchasing power of money; the only time in modern history when these three much-sought after economic characteristics simultaneously concurred.

No doctrine seems better entrenched among modern economists than the notion that price stability—for example freedom from inflation—and full employment are mutually incompatible. The idea has come to be accepted that there must be a deliberate trade-off between unemployment and price stability. In spite of this widely accepted idea, however, there is an extraordinary period in American history, namely, the 30-year period following the Civil War, when we had enormous national economic growth, full employment even with high levels of immigration, and gently but constantly declining price levels. This was a unique period in economic history.

Of course, there have been times of price declines, but these have been associated with depressions, panics, or the collapse of societies. But during the period to which I allude, the nickel was an important unit of purchasing power, and every year accumulated savings became more valuable. That was the great period of railroad building. Railroad mileage in the United States increased from 35,000 miles to 160,000 miles, or 357 percent. The milling of flour increased 120 percent and the production of steel ingots increased by 23,000 percent. It was a period of growth, excitement, and industrial ferment. It witnessed the inception of the electric utility, the telephone, and the petroleum industries, plus the beginning of modern merchandising and distribution and numerous other significant developments in industrial history.

What was it that occurred in the 30 years from 1865 to 1895 in American economic history to simultaneously bring about the cherished objectives of rapid economic growth, full employment, gentle deflation, and the flowering of industrial innovation?

The answer, Mr. President, is that the 30-year period from 1865 to 1895 was the only time in the history when a government—this Government—directly intervened to influence the pattern of capital ownership in the economy. This was the most effective period of the Homestead Acts. Congress, after a full decade of turbulent, and at times almost violent, debate, had legislated the steps to bring

about the realization of the American economic dream—the accumulation, over a reasonable working lifetime, of a holding of productive capital that would provide significant income and economic security, as well as the economic underpinnings for political democracy. It was an agrarian economy in spite of its rush to bring about industrialization. Productive property was thought of primarily in terms of land ownership. It was the accessibility of land ownership to those who were born without capital that alone explains the openness of that society, its full employment, its economic growth, and the rising solidity of its currency.

But at the very moment in history when we were discovering how government could assist private enterprise by guiding the growth and the pattern of ownership and development of the country's productive system, we were laying the foundations for the most serious of errors that brought our great railroads into their present troubles. While we were trying to get the private ownership of land into the masses of our citizens, we so structured the financing of our railroad systems that by the decade of the 1970's, virtually all of our industrial capital—which now included much of our productive land—would become owned by only the top 5 percent of wealthholders.

It is today again time for Congress, taking a long view of history, to return our economy to the principles that made us great.

It is time for us to innovate in laying down the guidelines for the reorganization of our Northeast and Midwest railroad system, a new equivalent to the Homestead Acts that will broaden the private ownership of our industrial economy even more effectively than the Homestead Acts did for our agrarian economy.

Had we structured our railroad system in the first place so that, instead of becoming owned by the top 5 percent of our wealthy citizens, they would become owned in reasonable-sized holdings by great numbers of our citizens—particularly those employees whose labors and talents make the railroad system function, we would not be experiencing our present difficulties.

Now, as in the period following the Civil War, the pattern which we establish for the ownership of our railroads can become decisive for the health of our economy in the future. If we lay down guidelines that permit the pinnacle ownership of the reorganized Midwest and Northeast railways from this point forward, we will foredoom the American economy to disaster. In an age when the productive input of capital instruments—land, structures, machines, and intangible capital—is greater than the productive input of labor by perhaps a factor of 10, and this disparity will grow at an accelerating rate, to build incremental productive power into the rich rather than into the propertyless masses is to insure the collapse of our private property economy and the advent of inflationary and totalitarian socialism that is making such headway in other parts of the world.

We have a recent lesson in the Western Hemisphere for statesmen who frustrate the aspirations of the people not just for full employment, but for the ownership of productive capital. When the late President Allende of Chile threatened the confiscation of the trucks of the small truckowners, the lands of the small landowners, the businesses of the small businessmen, and the hopes of all the propertyless serfs who dreamed to become such owners, he reaped the predictable whirlwind that leaders who fail to heed the reasonable economic aspirations of the people must suffer.

Thus, for the serious business before us at the moment, we must realize that at the very moment when we saw the importance of broad ownership of agricultural capital, we failed to generalize the underlying idea and laid the foundations for the concentrated ownership of industrial capital.

I am convinced we cannot retain our economic greatness if we do not now apply the wisdom of the Homestead Acts to economic enterprises as a whole, and to institute steps that will make it possible, within a few years, for every household and individual in America to become an owner of a viable holding of productive capital.

Fortunately, through the tools of modern finance, we can accomplish this critical objective wholly within the principles of private property and free-market economics: The foundation stones of our economic greatness and of our political freedom. We can now make "haves" of the "have-nots," without taking from the "haves."

Between now and 1980, the U.S. economy will have to put into place something on the order of $1 trillion of new capital formation if we are to continue our economic growth, restore our prosperity, protect our environment, and fulfill the economic expectations of our people. If we assure that this trillion dollars or so of newly formed capital becomes owned in reasonable-sized holdings by families and individuals from the 95 percent of our citizens who today owns no productive capital, we will have adopted what is in effect an Industrial Homestead Act: an economic policy that will apply generally and to the economy as a whole. We will restore the economic dynamics under which we can enjoy rapid economic growth, full employment, and gentle deflation—the hardening of money.

The place to begin this quiet revolution, this revolution of common sense, Mr. President, is with S. 2767, a bill laying down the guidelines and establishing the governmental machinery, for facilitating the restructuring and reorganization of our Midwest and Northeast region railroads.

S. 2767, the Rail Services Act of 1973, squarely addresses itself to the issue of expanding the base of capital ownership for our railroads, and for the vast new capital formation which must take place within the railroads in the foreseeable future. The Senate Commerce Committee added, provisions to the bill to assure, to the extent found practicable, by the proposed Government National Railway Association, the use of a technique of finance known as Employee Stock Ownership Plan—ESOP—financing. The ESOP is a remarkable innovation in corporate finance designed to reverse the heretofore universal tendency of all widely accepted techniques of corporate finance to concentrate ad infinitum the ownership of capital. It has enormously important social, economic, and political ramifications for strengthening our free enterprise economy.

Mr. President, I submit that the use of the ESOP financing technique to the maximum extent—ideally to the extent of 100 percent—in connection with solving the current railroad crisis, is the only logical alternative to nationalization of the railroads, for it is not just a way to efficiently finance economic growth, but also to build market power, and to motivate, in the most powerful way, the entire labor force to perform as never before in order to solve this problem.

The ESOP would enable the entire work force of the reorganized rail system to purchase, without deductions from their paychecks or savings, up to 100 percent of the newly issued common stock of the proposed United Rail Corporation on credit tied to the new capital requirements of the United Rail Corporation and secured by its future profits. Shares of stock, when paid for, would be allocated to the individual accounts of each employee in a tax exempt deferred compensation ESOP trust, without reduction of the take home pay or other benefits of the worker. Unions and management would retain their normal bargaining prerogatives and responsibilities, but subject to a broader range of bargaining possibilities. Given these incentives, if the new system cannot be run at a profit, without subsidies, the workers will have no one to blame but themselves.

Each worker will be put in a position where his own efforts toward cost minimization and increased production will directly influence the value of the capital estate which he acquires during his working lifetime. I would anticipate that strikes and slowdowns, antiquated work rules, featherbedding, resistance to automation, and unreasonable wage demands—all seemingly unsolvable problems up to now—will eventually disappear once workers come to realize how these activities not only work against the interests of consumers as a whole, but also against their individual self-interests.

Before describing the mechanics and implications of the ESOP, I think it fitting to acknowledge the contributions of those responsible for launching ESOP as a solution to the labor and capitalization problems of the new Northeast and Midwest rail system. This concept was first proposed by our distinguished colleague from Oregon (Mr. HATFIELD) in his "Dear Colleague" letter of November 5, 1973. Cosponsoring Mr. HATFIELD's proposal were Mr. CURTIS, Mr. HANSEN, Mr. HUMPHREY, and Mr. METCALF.

DESCRIPTION OF THE BASIC ESOP FINANCING TECHNIQUE

Let me briefly describe the basic logic of Employee Stock Ownership Plan financing and how it would work in the

contemplated railroad reorganization. In my opinion, the ESOP financing technique is the most important innovation in investment finance developed in recent years. The ESOP addresses itself to three of the most fundamental barriers to broadening the private ownership of equity capital in connection with the financing of economic growth or the financing of changes in the ownership of business assets:

First. The logic of corporate finance is built around the idea of investing under conditions where the investment is expected to pay for itself. This can be most easily accomplished if the investor can get to the pretax—that is, precorporate income tax—income produced by the newly acquired capital. To accomplish this objective, the ESOP involves using, in an innovative way, either or both of two traditionally recognized deferred compensation trusts designed to be qualified under section 401(a) of the Internal Revenue Code. These are the stock bonus trust and the money purchase pension trust designed to be invested, at least initially, either wholly or primarily in the stock of the sponsoring corporation.

Second. The employee must be shielded from income tax during his period of capital accumulation to the extent that his capital-derived income is used to defray the purchase price for his stock. Any "second income," or income from his newly acquired capital investment, thereafter used for consumption purposes would be subject to normal personal income taxation by Federal and State governments.

Third. The mechanism must not be capable of being abused by anyone for the purpose of building concentrated ownership rather than broad-based capital ownership. The present statutory law and regulations of the Treasury Department are admirably designed to prevent this abuse, and to assure building broad ownership into the employees as a whole, proportioned directly to their relative compensations from the employer.

Fourth. The financing technique must be so designed as to build significant capital ownership in the worker over a reasonable working lifetime. It often happens that where ownership of capital is insignificant in terms of its income-producing power it does not arouse the natural acquisitive instinct of the worker to protect and preserve his investment.

Fifth. Any technique suitable for building capital ownership into the workingman must be capable of doing so without making deductions from his paycheck or calling upon him for the investment of his generally nonexistent savings, or his invariably inadequate personal savings. The ESOP technique thus fully harnesses the logic of corporate investment, namely, that investment should be made upon terms where it can reasonably be expected to pay for itself within a reasonable period of years.

The ESOP is not a plan to redistribute the profits or dilute the equity of existing shareholders. It is not a stock option plan. It is not an antiunion technique, but rather is designed to broaden the outlook of both union officials and union members to comprehend both factors of production: not just the employment of labor, but the acquisition of privately owned capital by employees. And ESOP financing is not a handout or tax loophole scheme in any sense of the word.

The ESOP is merely the most logical and most economical vehicle devised to date for ownership planning and for the creation of vast amounts of new capital formation which we so desperately need within our corporate sector. The key to corporate ownership, as bankers and businessmen know so well, is having access to corporate credit. Under conventional financing techniques corporate credit is used to make the rich richer; to build capital ownership into the top 5 percent of U.S. wealthholders, who today own all the productive capital.

The ESOP makes some of that corporate credit available to employees while simultaneously financing the growth or normal operations of the corporation itself. It is a practical means for providing access to corporate credit and the normal self-liquidating logic of corporate finance to the new employee owners. It does no more than to place corporate employees in the same position that has enabled America's wealthiest families to become rich, but does so without depriving anyone of his existing property rights. As applied to the reorganized rail system, it would spread ownership of up to 100 percent of the newly issued common stock into all employees. It should be noted here that the fact of bankruptcy itself indicates that the present common stock of the bankrupt rail corporations has been made substantially valueless. The ESOP financing technique can be used in such manner as to protect, and indeed to greatly enhance the likelihood of full recovery of their claims by existing creditors, while providing them, to the extent of their legally recognized claims, with either readjusted debt securities, or with preferred stock, or with a combination of the two. The important aspect of the ESOP financing technique in this instance is that, once the claims of creditors have been paid off through their preferential claims on the income of the reorganized corporation, the growing equity of the corporation, to the extent that the ESOP is used, will be built into employees. Thus, prior to paying off existing creditors and newly acquired creditors, the employees are motivated by the prospect of building their own capital holdings to do everything possible to run the system profitably. When and as creditors are paid off, the employees are equally motivated to build the value of their own equity holdings through diligent and cost-conscious efforts on their part.

Over 40 highly successful U.S. corporations have adopted, or are in the process of adopting ESOP's since the first application of this financing technique in 1957. Not only does the ESOP provide low-cost capital for the employer, but it provides the most important form of job enrichment known to man: Enrichment for each employee in the form of a reasonable capital holding. It is ideally designed to generate labor-management harmony, expanded corporate profits, and to avoid the structurally inevitable inflation that arises in modern economies so long as employees are put in a position where, in order to keep up with rising living costs, rising taxes, and rising expectations, they must demand progressively more pay for progressively less work.

Financing loans, which under conventional techniques would be made directly to United Rail Corporation, would, under ESOP financing be made to a specially designed ESOP. While the details of the design of the ESOP would, under the Rail Services Act of 1973, be ultimately determined by the Government National Railway Association, it would seem that the trust in this case, as in most other ESOP financing instances, would cover all employees of the corporation, and their relative interests would be proportional to their relative annual compensation—however defined—over the period of years that they are employed. The voting power of the stock in the trust would normally be vested in a trust committee appointed by management and the membership on the committee would undoubtedly include representatives of the employees. Voting power on stock held in the trust may be passed through the trust to employees as the stock is paid for, or it may remain with the trust committee.

The trust committee invests the proceeds of loan financing and other trust income into newly issued stock of the United Rail Corporation at its current fair market value at the time of investment.

The trust gives its note to a lender, which note may or may not be secured by a pledge of the stock. If it is so secured, the pledge is designed for release of proportionate amounts of the stock to the trust each year as installment payments are made on the trust's note to the lender and the released stock is allocated to the participants' accounts.

United Rail Corporation would issue its guarantee to each credit source making a loan to the trust, insuring the lender that United Rail Corporation will make periodic payments into the trust sufficient to enable the trust to amortize its debt to the lender. Within limits specified by the Internal Revenue Code—15 percent of covered payroll for a stock bonus trust and an additional 10 percent of covered payroll if a money purchase pension trust of ESOP design is added—and such payments are deductible by the Corporation as payments to a qualified deferred compensation trust. Thus the lender would have the general credit of United Rail Corporation to support repayment of the loan, plus the added security resulting from the fact that the loan is repayable in pretax dollars. In contrast, it should be noted, under conventional financing the repayment of principal on any loans is always in after-tax dollars.

Periodically, as payment is made by the Corporation into the ESOP, there is allocated proportionately among the accounts of the participants in the trust a number of shares of stock proportionate to each participant's relative com-

pensation from the Corporation. Special formulas have been designed to counteract the relatively high proportion of early amortization payments used to pay interest and the relatively high proportion of latter payments used to pay principal.

As each particular financing is completed and the loan paid off, the beneficial ownership of the stock representing that financing accrues to the employees and is allocated proportionately to the individual account of each in the ESOP.

Most ESOP trusts are designed to permit the withdrawal of the portfolio in kind, subject to vesting provisions, either at termination of employment or at retirement. Special provisions concerning the portability of accounts of employees in the trust should be developed for the United Rail Corporation ESOP. It is desirable to so design the ESOP that any dividend income on shares of stock that have been paid for by the financing process and are thus allocated to the employees' accounts be distributed by the ESOP trust currently to the employee-participants, thus giving such employees a second source of income—"the eye of the owner."

Diversification of the portfolio of the ESOP can, if desired, be achieved after a particular block of stock has been paid for by exchanging this stock, at fair market value, for shares in other corporations at equal market value. Some modifications of present Treasury rules and regulations with respect to this aspect of the ESOP would probably be desirable. Since the trust is a tax exempt entity, such diversification is without tax impact to the employee owning the account that is diversified.

Through the use of ESOP financing, the corporation can obtain low cost capital and save the additional expenses of conventional public stock offerings. Once installed, the ESOP becomes a permanent part of the corporation's financial machinery, combining within a single package a mechanism for comprehensive long-range planning and the resolving of basic corporate problems: Financing, employee motivation, compensation, and retirement benefits, which in the past have been handled on a piecemeal, generally unplanned, and quite often self-defeating and mutually disruptive basis. Although there will be a temporary earnings dilution from the issuance of new stock in future financings through the ESOP, that dilution is soon restored by the inherent financing advantages of the ESOP technique: The use of pretax dollars to finance growth, the simultaneous building of property-supported retirement benefits as corporate growth is financed, the harnessing of the natural tendency of the employee under such circumstances to minimize costs and thus maximize profitability in order to benefit his own investment, and the normal savings in corporate retirement costs that occur when retirement funds are invested in the recycling of secondhand securities purchased in the market place.

Mr. President, U.S. business corporations, including railroad corporations, have always needed, but heretofore have never had, a way to raise the incomes of employees without raising corporate costs. Most approaches for liberalizing the railroad retirement system and private corporate retirement systems, particularly measures calling for earlier vesting, have the same effect as wage salary increases, namely, they are inflationary. Most retirement programs are so designed that contributions become costs of doing business and enter into the costs of goods and services produced. Where retirement income payments are not made directly by business to the retirees, they are in general invested in outstanding securities—secondhand securities—purchased from speculators in the public markets. The funds thus invested do not, with rare exceptions, go into new capital formation to increase the productive power of business. Rather, the $15 to $20 billion annually contributed to private retirement systems, as recent testimony before the Financial Markets Subcommittee of the Senate Finance Committee has shown, are used to inflate the prices of outstanding stocks of "glamor corporations." Such securities are normally purchased by retirement trusts on a yield basis that is presently more than offset by the inflationary loss of purchasing power of the underlying funds. The very process that deprives the corporate sector of a major source of financing growth is thus devoted to the financing of stock market speculation and inflation. It should be remembered, that most private retirement funds contain recycled outstanding securities acquired in this irrational process.

This bill is designed to overcome these basic structural defects of present private retirement systems, while permitting earlier vesting without raising corporate costs—indeed while greatly reducing corporate costs. It is not designed, however, to adversely affect contributions to the existing Railroad Retirement System, which are mandated under present laws on a pay-as-you-go basis similar to social security. Contributions to the ESOP go directly into new capital formation, or, in certain cases can be used to acquire assets purchased on a self-liquidating basis.

Contributions to the United Rail Corporation ESOP would go directly into capital formation, using the funds to be provided under S. 2767 for that purpose. Eventually, such contributions may also be used to finance the acquisition of other operating assets. The important point to remember here, however, is that the pretax yield of productive capital is harnessed directly to the repayment of financing, while building ownership into employees.

Mr. President, I know of no more efficient and effective way to build into railroad employees beneficial ownership of a private, viable capital holding, capable of supplementing their wage and salary incomes during their working lives, providing retirement security thereafter, and estates to pass on to their heirs. I know of no more practical way of enabling corporate management to raise the incomes of employees without raising corporate costs and with a long-term deflationary impact on the economy as a whole. Because the ESOP financing technique can both accelerate the growth and lower the costs of railroad transportation, it can open up the opportunity for greatly increased employment in the enormously more important railroad system of tomorrow.

Management's search for a way out of the class-conflict era of labor-management relations would take a new and brighter turn through the use of ESOP financing. The heretofore divergent interests of management and owners can through ESOP financing, be united with that of employees in revitalizing the private enterprise system generally, while building economic security into all employees. Employee stock ownership financing accomplishes the ultimate synthesis of interests defined by economist John Bates Clark almost 90 years ago as:

> Productive property owned in undivided shares by laboring men, contention over the division of products replaced by general fraternity . . .

Thus, Mr. President, the potential benefits of providing every worker the chance to participate in the ownership of capital are enormous.

Some of my colleagues who favor the ESOP approach have expressed concerns that overzealous tax reformers might level unfounded charges that this bill is a "tax loophole." If it is, and I deny that it is, then it is the first such "loophole" ever provided to working Americans. To the extent that existing ESOP tax incentives are taken advantage of by United Rail Corporation under S. 2767, to that extent we will have achieved truly structural reform of the U.S. tax system. It represents a new thrust for cutting the costs of welfare, eliminating future consumer subsidies of dozens of different kinds for the purpose of "creating" jobs, and other nonproductive forms of government spending, as redundant workers among the unemployed are absorbed into a healthier and more dynamic private sector.

ESOP financing techniques are designed to build market power into the American people as they finance the growth of the American economy. I can imagine no better method for making commonsense of the double-entry bookkeeping logic that is the very basis of any market economy.

This technique systematically broadens the personal income tax base for State and Federal Governments as more Americans begin drawing paychecks and dividend checks directly from enterprises that produce most of our goods and services. It is clearly a move in the direction of simplicity, fairness, and common sense, and that is what genuine tax reform is all about. Any reform that increases our dependency on government should be suspect. Conversely, the ESOP provision in S. 2767 is designed to increase the self-sufficiency and productive potential of America's railway workers and to encourage them to demonstrate the value of broadened corporate ownership as a catalyst and motivating force for updating and revitalizing today's undercapitalized rail and mass transit systems.

Only when workers can become owners of new and more efficient means of production can we overcome the enormous alienation and resistance to technolog-

ical advancements that have become commonplace within modern corporations, despite all the palliatives and psychological manipulations we have invented to mask the root cause of employee alienation and industrial disorder. That cause, for a certainty, lies in the inability of the worker to increase his productive power.

Without having legitimate access to the ownership of productive capital acquired on self-liquidating terms, one cannot be expected to use moral restraint against the tendency to demand progressively more pay in return for progressively less work when one must compete with the enormous productive power of modern capital. If a modern worker cannot acquire his share of the ownership of the machine, it must be a feared and hated enemy for it threatens his power to earn a living. Dignity can, however, come from acquiring legitimately, over a reasonable working lifetime, an ownership stake in the employer corporation and sharing in the "wages of capital"—the profits of the corporation in which the capital is employed.

Mr. President, there are but three political-economic roads from which we can choose.

We can take the course to the right, advocated by laissez-faire philosophers and economic anarchists, which would allow pinnacle ownership to remain and would indeed add enormously to its concentrated holdings. This would result, for example, if the existing creditors of the bankrupt railroads became the the owners of the common stock of the United Rail Corporation. Under this approach, each advance in technology, and each added investment would heighten the confrontation between the "haves" and the "have-nots," and would perpetuate economic class conflict.

We can take the road to the left, making everyone a "have-not" under the banners of "nationalization" and "equality." This would force an equal sharing of misery and scarcities, using the State or a collective to impose a new form of monopoly ownership, substituting robber-bureaucrat for robber-baron, perpetuating effective ownership by a small but different elite. This "new class" would, by such a step, be placed in a position where it could control the society not only through its stomachs, but also through the guns and nightsticks which it possesses, making corruption and tyranny even more inevitable than under pinnacle private ownership. Preventing the workers from enjoying the power and distribution rights that flow from the personal ownership of productive capital, this second road invites a continuing class struggle and relentless inflation. It should be noted that the socialist-leaning critics who argue that the government-owned railway systems of nonsocialist countries would not incur losses if the "ecological benefits" from greater uses of railways were added to the Government corporation's revenues, avoid mention of the fact that each of those economies is saddled with rampaging and accelerating inflation.

Such inflation inevitably flows from putting labor in a position where it must demand progressively more pay in return for progressively less work input, whether the workers' nonownership of capital results from pinnacle private ownership, or governmental public ownership.

Or, Mr. President, we can steer a middle course, getting back to the original road that was opened by Jefferson, Adams, Madison, and other Founding Fathers, and expanded by Lincoln under the then revolutionary homestead programs. This was the essence of the American dream that sparked the hopes of the propertyless everywhere and worked so well before our land frontier closed. The third road opened by our pioneer ancestors was intended to make everyone a "have," an owner of income-producing property; it was intended to provide each person a stake to help him become independent of others for his subsistence and thus providing the economic foundation for a free and just political democracy. This road ended when our geographic frontiers ran out and our industrial frontier began.

What an irony of history that our railroads—the key to the rise of America to industrial and agricultural greatness, and now even more vital to the development of a freer, more prosperous, and more environmentally hospitable economy yet to be built—took the wrong turn over a century ago, leading the rest of American industry headlong into pinnacle ownership, the concentrated ownership of capital. Our railroads today have been the first to arrive at a dead-end in that road. We, the Members of this Congress, more than a century later, are now given a second opportunity to provide a prototype design for the pattern of ownership of the American economy.

We could take the first course and further exacerbate the already intensely concentrated ownership of productive capital in the American economy.

Or we could join the rest of the world by taking the second path, that of nationalization.

Or we can take the third road, establishing policies to diffuse capital ownership broadly, so that many individuals, particularly productive workers, can participate as owners of industrial capital.

Mr. President, the choice is ours. There is no way to avoid this decision. Non-action is a political decision in favor of continued, and indeed increased, concentrated ownership of productive capital.

Which of these three ownership alternatives makes the most common sense, the most political sense, the most social sense, the most economic sense, indeed, the most moral sense?

The eyes of the world are upon this chamber as we deliberate this fundamental question at this moment of truth of our Nation's history.

Mr. President, are we ready to begin anew where our revolutionary forebearers ended, constructing a modern extension of the third road, the road of expanded ownership of productive capital, so that everyone will have the right to own the corporations that will, regardless of our decision, propel us further into the uncertain age of automation?

The have-nots of the world, including the 95 percent of the American people who own no capital, await our answer.

Mr. HARTKE. Mr. President, let me say to the distinguished Senator from Louisiana, the chairman of the Finance Committee, that this is probably one of the most innovative ideas presented in this bill, which has a lot of innovation in it. His amendment deals with basic aspects of the industrial system. The Senator has given great thought to the theory of industrial democracy which in substance allows those people making their contribution to the industrial production of this Nation to share not alone as wage earners, but also as participants in the profits of their labor. Individuals that really would, under normal circumstances appear to be opposed to this kind of operation, seem to be sympathetic to it, in view of the fact that it is the chairman of the Finance Committee who is the proponent of this measure as a result of which we may be moving much more rapidly toward a democratic system. Under the private ownership plan that had heretofore been envisioned by some, people were ready to sell this system short. In other words, we are now saying that the concentration of wealth might be brought to an end by concentrating the wealth in the hands of those people who are really producing the wealth of the Nation.

I commend the Senator from Louisiana. He has a great deal of material there. Not only is it possible that this could lead the way in the railroad industry, but also, this could be the beginning spot for giving consideration to other major industries in the Nation.

Mr. LONG. It might be well to find out how employees, properly motivated, can make the bankrupt corporation succeed. If this proposal works and I think it should be given a try—and I hope the Senator, as one of the conferees, will work for this—then we may very well have the answer for the future when some bankrupt corporation comes to the U.S. Government asking to be bailed out. It may be that we can say, "If you work this out so that your employees have a substantial piece of the action, our experience is that that type thing tends to work."

My big objection to our private property system is not that I do not favor it—I do favor it very much—but I object that not enough people own some of it. It would be well to see how it works when you give the employees an opportunity to own a major share of the stock, perhaps even 100 percent, if they will make the railroad a big success.

I look upon this as a great challenge for us to urge employees to be a part of the team and eliminate all those divisive labor-management practices which could be avoided when people of good will work together to make a success of an enterprise.

Mr. BEALL. Mr. President, I yield to the Senator from Kansas as much time as he desires.

Mr. DOLE. Mr. President, I support the Rail Services Act of 1973 as essential legislation to maintain the viability of our Nation's rail transportation system

which is becoming increasingly important in these days of fuel shortage.

LOANS FOR MARGINAL RAILROADS

This legislation not only provides for the restructuring of seven bankrupt railroads within the private sector, but it also provides authority for loan assistance to marginal railroads threatened with insolvency though these railroads lie outside the designated 17-State region specifically affected by this bill. This loan authority will be available to railroads such as the Rock Island and the Katy which together provide service on more than 1,000 miles of right-of-way in Kansas. More than one-half of the trackage in Kansas is currently operated by marginal railroads whose future is in jeopardy. This legislation, which deals with the bankrupt northeast railroads, properly recognizes that those connecting railroads across the country which are vulnerable, threaten the viability of our entire national system, and must have support if the system is to be sustained.

FREIGHT CAR SHORTAGE

The pending legislation also recognizes the chronic freight car shortage which threatens the survival of small shippers on branch lines throughout the Nation and primarily in the grain producing States. By incorporating in this legislation the Senate passed freight car bill, S. 1149, the Senate reaffirms its commitment to improve the utilization of the freight car fleet and to expand that fleet to meet current needs. The daily shortage in general service freight cars averages about 38,000, and this shortage is translated into acute hardship for thousands of country elevators and other shippers. Provisions of this bill will help alleviate this shortage and assist in meeting a longstanding problem of farmers and elevators across the country.

FAIR TREATMENT FOR LABOR

Earlier this year I supported strongly those amendments to the Railroad Retirement Act and other permanent legislation, which facilitated increases in railroad retirement benefits negotiated between rail management and labor. I am pleased that Congress has met its commitment to all of the Nation's 500,000 active employees and nearly 1 million retired rail employees.

The integrity of the railroad retirement fund must not be compromised, and with my support, Congress has seen to it that retired railroad employees within the framework of the recently passed law, will be assured continuity in retirement benefits and equitable benefits as well.

Title VI of the pending bill incorporates a comprehensive package of benefits for those whose positions in employment will be worsened as a result of legislative reorganization of the bankrupt railroads pursuant to the other titles of the bill. I am not opposed to the benefit levels provided in title VI per se; however, I am opposed to any congressional action which would enact into law a collective bargaining agreement which is properly the province of the private sector.

I supported the amendment of the distinguished Senator from Maryland (Mr. BEALL) because it provided the opportunity for free collective bargaining between management and labor as to the terms and conditions of labor protection to be accorded displaced workers.

The Beall amendment recognizes that the Federal Government has an obligation to provide assistance to the displaced employees, and it provides $250 million in Federal contributions to be applied for the benefit of affected employees pursuant to an agreement which would be negotiated freely, and certified by the Secretary of Labor as "fair and equitable."

I believe that the Government has an obligation, in forcing this merger and the resultant employment reduction, to be fair with affected employees, and I feel that under the Beall amendment, the employees, with the infusion of $250 million in Federal labor protection payments, would have been assured adequate protection until retirement age or until job opportunities in the new rail system became available.

Mr. HARTKE. Mr. President, I agree to manage and sponsor the Midwest and Northeast railroad reorganization legislation with a great many reservations and very considerable trepidation. The measure is of the magnitude to cause even the bravest legislator to approach it with caution. The bill will effectively grant an association, or more realistically its executive committee consisting of five men, the power to restructure most of our railroad transportation system in the vast area bounded generally on the west by the Mississippi, on the south by the Ohio River and on the north by Canada. The grant of authority over the largest segment of our private enterprise system is, to my knowledge, more extensive than has ever taken place in the history of our country, other than in war time. Billions of dollars of railroad assets are involved, but that is only the visible part of the iceberg insofar as the effects of such an extraordinary grant of power is concerned.

Industries, both large and small, throughout this vast area are dependent in varying degrees on rail transportation. Even the mammoth General Motors Corp. wired the President of the United States that a shutdown of the Penn Central would bring the operations of that giant corporation to a grinding halt.

While I am not suggesting that a small group of men to whom we are entrusting the economic welfare of the Midwest and Northeast would cut off service to General Motors, I do, however, suggest that they will have the power to, and in all probability will, cut off rail service to thousands of companies and hundreds of communities. The impact on nonrail employees, on tax rolls and therefore school budgets, the impact on the viability of communities or their ability to attract new industries will lie in the hands of five men recommended, if not chosen, by the Secretary of Transportation.

In the very limited amount of time that we have had since the House passed its version of this measure we have labored diligently to afford reasonable protection to shippers, States, cities, and communities against arbitrary action by these planners. I am not satisfied with the protection that this bill affords and my efforts to obtain greater protection to provide service for the general public have been unavailing.

Illustrative of the protection that is lacking is the following:

The bill provides for hearings by a rail emergency planning office to be created within the ICC to which all parties would present their views and demonstrate their vital interests. The office then makes a recommendation with respect to the service to be provided to such parties by the final system plan. The association is required to "evaluate" the recommendations of the ICC office, but the final system plan does not have to be consistent with or conform to the recommendations of the ICC. Thus, major industries or major cities and towns may convince the Commission office that they should continue to receive rail transportation service, but if the association decides that such service is inconsistent with the viability of the new Rail Corporation, then the planners are free to ignore the testimony regarding need for service.

After we passed the Amtrak legislation, many communities, even large cities such as Cleveland, Ohio, bitterly complained that they were deprived of rail service. If you think you heard complaints with respect to Amtrak, you may be sure that you have heard nothing that will compare to the complaints that I anticipate as a result of the actions of the planners of the Association under this legislation. Then why am I voting for it? Why have I sponsored this bill? The answer is that the judge having charge of the Penn Central reorganization says that unless we pass a bill to immediately provide for funds to keep the railroad operating and make long-range plans for its future, he will order the Penn Central system liquidated. He says he has no choice, and under our Constitution he may be corrrect.

Certainly we cannot afford to see Penn Central shut down and liquidated so we are faced with a Hobson's choice or virtually no choice at all. We have to pass legislation to prevent the liquidation of Penn Central, but I have strong reservations regarding the legislation which is before you today. There are a number of other features of this bill which I would change.

For one, I believe the bill sets too severe a time schedule for the kind of careful planning that we need. This is a vast project of the greatest possible significance to the welfare of the State of Indiana and all other States east of the Mississippi and north of the Ohio. I would rather support Penn Central for a longer period of time with funds from the Treasury than force a hasty and possibly ill-considered restructuring plan. I would like to afford more time for the ICC office to hear the thousands of complaints from your constituents and mine that will arise when they see the initial plan of the Department of Transportation, a plan which the Department has adamantly refused to show to your committee or any Member of Congress.

I would like to have the Association itself have more time to devise a preliminary system plan and to be fully advised with respect to the effect of such a plan on the welfare of constituents or

unemployment, on the economic welfare of our States and communities. The Board of Directors of the Association which has to finally approve the plan has only 30 days to approve or disapprove the final system plan devised by its executive committee.

Can you imagine a group of 13 men and women representing a cross section of America, most of whom will have no expertise in the field of transportation, passing on such a gigantic plan in 30 days. The Association's plan then will be presented to the Congress and it will be deemed approved if we fail to reject within 60 days. Also indicative of the meager time schedule established by the bill is the following: a special three-judge Federal court will be permitted only 20 days to pass upon vital aspects of the final system plan. Let me assure you that considering the multitude of actions and the extreme complexity of the matters that will be before that court, 20 days will be a totally unrealistic period of time for a decision.

I am concerned also with the motivation of DOT and the association. At the outset, the Department of Transportation proposed legislation which contained practically no money. It has consistently argued against those provisions in either House or Senate bill which provided Government financing. Accordingly, I think we can count on the DOT and the association, which I believe it will control, to insist on a highly profitable, stripped down, restructured railroad whose securities will be thereby assured of acceptance by creditors. This motivation is certain to result in far less service to fewer shippers and communities than I think should be provided in any system established by an agency created by Congress.

On the basis of our experience with the Department of Transportation to date, we can clearly expect information regarding its planning and that of the association only after it is completed. Every Member of Congress who has tried to get information regarding plans for the restructured system from DOT has been rebuffed. In order to prevent a continuation of this coverup, I would have preferred to see on the board of directors of the association at least two members recommended by the chairmen of the Senate and House committees. Congress might then just possibly be kept abreast of the plans as they are being developed rather than being forced to wait until they are completed. As matters now stand, we will undoubtedly be faced with the choice of accepting or rather not rejecting a plan no matter how onerous to our States, cities, communities, shippers, and employees as the only alternative to nationalization of the bankrupt railroads in the Midwest and Northeast.

I understand the bill we are about to enact. I have taken every legal and rational step available to me to make it possible to restructure the railroads in the Midwest and Northeast in the public interest.

Mr. President, during the time we have been involved in the proposed legislation, it would have been impossible for us to have acted as expeditiously and as effectively as we did without the cooperation of the other members of the committee. I want to pay special tribute to the Senator from Maryland, who spent hours, including times when I could not be there. We had such a good understanding that the minority sometimes became the majority, so far as proceeding was concerned.

In executive sessions, which were very open, discussions were frank and candid and educational and very productive of what I think is a major improvement of this legislation.

In addition, Senator CANNON took over as manager of the bill. Senator LONG was helpful, as were Senator STEVENSON and Senator HOLLINGS. Senator PEARSON, who had to operate on one foot at times, operated with a 100 percent so far as his mental capacity was concerned. Senator COOK, who is not a member of the subcommittee, was very productive. Senator STEVENS was very helpful. Although sometimes he seemed to have an emphasis on Alaska more than some of us would want, it was one which was productive, too.

Senator COTTON, the ranking minority member, demonstrated the ability and capacity to give in and also to help us move the measure successfully.

Of course, all this could not be done without the able leadership of such a distinguished chairman as WARREN MAGNUSON, probably one of the outstanding legislators in the history of the United States.

All this could not have been accomplished except for the fact that we have people who gave up hours with their own families, working long hours, providing for us the material and providing it in a fashion which was understandable, and without too much controversy, and I refer to the staff. I pay special tribute to Lynn Sutcliffe, Art Pancopf, Tom Allison, Mal Sterrett, Paul Cunningham, John Kirtland, Bob Joost, Loyal Synder, Dave Clanton, Joe Carter, Chris O'Malley, and Fran Pollock.

Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. BEALL. Mr. President, I thank the Senator from Indiana for his very kind remarks. I reiterate what I said in my opening statement about his good work in bringing this bill out of the committee and to the floor today, so that we have what we all hope will be a successful solution to the problem that faces the northeastern part of the United States. As a result of this legislation, we will be able to have an economically viable operating unit, so that rail service can be maintained for the economic betterment of the whole area.

I should like to second what the Senator said with regard to the work of the staff in preparing the measure and in keeping us prepared. They worked assiduously on our behalf, and I second the Senator's remarks on their behalf.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SAXBE (after having voted in the affirmative). On this vote I have a live pair with the Senator from South Carolina (Mr. THURMOND). If he were present and voting, he would vote "nay." I have already voted "yea." I withdraw my vote.

Mr. MANSFIELD (when his name was called). Mr. President, on this vote I have a pair with the Senator from Maine (Mr. MUSKIE). If present and voting, he would vote "aye." If permitted to vote, I would vote "nay." I withhold my vote.

Mr. ROBERT C. BYRD. I announce that the Senator from Maine (Mr. MUSKIE), the Senator from Mississippi (Mr. STENNIS), and the Senator from Louisiana (Mr. JOHNSTON), are necessarily absent.

I also announce that the Senator from Missouri (Mr. SYMINGTON), is absent because of illness.

Mr. HUGH SCOTT. I announce that the Senator from South Carolina (Mr. THURMOND) is necessarily absent because of death in his family.

The Senator from Utah (Mr. BENNETT) and the Senator from Michigan (Mr. GRIFFIN) are necessarily absent.

The pair of the Senator of South Carolina (Mr. THURMOND) has been previously announced.

The result was announced—yeas 69, nays 22, as follows:

[No. 574 Leg.]

YEAS—69

Abourezk	Hart	Montoya
Aiken	Hartke	Moss
Baker	Haskell	Nelson
Bayh	Hatfield	Nunn
Beall	Hathaway	Pastore
Bentsen	Hollings	Pearson
Bible	Hruska	Pell
Biden	Huddleston	Percy
Brooke	Hughes	Proxmire
Buckley	Humphrey	Randolph
Burdick	Inouye	Ribicoff
Cannon	Jackson	Roth
Case	Javits	Schweiker
Chiles	Kennedy	Scott, Hugh
Church	Long	Sparkman
Clark	Magnuson	Stafford
Cranston	Mathias	Stevens
Curtis	McClellan	Stevenson
Dole	McGee	Talmadge
Eagleton	McGovern	Tunney
Fulbright	McIntyre	Weicker
Gravel	Metcalf	Williams
Gurney	Mondale	Young

NAYS—22

Allen	Cotton	Hansen
Bartlett	Domenici	Helms
Bellmon	Dominick	McClure
Brock	Eastland	Packwood
Byrd, Harry F., Jr.	Ervin	Scott, William L.
Byrd, Robert C.	Fannin	Taft
Cook	Fong	Tower
	Goldwater	

PRESENT AND GIVING LIVE PAIRS, AS PREVIOUSLY QUOTED—2

Saxbe, for.
Mansfield, against.

NOT VOTING—7

Bennett	Muskie	Thurmond
Griffin	Stennis	
Johnston	Symington	

So the bill (H.R. 9142) was passed.

Mr. HARTKE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. HUMPHREY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The title was amended so as to read:

A bill to authorize and direct the maintenance of adequate and efficient rail services in the Midwest and Northeast region of the United States, and for other purposes.

Mr. HARTKE. Mr. President, I move that the Senate insist upon its amendment and request a conference with the House of Representatives thereon, and that the Chair appoint the conferees on the part of the Senate.

The motion was agreed to; and the Vice President appointed Mr. MAGNUSON, Mr. PASTORE, Mr. HARTKE, Mr. LONG, Mr. GRIFFIN, Mr. COOK, and Mr. BEALL conferees on the part of the Senate.

Mr. HARTKE. Mr. President, I ask unanimous consent that the name of the Senator from Connecticut (Mr. RIBICOFF) be added as a cosponsor of the measure.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. HARTKE. Mr. President, I move to indefinitely postpone consideration of S. 2767.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. HARTKE. Mr. President, I ask unanimous consent that the Secretary be authorized to make necessary and technical corrections of the bill.

The VICE PRESIDENT. Without objection, the Secretary will be so authorized in the engrossment of the measure.

Mr. HARTKE. Mr. President, I ask unanimous consent that the bill as passed be printed for the use of Senators.

The VICE PRESIDENT. Without objection, it is so ordered.

TRIBUTE TO SENATORS

Mr. MANSFIELD. Mr. President, the passage of S. 2767 represents an achievement of great magnitude. The questions presented to the Senate for resolution were as complex and difficult as any to come before the Senate this year. There is no perfect solution to this type of problem. But to do nothing while the problem grows worse would be irresponsible.

Although one can disagree with parts of the measure, one must agree that the leadership shown by the senior Senator from Indiana (Mr. HARTKE) as well as the Chairman of the committee (Mr. MAGNUSON) in shepherding this measure through the committee and the Senate has been remarkable. They are legislators of the finest order.

They are both men who know how to grapple with difficult problems and resolve them forcefully and fully. The Senate owes them a great debt.

In addition, I want to congratulate the immense contribution of the junior Senator from Maryland (Mr. BEALL) who comanaged the measure on the floor. His spirit of cooperation and his leadership is greatly appreciated. To all Members of the Senate who took such an interest in this measure, the leadership wishes to express its appreciation for their cooperation.

LEGAL SERVICES CORPORATION ACT

The Senate resumed the consideration of the bill (S. 2686) to amend the Economic Opportunity Act of 1964 to provide for the transfer of the Legal Services program from the Office of Economic Opportunity to a Legal Services Corporation, and for other purposes.

Mr. MANSFIELD. Mr. President, what is the pending business?

The VICE PRESIDENT. The pending business, under the order, is S. 2686, a bill to amend the Economic Opportunity Act of 1964.

CLOTURE MOTION

Mr. MANSFIELD. Mr. President, I send to the desk a cloture motion and ask that it be read.

The VICE PRESIDENT. The cloture motion having been presented under rule XXII, the Chair, without objection, directs the clerk to read the motion.

The assistant legislative clerk read the cloture motion, as follows:

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate upon the bill (S. 2686), a bill to amend the Economic Opportunity Act of 1964 to provide for the transfer of the legal services program from the Office of Economic Opportunity to a Legal Services Corporation, and for other purposes.

Mike Mansfield	Daniel K. Inouye
Gale W. McGee	Gaylord Nelson
John O. Pastore	Walter F. Mondale
Hubert H. Humphrey	Edward M. Kennedy
Alan Cranston	Jacob K. Javits
Edmund S. Muskie	William D. Hathaway
George McGovern	Joe Biden
Philip A. Hart	Harold E. Hughes
Robert Taft, Jr.	Dick Clark
Floyd K. Haskell	

AUTHORIZATION TO FILE REPORT OF COMMITTEE ON PUBLIC WORKS OF BILL ON WATER RESOURCES DEVELOPMENT AND RIVER BASINS MONETARY AUTHORIZATIONS ACT OF 1973 BY MIDNIGHT

Mr. GRAVEL. Mr. President, I report from the Committee on Public Works on original bill on Water Resources Development and River Basins Monetary Authorization Act of 1973, S. 2798, together with minority views, and ask unanimous consent to file the written report thereon by midnight tonight.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. GRAVEL. Mr. President, I would like to make a very brief statement concerning a few items in the report. The Senator from New York (Mr. BUCKLEY) had asked my permission to take extracts from the record of the subcommittee to use in his minority view—a minority view of one. I had no objections, and wish to note that all the subcommittee meetings were open to the public and to the press. In fact, the press requested, that the markup sessions of the committee be made public.

However, it is my belief that the Senator from New York, has put the words somewhat out of context in the way he has extracted from the record. However, I will stand by them. The point in issue was in respect to a spread sheet I had ordered for the committee, laying out numbers of sections, whether they had OMB approval, whether they had passed the Senate before, a brief description of the item in question, and also the name of the sponsor.

The Senator from New York also suggested that we remove the name of the sponsor in the legislation. I responded to that by saying that I saw no reason why, such actions should not carry the name of its sponsor. We must be responsible for our actions.

Mr. President, we are all elected by the voters in our home States. We come here with names that we are given at birth. We come here with a title from the States. We come here with a charge to uphold the public trust. When my colleagues come to me with problems about their States, I seriously consider their views on the needs of their constituents before making a final judgment.

My colleague has characterized this as back-scratching and has also characterized it as pork barrel. He phrased the "pork barrel" charge with the caveat that we in the Congress are held in very low repute among the American people as a result of the scandals that have taken place.

I submit that we are held in low repute as politicians and as public servants not alone as a result of scandals but also because we often choose to act with anonymity or behind closed doors. We are elected to do the public business and, in my view, we should do it in public.

I think anyone who characterizes a water resources bill as pork barrel is missing the point. What we are dealing with here is a capital investment in America and the continuation of a capital investment that began with the Nation's birth. This is an investment that will continue to be made for a very good reason—because people in various parts of the country feel these projects should be undertaken.

If we choose to demean ourselves and those we are elected to serve by calling a financial investment in water resource development, "pork barrel" then fie on this House, and fie on the people in it. If I may, one other comment germaine to this discussion. In my view when a Senator stands up to strike projects about which he knows nothing, I say that is bad government. We had proposal after proposal to strike out items in the bill from committee members who knew nothing about the project in question.

Mr. President, I stand on the record of the subcommittee and the full committee, and I stand on the accomplishments of Congress in this area over a number of years. I think we ought not to use the term "pork barrel." I think we would be better served if we talked about capital improvements for serving the people who live in this country and sent us to the Senate as their representatives.

ORDER FOR RECOGNITION OF SENATORS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, following the remarks of the distinguished Senator from South Dakota (Mr. McGOVERN) under the order previously entered, the following Senators be recognized, each for not to exceed 15 minutes, and in the order stated, prior to the order for the recognition of Mr. MANSFIELD under the order originally entered: Mr. BELLMON, Mr. SAXBE, and Mr. HANSEN.

The VICE PRESIDENT. Without objection, it is so ordered.

What is the will of the Senate?

Mr. MONDALE. Mr. President, I would like very briefly to observe that the pending business is the Legal Services Corporation Act on which we have been prepared to vote now for 2 days.

No one in opposition to the bill has sought the floor.

I would hope either that something might occur so that we might act, or that, if we have what I call a filibuster by amendment, we might invoke cloture, pursuant to the motion filed a few minutes ago.

Before us is an act to establish an Independent Legal Services Corporation. We would like to be assured, so far as possible, of the availability of legal services consistent with the Canons of Ethics for those in this country who need those services. If the law and the Constitution is applied to them as it is to others in American society, they will then have the right to go before the courts of the land to seek justice.

The measure pending before the Senate is the result of several years of compromise. It enjoys a broad bipartisan support. The measure was reported out of the Labor and Public Welfare Committee unanimously. And, as has been shown in the record, Mr. Laird of the White House, has written to us arguing that the Senate act on this measure.

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

Mr. MONDALE. I yield.

Mr. JAVITS. Mr. President, I am advised that there are 66 amendments in print by some Senators. There is no time limitation on the bill.

We have analyzed approximately 20 of those amendments, beginning with amendment No. 777 and going down to amendment No. 796 inclusive.

I state these facts for the RECORD, as I said yesterday, just to indicate that we are here. We are perfectly willing to debate any amendment which any Senator has to offer.

Again, I wish to repeat the fact that this has been very thoroughly debated and discussed since 1971, and even before in terms of the existing program I think that we have gone a long way in the Senate to work with the administration in trying to come to a satisfactory bill, observing all rights of those concerned.

Mr. President, for the Members of the Senate who may be interested, I am advised that there is a very interesting analysis of the concept of a legal services corporation by the former president of the American Bar Association. That analysis was given in testimony before a subcommittee of the House of Representatives in hearings held early this year, in February and March 1973.

I think it might be illuminating to have the opinion of the then president of the American Bar Association on the proposal to establish a corporation. We have said before that the American Bar Association does support passage of the Senate Labor and Public Welfare Committee bill.

I ask unanimous consent that a copy of a letter to me from the present president of the American Bar Association, Mr. Chesterfield Smith, together with the testimony of the former president of the American Bar Association, Robert W. Meserve, which is incorporated in the record I have, along with certain give and take on this general subject in the same record, be printed in the RECORD.

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

AMERICAN BAR ASSOCIATION,
Washington, D.C., November 12, 1973.

Re S. 2686, National Legal Services Corporation.

Hon. JACOB K. JAVITS,
Subcommittee on Employment, Poverty, and Migratory Labor, New Senate Office Building, Washington, D.C.

DEAR SENATOR JAVITS: On behalf of the American Bar Association I commend you for your leadership in securing favorable committee action on S. 2686 now before the Senate.

The American Bar Association has long been interested in the creation of an independent national legal services corporation and has on three occasions adopted policy positions in support of this concept. I am pleased to inform you that S. 2686, as reported, fully complies with the Association's insistence on assuring the independence of lawyers for the poor to provide professional legal services to clients. I urge that the legislation be speedily and favorably acted upon by the Senate and that any amendments seeking to restrict the independence of lawyers or the access of their clients to our processes of justice be resisted.

Sincerely,

CHESTERFIELD SMITH.

ESTABLISHMENT OF A LEGAL SERVICES CORPORATION

This subcommittee is conducting these hearings for the purpose of and with the intent to develop a bill that will continue to guarantee to the poor good professional legal assistance.

In view of recent negative expressions and actions concerning the legal services program, those of us who support such a program feel that it is imperative that we begin to lay the groundwork necessary to produce a viable and effective piece of legislation with the kind of broad constituent support needed to get it through Congress and enacted into law.

The presence of our opening witness speaks well of our intent to see that the poor, as are the more fortunate, are provided with the kind of professional legal assistance associated with the profession and a member of the bar.

Mr. Meserve, it is indeed our honor to have you appear before this subcommittee in support of our efforts.

I introduce to the committee and for the record, Mr. Robert Meserve, president of the American Bar Association.

You may proceed as you so desire, Mr. Meserve.

STATEMENT OF ROBERT W. MESERVE, PRESIDENT, AMERICAN BAR ASSOCIATION, ACCOMPANIED BY JOHN P. TRACEY, ASSOCIATE DIRECTOR, WASHINGTON OFFICE, AMERICAN BAR ASSOCIATION

Mr. MESERVE. Thank you very much, Mr. Chairman and members of the subcommittee.

It is with great pleasure that I appear before you today to express the views and policies of the American Bar Association on legislation to establish a national legal services corporation.

As you know, the association takes great and, I think, justifiable pride in the support and encouragement which it has provided to the Federal Government's efforts to bring to the poor and the equal access to our processes of justice to which we are all committed.

Since 1965, when the new experiment in democracy known as the Legal Service program began with the cooperation of the association and the Federal Government, virtually every president of our association has requested and received an opportunity to convey to the Congress the association's support for an expanded program of legal services to the poor and our professional concerns regarding the administration and operation of the program.

I am exceedingly grateful for the opportunity you extend to me today to continue this tradition.

As a background for my testimony and also to define the limits of my authority. I have attached to my prepared statement a staff memorandum which compiles the official policy statements of the association on the issues of concern to this committee.

Two of the resolutions merit our specific attention at the outset.

In April 1971, the board of governors of the association gave detailed consideration to the proposed establishment of a national legal services corporation.

The board concluded and resolved:

"That the American Bar Association supports, in principle, the creation of a federally funded, nonprofit corporation to administer monies which will be used to fund programs which will provide a broad range of legal services to persons unable to afford the services of an attorney, the charter of which shall contain assurances that the independence of lawyers involved in the Legal Services Program to represent clients in a manner consistent with the professional mandates shall be maintained."

You will note from that portion of the 1971 resolution quoted, that the association has not gone on record in support of or in opposition to any specific bill or provision thereof except insofar as such legislation would offend the professional obligations and independence of lawyers employed or otherwise funded by the corporation or its grantees.

As president of the association, I appear before you in a representative capacity and must observe the limits of my authority.

The second resolution which I would specifically note is that adopted by the house of delegates of the association on February 12 of this year at its midyear meeting in Cleveland, Ohio.

In reaffirming the commitment of the association to the national corporation concept, the House resolved as follows:

"The United States Government should increase the level of funding of Legal Services Programs to enable them to provide adequate legal services to eligible clients and to prevent a serious deterioration of the quality and quantity of service because of increased expense and mounting caseloads.

Government at all levels and lawyers from both the public and private sectors should take every step necessary to insure that legal services lawyers remain independent from political pressures in the cause of representing clients.

"The Congress of the United States should

enact a legal service corporation of a design consistent with the foregoing principles and the need to maintain full and adequate legal services for the poor."

I am proud to report to you that not a single member of our house of delegates spoke against the resolution and that it was adopted on a virtually unanimous voice vote.

The task which this committee commences with these hearings on legislation to establish a national corporation is both critically important and vitally urgent. I need not dwell on the obvious fact that continued debate without resolution on the important issues before you will seriously damage the program and perhaps critically obstruct the continuation of the legal services movement. The current status of the program has to be a matter of great concern to the Congress, the administration, the bar, and most importantly, the poor who have derived so much benefit from the services which it has provided. In February 1971 the Ash Council on Executive Organization recommended the corporation structure to the President and virtually every concerned and informed constituency agreed, in principle, with that recommendation. Since that time, the program, its lawyers, and clients appear to have the most serious threat to the continuing availability of legal services to the poor in its 8-year history.

The pendency of the legislation and the continuing debate over its provisions have resulted in a rudderless course in national program administration. Crucial decisions and policy directives have been postponed because of the continued anticipation that the new structural autonomy of a corporation was just around the corner.

As you all undoubtedly know, the program has been without a permanent director since February 1972, and the National Advisory Committee which has traditionally been the vehicle for advice and oversight by the organized bar was recently disbanded by the Office of Economic Opportunity after not having been convened since April 1971. The continuation of the program in its current posture must be viewed as a most serious crisis by all concerned.

Now I would like to turn to some of the important issues which confront you in your effort to design the structure of the national corporation.

The heretofore divisive issue of the composition of the Board of Directors of the Corporation is one where my authority from the association leaves me little opportunity to provide specific assistance. In considering this issue, the association's board of governors concluded that it was more political than professional and should be left to the political process to determine. I am sure that I speak for the association, however, in expressing the hope that a majority of the board be lawyers.

The structure decided upon must offer a framework through which the lawyers employed by program grantees can serve clients to the extent of professional obligations mandated by the code of professional responsibilty of the American Bar Association and the ethical mandates of the bar in the jurisdiction wherein the lawyer practices. Statutorily mandated restrictions which would in any way interfere with the ethical obligations of a lawyer to a client would seriously undermine the professionalism of the legal services effort. Restrictions such as those advanced in amendments offered by Senator Murphy in the 90th and 91st Congresses which sought to prevent legal services lawyers from instituting suits against Government agencies or officials or allowed Governors of the States to control the scope of activities of legal services programs would certainly appear to contravene canon 5 of the code of professional responsibility which requires that a lawyer exercise independent professional judgment in behalf of a client. The association vigorously and successfully opposed such provisions in the past and will certainly oppose them in the future.

The association has also resisted administrative attempts to regionalize or decentralize the administration of the program. We believe that the program should be truly national and that the policy direction should be left to the Board of Directors of the Corporation with local policies formulated by the boards of the local projects within the framework of the national directives. This, of course, would seem to argue against a revenue-sharing approach which, as I understand it, would vest State and local officials with the funding decisions which, as we all know, effectively control policy. Funding decisions should be the prerogative of the national corporation.

While we insist on policymaking on a national basis, we would recommend continued consultation with State and local government and State and local bar associations. Our experience indicates that many of the problems and tensions in the operation of the Legal Services program have resulted from failure on the part of program lawyers and local government and bar associations to communicate with and understand each other. On our part, we continually and successfully urge more interaction between the programs and bar associations.

As you know, there has been a good deal of controversy surrounding the operations of the Legal Services program. Unfortunately, the criticism, most of which is unfair and overgeneralized, seems to get more public attention than the excellent client service which the more than 2,300 lawyers currently employed deliver to their previously unrepresented clients on a day-to-day basis. We have all heard the outcry against "law reform" activities of poverty lawyers who, accordingly to the criticisms, neglect the legitimate needs of clients in order to pursue their own agenda of social and institutional reform. A look at the record may help to put that criticism in better perspective.

The Office of Economic Opportunity has released statistics that indicate that the program is currently serving approximately 1 million clients per year. The breakdown of representation indicates further that approximately 42 percent of the matters involve domestic relations, 18 percent deal with consumer and job-related problems, 10.5 percent are housing problems, 9 percent involve Government welfare programs, and 20 percent are juvenile offenses and other miscellaneous matters. These statistics would seem to accurately reflect the legal problems experienced by the poor and the areas where assistance is most needed. Statistics also indicate that 83 percent of the matters handled by legal services lawyers are disposed of without litigation.

The California rural legal assistance program has perhaps received more severe criticism than any other legal services project. The intensity of the criticism finally resulted in the appointments by OEO of a prestigious commission of three State judges chaired by my fellow New Englander, Robert B. Williamson, a distinguished jurist who formerly served as Chief Justice of the Supreme Court of Maine.

After exhaustively studying the many complaints against the program, which covered of the gamut the criticisms of legal services programs generally, and conducting public hearings throughout the State, the Commission concluded:

"[T]he operations of CRLA as conducted presently and within the recent, past are within applicable OEO standards and applicable standards of professional responsibility. The Commission finds that CRLA has been discharging it duty of provide legal assistance of the Economic Opportunity Act of 1964 in a highly competent, efficient and exemplary manner. We therefore recommend that California Rural Legal Assistance, Inc. be continued and refunded."

[Report of the OEO Commission on CRLA to the Honorable Frank Carlucci, dated June 25, 1971, page 88.]

With regard to the so-called law reform activities of legal services programs, it is often overlooked that the mandate from Congress and a review of the program by the General Accounting Office specifically recognize law reform as a legitimate program activity.

The report of the Committee on Labor and Public Welfare of the Senate on the Economic Opportunity Amendments of 1967 noted:

"Yet the legal services program can scarcely keep up with the volume of cases in the communities where it is active, not to speak of places waiting for funds to start the program. The committee concludes, therefore, that more attention should be given to test cases and law reform."

[S. Rept. No. 563, 9th Cong., 1st sess., p. 40]

In a report on the Office of Economic Opportunity in 1969, the General Accounting Office reported to the Congress:

"LSP has improved the plight of the poor living in areas served by LSP projects by affording legal representation to the poor and educating them as to their legal rights and responsibilities. However, few LSP projects were engaged in OEO's more far-reaching goals of assisting the poor in the formation of self-help groups, such as cooperative and business ventures (economic development) and in advocating appropriate reforms in statutes, regulations, and administrative practices that adversely affect the poor (law reform)."

[Review of Economic Opportunity Programs, GAO Rept. No. B–130515, March 18, 1969, p. 129]

Finally, President Nixon in his message to the Congress transmitting the legislation for the establishment of a national legal services corporation stated:

"While it is important to insulate the corporate structure so that public funds can be properly channeled into the field, it is even more important that the lawyers on the receiving end be able to use the money ethically, wisely and without unnecessary or encumbering restrictions.

"The legal problems of the poor are of sufficient scope that we should not restrict the rights of their attorneys to bring any type of civil suit. Only in this manner can we maintain the integrity of the adversary process and fully protect the attorney-client relationship so central to our judicial process. [H. Doc. 92–104, 92d Cong.]"

I can also state that it has been represented to me that that is still the position of the President.

Thus it appears to me that every competent authority which has investigated the operations of the program has come down on the side of the project lawyer being unfettered by statutory restrictions which encumber the project's obligations in representing clients in civil matters. I would hope that the legislation process could go forward without expending valuable time on a rehash of what seems to be settled issues.

As noted in the previously quoted association resolution, we continue to urge a higher level of appropriations for the national corporation. At the $71.5 million level requested in the administration's budget for the coming fiscal year, it would appear that there will be a further contraction rather than an expansion in services. Specific

thought might be given to authorizing funds for the transitional phase of the program to assure no diminution in services.

In conclusion, the list of accomplishments of the legal services program in the 8 years of its operation is most impressive. It has survived adolescence and attained a maturity which argues for a national legal services corporation properly structured so as to assure the continued professionalism of the program which, at the same time, insulates the projects from political pressures. We must have the necessary confidence in the legal profession and the judiciary to assure that the corporation and its grantees will be continually monitored and measured by the professional standards applicable to all the components of our justice system.

We must also recognize that legal services to the poor has become an integral component of that total system and must be continued and hopefully expanded and strengthened.

Speaking on behalf of the American Bar Association and as a private lawyer committed to the cause of adequate legal services for all our citizens, I pledge our continuing cooperation in your critically important task.

That is the end of my statement, gentlemen and lady.

[The following memorandum was submitted for the record:]

AMERICAN BAR ASSOCIATION MEMORANDUM

Re: ABA Policy Positions.—Legal Services.
Date: February 16, 1973.

The modern history of ABA support for providing comprehensive legal services to the poor began with the adoption of a resolution sponsored jointly by the Committee on Legal Aid and Indigent Defendants and the Committee on Lawyer Referral at 1965 Midyear Meeting in Miami, Florida. The 1965 Resolution provides:

Whereas, The organized bar has long acknowledged its responsibility to make legal services available to all who need them, and this Association has been a leader in discharging this responsibility; and

Whereas, The organized bar, under the leadership of the National Legal Aid and Defender Association and of this Association, has extended legal services to indigents for more than three quarters of a century, and there are now some 247 legal aid offices and 136 volunteer legal aid committees rendering these services, and

Whereas, The organized bar, under the leadership of this Association, has also extended legal services to persons of modest or low incomes for many years through Lawyer Referral programs, and there are now some 203 Lawyer Referral agencies in operation; and

Whereas, Individual lawyers traditionally have rendered service without charge to those who cannot pay; and

Whereas, Despite this considerable effort of individual lawyers and the organized bar over many decades, it is recognized that the growing complexities of modern life, shifts of large portions of our population, and enlarged demands for legal services in many new fields of activity warrant increased concern for the unfilled need for legal services, particularly as to persons of low income, and that the organized bar has an urgent duty to extend and improve existing services and also to develop more effective means of assuring that legal services are in fact available at reasonable cost for all who need them; and

Whereas, The Economic Opportunity Act of 1964 provides for cooperative programs with state and local agencies through which various services, including legal services, may be rendered to persons of low incomes who need advice and assistance; and

Whereas, Freedom and justice have flourished only where the practice of law is a profession and where legal services are performed by trained and independent lawyers;

Now, Therefore, Be It Resolved, That the American Bar Association reaffirms its deep concern with the problem of providing legal services to all who need them and particularly to indigents and to persons of low income who, without guidance or assistance, have difficulty in obtaining access to competent legal services at reasonable cost; and authorizes the officers and appropriate Sections and Committees of the Association, including such additional special committee (if any) as the Board of Governors may establish, in cooperation with state and local bar associations and the National Legal Aid and Defender Association, to improve existing methods and to develop more effective methods for meeting the public need for adequate legal services; and

Further Resolved, That the Association, through its officers and appropriate committees, shall cooperate with the Office of Economic Opportunity and other appropriate groups in the development and implementation of programs for expanding availability of legal services to indigents and persons of low income, such programs to utilize to the maximum extent deemed feasible the experience and facilities of the organized bar, such as legal aid, legal defender, and lawyer referral, and such legal services to be performed by lawyers in accordance with ethical standards of the legal profession; and

Further Resolved, That the Association's Committees on Legal Aid and Indigent Defendants and on Lawyer Referral Service shall, in the absence of the creation of a special committee for the purpose, have primary responsibility for (i) implementing these resolutions, (ii) coordinating with the appropriate Committees and Sections, and (iii) reporting back to this House at the annual meeting in August, 1965.

(Reports of the ABA, 1965, pp. 110–111.)

The above resolution states the basic Association policy on extending legal services to indigents and persons of low income.

The Board of Governors adopted a resolution specifically opposing the so-called Murphy Amendment in October 1969. That Board resolution provides:

Whereas, the adoption by the United States Senate of an amendment to S. 3016 seeks to place in the hands of the governors of the various states a power of veto over the activities of legal services programs funded by the Office of Economic Opportunity; and

Whereas, such power contravenes the American Bar Association's commitment to secure full and effective legal services to the poor by providing every person in our society with access to the independent professional services of a lawyer of integrity and competence; and

Whereas, enlarging the scope and effectiveness of the power to veto legal services programs is highly undesirable because experience has shown that the power to veto may be used to circumscribe the freedom of legal service attorneys in representing their clients to address issues of governmental action or omission affecting the rights of their clients, and to discourage actions which are politically unpopular or adverse to the views of the majority; and

Whereas, such limitations impair the ability of legal services programs to respond properly to the needs of the poor and constitute oppressive interference with the freedom of the lawyer and the citizen;

Now, therefore, Be It Resolved, That the American Bar Association reaffirms its position that the legal services program should operate with full assurance of independence of lawyers within the program not only to render services to individual clients but also in cases which might involve action against governmental agencies seeking significant institutional change; and

Further Resolved, That representatives of the American Bar Association be authorized to express the concern of the Association as to the effect of the aforesaid amendment.

(Reports of the ABA, 1970, pp. 161–162)

The above resolution was widely circulated to state and local bar associations and to the Congress. Fifty bar associations responded with similar resolutions or statements of opposition.

The Board of Governors adopted a resolution following the Annual Meeting in Dallas in August 1969 directed at public criticism of legal services lawyers by public officials. The August 1969 resolution provides:

Whereas, attacks against legal aid and legal service lawyers and other lawyers threaten the rights of clients to have independent advocates;

Now, Therefore, Be It Resolved, That the American Bar Association supports and continues to encourage every lawyer in the exercise of his professional responsibility to represent any client or group of clients in regard to any cause no matter how unpopular; and

Further Resolved, That the American Bar Association deplores any action or statement by any government official who attempts to discourage or interfere with the operation or activities of any properly constituted organization which provides legal services to the community because the lawyers associated therewith, or any lawyer acting in good faith and within the confines of ethical conduct, zealously represents clients in matters involving claims against a government entity or individuals employed thereby.

(Reports of the ABA, 1970, p. 162)

A resolution supporting the enactment of legislation authorizing a federally-funded, non-profit corporation to provide funding for legal services programs was adopted by the Board of Governors in April 1971. This resolution provides:

Whereas, The American Bar Association in furtherance of policy positions adopted by the House of Delegates in February 1965, and the Board of Governors in August and October, 1969, has vigorously supported the expansion of legal services to those unable to afford the services of an attorney through the Legal Services Program of the Office of Economic Opportunity; and

Whereas, The American Bar Association has insisted that the independence and professional integrity of the lawyers involved in rendering such service be maintained, with particular emphasis on protection of the attorney-client relationship and compliance with the Code of Professional Responsibility and Canons of Ethics of the Legal Profession; and

Whereas, Pronouncements of this Administration and legislation currently pending in both Houses of Congress propose the establishment of a federally-funded, non-profit corporation to assume responsibility of funding programs which will make a broad range of legal services available to persons unable to afford the services of an attorney which corporation will not be an agency or establishment of the United States Government; and

Whereas, The establishment with adequate safeguards of such non-profit corporation will tend to further the insistence of the American Bar Association on the independence and professional integrity of the Legal Services Program:

Now, Therefore, Be It Resolved, That the American Bar Association supports, in principle, the creation of a federally-funded non-profit corporation to administer monies which will be used to fund programs which will provide a broad range of legal services to persons unable to afford the services of an attorney, the charter of which shall contain assurances that the independence of lawyers involved in the Legal Services Pro-

gram to represent clients in a manner consistent with the professional mandates shall be maintained; and

Be It Further Resolved, That representatives of the American Bar Association designated by the President be authorized to present testimony on behalf of the Association before the appropriate committees of the Congress consistent wtih this resolution.

(Reports of the ABA, 1971, pp. 558–559)

At the Midyear Meeting in Cleveland in February 1973, the House of Delegates of the American Bar Association reaffirmed its support of the expansion of legal services efforts and establishment of a national legal services corporation. The resolution adopted by voice vote provides:

Whereas, There is a continuing need for legal services for the poor; and

Whereas, There are federally funded legal service programs to meet this need in each of the states; and

Whereas, The funding for these programs has not increased since 1970 in spite of the increase in demand and operating expenses; and

Whereas, This Association continues to support the need for adequate legal services to the poor and the need for vital and independent programs to provide this representation;

Now, Therefore, Be It Resolved:

1. The United States government should increase the level of funding of legal services programs to enable them to provide adequate legal services to eligible clients and to prevent a serious deterioration of the quality and quantity of service because of increased expense and mounting caseloads.

2. Government at all levels and lawyers from both the public and private sectors should take every step necessary to insure that legal services remain independent from political pressures in the cause of representing clients.

3. The Congress of the United States should enact a legal service corporation of a design consistent with the foregoing principles and the need to maintain full and adequate legal services for the poor.

In addition to the above resolutions, the Board of Governors in October 1970, authorized President Edward L. Wright to communicate to OEO Director Donald Rumsfield the Association's concern regarding a proposal for administrative reorganization of the Legal Services Program. A copy of that letter is attached.

AMERICAN BAR ASSOCIATION,
October 16, 1970.

Re legal services program of the Office of Economic Opportunity.

HON. DONALD RUMSFELD,
Office of Economic Opportunity,
Washington, D.C.

DEAR MR. RUMSFELD: You will recall that I wrote to you on October 3, expressing my concerns regarding the proposal for administrative reorganization of the Legal Services Program currently under consideration by the Agency.

The proposed reorganization plan was extensively discussed by the Board of Governors of the American Bar Association at its Fall Meeting in Chicago on October 15 and 16. The Board has authorized me to inform you of the Association's reiteration of the recommendations made in the February, 1969 memorandum to then Secretary Finch and to Secretary Romney, especially the following: "Should an independent office in the Executive Branch not be feasible at this time, and if an OEO type of agency is to be continued, the existing program could remain within that structure, provided it becomes administratively independent from the existing Community Action Program."

Independence of the Legal Services Program from the Community Action Program and its establishment as a National Emphasis program with policy and responsibility firmly established at the national level have been sought since the inception of the program. Representatives of the organized bar have continually championed the need for such independence before Congress and program administrators and at the highest level of this and the previous Administration. A regression from the Program's status which you established in your historical announcement of July 14, 1969, in our opinion, would be unwise, unwarranted, and unacceptable to the legal profession which greeted that announcement as the culmination of five years of unswerving effort on a matter of immense professional and public concern.

This Association is well represented on the Subcommittee of the National Advisory Committee, which is currently considering the reorganization proposal in cooperation with you and other officials of the Agency. Preliminary reports from those conducting this study have led the Board of Governors to conclude that the concerns which have been expressed by members of the bar and by members of Congress are justified.

On behalf of the American Bar Association and its Board of Governors, I urge you to reaffirm the independent status of the Legal Services Program at all levels of administration within the agency.

Sincerely,

EDWARD L. WRIGHT.

Mr. HAWKINS. Thank you for a very excellent and clearcut statement. It is certainly one which I think speaks rather eloquently to the subject that we have before this committee.

The Chair is going to yield its time to its colleague from Washington, Mr. Meeds, who is the author of one of the legal service bills, and then recognize the ranking minority member, Mr. Steiger, who has also authored one of the bills.

Then we will proceed in the order of the committee.

Mr. Meeds.

Mr. MEEDS. Thank you very much, Mr. Chairman.

My commendations to you, Mr. Meserve, for your statement and my commendations to the American Bar Association for its longstanding support of what I consider to be the jewel in the crown of OEO programs, the program which has really brought full mention of constitutional rights to those who have heretofore been unable to assert the right of a judiciary, access to the judiciary because they could not afford it.

Without defining the help and work of the American Bar Association certainly this program would not be what it is.

Mr. MESERVE. Thank you, Congressman.

Mr. MEEDS. I deeply appreciate in your statement the reiteration of President Nixon's statements with regard to the importance of this program, the importance of insulating the corporate structure.

As he said, "Even more important that the lawyers on the receiving end be able to use the money ethically, wisely and without unnecessary or encumbering restrictions."

I would like to address my questions to you along that line, if I may.

Mr. MESERVE. Surely.

Mr. MEEDS. What might be some encumbering restrictions? In the bill which was presented with this very eloquent statement by the President, there was a provision that a board would decide whether appeals could be taken.

Would you feel that that would be a proper restriction on the individual zealous pursuit of the attorney's case?

Mr. MESERVE. I would think that if that board were comprised of lawyers, their advice on the subject surely should be of great assistance to an individual lawyer who—and I speak from my own experience—quite frequently sees the merits of the case as being much greater perhaps than they are and quite frequently does not understand problems of policy which may affect the whole structure of the program.

Basically, I would think the ultimate decision within the limits of funds available should be on a professional basis for the lawyer. I surely would have no objection to his getting informed advice.

Mr. MEEDS. But I assume you would have objection if it went beyond advice, if he were told which cases he could appeal.

Mr. MESERVE. I think that would be very dangerous from the point of professional responsibility. I would not want a committee of my partners to tell me if I could appeal a case for a wealthy client.

Mr. MEEDS. As a matter of fact, it would be a violation of the code of ethics?

Mr. MESERVE. It would be, Congressman.

Mr. MEEDS. What would you advise this committee would be the limits of legislative advocacy?

In other words, in that bill also—and this is from my recollection because I don't have it before me—if it provided that a lawyer could appear before a legislative group for his client only upon the request of the group or something like that, if that were the case—and again trusting my recollection and assuming for the purpose of the question that that was the case—would that be an undue restriction in your mind in the role of the lawyer in pursuing zealously the cause of his client?

Mr. MESERVE. I think any limitation which would bar legislative activity on behalf of a client would violate the code of professional responsibility, if we talk about a client's wishes and a client's interest reasonably adapted to the program.

Limitations on lobbying for causes or issues not related to a specific client or group of clients would not appear to offend the code if such activity were proscribed as a condition of employment.

Surely political activity of individual lawyers which seek to promote their own interests or a particular party or individual should not be permitted in the program. I think this could safely be left to the judgment of the board of directors of the corporation which, as I suggested, should at least consist primarily of lawyers acquainted with the restrictions in the code of professional responsibility.

Mr. MEEDS. On the floor of the House particularly, we have had a lot of comment that because the taxpayers support the legal services program that somehow the obligation of the lawyers working for legal services should be different to their clients than that of you and your client.

Do you think it should be any different?

Mr. MESERVE. No, sir; I do not. I think the lawyer-client relationship does not change just because the Federal Government is paying the fee. There is only one code of professional responsibility. Its provisions are equally applicable to private lawyers and legal services lawyers. That is the way it should be. If we are serious about providing counsel to the poor, I think we should offer the same services as we give to our paying clients.

Mr. MEEDS. Finally, I would like to ask you a question with regard to funding.

You stated that you thought funding at $71 million, which as I understand is proposed in the fiscal year 1974 budget of the President, would be in effect a reduction of the services under the program.

Would you explain and clarify that?

Mr. MESERVE. I think there are statutory provisions with regard to increments and fringe benefits which will mean that while the actual amount may be the same as last year, the services might be somewhat reduced.

I have also felt that the present funding of the program only permitting the program going into certain areas, and not experimenting with other areas. I think the problem of the rural poor ought to be dealt with, too. I am not sure it can be dealt with within the present framework of the OEO organization, but I think there ought to be funds to permit all the poor to benefit by this program. Therefore, I think the funds are now inadequate and will be in the future when the normal increments are taken into account.

Mr. MEEDS. Thank you very much.

Mr. HAWKINS. Mr. Steiger?

Mr. STEIGER. Thank you, Mr. Chairman.

I welcome these hearings as an opportunity for Members of Congress, the administration, and all interested parties to work together in strengthening the Legal Services program.

A great deal of justifiable criticism has been devoted to Federal programs which are wasteful and inefficient. It is unfortunate, therefore, that the most stringent attack upon any Federal agency has been reserved for one of the Government's most successful endeavors—the Legal Services program.

Ironically, this opposition has largely been generated by the very success of Legal Services attorneys in asserting the rights of the disadvantaged.

While most Americans have strongly supported the implementation of equal access to the judicial process, there are some—whose power rests upon governmental authority or economic sanction—who are unwilling to have their actions subjected to the scrutiny of an impartial court under the rule of law.

Those who would permit the arbitrary and capricious disregard of the legitimate rights of any citizen must not be allowed to prevail.

The Legal Services program has done more than win cases and establish precedents. It has served as a constant reminder that in our democracy, just grievances can be resolved within the system rather than in the streets.

Yet today the very existence of the program hangs in the balance. To insulate the program from recurring political attacks, President Nixon has strongly endorsed the concept of a nonprofit Legal Services Corporation.

The Congress must now act its legislative will, to insure that the Corporation is truly independent, professionally administered, and capable of delivering high quality legal services.

The crisis grows and we must act rapidly.

President Meserve, we know of the deep commitment of the American Bar Association to the Legal Services program, and we are grateful for your personal efforts in this endeavor.

There is now a 30-day funding limitation and the imposition of travel restrictions on field lawyers.

What is the American Bar Association's position on those matters?

Mr. MESERVE. First, may I explain what I am sure you will understand and that is that our support goes to the program and not necessarily to any particular individuals. The selection of the individuals to operate that program is basically none of our business so long as they are people sincerely interested in operating the program. From this point of view, we were very sorry to lose Mr. Speaker and Mr. Tetzlaff who had been honest and able administrators of the program, in our opinion.

But, I am not against any person who is there now. This has been explained to me, particularly the 30-day funding and the limitation on funding as a temporary matter which would enable the new administrator to get a handle on what is going on. From that point of view, I personally would think that this is a reasonable thing for a limited period of time. I think it would be terrible if over an extended period of time the program were to operate on a 30-day basis. For example, I don't see how a client could have any confidence in the continued representation of a lawyer whom he knows may not be there 30 days hence and there may be no program there to support him 30 days hence.

I would hope that the people in what I expect will be sort of a caretaker responsibility pending your creation of a legal services corporation will see to it that they discharge their duties as caretakers honestly and efficiently and keep the level of legal services high.

I think we have some other problems here, too. These are grants, these 30-day funds, made to other entities operating in the field under the supervision of OEO. Many of these bodies have to make extensive commitments for the employment of lawyers and others to administer those programs. They cannot do that on a 30-day basis. I don't know any lawyer who has any capacity who will want to work on a program where he may be letting the program terminate within 30 days. Moreover, many of these programs at some of these backup centers have made contractual commitments, as I understand it, in reliance upon a probable extension of the program which will cause financial loss to the entities involved, the agencies which are backing them up, such as educational institutions and the like.

I would surely hope that, assuming that the restrictions on travel and the 30-day limitations are within the power of OEO, that they would be terminated quite promptly and the program restored to the point where, as far as you can, there is confidence that the program will continue and the objectives will continue to be met.

Mr. STEIGER. What is the impact of the decision to end the advisory council?

Mr. MESERVE. Well, I think the prior administrators have found the advisory council to be a useful body. It is through that council that the American Bar Association, for example, has had an input in the program and has been able to offer advice. I believe the council if it had to be dissolved, a new one should be appointed. I think there ought to be a council there and the administrator ought to be free to call upon it. I would hope he would. I would hope it would represent not only the organized bar, the American Bar Association, but some of the client groups to whom the office must look in connection with its programs. I think a national advisory council is desirable for either the corporation or the existing OEO organization. I would hope that one would be reinstituted that would have a professional advisory input into the situation.

Mr. STEIGER. It has been reported that OEO has considered terminating funding for backup centers and providing some kind of an in-house capability for backup services.

Would you give us your thoughts about the consequences of a development of that kind?

Mr. MESERVE. First of all, I would hope that any such program if instituted would be preceded by adequate notice to the entities which have committed themselves in effect to provide this type of service and have made financial commitments inconsistent with having the service terminated on 15, 20, or 30 days' notice.

Generally speaking, I would feel that these, more or less independent agencies are helpful to OEO. I would hope that an investigation of them made by the present administration would convince them that that is so and that the actual expense of operating through the independent entity as a backup center is probably in the whole less, and the services better than with an in-house capability which means employing people by the Government whereas now people are employed by independent entities.

Mr. STEIGER. You do agree, do you not, that there is a need for the concept of backup services?

Mr. MESERVE. Indeed I do. I don't see how with any efficiency the individual lawyers in the field can do all the types of research which these backup centers can do in specific and particular areas. I think it is a great economic advantage that a backup center in Massachusetts can tell a lawyer in Colorado what is going on in a particular field not only in Colorado and Massachusetts but throughout the United States because they have an actual capacity to correlate and integrate resources into these particular problems. I think the concept of a central organization responsive to legal and drafting questions in particular areas is an excellent one. I do think that the backup center program has worked well from all I have heard. I see no reason to abolish the concept but I am not wholly on the inside on that. I think some kind of backup center services ought to be provided to counsel in the field or they will handle a great many less cases than they are now, which I think is bad for the poor people.

Mr. STEIGER. The gentleman from Washington, Mr. Meeds, talked about the concept of a restriction on appeals. It has also been suggested by some that there ought to be restrictions on test cases.

Would you give me your judgment about any kind of effort to limit the ability of a legal service attorney to handle a test case given the limited resources available?

Mr. MESERVE. I think that is a matter of judgment to be exercised in rules laid down in advance by the individual sponsoring organization. I would think that it is possible that a test-case limitation can be imposed, to some extent, fairly. But on the other hand, I must say that the test-case concept to me seems pretty vital to a legal services program, and economical in the long run. If you can pick one case as a test case, it may affect thousands of people in the area and avoid the necessity for a tremendous amount of duplicated litigation all raising the same issue. In the interest of judicial economy and in the interest of representing the poor, the selection of test cases and pushing of test cases is indeed desirable. It may be that the test cases selected might be so far removed from the interest of an average poor person that perhaps they ought not to be brought. But none have been brought to my attention under the present program that have not warranted the test-case action. I think of the property tax case in California which was litigated under the OEO legal service funded agency there. It seems to me that that was a test case and did a very good job in bringing to the attention of the court and people of the United States a very real problem in taxation.

I don't know how you do that except through test cases. Therefore, whatever restrictions might be adopted, I hope they would meet the needs of the poor to have test cases brought in such areas.

Mr. STEIGER. One last question which as a nonlawyer is asked of me by people: Why should the average citizen—or why should nonlawyer Bill Steiger—be concerned as to whether lawyer Lloyd Meeds is bound by what the American Bar Association talks about as the code of professional responsibility?

Mr. MESERVE. Without that application of the code, in my opinion, the judicial system could not exist. It is that simple, sir. I think that the need for lawyers in a particularly competitive profession to be bound by rules as to what they can and cannot do and to live within those rules is integral to the whole system of justice which has developed in the United States of America. I don't think it matters whether I am representing Standard Oil of New Jersey or a poor man from the Boston ghetto. It is my duty to observe the code of professional ethics. Otherwise, the whole system falls apart.

Mr. STEIGER. I appreciate very much what I think is a very good response to my question

and your real commitment, as with the commitment of the American Bar Association.

Thank you.

Mr. HAWKINS. Mrs. Chisholm?

Mrs. CHISHOLM. Thank you.

I have two brief questions.

First of all, in terms of the espousal of equalitarian principles even in the area of law, which is still an ideal in this country and not a reality as yet, does the American Bar Association feel that any services offered to the poor by the legal services lawyers should in no way be different from the services offered to the middle- and upper-class citizens in this country who have the wherewithal to pay for such services so long as the services offered by the lawyers ameliorates the condition of the poor in our society.

I would like to know how the American Bar Association feels about that ideal kind of concept which is not yet implemented.

Mr. MESERVE. I think I have already, if I may say so, answered your question, Congresswoman. I feel that the poor person in our society ought to get the same kind of legal representation in every area as the rich person can get. I think the only way that can be done is through the legal services program. I think legal services ought to be able to ameliorate his condition and to see to it that the guarantees of the Constitution of the United States are available to all citizens of all classes of economic wealth or lack of it.

Mrs. CHISHOLM. Thank you.

One more brief question.

The Code of Professional Ethics in the field of law is analogous to the Hippocratic Oath taken by men in the field of medicine?

Mr. MESERVE. I think the code is much more extensive and detailed. The Hippocratic Oath, as I understand it—and, of course, I am not a doctor—is a general statement of professional conduct, as I remember it, which is a very desirable thing. The Code of Legal Ethics is far more detailed. It deals with many more situations, even though in many areas it is expressed in generalities which must be interpreted by the court from time to time. It is more analogous to the differentiation perhaps between the Ten Commandments or the Sermon on the Mount on one hand or the Constitution of the United States on the other.

Mrs. CHISHOLM. Thank you.

Mr. HAWKINS. Mr. Clay has yielded his first set of questions to the gentleman from Michigan, Mr. Ford.

Mr. FORD. I would like to go back to this question of a test case. That is not a legal term—"test case"— that it a term that gets taken up at cocktail parties and in coffeehouses and other places where lawyers get together and they say there is a certain type of litigation going on and if this is decided it will set some things in perspective and therefore it becomes a test case when viewed from a professional standpoint by lawyers outside the case.

But as the lawyer or client or individual involved in the case, the words "test case" means nothing, do they?

That case is only important to him as to how it ends up with respect to his rights, whether it be criminal or civil. The fact it will set the pattern for something else to happen is irrelevant; isn't it?

Mr. MESERVE. I would not say it is strictly irrelevant. I would agree generally with you that the problem is serving the interests of an individual client.

Mr. FORD. From a professional point of view, does the lawyer have any right in determining how he should proceed with that client's case at any given time to take into account whether it will or will not be a test case that will affect the rights of other people?

Mr. MESERVE. Yes, I think he does. I think it affects the rights of that client, but I think it also affects the rights of society generally and he has a right to take that into consideration.

My office was hired many years ago—long before I was a partner in it—to bring certain litigation on behalf of a corporation involving the constitutionality of the social security laws back in the Roosevelt days.

It litigated that question to the Supreme Court of the United States. I think at all times we were conscious and our client was conscious and wanted us to proceed in that case as counsel representing the individual whose case was the only case that could bring the problem before the Court but also as a test case involving for a multitude of clients in such a position the constitutionality of the social security law. That is why the client wanted the case instituted in the first place.

Mr. FORD. But you would agree with me that if parties outside the scope of the interest of the people bringing the suit in that case had decided that from their point of view this was a test case that they could not, if this was a legal services case, bring pressure to stop.

Let us put it as far as a regulation. What would be the effect of the lawyer's professional standing if we attempted to impose on him that once someone identifies this as a test case you are thereafter barred from representing the party in that case because its nature is now described as a test case without regard to what the real issues are.

Mr. MESERVE. If I understand your question, of course, that could not occur. You have to consider the interests of the party and act for him.

Mr. FORD. Then you would agree that any attempt to characterize cases and put a restriction on legal services lawyers would be outside the scope of what is considered in the Code of Professional conduct?

Mr. MESERVE. Yes. I think the interests of the individual client may include the fact that the case may affect a lot of other people. If the client would come to me and say he wanted to drop the case, I could not say, "No, you must proceed because it is a test case."

Mr. FORD. It works both ways?

Mr. MESERVE. Yes.

Mr. FORD. You in your statement make mention on page 5, "I am sure that I speak for the association when I express the hope that the majority of the board . . ."—and you are speaking of the board of directors of the corporation—". . . be lawyers."

It has been our understanding that the various meetings that took place with everybody concerned in this went on for so long with Mr. Powell, your predecessor representing the American Bar Association, that really there may be what could amount to a quasi-contractual relationship.

The fact is that the American Bar Association has substantially acted in a number of ways to substantially carry through an agreement that they would accept a corporate concept which whenever discussed from your point of view had carried with it the thought that not only the national board but the local boards would have a majority of lawyers on it.

To many of us it came as a surprise that anybody would think otherwise because from its inception the discussion of the corporation has carried that concept.

Is that a fairly accurate description of where you sit in the bar association?

Mr. MESERVE. I would feel that to run a legal program it would be entirely desirable that the majority of people concerned be lawyers but not exclusively lawyers. I would also say I am not acquainted ehough with the history to give you a complete and frank answer to the remainder of your question except that I would suppose that any president of the American Bar Association sitting where I am sitting would advocate that position. However, we have resolutely stayed away from trying to say that so many members of the board should be appointed upon the nomination of such and such a person. That has not been a function which the American Bar Association as such has carried forward.

Mr. FORD. Last year when we had the legislation in conference one issue that held us up as long as anything else that was negotiated with the White House during the course of that conference was the specific issue of once you decide there are going to be lawyers on the board who decide who is and who is not a lawyer in there was a very hard position taken by the White House that the only way they would agree to the appointment system was if the President would make the appointments directly, completely unfettered by any kind of a recommendation from the several bar associations that had been included, several groups of professional organizations that had been included in the legislation as prospective recommenders of members of the board.

It really came down to the point where it became apparent to us that not even a simple provision that allowed one of these professional groups to submit several names and let the President take anyone he wanted would satisfy him.

It had to be the privilege of rejecting all of them and reaching outside in effect. This caused a number of us to be concerned about how important that appointing process was. Where we had not attached a great deal of importance to the appointing process, while we would have this fragmented method of people reaching the board, some coming from the recommendation of your organization, and some coming from the recommendations of another organization.

When you think it is the President, the Congress, the American Bar Association or any one group or person is going to have the power to make all the appointments for something that should have a national scope then it takes on a different dimension.

How do you feel at this point about retaining the role of these professional organizations in recommending the names of people who should be selected for positions on the board?

Mr. MESERVE. I would be flattered if such a role could be continued for the American Bar Association but I don't know that I have a right to express any specific position on the issue of whether or not it should be legislated by congressional action. I think that is a political issue which goes beyond my authority. I am not trying to duck you. I would think it would be a happier situation if the interests of the groups that have a direct interest in this program could be recognized. If it came to the point of saying either they could not be recognized or we would have no program, I think the program is the important thing. I would hope that anybody who was appointed would feel his responsibility and would recognize the need to govern the program by the Code of Professional Ethics and professional responsibility, but I really have no authority to speak to that position, especially in the absence of a bill.

Mr. FORD. Recognizing that the American Bar Association and some State bar associations are similarly organized at the State levels, we all serve on some committee or another, or we did, some of us, before we came here, and put in some extra time because we have a demonstrated interest in particular areas of the law.

Is it fair to assume that a recommendation coming from the American Bar Association or similar professional organizations would be likely to contain the names of people who had served on such committees as would concern themselves with poverty laws, with special problems of providing legal representation to indigents, et cetera?

Mr. MESERVE. I think that would be a fairly reasonable assumption to make.

Mr. FORD. Isn't the tradition so strong in this regard that an attempt to go outside

of some people who have demonstrated interest and expertise would probably get a person like yourself in trouble with the American Bar Association?

Mr. MESERVE. I don't know. One of the bills suggested that the president of the American Bar Association, ex officio, be a member of the board of the corporation. I don't know what I can do or what restrictions there are on my power in that regard. I have not had anybody come to me and say I did a wrongful thing in appointing somebody to a committee in which they had shown no interest before, but I think the presumption would be that the people we would nominate would be people who had a demonstrated interest in the field and who had capacity and character and were well informed in the fiedl of professional ethics.

Mr. HAWKINS. There is a Democratic caucus set for 10. Some of the Members are a little edgy about wanting to attend.

If you care to stay, I will get back to you for further questions.

Mr. Benitez?

Mr. BENITEZ. I just want to commend the president of the American Bar Association on a very fine statement.

I am happy to see that this association which in the past has been identified with a more conservative outlook is joining us in this particular issue in the belief that the human rights of education, health, and legal services should be extended equally to all Americans.

Mr. MESERVE. Thank you very much. I think this is true conservatism as well as true liberalism. I think it works both ways.

Mr. HAWKINS. The Chair would like to announce that due to the speed with which we were forced into moving with, because of the strangulation and mass murder of Legal Services, we are going to appoint a subcommittee consisting of Mrs. Mink and Mr. Steiger to reconcile any conflicting views in the bill sponsored by Mr. Meeds and the bill sponsored by Mr. Steiger. The committee will hold one additional public hearing at which others will be invited to present their views.

It is the intent of the committee to draft a bill just as rapidly as possible and to present it to the full committee. We hope to get a bill on the desk of the President before the last legal service program has been extinguished. We will move rather fast. I make this as a public notice so that no one will be taken by surprise.

Mr. Ford, if you care to remain to ask some additional questions, you may.

Mr. FORD. I just thought you ought to know that there has been floating around here what heretofore has been intended to be a secret document called congressional strategy on OEO which is a coldblooded Madison Avenue-type campaign to slaughter OEO in a manner that will maximize the efforts with a minimum of political pain to the people responsible for them.

One of the interesting observations that you should be made aware of is that in laying out the specific strategy to be followed they deal with Legal Services by first recognizing that this is one that has some stickers on it and they better be careful about handling legal services because what they may get away with where the only constituency interested is poor people they cannot get away with where there is a professional body of support.

Obviously, you represent a principal part of that professional body of support.

Whoever did this is more sophisticated than I on the makeup of these committees. One of the tactics is to steer the legal services corporation into the judicial committees.

Later on it says, "* * * steering it into the judicial committees has the advantage of providing it a more conservative reception, one likely to be more sympathetic to the administration point of view. It would be easier to bring it off this time because one, the administration wants it and two, there is no EOA legislation pending to which it can be attached."

At the time this was written, the committee that is now holding the hearings had not yet been informed. Reading the rest of the document it is apparent that the intention of at least the person writing this was that all of these actions would take place and leave legal services with no place to go and Congress would be forced with either the expiration of legal services, that thereafter some form, I know not Mr. Steiger's bill, of legal service program would float to the Congress and go to the judicial committee and magically we would have a more conservative legal services program.

I call this to your attention because I had not realized that we were dealing with this kind of activity in a conservative-liberal vein.

Mr. MESERVE. I have not, either. I want to say that I am sure this committee will deal with it in a vein which is neither liberal or conservative and look to the preservation of the public good. That is our attitude.

In response to the chairman's remarks, I would like to say that we are extremely anxious to cooperate in any way we can with the operations of this subcommittee in considering any specific legislation which may be brought to our attention.

I assure you that I am not acquainted with that document to which you refer and obviously had no part in it.

Mr. FORD. Thank you.

Mr. STEIGER. One further question: There has been some speculation that the OEO administrators might consider turning the legal services program over to the American Bar Association.

Has that been raised with the ABA?

Do you have any comment?

Mr. MESERVE. That has not only been raised with the ABA, but on first impression raises my hackles. I don't imagine the ABA can run a government operation as the OEO. As far as I can now consider it, it seems to me to be a very unwise suggestion. I don't think the ABA is constituted to run a program as administrators. I think that this ought to be apart from any existing organization.

I surely hope the ABA would have an input but we are not trying to build an empire, I assure you.

Mr. STEIGER. Thank you.

Mr. HAWKINS. Again, Mr. Meserve, you have shown the high level of professional integrity of the association in presenting your views to this committee. We thank you.

Mr. MONDALE. Mr. President, I normally do not object or disagree with what the Senator from New York says. However, I wish to point out that there are not 66 amendments. There are 72.

Mr. JAVITS. Mr. President, I thank the Senator from Minnesota for his correction. I am very pleased to stand corrected.

Mr. HELMS. Mr. President, I ask unanimous consent that during the consideration of this bill, my legislative assistant, Mr. James P. Lucier, be permitted the privilege of the floor.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. HELMS. Mr. President, I would like to direct a question to the Senator from New York. Would the Senator from New York advise the Senator from North Carolina approximately on what days public hearings were held on the bill this year?

Mr. JAVITS. Mr. President, the Senator from New York advises the Senator from North Carolina that no hearings were held this year on this particular measure.

If the Senator desires it, I could give him, on his time or on my own time, the days of the hearings dealing with measures which were comparable to this one.

Mr. HELMS. That was prior to my arrival in the Senate. Does the Senator have any information as to whether either the distinguished Senator from Tennessee (Mr. BROCK) or the Senator from North Carolina was invited to the closed executive session of the subcommittee and committee at which time this measure was drafted and finally approved?

Mr. JAVITS. Mr. President, I did not hear the question.

Mr. HELMS. Mr. President, the point that the Senator from North Carolina would make is that the Senator from Tennessee (Mr. BROCK) and the Senator from North Carolina introduced in good faith a measure which we think to be superior to the one now pending before the Senate. We were given short shrift on this. Insofar as we know, speaking only for the Senator from North Carolina, we were not even given the courtesy of an invitation or consultation. No discussions were afforded our proposal when it was known that we had introduced legislation on this topic.

I wonder how it is that, if the Labor Committee bill is such a magnificent piece of legislation as has so often been said on the floor of the Senate, that it has not been considered by the Judiciary Committee.

Mr. JAVITS. Mr. President, I may respond to the Senator that as I understand it the bill to which he refers was actually referred to the Judiciary Committee. And as far as we are concerned in respect of this measure, as it was an element, and has been continuously, of the so-called anti-poverty program and also the Office of Economic Opportunity, it went to our committee.

Any other committee could at any time have sought to assert jurisdiction and could have brought the matter to the floor if it had desired to do so. Apparently there was no desire to do so.

I would appreciate it if the Senator would advise me if he or any of his colleagues requested a hearing from the Committee on Labor and Public Welfare to which the bill was not referred, as I am not personally aware of any.

Mr. HELMS. Mr. President, what was the question of the Senator?

Mr. JAVITS. Mr. President, I wonder in what form, at what time, and under what circumstances, if at all, the authors of the bill which was referred to the Judiciary Committee sought a hearing before the Committee on Labor and Public Welfare. I would be very much interested in getting that information.

Mr. HELMS. Mr. President, I will endeavor to furnish the Senator a copy of a letter written by the Senator from North Carolina in this connection on tomorrow. I do not have the letter with me on the floor at the moment. I did not anticipate that there would be this discussion.

Let me ask the Senator from New York this question: Would the Senator from

New York have any objection to this bill being considered by the Judiciary Committee?

Mr. JAVITS. Mr. President, at this stage, I would feel that the matter has been very thoroughly considered and that every committee that had any interest has had a full opportunity to dig into the matter.

The rules of procedure in the Senate protect the right of everyone. A motion could have been made to send this bill to the Judiciary Committee if that were the disposition of any Senator. A complete substitute could have been offered for the whole bill. Amendments can be offered to any part of a bill.

I do not see that anyone's rights have been invaded if a majority of the Senate is with what is considered to be the right course to take, including, by the way, a motion to table the bill. The Senate has tabled bills. And it is a very legitimate motion.

Mr. HELMS. Mr. President, the Senator from North Carolina would in no way imply that there has been any violation of the rules.

I reiterate my question, Mr. President, directed to the distinguished Senator from New York: Would he have any objection to this bill being considered by the Committee on the Judiciary? Would he personally object to the examination of the bill by the Judiciary Committee?

Mr. JAVITS. The Senator from New York believes there has been a very extensive public examination of this bill. The Senator from New York, if faced with that issue, would hope to consult with the other Senators who submitted the measure with him—Senators NELSON, TAFT, SCHWEIKER, and BEALL—at the very least, in order to ascertain what would be their attitude.

If the composite opinion was that this matter had been thoroughly enough examined, and that every committee that had any jurisdiction or thought it had jurisdiction had had an absolute access to the method by which that jurisdiction could be asserted, and failed to do so, and if the Senator were chosen by the group as the one to make the objection, he would make it. But I would not wish to do it on my own. On the other hand, if I were on the floor on my own, and the Senator should ask unanimous consent to refer this measure to the Committee on the Judiciary, I would object in order to preserve the opportunity for the consultation which I have described.

Mr. HELMS. But only for that reason?

Mr. JAVITS. Certainly only for that reason. But that is no implication as to my own attitude. I have already stated my attitude: I believe the matter has been very thoroughly considered, and is ready for action.

Mr. MONDALE. Mr. President, will the Senator yield? As the Senator from New York knows——

Mr. JAVITS. I might say that the Senator from North Carolina has the floor.

Mr. MONDALE. Will the Senator from North Carolina yield?

Mr. HELMS. Let me finish this line of questioning, if I may.

I still do not fully understand the position of the distinguished Senator from New York, and I am sure he will forgive me for not being able to hack through the verbiage to which I acknowledge that I have contributed.

Does the Senator feel that this bill would pass the muster of the Committee on the Judiciary?

Mr. JAVITS. I have no idea. I just would be guessing. I really do not know.

Mr. HELMS. Would not the Senator be willing to resolve any doubt about it, since there is considerable doubt about this measure, certainly on my part and on the part of others? Would not the Senator feel that inasmuch as there have been no hearings this year, and there are several freshman Senators who have come to this body as of last January—I know the Senator does not want those of us who are new in the Senate to feel that we have been shut out. We were given no opportunity to sit in on the construction of this measure. I am perfectly willing to take the Senator's word about his own judgment as to the worthiness of this bill. I know he is sincere. It may be that he is sincerely wrong; I will not pass judgment on that. But I still say that this is unusual procedure, for the Senate to deny an opportunity, at the time of the drafting of a bill, to provide input. That is what the Senator from North Carolina takes exception to.

Mr. JAVITS. Mr. President, I have no desire to instruct my colleague in the way in which legislation is handled in the Senate, but I know of no situation—

Mr. HELMS. My distinguished colleague does not need to.

Mr. JAVITS. I know of no situation in which, if Senators feel they would like to appear before a committee, testify before a committee, and present whatever ideas they may have to a committee, including my Committee on Labor and Public Welfare, that they would be denied that right, or have been denied that right. I would like to know about that, if the Senator claims that in this case. But to backtrack through the whole process by which legislation comes to the floor, especially when no rights whatever have been lost—the Senator has every right to propose anything he wishes on this bill. Any committee has the right to move to send this bill to that committee. No one's rights have been shut off at all.

Mr. HELMS. That is true. I would say to the Senator, that is precisely why there are—how many amendments, 76?

Mr. JAVITS. Seventy-odd.

Mr. HELMS. Seventy-odd amendments. We are trying to bring to this bill a state of perfection which we think does not exist at this time. And yet what did I just hear from our distingnuished colleague from Minnesota? That we are filibustering by amendment. That is simply not so, Mr. President. We are exercising a legitimate process, the only process left to us.

The Senator's point would be absolutely valid if there had been public hearings on this bill. But there were not. And I frankly wonder why there were not public hearings.

Mr. JAVITS. May I point out to my colleague that in the last two Congresses, hearings were held on the legal services program.

Mr. HELMS. But I was not here.

Mr. JAVITS. I understand, sir. But you were not here when lots of laws became law that you are subject to, just as I am. We have spent billions and billions of dollars of public money while the Senator was not here. We engaged in wars. Before I was here, too. You simply cannot reverse the tide of history.

Mr. HELMS. I believe the Senator is straying from the subject, but do not let me interrupt him.

Mr. JAVITS. I think I would rather let the Senator speak than I. I think I have answered the question. The fact that the Senator was not here, it seems to me, is not directly relevant to the situation, as he has lost no rights of any kind.

Mr. HELMS. I hope my distinguished colleague will not misunderstand me, because I am sure he knows the affection in which I hold him.

Mr. JAVITS. It is reciprocated.

Mr. HELMS. But could the Senator tell me why this was done in executive session?

Mr. JAVITS. As far as I know, this bill was not marked up in executive session. But even if it was, the important point here was that we had discussed and considered this bill for over 2 years, and that fare has had jurisdiction over anti- we had had a bill vetoed which had much of this in it.

Finally we got to the point where the administration wanted the bill out, and we moved it. This was something which, as I say, was one of those almost classic examples of trying to get together with the administration on a bill, at least with respect to passing his bill in the Senate.

But again, whether the administration liked the bill or not—and apparently the administration certainly is willing to see this one at least go to conference—it does not cut off any Member's rights. The Senator has every right to push any amendment he wishes. Even cloture will not cut him off. He has a number of colleagues. The colleagues together have time in which to debate every amendment within the time which the rule gives them, and if there are enough Senators who are enlisted in the fight, they can handle 67 amendments. Every Senator has an hour. We have found before that even the administration of the cloture rule could take as much as a week, if Senators wished to use their time and if there is adequate support for the effort to amend the bill.

But in view of the fact that we are at the end of the session, that this is a measure which has, at long last, come into some kind of balance where it can become law, and the fact that it has been discussed and considered and looked into by most eminent authorities—I have just inserted in the RECORD the statement of the former President of the American Bar Association, regarding the necessity for such legislation and my own bar association in New York and many others in

the country have passed on the matter—it is late, and my friends feel that the time has come to act.

Mr. HELMS. I would simply also——

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

Mr. HELMS. Just 1 more minute, and then I shall be through, and you gentlemen can have it.

There was just one question remaining in my mind. I keep hearing about the American Bar Association. As far as I know, the American Bar Association was not elected to the United States Senate. The Senator from New York was, the Senator from California was, and the Senator from North Carolina was, but the role of the American Bar Association is purely advisory as far as I am concerned.

They may be right upon occasion, and they may be wrong upon occasion. But if they are so interested in this legislation, why did it not go to the Committee on the Judiciary? Why was it sent to the Labor and Public Welfare Committee where it was acted upon?

Mr. JAVITS. I hope the Senator will forgive me if I—I think I have almost exhausted the subject, but I have the greatest respect for the Senator and, if he wishes, I will answer the question.

The Economic Opportunity Act, the so-called antipoverty program, has been in the constant jurisdiction of the Committee on Labor and Public Welfare from the beginning. This goes back almost a decade. One of the elements of the Economic Opportunity Act is the legal services program. Hence, when the matter involved amendments with respect to the extension of the Economic Opportunity Act of 1964, the amendments have invariably been referred to the Committee on Labor and Public Welfare. That is the reason for this measure and the reason why the committee reported the bill.

I repeat, had any other committee sought to assert jurisdiction over the measure, the methodologies of the Senate which are practiced, the procedure would have permitted that committee to seek to have it referred. But that did not happen in this case.

That is the best information I can give the Senator.

Mr. HELMS. I thank the Senator from New York and, let me say, I have enjoyed the discussion.

Mr. JAVITS. I thank my colleague.

Mr. CRANSTON. Mr. President, first, it is a great pleasure for me to have been recognized by the Vice President of the United States. It is the first time it has happened in my experience in the Senate. When I was brand new here, I felt that I should not speak during the brief time the Senator from Minnesota (Mr. HUMPHREY) was in the chair as Vice President. Then, his successor was never here except when close votes were expected, so I never had the opportunity to seek recognition when he was in the chair. Consequently, it is indeed a great pleasure to be recognized by a real genuine Vice President of the United States.

Mr. President, I should like to say on the matter of the Judiciary Committee and its relationship to a role on the legal services bill, as the Senator from New York has said, since passage of the Economic Opportunity Act in 1964, the Committee on Labor and Public Welfare has had jurisdiction over anti poverty programs, including the legal services program. The Judiciary Committee has never had jurisdiction.

A recommital motion was made last year, when legal services corporation legislation was on the floor, to refer the bill to the Committee on the Judiciary and it was defeated by an overwhelming vote.

The chairman of the subcommittee that would be most likely to have jurisdiction, if this matter were to be referred to that committee is my colleague from California Mr. TUNNEY. He is chairman of the Subcommittee on Representation of Citizen Interests. I have discussed this with him, and he has made it plain that he does not wish this matter referred to that committee and, hence, to his subcommittee. It is well recognized that the Committee on Labor and Public Welfare has this jurisdiction.

It so happens that my colleague from California wrote a letter to the Senator from North Carolina (Mr. HELMS) in response to a query from him about the Judiciary Committee and its possible interest in this measure. Mr. TUNNEY there is no desire by that committee to indicated in his letter of July 6 that have that matter before it. He did state:

> The subcommittee shall review carefully all existing Federal legal services programs to determine whether or not they are adequately serving the needs of the poor.

The committee report on S. 2686 states:

> The bill reported by the Committee on Labor and Public Welfare represents a bipartisan effort, based upon the bill submitted to Congress by President Nixon on May 15, 1973.

A majority of this body, a majority on this side of the aisle, a majority on that side of the aisle, and the administration, do not want this measure recommitted. They want it passed.

All 16 members of the Labor and Public Welfare Committee, Mr. President, support the bill and want it speedily passed.

I had hoped again that tonight we would have the opportunity to discuss this bill on its merits, the arguments for it, and the arguments, if any, against it, but again there is no desire, apparently, by those seeking to obstruct it, to speak on it.

I note that no one is in the Chamber right now to speak against the measure. Obviously, we have simply run into a filibuster, so we have taken the route normally available and often taken when the Senate faces a filibuster, and the majority and minority leaders have filed a cloture motion.

Mr. President, I yield the floor.

QUORUM CALL

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

The VICE PRESIDENT. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

The VICE PRESIDENT. Without objection, it is so ordered.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, tomorrow the Senate will convene at 9:45 a.m.

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 and in the order stated: MCGOVERN, BELLMON, SAXBE, HANSEN; after which the following Senators will be recognized, each for not to exceed 10 minutes, and in order stated: MANSFIELD and GRIFFIN.

At the conclusion of the aforementioned orders, the Senate will proceed to the consideration of routine morning business for not to exceed 15 minutes, with statements limited therein to 3 minutes; at the conclusion of which, under the order previously entered, the Senate will proceed to the consideration of the Special Prosecutor bill.

On tomorrow there will be yea-and-nay votes on motions, amendments, and final passage, hopefully, of the supplemental appropriations bill.

I yield the floor, Mr. President.

ADJOURNMENT TO 9:45 A.M.

Mr. CRANSTON. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 9:45 a.m. tomorrow.

The motion was agreed to; and, at 8:05 p.m., the Senate adjourned until tomorrow, Wednesday, December 12, 1973, at 9:45 a.m.

NOMINATIONS

Executive nominations received by the Senate December 11, 1973:

NATIONAL LIBRARY OF MEDICINE

The following-named persons to be Members of the Board of Regents, National Library of Medicine, Public Health Service, for a term of 4 years from August 3, 1973:

Joseph Francis Volker, of Alabama, vice Jack Malcolm Layton, term expired.

John William Kauffman, of New Jersey, vice William O. Baker, term expired.

HOUSE OF REPRESENTATIVES—*Tuesday, December 11, 1973*

The House met at 10 o'clock a.m.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

The Lord will give grace and glory; no good thing will He withhold from them that walk uprightly.—Psalms 84: 11.

O Lord, our God, unto whom all hearts are open, all desires known and from whom no secrets are hid, bless us with