to fail, livestock to perish by the millions, and people to die by the thousands. The six nations have now exhausted all of their grain reserves and another dry year has caused the failure of 80% of their crops. The result is that a 1½ million ton shortage of grain is expected in the six Sahelian nations this year. Thus, while the 250,000 tons of grain we have pledged for 1974 is encouraging, it falls far short of what is required next year. *We call upon our Government, therefore, to convene within the next three months an international conference of the developed nations of the world* to plan how they shall meet together the emergency needs of the Sahelian nations for food, health, and medical care this year with particular attention to transportation and storage facilities problems.

II. MEDIUM TO LONG RANGE DEVELOPMENT NEEDS

If we are to avoid being faced with a continued crisis next year, the U. S. and the international community must step up immediately the medium to long term development aid required to make these countries self sufficient. It can be done, the people of the Sahel Zone want to do it. Their leaders everywhere told us, "We have the manpower, the rich soil, and the underground water resources; we know where the water is; all we need is the capital to purchase the technology to bring it up and make the dry land bloom."

We saw with our own eyes the kinds of irrigation, dam building, well digging, animal husbandry, and manpower training projects which, if sufficiently expanded, could not only put these nations on their feet but also make them a blessing to the rest of the world. Without a "Marshall Plan" type effort by the Developed Nations of the world, this can never come to pass.

Thus, while the U. S. has made a creditable effort to meet the emergency, we were embarrassed to note that our government has not contributed a cent to the multi-lateral institution formed to meet the medium to long range development needs of the Sahel, the African Development Fund of the African Development Bank.

We return, therefore, to urge our President and our government to add to its proposal for aid to the I.D.A. and the Asian Development bank, the sum of $60 million once pledged by President Johnson to the special fund of the African development bank for use in meeting the Sahel Crisis. Our discussions with President Diori of Niger, Mr. Dakoure of the Interstate Committee, and Mr. Labidi of the African Development Bank, assure us that many of these medium to long range projects are ready for funding, awaiting only the kind of leadership we in this country should give. Our failure to share in the funding of the African Development Bank is a continuing source of embarrassment to our diplomats in Africa that this crisis affords us an opportunity to eliminate.

III. RENEWED AND EXPANDED EFFORT BY PRIVATE GROUPS AND INDIVIDUALS IN AMERICA

Throughout our tour, we encountered a note of genuine appreciation for the contributions of Americans to the drought relief effort. The contributions of such groups in the private sector as Africare, the Catholic Relief Service, Church World Services, Care, Rains, The International Red Cross, Push, the United Auto Workers, American Friends Service Committee, and others have not gone unnoticed or unappreciated. The work of our government agencies: The Peace Corps; Aid (Agency for International Development); and in some instances our Air Force, have all created for us a climate of goodwill in Africa.

The deepening nature of the crisis in 1974, however, calls for a redoubling of our efforts in the private sector while we step up our government aid. *We announce, third, therefore, that it is our intention to convene with Africare a national conference on the Sahelian drought.* We shall ask the leaders of our religious bodies in America, the voluntary agencies which are at work in the Sahel, civic, fraternal, social, educational and civil rights groups that have an interest in the problem to come to Washington in the near future for a day or more of analysis of the siutation and the selection, from a number of proposals of specific projects to fund in the six Sahelian nations to alleviate the crisis.

IV. "SUBDUE THE EARTH"—TIME FOR MAN TO FIGHT

So God created man in his own image . . . and said unto them. Be fruitful, and multiply and replenish the earth and subdue it.—Genesis 1: 27–28.

In contrast to sentiments expressed by some of our American officials stationed in the Sabel, we were most impressed with the boundless hope that the African people and their leaders have in our ability to win the fight against the desert. They know from their "oral tradition" what we know from our geology, archelogy and anthropology: namely, that the Sahelian Zone like the Sahara Desert was once a flourishing forest, and that over thousands of years man has retreated before a growing desert that creeps southward at a rate of thirty miles a year today.

The courage and determination of the Sahelian people are saying to mankind, armed as we are with modern technology, Let us stand and fight. Let us reclaim the vast regions and rich land lost to nature even as we have defied gravity to reach the moon.

The population explosion and the worldwide commodity shortage demand that we as Americans join with them in this historic effort to reclaim the Good Earth.

Signed:

The Reverend Walter E. Fauntroy, Member of Congress; Dr. L. Venchael Booth; Bishop Alfred G. Dunston; Mr. Richard Hightower; Bishop Harold R. Perry; Bishop H. Thomas Primm; Bishop Ruben L. Speaks; and Bishop Smallwood E. Williams.

SENATE—*Friday, December 14, 1973*

The Senate met at 10 a.m. and was called to order by Hon. JAMES ABOUREZK, a Senator from the State of South Dakota.

PRAYER

The Reverend Monsignor Patrick J. Ryan, major general, U.S. Army (retired), former Chief of Chaplains, U.S. Army, Washington, D.C., offered the following prayer:

O God, You have fulfilled our Founding Fathers' faith in Your divine providence by making and keeping us a land rich in the abundance of Your creation.

Freedom, justice, and universal brotherhood are for us our precious heritage, but, for countless men in our midst and all over the world, they are still only a dream. May we be faithful to share this heritage with the living and transmit it to a people still unborn.

This we ask through our Lord Jesus Christ, Your Son, who lives and reigns with You in the unity of the Holy Spirit, world without end. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The second assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., December 14, 1973.

To the Senate:

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

JAMES O. EASTLAND,
President pro tempore.

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

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the House had disagreed to the amendments of the Senate to the bill (H.R. 11575) making appropriations for the Department of Defense for the fiscal year ending June 30, 1974, and for other purposes, agreed to the conference requested by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. MAHON, Mr. SIKES, Mr. FLOOD, Mr. ADDABBO, Mr. MCFALL, Mr. FLYNT, Mr. GIAIMO, Mr. WHITTEN, Mr. MINSHALL of Ohio, Mr. DAVIS of Wisconsin, Mr. WYMAN, Mr. EDWARDS of Alabama, and Mr. CEDERBERG were appointed managers of the conference on the part of the House.

The message also announced that the House had disagreed to the amendments of the Senate to the 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, agreed to the conference requested by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. STAGGERS, Mr. JARMAN, Mr. DINGELL, Mr. ADAMS, Mr. PODELL, Mr. METCALFE, Mr. HARVEY, Mr. KUYKENDALL, Mr. SKUBITZ, and Mr. SHOUP were appointed managers of the conference on the part of the House.

The message further announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 11324) to provide for daylight saving time on a year-round basis for a 2-year trial period, and to require the Federal Communications Commission to permit certain daytime broadcast stations to operate before local sunrise.

ENROLLED BILL SIGNED

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

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

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.

The enrolled bill was subsequently signed by the Vice President.

THE JOURNAL

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

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the first two nominations on the Executive Calendar.

There being no objection, the Senate proceeded to the consideration of executive business.

The ACTING PRESIDENT pro tempport. The first two nominations on the Executive Calendar will be stated.

DEPARTMENT OF DEFENSE

The second assistant legislative clerk read the nomination of James W. Plummer, of California, to be Under Secretary of the Air Force.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

SECURITIES INVESTOR PROTECTION CORPORATION

The second assistant legislative clerk read the nomination of Ralph Dwight DeNunzio, of Connecticut, to be a Director of the Securities Investor Protection Corporation.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

Mr. MANSFIELD. Mr. President, that concludes the call of the Executive Calendar. The next nomination is for the Department of Justice, WILLIAM B. SAXBE, of Ohio, to be Attorney General. To repeat, that will be taken up some time Monday afternoon.

LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate resume the consideration of legislative business.

There being no objection, the Senate resumed the consideration of legislative business.

THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the calendar, beginning with No. 593, H.R. 6186.

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

TAXABILITY OF INSURANCE AND BANK HOLDING COMPANY DIVIDENDS

The Senate proceeded to consider the bill (H.R. 6186) to amend the District of Columbia Revenue Act of 1947 regarding taxability of dividends received by a corporation from insurance companies, banks, and other savings institutions which had been reported from the Committee on the District of Columbia with amendments: on page 1, line 8, after the word "this", strike out "article" and insert "subchapter"; on page 2, line 7, after the word "this", strike out "article" and insert "subchapter"; and on page 3, after line 2, insert a new section, as follows:

The amendments were agreed to.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

SEC. 3. (a) Section 7324(d)(4) of title 5, United States Code, is amended to read as follows:

"(4) the Mayor of the District of Columbia, the members of the Council of the District of Columbia, or the Chairman of the Council of the District of Columbia, as established by the District of Columbia Self Government and Governmental Reorganization Act; or".

(b) Notwithstanding any other provision of law, the provisions of section 7324(a)(2) of title 5, United States Code, shall not be applicable to the Commissioner of the District of Columbia or the members of the District of Columbia Council (including the Chairman and Vice Chairman), as established by Reorganization Plan Numbered 3 of 1967.

CREDIT ELIGIBILITY FOR PUBLIC UTILITY COOPERATIVES

The Senate proceeded to consider the bill (S. 2150) to amend Public Law 92–181 (85 Stat. 583) relating to credit eligibility for public utility cooperatives serving producers of food, fiber, and other agricultural products which had been reported from the Committee on Agriculture and Forestry with an amendment to strike out all after the enacting clause and insert:

That section 3.8(d) of Public Law 92–181 (85 Stat. 583) is amended by inserting after "80 per centum" the following: "(60 per centum in the case of public utility cooperatives)".

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended, so as to read: "A bill to amend Public Law 92–181 (85 Stat. 583) relating to credit eligibility for public utility cooperatives serving producers of food, fiber, and other agricultural products."

BILL PASSED OVER

The Senate proceeded to consider the bill (H.R. 11771) making appropriations for foreign assistance and related programs for the fiscal year ending June 30, 1974, and for other purposes was announced as next in order.

Mr. MANSFIELD. Over.

The ACTING PRESIDENT pro tempore. The bill will be passed over.

NEW ALLOY FOR PENNY

The bill (S. 2795) to authorize the Secretary of the Treasury to change the alloy and weight of the 1-cent piece, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3515 of the Revised Statutes, as amended (31 U.S.C. 317), is further amended by designating the existing section as subsection (a) and by adding a new subsection (b) to read as follows:

"(b) Whenever the Secretary of the Treasury determines that the use of copper in the 1 cent piece is no longer practicable, he may change the alloy of the 1 cent piece to not less than 96 per centum of aluminum and such other metals as he shall determine. The 1 cent piece authorized by this subsection shall have such weight as may be prescribed by the Secretary."

ASSISTANT SECRETARY FOR INDIAN AFFAIRS

The Senate proceeded to consider the bill (H.R. 620) to establish within the Department of the Interior an additional Assistant Secretary of the Interior for Indian Affairs, and for other purposes which had been reported from the Committee on Interior and Insular Affairs with an amendment to strike out all after the enacting clause and insert:

That there shall be in the Department of the Interior, in addition to the Assistant Secretary now provided for by law, one additional Assistant Secretary of the Interior for Indian Affairs, who shall be appointed by the President by and with the advice and consent of the Senate, who shall be responsible for such duties as the Secretary of the Interior shall prescribe with respect to the conduct of Indian Affairs, and who shall receive compensation at the rate now or hereafter prescribed by law for Assistant Secretaries of the Interior.

SEC. 2. Section 5315 of title 5 of the United States Code is amended by striking out "(6)" at the end of item (18) and by inserting in lieu thereof "(7)".

SEC. 3. Section 462, Revised Statutes, as amended and supplemented (25 U.S.C. 1), and paragraph (45) of section 5316 of title 5 of the United States Code, are repealed: *Provided,* That this section shall not take effect until an Assistant Secretary of the Interior for Indian Affairs has been confirmed and takes the oath of office.

SEC. 4. Subsection 7(c) of the Alaska Native Claims Settlement Act (85 Stat. 688) is hereby amended by deleting that subsection in its entirety and inserting in lieu thereof a new subsection as follows:

"(c) The Secretary shall establish a thirteenth region for the benefit of Natives who are nonresidents of Alaska who elected to be enrolled therein, and they may establish a regional corporation pursuant to this Act."

SEC. 5. The Alaska Native Claims Settlement Act (85 Stat. 688) is hereby further

amended by inserting at the end thereof a new section 28 as follows:

"SEC. 28. (a) A Native who elected to be enrolled in a thirteenth region, pursuant to subsection 5(c) shall be so enrolled, notwithstanding the fact that a majority of the Natives eligible to elect enrollment in that region may not have so elected.

"(b) Notwithstanding any provision of subsection 5(a) to the contrary, the Secretary shall, on or before December 17, 1973, or pursuant to subsection (f) of this section, if applicable, certify a temporary roll of all Natives eligible for benefits under this Act, which temporary roll shall be used as a basis for initial distribution of funds pursuant to subsection 6(c). Such initial distribution shall be made immediately upon certification of the temporary roll, anything to the contrary in subsection 6(c) or any other provision of this Act notwithstanding. When the final roll is certified, the Secretary shall take such steps as may be necessary to make appropriate adjustments in the distribution of funds pursuant to this Act. The final roll shall incorporate changes in enrollment pursuant to this subsection as well as other changes made by the Secretary in accordance with the Act.

"Any Native who, on or before December 1, 1973, had filed with the Secretary or his delegate any application to amend his enrolled application regarding his election whether or not to be enrolled in the thirteenth region shall, within not less than sixty nor more than ninety days of the enactment of this section, inform the Secretary whether or not he wishes to be enrolled in the thirteenth region. Any Native who so informs the Secretary shall be enrolled according to his preference as indicated in the information so submitted to the Secretary. Any Native who fails so to inform the Secretary shall be enrolled according to the information provided in that Native's original enrollment application. The Secretary shall take such action as may be necessary to insure that every Native affected by this section is aware of his option to change his enrollment decision. Within one hundred and twenty days of the enactment of this section the Secretary shall prepare and certify a final roll which when certified shall supersede the temporary roll authorized by this subsection.

"(c) Within thirty days of the certification of the final roll pursuant to this section, any bona fide organization representing nonresident Natives shall submit to the Secretary the names of not more than five Natives who have elected to be enrolled in the thirteenth region as nominees for the positions of the five incorporators of the thirteenth regional corporation. Not less than thirty days nor more than sixty days after such certification, the Secretary shall mail to all eligible voters ballots containing the names of all nominees and their associational affiliations for the purpose of an election by mail of the five incorporators who shall serve as the initial directors of the thirteenth regional corporation. Eligible voters in the election shall be only Natives eighteen years of age or older on the date of election of incorporators pursuant to this subsection who are enrolled in the thirteenth region. Valid ballots shall be only those ballots mailed to the Secretary or his designee not later than ninety days after such certification. The five nominees for whom the most votes are cast shall be elected incorporators of the thirteenth regional corporation and shall promptly take all steps authorized by this Act for such incorporators. All rules, regulations, and information relating to the election shall be transmitted directly to all known organizations representing nonresident Natives, the twelve regional corporations representing resident Natives, and all eligible voters.

"No moneys distributed or to be distributed pursuant to this Act may be expended or obligated by any Native, Native corporation, Native organization, representative thereof, or adviser thereto, to assist in, communicate on, or otherwise influence the election.

"(d) The articles of incorporation of the thirteenth regional corporation shall be submitted to the Secretary for approval in accordance with subsection 7(c) within eighteen months of the enactment of this section.

"(e) Except as specifically provided herein, nothing in this section shall be construed to alter or amend any of the provisions of this Act.

"(f) In the event the Secretary of the Interior, prior to the enactment of this subsection, has certified a roll pursuant to subsection 5(a) of this Act, such certification shall be rescinded and a new temporary roll certified within ten days of the enactment of this subsection. Any distribution of funds pursuant to subsection 6(c) of this Act made by the Secretary or his delegate on the basis of the rescinded roll shall not be affected by this subsection.

"The Secretary shall make any necessary adjustments in future distributions to accommodate changes in the temporary roll reflected in the final roll in order to insure a final distribution of such money in accordance with the final roll. The Secretary is authorized to make payment from the Alaska Native Fund to the thirteenth regional corporation, once established, during the period prior to the next regularly scheduled distribution from the fund pursuant to this Act. Such payment shall be in the form of an advance on such corporation's adjusted share of such regularly scheduled distribution."

SEC. 6. The Alaska Native Claims Settlement Act (85 Stat. 688) is further amended by adding a new section 29, to read as follows:

"SEC. 29. Any corporation organized pursuant to this Act shall through December 31, 1976, be exempt from the provisions of the Investment Company Act of 1940 (54 Stat. 789), as amended. Nothing in this section shall, however, be construed to mean that any such corporation shall or shall not after such date be subject to the provisions of the Investment Company Act of 1940."

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.

Mr. MANSFIELD subsequently said: Mr. President, the Senate earlier today passed H.R. 620. I move to reconsider the vote by which the bill was passed, together with the third reading thereof.

The motion was agreed to.

Mr. MANSFIELD. I ask unanimous consent that the bill be amended by certain technical amendments, which I send to the desk and ask unanimous consent that they be considered en bloc.

The VICE PRESIDENT. Without objection it is so ordered. The amendments will be stated.

The legislative clerk read as follows:

On page 3, line 18, strike the comma.

On page 3, line 24, strike "17" and insert in lieu thereof "31".

On page 4, line 11, strike "the Act" and insert in lieu thereof "this Act".

On page 4, line 24, strike "may be" and insert in lieu thereof "he may deem".

On page 6, line 19, strike "subsection" and insert in lieu thereof "section".

On page 6, line 22, strike "subsection" and insert in lieu thereof "section".

On page 7, line 2, insert "of funds pursuant to subsection 6(c)" between "distributions" and "to".

On page 7, line 4, strike "money" and insert in lieu thereof "funds"

On page 7, line 5, strike "payment" and insert in lieu thereof "payments".

On page 7, line 9, strike "payment" and insert in lieu thereof "payments".

On page 7, line 9, strike "an advance" and insert in lieu thereof "advances".

On page 6, line 18, strike "of the Interior".

The amendments were agreed to.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill (H.R. 620) was read the third time, and passed.

Mr. MANSFIELD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BIBLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

BILL PASSED OVER

The bill (H.R. 11372) to conserve energy on the Nation's highways was announced as next in order.

Mr. MANSFIELD. Over.

The ACTING PRESIDENT pro tempore. The bill will be passed over.

CECIL M. HARDEN LAKE

The bill (S. 1561) to provide that Mansfield Lake, Ind., shall be known as "Cecil M. Harden Lake" was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Mansfield Lake, Indiana, created under authority of the Act entitled "An Act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes", approved June 28, 1938 (52 Stat. 1215, as amended and supplemented) shall be known and designated hereafter as "Cecil M. Harden Lake". Any law, regulation, map, document, or record of the United States in which such lake is referred to shall be held to refer to such lake as Cecil M. Harden Lake.

W. TURNER WALLIS PUMPING STATION, FLA.

The bill (S. 2509) to name structure S–5A of the Central and Southern Florida Flood Control District, located in Palm Beach County, Fla., as the "W. Turner Wallis Pumping Station" in memory of the late W. Turner Wallis, the first secretary-treasurer and chief engineer for the Central and Southern Florida Flood Control District was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That structure S–5A of the Central and Southern Florida Flood Control District, located in Palm Beach County, Florida, shall be named the "W. Turner Wallis Pumping Station" in memory of the late W. Turner Wallis, the first secretary-treasurer and chief engineer of the Central and Southern Florida Flood Control District.

SEC. 2. Any law, rule, regulation, document, map, or record of the United States in which

reference is made to structure S–5A referred to in the first section of this Act shall be considered to be a reference to that structure by the name designated for the structure in the first section of this Act.

JAMES G. FULTON FLOOD PROTECTION PROJECT

The Senate proceeded to consider the bill (S. 2535) to designate the Chartiers Creek flood protection project in Allegheny County, Pa., as the "James G. Fulton flood protection project."

S. 2535 A TRIBUTE TO JAMES G. FULTON

Mr. JAVITS. Mr. President, I am so pleased that Congress is recognizing by this bill a fine legislator, a highly patriotic American, and a very personal friend of mine, Jim Fulton. I served with Jim Fulton in the House of Representatives from 1947 to 1954. I shared his life as he shared mine, including attendance at my wedding in 1947, and through all the political campaigns and vicissitudes of life, he had been a constant friend to me, to Mrs. Javits, and to our children. I know as well as anyone the unbelievable dedication and warm humanity he brought to his position as a representative in the Congress. He literally loved in a most personal sense the men, women and children of his district and served them with the devotion of a friend and father as well as that of a Congressman. It is good that the Congress shows by this bill that it does not forget its own.

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

S. 2535

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the portion of the project for flood protection on Chartiers Creek in Allegheny County, Pennsylvania, authorized by section 204 of the Flood Control Act of 1965 (Public Law 89–298), is hereby designated as the "James G. Fulton flood protection project". Any reference to such project in any law, regulation, map, document, record, or other paper of the United States shall be held to be a reference to the James G. Fulton flood protection project.

THE H. V. EASTMAN LAKE

The bill (H.R. 655) to provide for the naming of the lake to be created by the Buchanan Dam, Chowchilla River, Calif., was considered, ordered to a third reading, the third time, and passed.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the lake to be created by the Buchanan Dam on the Chowchilla River, California, authorized by section 203 of the Flood Control Act of 1962, shall be known and designated as the "H. V. Eastman Lake". Any law, regulation, document, or record of the United States in which such lake is designated or referred to shall be held to refer to such lake as the "H. V. Eastman Lake".

Mr. MANSFIELD. That concludes the call of the calendar.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Does the Senator from Michigan (Mr. GRIFFIN) desire recognition?

Mr. GRIFFIN. No, Mr. President.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Texas (Mr. BENTSEN) is recognized for not to exceed 15 minutes.

THE ENERGY CRISIS

Mr. BENTSEN. Mr. President, in the last few months, many words have been spoken about the energy crisis, and some affirmative action has been taken.

Congress has passed mandatory fuel allocation legislation; the Senate has passed legislation for energy conservation and for research and development.

The President has twice addressed the Nation, and he has called for a new Federal Energy Administration to coordinate energy related programs.

All of these steps are essential. And, I have supported them.

Yet, Mr. President, we must recognize that the energy crisis will place great demands on the American people, on American private enterprise, and upon the governing institutions—both the Congress and the Executive of this country.

To emerge from the tangled thicket of the energy crisis will leave many cuts and scratches on the economic and social structure of this Nation. None of the parts will come through unscathed; there will be heated controversy at almost every turn.

And, there will be sacrifices required.

The American people in my opinion will make these sacrifices if they know that the sacrifice is fair and even-handed—borne equitably by private citizens and private enterprises alike.

It is in the American nature to rise to the occasion when courage is demanded to solve a problem. Our people, contrary to the assertions of some, have not grown too soft to respond to a crisis.

But, the sacrifices essential to overcoming the energy crisis will not be made if the American people believe that any one sector of our economy is getting a special deal or if the government acts to favor one group or enterprise over another without adequate justification.

The American people expect their Government to be fair and their leaders to act responsibly, to propose realistic programs, and to administer those programs effectively.

They also expect their political leaders to propose new policies when old ones have failed, and they are entitled to no less than that.

Accordingly, the time has come to ask: Are the energy policies and programs of the past adequate to meet the problems of today and the demands of tomorrow?

The time has come to ask: Will the oil industry make sacrifices equal to those asked of the private American citizen in this time of trial?

And, the time has come to ask: If policy is to be changed, what changes will assure a more even sacrifice while still accomplishing our goal of greater domestic energy independence?

Today, I am making two major proposals that I believe will promote that kind of change.

First, I will introduce legislation to increase dramatically the taxpayer's share of the dollars from oil and gas produced by private oil companies from Federal lands.

Second, I will introduce legislation limiting the use of the percentage depletion allowance to oil and gas produced solely in North America—in effect limiting the depletion allowance to areas where there is less chance of interruption of deliveries.

Mr. President, the United States simply must become energy independent. It is crucial to our security and crucial to the continued well-being of our people.

Whatever the eventual outcome of the Middle East situation, it should have taught us clearly and unmistakably that we must not allow the lifeblood of the American economy to be subject to the whim of any foreign nation. We must not bend to economic blackmail.

One day, imports from the Arab countries will probably resume. In the meantime, we have been taught a lesson; now let us learn that lesson.

Mr. President, our country is blessed with the resources to attain independence. Now, we must have the wisdom to apply the tremendous private and public investment required to achieve that goal.

I believe our Federal offshore leasing policies should have major revision with three objectives in mind.

We must have a more rapid development of offshore leases than we do now. We must have more competition within the oil industry—allowing smaller producers to compete with larger companies—for those leases. And, we must assure a greater return from the oil companies to the American citizens for this right to make private profits from public lands.

I believe that these objectives are consistent with each other, fair to the oil industry and the American people, and in the best interest of our Nation.

The fact is, Mr. President, that the oil and natural gas located under Federal land belong to all the American people, and I believe that our citizens have a right to obtain the full measure of its value.

Yet, for too long, that has not been public policy.

For, in the granting of this valuable right to produce oil and gas from public lands, the American taxpayer has not come off as well as taxpayers of foreign lands—we have settled for the initial payment from the oil companies in the form of high bonuses for the right to drill while we have allowed the companies to keep too much of the revenues from the oil and gas obtained from these public lands. We should deemphasize the bonus payments and have a much larger participation in the oil production.

My proposal would result in a better deal for the American taxpayer and American consumer by assuring a greater share of the revenues for the taxpayer and assuring more petroleum for independent refineries and independent marketers.

Under present law, the Federal Government places tracts of federally owned offshore lands up for lease so that private companies can develop the oil and gas production. The oil companies bid for the right to drill. Once the bids are decided the Government awards the tracts, and the Government gets the bonus payments bid by the oil companies.

All of this takes a great deal of "front" money to pay the cost of the bonus. Often, only large companies can accumulate the capital necessary to allow a bid on these lands. Too often, the smaller producer is simply eliminated from the market.

In addition to the bonus payments, the U.S. taxpayer presently receives 16⅔ percent of the revenue derived from the sale of oil and gas produced from offshore public lands. The total royalties from all present leases add about $300 million annually to the Federal Treasury.

I propose that on all future leases, the U.S. taxpayer presently receives 16⅔ percent to 65 percent of the oil and gas produced, if and when the initial investment is recovered. And, furthermore, I believe that the percentage should be increased over the present rate even before the oil companies' costs are recovered.

Under the sharing I propose and at today's higher oil prices the Federal Government would eventually expect to receive $300 million a year in oil and gas for just the first of three lease sales scheduled next year.

The proposal is similar to the arrangements the major oil companies now have with many foreign countries.

Surely, the American taxpayers are entitled to the same share of production from the lands they own as the people of Indonesia or Nigeria or the Philippines are now receiving from American oil companies.

That is not too much to ask from the American petroleum industry. I believe it makes good energy sense and good economic sense.

Mr. President, we have every reason to believe that Federal lands on the Outer Continental Shelf contain a greater store of petroleum resources. The National Petroleum Council estimates that over 80 percent of oil and gas on these lands have yet to be discovered. The council estimates 112 billion barrels of oil and 214 trillion cubic feet of natural gas remain to be found on these federal lands. If the American citizens' share of this production were increased to the level I have suggested, the total Federal share from these lands would be increased over $100 billion. This is a conservative figure based on today's prices and the level of recovery possible under present technology. I would expect that the Federal share would exceed that amount.

Giving the taxpayer a larger share of the barrels of oil produced should result in lower initial bids for the leases. But, this in itself can be a plus because such a change would make it possible for more smaller producers to participate in these leases.

The present system, has given the major companies an advantage over smaller independent drilling companies which cannot raise the required capital for the large bid outlays.

My proposal would make it easier for more producers to enter the market. It would insure that these offshore lands would not be the private preserve of only the major oil companies.

Greater participation by smaller producers in offshore production on Federal lands will also assure more petroleum for independent refiners and independent marketers. It could mean more competition at all levels of the industry, and that is very much in the interest of the consumer.

The present leasing systems emphasis on high initial bonuses has restricted the number of lease sales. There are limits to how much capital even the major companies can raise in a lump sum. A system resulting in more of the Federal share to be paid after production is obtained will allow more frequent sales and this should result in an accelerated development of Federal lands.

In addition, Mr. President, I also believe we should require a commitment from the oil companies to drill as a condition of granting these offshore leases.

The fact is, Mr. President, many leases are granted that remain underdeveloped for too long.

Other countries uniformly require oil companies to have a firm schedule for drilling when the leases are granted. Some countries even require the posting of performance bonds in order to assure adequate development of the leased lands.

It seems to me that if we are to move our Nation toward greater energy independence, the American Government should insist on expeditious development of American offshore leases. If a reasonable commitment to drill is a condition of the lease, there will be no question of holding a lease undeveloped in the hope of higher prices.

Mr. President, I believe that substantially increasing the share of oil and gas which the American people receive from their Federal lands and requiring a drilling commitment from private companies provides a better way of developing these lands than attempting to get the Federal Government involved in the actual drilling operation as some have advocated. The oil business is a high-risk undertaking requiring a great deal of expertise. I believe we should let private industry raise the capital and take the risks as long as the American people receive a fair share of the benefits.

Mr. President, there is a second major policy change I would propose: to limit the use of the percentage depletion allowance to oil and gas production solely in North America.

Under present law our tax code allows oil companies the same depletion allowance for production in the Middle East as it does for domestic production. If our Nation is to move toward the goal of energy independence, then a depletion allowance that encourages oil exploration and production outside North America only works against that goal.

I do not believe we should have an incentive on the books for production in far corners of the world at a time when we are seeking domestic independence.

Mr. President, the proposals I have outlined in this speech, along with my legislation to create an agency for energy adjustment to aid industry in the transition from an economy based on petroleum abundance to one of petroleum scarcity, will assist our Nation in coping with the energy crisis.

I understand very well the sacrifices being requested of our people. And, I am not without sympathy to the demands and pressures placed on the oil industry, as that industry tries to do its best for the American people.

All of our institutions must be responsive to change. The American petroleum industry is no exception. It is going to have to change some of its ways of doing business and it cannot resist that decision much longer. The image of huge profit increases by major companies in the midst of an oil and gas shortage is not a healthy image to have. I sincerely hope and believe that responsible leaders of this industry will begin responding more effectively to this new challenge in the same manner they responded to the immense challenge of World War II when the Allies rode to victory on American oil.

If our country is going to be successful in overcoming the energy crisis, if we are going to become independent, if we are going to avoid major economic dislocations, job losses, and production shutdowns; then we need, indeed we must have, the cooperation of the American petroleum industry—a cooperation not just of production but a cooperation and willingness to do what is necessary for the best interest of the American people and their Nation.

Let me add that during the darkest hours of World War II, when our battleships were on the bottom of Pearl Harbor and we were retreating before dedicated enemies on two sides of the world—and when our attention was focused on getting enough supplies and manpower to just stem the tide—even with all of that, plans were being made and implemented to put us in position to go on the offensive and to win.

We need a little of that dedicated planning and leadership today. We need to be gearing up for victory over the energy crisis even as we struggle for the stopgap measures to save what we have.

I have not yet detected enough of that dedication—either in the Government or in the private sector.

I urge the Congress to move expeditiously on the measures I have proposed.

TRANSACTION OF ROUTINE MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of routine morning business not to extend beyond 10:30 a.m., with statements limited therein to 3 minutes.

Is there morning business?

PROHIBITION ON USE OF FUNDS IN DEFENSE APPROPRIATION BILL FOR SHIPMENT OF PETROLEUM PRODUCTS TO SOUTHEAST ASIA

Mr. COTTON. Mr. President, yesterday I offered an amendment to the defense

appropriation bill, which was agreed to, providing that no funds in the bill could be used to furnish petroleum to Southeast Asia. I noted the comment in the newspapers that I said in connection with the amendment that I purposely left open a loophole so that the amendment would have only a certain psychological effect. I do not complain about that because my remarks on the floor were very clear.

However, so that the record will be straight, I wish to state that the Senator from New Hampshire did not purposely leave any loopholes. Under the rules, and this has been confirmed by the Parliamentarian, any amendment that would have precluded the use of other funds would be subject to a point of order and would immediately have been rejected and thrown out on a point of order. The Senator from New Hampshire went as far as he could. The only amendment not subject to a point of order was one that dealt strictly with funds in that particular appropriation bill, and we could not reach into the funds the Pentagon already has in the pipeline in foreign appropriations. Certainly, I would have attempted to reach those funds had I been able to under the rules of the Senate, because frankly I am still seething, and not so much from the fact that the Department of Defense is furnishing oil, but that they are doing it without the knowledge of Congress or its committees.

I trust these steps will be taken. Because of the financial aid we are sending and probably will continue to furnish to South Vietnam and Cambodia they will probably be able to get oil from countries that very likely will not sell to us.

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

Mr. COTTON. I am glad to yield.

Mr. ROBERT C. BYRD. I wish to substantiate as best I can what the distinguished Senator has said with respect to the point of order which would lie against legislation on an appropriation bill. It is precluded by the rules, and as the Senator has so correctly said, a point of order could have been raised. That point of order would have been upheld by the Chair and it would have been a vain act to have attempted to have sought legislation on that particular vehicle.

I congratulate the Senator on the amendment he did offer. I supported it on the floor yesterday. I think it is a good amendment and certainly the Senator had no intention of leaving a loophole nor did any Senator who voted for that amendment have any idea of doing so and at the same time intentionally leaving a loophole.

Mr. COTTON. I thank the distinguished acting majority leader for his comments and for substantiating the statement I have just made.

Also I appreciate his making so clear the understanding by Members of the Senate. Perhaps we are more keenly aware of the rules than some of those connected with the news media. It was not my purpose to make any idle gesture. I went just as far as I could under the rules without having a point of order lodged.

I thank the Senator from West Virginia not only for his support of the amendment but making it so clear this morning that the point I made is well taken.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield for one brief addendum?

Mr. COTTON. I am glad to yield.

Mr. ROBERT C. BYRD. The rule to which I have referred, and to which the distinguished senior Senator from New Hampshire referred, is paragraph 4 of rule XVI—entitled "Amendments to Appropriation Bills"—of the Standing Rules of the Senate.

Mr. COTTON. I thank the Senator. I hope that whatever happens to this amendment in conference, with the support it received in the Senate, it will have some impact on those downtown who are making the policies.

Again, I thank the Senator.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The ACTING PRESIDENT pro tempore (Mr. ABOUREZK) laid before the Senate the following letters, which were referred as indicated:

SUPPLEMENTAL ESTIMATES OF APPROPRIATIONS FOR MEDICAL CARE

A letter from the Deputy Director of the Office of Management and Budget reporting, pursuant to law, that the appropriation for the Veterans' Administration for Medical Care has been apportioned on a basis which indicates the necessity for supplemental estimates of appropriations for the fiscal year 1974. Referred to the Committee on Appropriations.

SUPPLEMENTAL ESTIMATES OF APPROPRIATIONS FOR READJUSTMENT BENEFITS

A letter from the Deputy Director of the Office of Management and Budget reporting pursuant to law, that the appropriation for the Veterans' Administration for Readjustment Benefits has been apportioned on a basis which indicates the necessity for supplemental estimates of appropriations for the fiscal year 1974. Referred to the Committee on Appropriations.

SUPPLEMENTAL ESTIMATES OF APPROPRIATIONS FOR COMPENSATION AND PENSIONS

A letter from the Deputy Director of the Office of Management and Budget reporting, pursuant to law, that the appropriation for the Veterans' Administration for Compensation and Pensions has been apportioned on a basis which indicates the necessity for supplemental estimates of appropriations for the fiscal year 1974. Referred to the Committee on Appropriations.

REPORT ON CONTRACTS FOR MILITARY CONSTRUCTION

A letter from the Secretary of the Army transmitting, pursuant to law, a report of Department of the Army contracts for military construction awarded without formal advertisement covering July 1, 1972 through June 30, 1973 (with an accompanying report). Referred to the Committee on Armed Services.

PUBLICATIONS OF THE FEDERAL POWER COMMISSION

A letter from the Chairman of the Federal Power Commission transmitting for the information of the Senate a publication entitled "Regulations To Govern the Preservation of Records of Public Utilities and Licensees, January 1, 1972," and a publication entitled "All-Electric Homes, Annual Bills, 1972" (with accompanying publications). Referred to the Committee on Commerce.

PROPOSED LEGISLATION TO AMEND THE FOREIGN SERVICE BUILDINGS ACT

A letter from the Assistant Secretary of State transmitting a draft of proposed legislation to amend the Foreign Service Buildings Act, 1926, to authorize additional appropriations (with accompanying papers). Referred to the Committee on Foreign Relations.

PROPOSED INCREASED APPROPRIATIONS FOR THE DEPARTMENT OF STATE

A letter from the Assistant Secretary of State transmitting a draft of proposed legislation to increase the authorization of appropriations for "Administration of Foreign Affairs" (with accompanying papers). Referred to the Committee on Foreign Relations.

REPORTS OF THE COMPTROLLER GENERAL

Two letters from the Comptroller General of the United States transmitting, pursuant to law, a report entitled "Effective Central Control Could Improve DOD's Ammunition Logistics," and a report entitled "How To Improve the Procurement and Supply of Drugs in the Federal Government" (with accompanying reports). Referred to the Committee on Government Operations.

REPORT OF THE ATTORNEY GENERAL

A letter from the Acting Attorney General transmitting, pursuant to executive order, a report on identical bidding in advertised public procurement (with an accompanying report). Referred to the Committee on the Judiciary.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

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

A concurrent resolution of the Legislature of the State of Louisiana. Referred to the Committee on Commerce:

"A concurrent resolution to urge and request the United States Congress, the President of the United States and the Federal Power Commission to make all possible efforts in providing for the allocation of adequate fuel supplies to commercial fishermen, shrimpers and oyster fishermen

"Whereas ,the shortage of fuel supply has caused an unusually acute hardship upon commercial fishermen, and

"Whereas, the shortage of fuel may result in utter economic disaster to oyster farmers and commercial fishermen in Louisiana due to the fact that these persons have already suffered severe economic loss resulting from catastrophic flooding, and

"Whereas, seafood has always been an important part of the diet of the United States citizenry, and

"Whereas, economic ruin of this industry at this time could retard the development of food supply potentials of our oceans for many decades in the future, therefore, be it

"Resolved by the Senate of the Legislature of Louisiana, the House of Representatives concurring herein, that the Congress of the United States, the President of the United States, and the Federal Power Commission are hereby urged and requested to take all possible action to insure that adequate supplies of fuel are allocated to commercial fishermen, shrimpers and oyster fishermen in order to prevent further economic disaster to these persons, be it further

"Resolved that a copy of this Resolution be forwarded forthwith to the Speaker of the United States House of Representatives, and the President Pro Tem of the United States Senate, the President of the United States, and each Commissioner of the Federal Power Commission."

A concurrent resolution of the Legislature of the State of Louisiana. Referred to the Committee on Interior and Insular Affairs:

"A concurrent resolution to urge and request

that the United States Congress, the governments of the forty-nine sister states and the people of the United States make all reasonable effort to see that certain policies be adopted concerning the national energy crisis

"Whereas, the United States is presently experiencing an energy shortage of monumental proportions, and

"Whereas, Louisiana is among the leaders in production of energy creating fuels, and

"Whereas, this is reflected by virtue of the fact that about one-third of the domestic natural gas production of the nation and about one-fourth of the domestic oil production of the nation is in Louisiana, and

"Whereas, this state has for many years remained among the several leading states in exploration for minerals beginning as early as 1823, and

"Whereas, Louisiana is the home of many refineries which are among the largest in the nation and even in the entire world, and

"Whereas, the citizens of Louisiana have long anticiapted the present fuel shortage and have been studying all available means for the prevention of such a crisis, and

"Whereas, due to its close involvement with the oil industry and its problems Louisiana is in a unique position to lead in the suggestion of those policies which can result in the alleviation of the present fuel shortage, and

"Whereas, this knowledge and experience counsel that certain policies be pursued. Therefore, be it

"*Resolved* by the Senate of the Legislature of Louisiana, the House of Representatives concurring, that the Congress of the United States, the government of the forty-nine sister states and the people of the United States are hereby urged and requested to make all reasonable effort to effectuate the adoption of certain policies concerning the national energy crisis, these policies being 1) the deregulation of prices on oil and gas, 2) encouragement of the use of capital for research in the development of other sources of energy, 3) to proceed with all deliberate speed in the construction of the Alaskan Pipeline, 4) to encourage the exploration and development of potential oil and gas fields, particularly along the Atlantic Seaboard, 5) to encourage the use of coal and other alternate fuel sources, 6) to encourage research into methods for processing shale into usable and economical gas and oil products, 7) to encourage the construction and development of superports along the coastlines of the Atlantic Ocean and the Gulf of Mexico by states willing to do so, 8) to proceed on an emergency basis to formulate a program to federally fund the research and development of fuel resources including alternate fuel sources, 9) to reconsider and reevaluate the provisions of the Clean Air Act in light of the present fuel crisis, 10) to develop nuclear and fast breeder reactors to end the current dependence on fossile fuels, 11) to remove price restrictions on manufactured products needed in the oil and gas industry, and 12) to expedite offshore (California, Gulf of Mexico and Eastern seaboard) leasing with less emphasis on huge cash bonuses from oil companies so as to stimulate exploration and development, be it further

"*Resolved* that a copy of this Resolution shall be transmitted forthwith to the Speaker of the United States House of Representatives, the President Pro Tem of the United States Senate, and the Governors of the forty-nine sister states in order that the purposes of this Resolution might be given due consideration."

A resolution adopted by the California Navigation and Ocean Development Commission memorializing Congress to consider boating on an equal basis with other forms of recreation. Referred to the Committee on Commerce.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. RANDOLPH, from the Committee on Public Works, without amendment.

S. 1961. A bill to amend the Flood Control Act of 1938. (Rept. No. 93-631).

By Mr. WILLIAMS, from the Committee on Labor and Public Welfare, without amendment:

S. Res. 154. A resolution to extend through February 28, 1977, the Select Committee on Nutrition and Human Needs (Rept. No. 93-632).

By Mr. HOLLINGS, from the Committee on Commerce, with an amendment:

H.R. 8529. An act to implement the shrimp fishing agreement with Brazil (Rept. No. 93-633).

By Mr. RIBICOFF, from the Committee on Government Operations, with amendments:

S. 2776. A bill to provide for the effective and efficient management of the Nation's energy policies and programs (Rept. No. 93-634).

EXECUTIVE REPORTS OF COMMITTEES

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

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

Walter Jay Skinner, of Massachusetts, to be a United States district judge for the district of Massachusetts.

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

John H. Powell, Jr., of Maryland, to be a member of the Equal Employment Opportunity Commission.

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

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. BENTSEN:

S. 2813. A bill to establish in the Department of the Treasury an Agency for Energy Adjustment to administer a guarantee program for industrial adjustment loans to enable business concerns to achieve energy efficiencies, and for other purposes. Referred to the Committee on Banking, Housing and Urban Affairs.

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

S. 2814. A bill to provide for increases in the readjustment allowances paid to Peace Corps volunteers and volunteer leaders, and to provide for the handling of such allowances. Referred to the Committee on Foreign Relations.

By Mr. FONG:

S. 2815. A bill to amend title II of the Social Security Act to increase the increment in old-age benefits payable to individuals who delay their retirement beyond age 65. Referred to the Committee on Finance.

By Mr. CHILES:

S. 2816. A bill for the relief of Miss Maxima Gonzales. Referred to the Committee on the Judiciary.

By Mr. HOLLINGS:

S. 2817. A bill to amend the Federal Food, Drug, and Cosmetic Act, and for other purposes. Referred to the Committee on Labor and Public Welfare.

By Mr. BARTLETT (for himself and Mr. BELLMON):

S. 2818. A bill to declare that certain federally owned land is held by the United States in trust for the Kiowa, Comanche, and Apache Indian Tribes of Oklahoma. Referred to the Committee on Interior and Insular Affairs.

By Mr. MANSFIELD (for himself, Mr. HUGH SCOTT, Mr. ROBERT C. BYRD, and Mr. GRIFFIN):

S.J. Res. 180. A joint resolution relative to the convening of the second session of the 93d Congress. Considered and passed.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BENTSEN:

S. 2813. A bill to establish in the Department of the Treasury an Agency for Energy Adjustment to administer a guarantee program for industrial adjustment loans to enable business concerns to achieve energy efficiencies, and for other purposes. Referred to the Committee on Banking, Housing and Urban Affairs.

ENERGY ADJUSTMENT ACT OF 1973

Mr. BENTSEN. Mr. President, the progress of this country to the highest standard of living in history has not been without great peril and hardship. Americans are accustomed to sacrifice and it is traditional for our Nation to rise to the occasion when courage is demanded to solve a problem. I believe this to be true of this generation of Americans just as it was true of past generations. Our people have not grown too soft to respond to crisis—but they do expect their political leaders to be in the vanguard in proposing what the responses should be. and they are entitled to no less than that.

They are entitled to an organized approach so that we can maximize our resources in overcoming the problem which faces us. They are entitled to a fair approach whereby the burden is fully shared by all of us—rich, middle income, or poor.

The size and scope of the energy crisis is slowly but surely making itself felt on the general economy of the United States. Recent statements by respected economists have noted that the energy crisis mears shortages in consumer products, higher prices, critical dislocations for energy-intensive and energy-based industries such as transportation, petrochemicals, automobile manufacturing, tourism, and in some cases, basic manufacturing. The effects on employment are already being felt. Even the optimistic forecasts predict close to 6 percent unemployment by the end of next year. This will not be just teenagers and part-time workers. Six percent unemployment will include basic family providers. The married man with a family to feed and to clothe.

It is my judgment, Mr. President, that the Government of the United States bears a special responsibility to work with affected industries and employees to reduce the curtailments of production and services and to keep factories operating and our workers on the job.

Mr. President, we must take effective action immediately to provide the assistance necessary to our business and their employees so that economic effects

of the energy crisis do not result in millions of employees losing positions and benefits which they have earned over many years and the closing of businesses which have taken a lifetime to build.

Mr. President, it is time for Washington to stop playing a game of first the good news and then the bad news. It is time for us to level with the American people and say that there is going to be precious little good energy news next year. But just how bad the news is going to be depends upon leadership in Washington and the sacrifices in comfort and convenience that the average citizen is willing to make.

It is time also to recognize that there is more to "human needs" than heat in the winter, air-conditioning in the summer, and gasoline to run the automobile on every trip to the store and every pleasure jaunt we might like to make.

"Human needs" also include keeping our economy moving, keeping plants open, and keeping Americans at work.

Mr. President, every American knows that ours is a complex and interrelated economy that runs on a high consumption of petroleum and petroleum products. In the next several years we will see that complex economy move from petroleum abundance to petroleum scarcity. This transition will be necessary even if the Arab oil embargo ends tomorrow. We simply cannot go on using petroleum and natural gas as if the wells will never run dry.

We must be focusing on the action necessary to protect our people's jobs and the production of our factories. This must be parallel to our efforts to increase domestic fuel supplies, find new sources, and make more efficient use of the fuels we already have.

I am today introducing legislation to aid in that transition and ask that the bill be printed at the conclusion of my remarks.

This measure would establish within the Department of Treasury an Agency for Energy Adjustment to administer a guaranteed Government loan program for adjustments necessary to convert to a petroleum-scarce economy.

Under this legislation the Federal Government would guarantee the principal and interest of loans made for three purposes:

One, installation of energy-saving production equipment;

Two, conversion from industrial usage of petroleum and natural gas to more abundant forms of energy, such as coal;

Three, conversion to other lines of products and services less dependent on high energy usage.

With respect to the installation of energy-saving equipment, I would say American industry is presently wasting a great deal of fuel. Through capital additions financed under my measure, many plants could save between 12 and 20 percent of their total energy consumed in processing without any reduction in output. These are steps which can be taken with existing technology and at reasonable levels of expenditures.

Engineering consultants, who have surveyed a hundred plants to suggest ways of saving energy in manufacturing processing, have found no plant in which energy consumption could not be reduced by as much as 7 percent and in one case they found energy consumption could be reduced 40 percent.

For instance, many plants receive natural gas into their facilities at 500 pounds per square inch and burn it at 100 pounds per square inch. Most of them waste 400 pounds per square inch of pressure through reducing valves. By simply installing a pressure turbine that extra gas pressure can be used to generate electricity for the plant.

Many plants are allowing recoverable energy to literally go up their smoke stacks because they have not installed heat exchangers to catch the heat and use it for space heating. Some plants could be fitted with these heat economizers for as little as $10,000 which could be paid for in 6 months by the energy that would be saved.

These are but two of many examples of energy saving production equipment which could be installed.

American industry has been careless with energy in the past because it was cheap and abundant. Today it is neither. We should assure that funds are available to make the transition and my bill would do this.

In the years ahead, conversion of many plants from petroleum to low-sulfur coal which can meet our air quality standards is going to be essential. These conversions will in most cases require new boilers which must be constructed on the plant site over a period of between 2 and 3 years. These boilers will cost $12 for every pound of steam per hour which they can produce. For most plants the conversion will require an expenditure of several million dollars. We must assure that capital for these expenses can be obtained. My bill would assist in this.

However, despite installation of energy saving production equipment and conversion to more abundant energy sources, an energy scarce economy will result in some product lines and services being discontinued or severely limited.

Where these activities provide substantial employment in an area, the effect upon the community will be disastrous unless steps are taken to assist these plants convert to other products or services. I believe our Government must be prepared to play some role to save jobs and businesses during this conversion and my bill so provides.

The bill also grants borrowers a priority under the Federal energy allocation programs to insure that plants are able to continue production during the conversions.

The bill provides for loan guarantees of up to one and a half billion dollars over the next 18 months.

Since the demand for loans such as these are unknown, this figure must be the subject of hearings. But whatever the amount eventually agreed upon, I believe the cost of unemployment and plant closings is greater. A 1 percent increase in unemployment reduces revenue to the Federal Treasury by over $10 billion—in addition to the human loss.

I believe that such a program as outlined in my legislation would help keep factories and plants open, production lines moving, and American workers on payrolls instead of in the unemployment compensation or welfare rolls.

The proposal will help move this Nation toward energy self-sufficiency and economic security.

Undoubtedly, other measures will have to be taken if we are to achieve these goals.

Of one thing I am certain.

We cannot delay action.

The cost of doing nothing—the cost of waiting for jobs to be lost and factories to close—is unacceptable.

I urge expeditious action on this bill.

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

S. 2814. A bill to provide for increases in the readjustment allowances paid to Peace Corps volunteers and volunteer leaders, and to provide for the handling of such allowances. Referred to the Committee on Foreign Relations.

Mr. MONDALE. Mr. President, in 1961, the Congress of the United States passed, and the President signed into law, the Peace Corps Act. As stated in the opening section of the act, the purpose of the legislation was—

> To promote world peace and friendship through a Peace Corps, which shall make available to interested countries and areas men and women of the United States qualified for service abroad and willing to serve, under conditions of hardship if necessary, to help the peoples of such countries and areas in meeting their needs for trained manpower, and to help promote a better understanding of the American people on the part of the peoples served and a better understanding of other peoples on the part of the American people. 22 U.S.C. 2501.

Men and women who become Peace Corps volunteers are not paid a salary. Rather, the act specifies that, during their term of service to the corps, they shall only be provided with "such living travel, and leave allowances, and such housing, transportation, supplies, equipment, subsistence, and clothing as the President may determine to be necessary for their maintenance and to insure their health and their capacity to serve effectively." 22 U.S.C. 2504(b).

Because of the absence of a salary, the Peace Corps volunteer is faced with serious problems when he or she terminates affiliation with the Corps. After 2 years of Peace Corps service, the volunteer returns to the United States faced with the necessity of finding a job, finding a place to live, sometimes returning to school, and readjusting to life in this country. He often has little or no money with which to accomplish his readjustment, because he has not received a salary for a period of 2 years. Thus, the volunteer who is, according to the act's declaration of purpose, returning from "conditions of hardship" in many cases, is forced to face even greater hardships upon his return to the United States.

Recognizing this problem, the Peace Corps Act provides for a "readjustment allowance" for volunteers. Under 22 U.S.C. 2504(c), volunteers are entitled to receive an allowance at the rate of $75 for each month of satisfactory service. Volunteers who have one or more minor children at the time of entering preenrollment training receive an allowance at the rate of $125 per month for one

parent. Supervisory personnel, called volunteer leaders by the act, are entitled to receive a readjustment allowance of $125 per month—22 U.S.C. 2505 (1). The allowances are payable, except under special circumstances, on the return of the volunteer to the United States.

It is this readjustment allowance—totaling only $900 per year for volunteers and only $1,500 per year for one parent of a minor child and volunteer leaders—that the returning volunteer must use to facilitate his return to American society. Not only is the allowance pitifully low, it is also subject to social security taxes, subject to Federal income taxes, subject to State income taxes. Moreover, it does not accrue interest during the time of service. In short, by the time the volunteer uses his allowance to pay life and accident insurance premiums, educational loan payments, organization dues, support for dependents in the United States, and other necessary expenses during his term of service, little if anything is left to ease his readjustment to American life.

The volunteer returns to the United States in need of a job, a place to live, and clothing. Many returning volunteers wish to return to school and must go through the lengthy admissions process. The volunteer does not receive Federal or State unemployment insurance benefits and is not entitled to veterans' benefits. At the same time the volunteer is experiencing a period of economic stress, he is frequently undergoing a "cultural shock" as well. The readjustment allowance—or what is left of it—is of little help.

In 1961, the allowance was set at $75 per month on the basis of Congress assessment of the needs of the volunteer in 1961. Commonsense tells us that the 1961 level, which has never been changed, is insufficient as a 1973 level. Since the passage of the Peace Corps Act, and the establishment of the $75 level readjustment allowance, the Consumer Price Index has risen almost 52 percent. This index serves as a useful guide to the cost of living in this Nation, and it is this index to which we should look to measure the needs of the returning Peace Corps volunteer.

The Peace Corps volunteer serves his country in an honorable way. In addition, the volunteer makes a significant contribution to world peace and understanding. His service is accomplished in what are often primitive and difficult living conditions. Yet the hardships are accepted without complaint by the volunteer. We should not, we must not, subject the returning volunteer to additional hardship. We owe the volunteer better.

Accordingly, I am today introducing legislation which would increase the Peace Corps readjustment allowance.

The legislation increases the allowance for volunteers to $150 per month; for volunteers with minor children to $250 per month for one parent; and for volunteer leaders to $250 per month.

The bill also contains several other provisions to help the returning volunteer. First, the bill provides for the deposit of the accruing readjustment allowance in a savings account of a federally insured bank or savings and loan association so that the accruing allowance may accumulate interest over the period of the volunteer's service. Second, the bill provides for the informing of volunteers of the provisions of this legislation, so that they may take advantage of their rights under it. Third, so that we might prevent time from overtaking us again, the bill provides for automatic increases in the readjustment allowance rate in conjunction with increases in the rates of basic pay of employees paid under statutory pay systems under subchapter I of chapter 53 of title 5, United States Code. Finally, the bill authorizes sufficient funds to be appropriated to carry out the purposes of this bill.

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

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

S. 2814

A bill to provide for increases in the readjustment allowances paid to Peace Corps volunteers and volunteer leaders, and to provide for the handling of such allowances

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 5(c) of the Peace Corps Act is amended by striking out "$75" and inserting in lieu thereof "$150" and by striking out "$125" and inserting in lieu thereof "$250."

(b) Section 6(1) of such Act is amended by striking out "$125" and inserting in lieu thereof "$250".

SEC. 2. Section 10 of the Peace Corps Act is amended by adding at the end thereof the following new subsections:

"(h) Upon written request of a volunteer or volunteer leader, the President shall deposit on behalf of that volunteer or volunteer leader, in a savings account of a federally insured bank or savings and loan association, the amounts of the readjustment allowance which the volunteer or leader is entitled to receive for each month of satisfactory service performed by him. Each such amount shall be deposited promptly after the end of each month of satisfactory service. Interest earned on the amounts so deposited shall be paid at the same times, and to the same persons, as the amounts of such allowance are paid. Prior to the commencement of each period of service with the Peace Corps for which a volunteer or volunteer leader is entitled to receive a readjustment allowance, the volunteer or leader shall be informed with respect to the provisions of this subsection and acknowledge in writing that he has been so informed.

"(i) Each time that the rates of basic pay of employees paid under statutory pay systems are increased under subchapter I of chapter 53 of title 5, United States Code, the rate of any allowance provided under section 5 (b) or (c) or section 6(1) of this Act shall be increased by a percentage equal to that average percentage of increase, as determined by the President, as the rates of basic pay of such employees are increased. Any increase in such allowances shall be effective on the first day of the month in which the increased rates of basic pay of such employees are effective."

SEC. 3. (a) (1) The amendments made by the first section of this Act are effective on the first day of the first full calendar month commencing on or after the date of enactment of this Act.

(2) Subsection (1) of section 10 of the Peace Corps Act, as added by section 2 of this Act, shall apply with respect to any increase, effective on or after the first day of the second full calendar month commencing on or after such date of enactment, in the rates of basic pay of employees paid under statutory pay systems under subchapter I of chapter 53 of title 5, United States Code.

(b) Subsection (h) of section 10 of the Peace Corps Act, as added by section 2 of this Act, shall be effective on the first day of the first full calendar month occurring at least thirty days after the date of enactment of this Act. Any individual who is a volunteer or volunteer leader within the meaning of the Peace Corps Act on the effective date of such subsection (h), who makes a written request in accordance with the amendment made by such section, may also request (and he shall be informed that he may make such additional request) that any amount of the readjustment allowance which he is entitled to receive and which has not yet been paid shall also be deposited in a savings account.

SEC. 4. There is hereby authorized to be appropriated a sum of $10,000,000 to carry out the purposes of this Act.

By Mr. FONG:

S. 2815. A bill to amend title II of the Social Security Act to increase the increment in old-age benefits payable to individuals who delay their retirement beyond age 65. Referred to the Committee on Finance.

PROPOSALS TO PROVIDE 6 2/3 PERCENT ANNUAL PREMIUM IN SOCIAL SECURITY BENEFITS FOR PERSONS RETIRING AFTER AGE 65

Mr. FONG. Mr. President, I am introducing today a bill, S. 2815, to expand the choices open to older Americans under the social security system by providing that persons choosing to delay retirement will qualify for higher benefits on the same percentage basis as benefits are now reduced for early retirement.

My bill will provide for an increase of 6⅔ percent in benefits for each year between age 65 and 72 that an individual elects to delay his or her receipt of social security retirement benefits. For those who choose to wait until age 72, the minimum increase in benefits will be 46⅔ percent.

Since continued employment after age 65 may also raise the retiree's average monthly wage for social security benefit calculations, the actual improvement in benefits at retirement may be higher than at the 6⅔ percent annual rate. The maximum increment for retirement at 72 could be substantially above 50 percent.

The purpose of my bill is to make the social security system more flexible by giving the retiree more freedom in adapting its provisions to his or her personal problems. He or she will be able to elect the benefit approach which best suits individual need and desire. To maximize the choice the bill provides a benefit increase of five-ninths of 1 percent for each month that he or she chooses to continue employment after 65.

The proposed benefit increment is a first major step in correcting a serious inequity in social security which sharply penalizes the hundreds of thousands of persons who prefer to continue working after age 65. Together with flat dollar liberalization of the earnings test, which now reduces OASDI benefits by 50 percent of earnings over $2,100 a year—$2,400 after January 1, 1974—S. 2815 moves us toward complete freedom for the individual in his or her choice of time for retirement.

The bill would in no way interfere with or jeopardize the current right of a person to elect retirement for social security benefit purposes.

As a simple matter of equity, my bill would recognize the principle of flexibility on behalf of those who delay retirement in much the same way as the law now recognizes the right of persons who choose to retire between 62 and 65.

My decision to propose a 6⅔-percent annual benefit increment at this time was based on two considerations. The percentage is identical to the reduction for early retirement. As a matter of fiscal and legislative practicality, I believe it is probably the maximum increment percentage now acceptable.

If, instead of my proposal, the Congress were to authorize the full actuarial benefit increase which should be available if we assume full entitlement to social security benefits at age 65, I am informed the annual increment would be 12 percent. While this is a laudable objective, I do not believe we are quite ready to go that far at this time.

I decided to propose the 6⅔-percent increment because it may take a while to get acceptance of even this amount. Additionally the first year cost to the social security system will be approximately $198 million, about one-half of costs for the actuarially determined 12-percent increment.

Currently those who choose to remain in the work force after 65 are entitled to an annual increment of 1 percent. This provision, enacted in 1972, was welcome, but it does little more than recognize the social security taxes aid after 65. It falls far short of real equity. It is relatively ineffective in expanding choices open to older Americans.

It would be my ultimate hope that eventually we would amend the Social Security Act to provide fully equitable consideration for those who decide to continue work after age 65. My proposal offers a beginning, but not necessarily an end.

I have long been disturbed by the high share of social security costs which are now in fact borne by working persons past 65. The older person who works is now actually paying roughly $4 billion a year as a hidden subsidy to those drawing benefits.

It is a small wonder that older persons are increasingly unwilling to remain in the work force. This is because the actual return for continuing to work is not enough to impel him or her to continue. Not only does the full-time worker lose social security benefits, but he or she also must pay income taxes and social security taxes on earnings. When these are added to expenses incurred in going to the job, often little if any net again from employment remains for the worker's own use.

The Nation's loss of productivity resulting from waste of skills and experience among older Americans is serious. Even more important is the economic and psychological loss to the individual which comes through disinvolvement from life's mainstream. There is ample evidence that retirement often is accepted most reluctantly because there is little practical choice in terms of economic advantage.

I know that these matters have been of serious concern to others in the Congress. I hope they will join me in pressing for adoption of S. 2815 as a new major step toward real flexibility in America's retirement system.

It is time that we counterbalance present incentives in society for early retirement with comparable incentives for later retirement. Without such balance, older Americans are denied full freedom of choice.

Letters I have received from individuals and comments by such distinguished organizations of older people as the American Association of Retired Persons and the National Retired Teachers Association convince me that older Americans—both employed and retired—feel strongly that they should have the right to choose. This demands flexibility in social security along the lines that I now propose.

As a matter of fact, spokesmen for the American Association of Retired Persons and the National Retired Teachers Association at recent hearings by the Senate Special Committee on Aging were instrumental in encouraging me, through their testimony, to introduce my bill at this time.

During recent years there has been a great deal of talk about need for a new national policy in aging. Despite some progress, and every step forward is good, we have not yet really come to grips with the challenges in our new era of aging.

Millions of words have been used in thousands of articles and meetings ranging from the White House conferences of 1961 and 1971 to sessions in our smallest villages. In them all there has been a call for action to give older Americans full freedom of choice—with honor, dignity, and self-respect. And yet too often our seniors find themselves treated as second-class citizens.

In examinations of need for a new national policy in aging—whether by authorities in medicine, economics, sociology or other disciplines—one key element in our problem comes clear. There is need for a new look at retirement practices in this country. We need to reconsider obsession with the numbers game—our pursuit of retirement based solely on artificial chronological rules of age without regard for either actual abilities of older persons to participate in the Nation's productive forces, or the desire of many for continued involvement in society's mainstream.

Deliberations by the real experts on aging—older persons themselves—have been no less emphatic about the need of new approaches to the question of retirement. We need to reinstate the principle that choices should be made by the individual in the light of individual abilities and individual desires.

No one would claim that this objective can be achieved through legislation alone. Education about the tremendous productive potential and the will for involvement among older persons may, indeed, be the most important element in solving the problem.

But there are some things that Congress can do. Perhaps most important will be decisions in Federal programs, such as social security, which will offer incentives for continued life participation by older persons at least equal to current disincentives.

My bill to provide higher social security benefit increments for those who choose to delay retirement until after 65 in my judgment is an essential step toward this objective. I urge its speedy and favorable consideration by the Congress.

As you know, I have previously introduced a bill, S. 2499, to extend job protection of the Age Discrimination Act to persons over 65 as well as those between 40 and 65. It, together with liberalization of the social security earnings test on behalf of those who choose to work part time, will complement the bill I introduce today. Together they can be instrumental in reinstatement of the rights of older Americans. Among these rights, first and foremost, after life itself, is the right to freedom of choice.

By Mr. HOLLINGS:

S. 2817. A bill to amend the Federal Food, Drug, and Cosmetic Act, and for other purposes. Referred to the Committee on Labor and Public Welfare.

Mr. HOLLINGS. Mr. President, today, I am introducing a proposal to simplify the manner in which public eating places notify their patrons when they serve yellow margarine. This is a small, but, I believe, useful change in the Federal Food, Drug, and Cosmetic Act, which will benefit all parties concerned.

The present law requires that an eating place do two things to notify patrons when it is serving yellow margarine. It must post a sign on the wall or make a statement in the menu, and it must identify each serving by appropriate labeling or by a triangular shape.

I know of no other law, Federal or State, which requires such a double notification. My bill would simply require that any single one of three forms of notice must be given.

This bill is identical to S. 438 which I introduced last year. Hearings on that measure indicated the useful purpose to be served by this change in the law.

Margarine has become an established food in the American diet. Per person consumption annually of margarine is estimated by the Department of Agriculture to be 11.3 pounds; that of butter to be 5 pounds. One reason for the increasing need for and use of margarine is that butter consumption has been generally decreasing as our dairy farmers have found better markets for their milk in fluid milk, cheese, and ice cream. As of August of 1973, the average retail prices of margarine was estimated by the Bureau of Labor Statistics to have been 36.8 cents while the retail price of

butter was estimated at 88.7 cents per pound.

Certainly, we all take pride in the growth of our modern dairy industry. It is one of our basic agricultural enterprises. Milk is one of the basic foods used by man, and is a vital part of our diet. My proposal will in no way burden the marketing of dairy products. I believe it is a step toward easier and, therefore, improved compliance and enforcement of the margarine notice law.

The status of margarine is vastly different now from what it was when the existing law was enacted in 1950. Margarine has become the leading table spread, used by most American families. In recent years, it has drawn the recommendation of many physicians for certain dietary purposes. At the same time, many more Americans than ever before are taking their meals out. The American restaurant business is preparing and serving a larger proportion than ever before of the meals Americans consume.

The double notice in the Federal law stems from a desire in Congress to assure that patrons would be informed as to whether they were receiving margarine or butter. Some prefer one, some the other, and the aim was to inform. However, the double notice has been difficult to enforce. Undoubtedly, many restaurant managers have been confused by it. It is an unnecessarily complicated way of achieving the object of notification. As such, it is a burden on those eating places which for one reason or another may wish to make margarine available to patrons. To the extent that it discourages eating places from making this particular food available to patrons who desire it, it is burdensome to consumers. It cannot be said that the Federal double notice has been very successful.

We are in an era of increasing awareness of consumer protection. During the past several years Congress has considered much labeling legislation and has approved important changes in our laws. Not once has any one suggested double labeling or double notice for any product. It does not make sense. On the contrary, a real objective has been to seek the greatest possible uniformity between Federal and State laws, so as to make consumer information simpler to provide and easier for consumers to use.

In this respect the double notification requirement for margarine is not uniform. It is obsolete. Most States have a legal requirement in this specific area and must be found some single form of notice sufficient. Several States in the course of making basic changes in their margarine laws after the old Federal taxes were removed in 1950, as a subordinate consideration and mainly for legislative convenience adopted the double requirement. But most States saw no reason to do so. The result is an even greater complication of one area of consumer protection law.

The enforcement agency, the Food and Drug Administration, in a hearing on August 10, 1970, by the House Interstate and Foreign Commerce Committee on a similar proposal (H.R. 12061) concurred with the single notice change. Indeed, the agency is seeking to encourage States to enforce this part of the Federal law as a part of its effort to improve enforcement generally. The result is that most States find they must enforce the Federal double requirement on top of their own single requirement.

In summary, this bill is a simple, technical change which has three objectives: First, to provide better consumer protection by making the law easier to comply with and to enforce; second, to simplify in one respect the burden of regulations on our expanding and important eating-out industry; and, third, to encourage uniformity in Federal and State regulation in this area.

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

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

S. 2817

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 407(c) of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 347(c)), is amended by deleting the language thereof and substituting the following:

"(c) No person shall serve colored oleomargarine or colored margarine at a public eating place, whether or not any charge is made therefor, unless (1) a notice that oleomargarine or margarine is served is displayed prominently and conspicuously in such place and in such manner as to render it likely to be read and understood by the ordinary individual being served in such eating place, or (2) a notice that oleomargarine or margarine is served is printed or is otherwise set forth on the menu in type or lettering not smaller than that normally used to designate the serving of other food items, or (3) each separate serving bears or is accompanied by labeling identifying it as oleomargarine or margarine."

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 796

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

S. 2008

At the request of Mr. WILLIAMS, the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 2008, the Workers' Compensation Act.

S. 1098

At the request of Mr. BIBLE, the Senator from Iowa (Mr. CLARK) was added as a cosponsor of S. 1098, a bill to amend the Internal Revenue Code of 1954 to provide income tax simplification, reform, and relief for small business.

S. 2776

At the request of Mr. RIBICOFF, the Senator from Alabama (Mr. ALLEN), the Senator from Maine (Mr. MUSKIE), the Senator from Montana (Mr. METCALF), the Senator from Florida (Mr. CHILES), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Florida (Mr. GURNEY), the Senator from Ohio (Mr. SAXBE), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Delaware (Mr. ROTH), and the Senator from Tennessee (Mr. BROCK) were added as cosponsors of S. 2776, a bill to provide for the effective and efficient management of the Nation's energy policies and programs.

SENATE CONCURRENT RESOLUTION 61—SUBMISSION OF A CONCURRENT RESOLUTION AUTHORIZING THE PRINTING OF ADDITIONAL COPIES OF COMMITTEE PRINT ENTITLED "CONFIDENCE AND CONCERN: CITIZENS VIEW AMERICAN GOVERNMENT—A SURVEY OF PUBLIC ATTITUDES"

(Referred to the Committee on Rules and Administration.)

Mr. MUSKIE submitted the following concurrent resolution:

S. CON. RES. 61

Resolved by the Senate (the House of Representatives concurring), that there be printed for the use of the Senate Committee on Government Operations 2000 additional copies of Part I of its committee print entitled "Confidence and Concern: Citizens View American Government—A Survey of Public Attitudes," dated December 3, 1973.

SENATE RESOLUTION 218—SUBMISSION OF A RESOLUTION TO PAY TRIBUTE TO MEMBERS OF THE ARMED SERVICES MISSING IN ACTION

(Referred to the Committee on Foreign Relations.)

Mr. BARTLETT submitted the following resolution:

S. RES. 217

Whereas, the United States recognizes its responsibility as well as its gratitude to the 1,163 members of the Armed Forces who are currently listed as missing in action in Indochina; and

Whereas, the families of these missing men are entitled to an accounting of their fate; and

Whereas, the North Vietnamese have disregarded the Paris Peace Agreement which provides in Section 8b:

"The parties shall help each other to get information about those military personnel and foreign civilians of the parties missing in action, to determine the location and take care of the graves of the dead so as to facilitate exhumation and repatriation of the remains, and to take any other such measures as may be required to get information about these still considered missing in action."

Whereas, it is in the interest of basic humanity and justice for North Vietnam to allow the United States, or a neutral nation or third party such as the Red Cross to search for the location of missing in action throughout Indochina;

Be it resolved, That the United States Senate urges the President to continue to use every diplomatic avenue, including North Vietnam's allies and the United Nations to assist in obtaining the necessary cooperation and information concerning our missing men; and

That, during this Christmas season, the

grateful people of our nation give a special remembrance through our thoughts and our prayers for those brave men and their loyal families who have given so much for each of us.

FEDERAL ENERGY ADMINISTRATION ACT—AMENDMENT

AMENDMENT NO. 912

(Ordered to be printed and referred to the Committee on Government Operations.)

Mr. BUCKLEY (for himself, Mr. BAKER, Mr. COOK, Mr. DOMENICI, Mr. FONG, Mr. HATFIELD, Mr. PEARSON, Mr. TAFT, Mr. MCCLURE, Mr. DOLE, and Mr. DOMINICK) submitted an amendment intended to be proposed by them jointly to the bill (S. 2776) to provide for the effective and efficient management of the Nation's energy policies and programs.

AUTOMOBILE EMISSION STANDARDS—AMENDMENT

AMENDMENT NO. 913

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

Mr. WILLIAM L. SCOTT submitted an amendment intended to be proposed by him to the bill (S. 2772) to amend title II of the Clean Air Act, as amended.

LEGAL SERVICES CORPORATION ACT—AMENDMENT

AMENDMENT NO. 914

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

Mr. LONG submitted an amendment intended to be proposed by him to the bill (S. 2686) to amend the Equal 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.

AMENDMENT OF THE EXPORT ADMINISTRATION ACT OF 1969—AMENDMENT

AMENDMENT NO. 915

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

Mr. SCHWEIKER submitted an amendment intended to be proposed by him to the bill (H.R. 8547) to amend the Export Administration Act of 1969, to protect the domestic economy from the excessive drain of scarce materials and commodities and to reduce the serious inflationary impact of abnormal foreign demand.

PRISONERS OF WAR AND MISSING IN ACTION TAX ACT—AMENDMENT

AMENDMENT NO. 916

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

Mr. SCHWEIKER submitted an amendment intended to be proposed by him to the bill (H.R. 8214) to modify the tax treatment of members of the Armed Forces of the United States and civilian employees who are prisoners of war or missing in action, and for other purposes.

ADDITIONAL STATEMENTS

ANNOUNCEMENT OF JOINT INVESTIGATION ON WARRANTLESS WIRETAPPING AND SURVEILLANCE

Mr. KENNEDY. Mr. President, I am pleased to announce with my colleagues, the distinguished Senator from North Carolina (Mr. ERVIN) and the distinguished Senator from Maine (Mr. MUSKIE), the undertaking of a joint investigation into warrantless wiretapping and electronic surveillance.

The joint investigation is being conducted by the Judiciary Subcommittee on Administrative Practice and Procedure, which I am privileged to chair; the Judiciary Subcommittee on Constitutional Rights, chaired by Senator ERVIN, and the Foreign Relations Subcommittee on Surveillance, chaired by Senator MUSKIE.

Wiretapping and electronic surveillance pose a greater threat to the constitutional rights of American citizens than ever before. A recent survey of public attitudes shows that 75 percent of the American people feel that "wiretapping and spying under the excuse of national security is a serious threat to people's privacy."

It is not difficult to understand the reasons for such concern. The revelations of the past year have indicated widespread Government involvement in wiretapping, bugging, and break-ins. Under such circumstances, a vigorous congressional investigation is needed.

Because so much of this wiretapping has been done in the name of "national security," a joint undertaking of the Foreign Relations and Judiciary Subcommittees will enable the expertise of each to be utilized in examining the different aspects of the overall problem. The Foreign Relations Subcommittee will be able to evaluate the "national security" basis of this kind of Government activity, while the two Judiciary Subcommittees will bring to bear their knowledge of wiretap law and practice, and the constitutional problems that it presents. By pooling the resources and the expertise of our three subcommittees, a thorough and complete investigation will result. We hope to enlist the cooperation of officials of the Justice Department, the State Department, and other Federal agencies in this joint undertaking.

The investigation will focus on wiretapping and other electronic surveillance of American citizens conducted by the Federal Government without a court order. The areas of inquiry will include the historical background of warrantless electronic surveillance; the practices and procedures of the Department of Justice and other Federal agencies in the conduct and authorization of such surveillances; and the cases of the 17 government officials and newsmen, plus others, which have recently come to light.

The investigation is already underway, and staff work is in progress. It will be followed by joint hearings to be held early next year by the three subcommittees with a view toward the development of new legislation and of more adequate administrative guidelines.

The joint investigation is a continuation and extension of hearings on "Warrantless Wiretapping" held last year by the Subcommittee on Administrative Practice and Procedure. At these hearings, a detailed inquiry was made into the practices and procedures of the Department of Justice and other Federal agencies in the area of wiretapping and electronic eavesdropping, and present and former officials of the Justice Department were called as witnesses. At the subcommittee's request, additional information was supplied by the Department following the hearings.

The Administrative Practice and Procedure Subcommittee has played an active role in the area of electronic surveillance over the past decade. Under its previous chairman, the subcommittee held the principal hearings on wiretapping and governmental intrusion into privacy in the 1960's, having held 46 days of hearings on this subject and received testimony from over 200 witnesses. Its work on the proposed Right to Privacy Act of 1967 led in large measure to the enactment of the controls on wiretapping and electronic surveillance contained in title III of the Omnibus Crime Control and Safe Streets Act of 1968.

During the past several years, the subcommittee has engaged in extensive correspondence with the Justice Department and other Federal agencies regarding the nature, scope, and duration of warrantless national security surveillance. In 1971, I issued a report to the members of the subcommittee regarding noncourt ordered wiretapping which was cited several times in *United States* v. *United States District Court*, 407 U.S. 297 (1972). This correspondence has provided the leading source of statistical information on warrantless wiretapping, much of which I placed in the CONGRESSIONAL RECORD, volume 118, part 18, pages 22636–22640.

There is no subject that so directly affects the constitutional right of Americans to privacy as wiretapping and electronic eavesdropping. I join my colleagues in undertaking this important inquiry into an area of such great concern to all Americans.

WHO GETS TAX BENEFITS?

Mr. ABOUREZK. Mr. President, the recent exposés of the President's remarkably low income tax payments do little to inspire confidence in our tax system.

The President is not the only wealthy American who benefits from the many loopholes in our tax code.

Getting at the truth of who gets what

in the way of tax benefits is a tricky business.

Fortunately, the Tax Reform Research Group has cut through the statistical shroud to produce some alarming evidence about the gross maldistribution of the Federal income tax load.

I ask unanimous consent to have printed in the RECORD several recent newspaper articles about the Tax Reform Research Group's findings, together with the Government data on which they were based and the Reform Group's computation of who is actually getting what.

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

[From the New York Times, Nov. 23, 1973]

TAX PLOT CHARGED BY A NADER GROUP—PANEL SAYS NIXON AIDES AND HOUSE COMMITTEE TRY TO HIDE NEED FOR REFORM

(By Eileen Shanahan)

WASHINGTON, Nov. 22.—The Tax Reform Research Group, a Ralph Nader organization, charged today that the Nixon Administration and the House Ways and Means Committee were conspiring to keep from the public facts that would demonstrate the need for tax reform.

The facts at issue are those that show the dollars and cents benefits that individuals at different income levels realize from the various preferential provisions of the tax laws.

The tax group, which is financed by Mr. Nader's Public Citizen organization, said that the Administration kept providing the committee, and the committee kept publishing, misleading figures that "attempt to show that income tax loopholes favor middle-class taxpayers."

This is true, according to Robert Brandon, director of the Tax Reform Research Group, only when the figures on the benefits are lumped together. The tens of millions of middle-income taxpayers, when lumped together, do get more total benefits from such tax preferences as the deduction for mortgage interest than do the few thousand in the income class of over $100,000, he said.

SOME BENEFIT MORE

But when the average advantage per person is calculated, the benefits to upper-income taxpayers are much higher, he continued.

For instance, the group of taxpayers just below the exact middle income, those with incomes of $7,000 to $10,000, had total tax savings of $310-million because of the deduction for mortage interest, while those in the over $100,000 bracket had total savings of only $55-million.

However, for each of the 12.6 million taxpayers in the $7,000-to-$10,000 bracket, the saving averaged $24.59, while the 91,826 persons in the over-$100,000 bracket saved an average of $602.

If the mortgage interest deductions were eliminated completely and tax rates were cut across the board, instead of granting the deductions, a tax reduction of $46.92 could be given to everyone, according to the tax group's calculation.

"Obviously, the average taxpayer would be better off without the deduction and with lower taxes instead," Mr. Brandon said.

The disparities in the benefits from preferential sections of the tax law are considerably greater in some cases, the tax group's study showed.

The largest disparity, by far, was in the benefits realized from the preferential treatment of capital gains, which are generally taxed at half the rate at which ordinary income is taxed.

TAX SAVINGS LISTED

Individuals in the over-$100,000 income group averaged tax savings of $39,211 under this provision of the law, while those in the $7,000-to-$10,000 group averaged $15.07; those in the $10,000-to-$15,000 group averaged $23.27; those in the $15,000-to-$20,000 group averaged $52.67, and those in the $20,000-to-$50,000 group averaged $284.59.

Some tax preferences, such as the depletion allowance for oil and gas wells and other mining operations, are hardly used at all except by individuals with the highest income, the tax group's figures showed. The average tax saving, from the depletion allowance to taxpayers in the $10,000-to-$15,000 bracket, which is just about middle income, was $1.23. For the over-$100,000 group, the average benefit was $1,150.23.

Mr. Brandon said that Nixon Administration officials and Representative Wilbur D. Mills, chairman of the House Ways and Means Committee, had "tried to cover up the unfairness of the nation's tax laws."

The tax group used published Treasury Department information on 1972 tax payments but was forced to use 1971 figures on the number of taxpayers in each income class because these figures for 1972 have not yet been published. The tax group said that the use of figures from two different years would have only a small impact on the accuracy of the statistics.

Mr. Brandon concluded that the tax group's figures showed that the assertion that "average taxpayers are the major beneficiaries of our present tax loopholes are completely false."

"Those responsible for our unfair tax system are perpetrating a cruel hoax on the American people," he said.

[From the Washington Star-News, Nov. 23, 1973]

TAX DATA DISTORTED, NADER GROUP CLAIMS

A Ralph Nader-backed research group says the Nixon administration and the House Ways and Means Committee have deliberately published a misleading report to cover up tax favoritism toward the wealthy and to thwart needed tax reforms.

The Tax Reform Research Group said the report, published by the committee last June in consultation with the Treasury Department, omitted crucial statistics in reaching the false conclusion that federal tax loopholes favor middle-income taxpayers.

In a statement, the Nader group said the complete statistics actually show that wealthy taxpayers benefit from the loopholes at the expense of those with smaller incomes.

Robert Brandon, director of the group, said, "These statistics really show how much the nation needs thorough reform of its tax laws."

He said Rep. Wilbur D. Mills, D-Ark., the ways and means committee chairman, and President Nixon "should be working to end the unfairness of our tax laws instead of covering it up."

Brandon said the House committee reported that taxpayers with adjusted gross incomes between $7,000 and $10,000 a year saved $310 million in mortgage interest deductions in 1972 and those with incomes of more than $100,000 saved only $55 million.

But, he said, the report failed to mention that the $310 million savings was spread among 12 million taxpayers while only 91,286 people shared the $55 million in the higher bracket. The average taxpayer actually saved only $24.59 from the mortgage interest deduction last year, he said, while the wealthier taxpayer saved $602.50.

Brandon said this loophole saved Nixon about $66,000 on his 1970 and 1971 taxes because of interest paid for his homes in Key Biscayne, Fla., and San Clemente, Calif.

[From the New York Daily News, Nov. 23, 1973]

TAX SURVEY SLANTED DATA: NADER GROUP

WASHINGTON.—A Ralph Nader research group said tonight that the administration and the House Ways and Means Committee have deliberately published a misleading report to thwart needed tax reforms and to cover up tax favoritism toward the wealthy.

The Tax Reform Research Group said the report, published by the committee last June, in consultation with the Treasury Department, omitted crucial statistics in reaching the false conclusion that federal tax loopholes favor middle-income taxpayers.

It said complete statistics show that wealthy taxpayers benefit.

DELIBERATE DECEPTION

"The slanting of these statistics is part of a deliberate plan to deceive the American people and stymie the tax reform movement," said Robert Brandon, director of the group. "These statistics really show how much the nation needs thorough reform of its tax laws."

He said Rep. Wilbur D. Mills, (D-Ark.), the Ways and Means chairman, and President Nixon "should be working to end the unfairness of our tax laws instead of covering it up."

Brandon said the House committee reported that taxpayers with adjusted gross incomes between $7,000 and $10,000 a year saved $310 million in mortgage interest deductions in 1972 and those with incomes over $100,000 saved only $55 million.

But, he said, the report failed to mention that the $310 million savings was spread among 12 million taxpayers while only 91,286 people shared the $55 million in the higher bracket. The average taxpayer actually saved only $24.59 from the mortgage interest deduction last year, he said, while the wealthier taxpayer saved $602.50.

NIXON SAVED $66,000

Brandon said this loophole saved Nixon about $66,000 on his 1970 and 1971 taxes because of interest paid for his homes in Key Biscayne, Fla., and San Clemente, Calif.

Brandon said the committee report was also misleading on * * * income earner saved only $23.80 on medical expenses compared with $547.73 for the average taxpayer in the highest bracket.

[From the Washington Post, Nov. 23, 1973]

TAX REPORT CHALLENGED BY NADER

A Ralph Nader-backed research group says the administration and the House Ways and Means Committee have published a misleading report to cover up tax favoritism toward the wealthy and thwart needed tax reforms.

The Tax Reform Research Group said the report, published by the committee last June in consultation with the Treasury Department, omitted crucial statistics in reaching

the false conclusion that federal tax loopholes favor middle-income taxpayers.

In a statement, the Nader group said the complete statistics actually show that wealthy taxpayers benefit from the loopholes at the expense of those with lesser incomes.

"The slanting of these statistics is part of a deliberate plan to deceive the American people and stymie the tax reform movement," said Robert Brandon, director of the group. "These statistics really show how much the nation needs thorough reform of its tax laws."

Brandon said the House committee reported that taxpayers with adjusted gross incomes between $7,000 and $10,000 a year saved $310 million in mortgage interest deductions in 1972 and those with incomes over $100,000 saved only $55 million.

But, he said, the report failed to mention that the $310 million savings was spread among 12 million taxpayers while only 91,238 people shared the $55 million in the higher bracket. The average taxpayer actually saved only $24.59 from the mortgage interest deduction last year, he said, while the wealthier taxpayer saved $602.50.

Brandon said this loophole saved President Nixon about $66,000 on his 1970 and 1971 taxes.

ESTIMATES OF FEDERAL TAX EXPENDITURES

TABLE 2.—ESTIMATED DISTRIBUTION OF SELECTED ITEMS OF TAX PREFERENCES OF INDIVIDUALS BY ADJUSTED GROSS INCOME CLASS, CALENDAR YEAR 1972

[In millions of dollars]

Adjusted gross income class	Exclusion of benefits and allowances to Armed Forces personnel	Exemption for certain income earned abroad by U.S. citizens	Exclusion of income earned by individuals in U.S. possessions	Deferral of income of foreign controlled subsidiaries	Farming: Expensing and capital gain treatment	Timber: Capital gain treatment for certain income	Expensing of exploration and development costs	Excess of percentage over cost depletion	Investment credit	Depreciation on buildings (other than rental housing) in excess of straight-line	Asset depreciation range	Dividend exclusion
0 to $3,000	15	(1)	(1)	(1)	15	(1)	(1)	1	(1)	1	(1)	2
$ 3,000 to $5,000	150	1	(1)	(1)	50	2	1	5	45	3	(1)	10
$5,000 to $7,000	180	3	1	(1)	90	2	1	4	55	5	(1)	18
$7,000 to $10,000	130	5	1	(1)	130	3	2	11	95	10	1	27
$10,000 to $15,000	115	7	2	1	170	4	9	18	125	19	1	56
$15,000 to $20,000	55	16	3	1	100	3	7	20	90	17	1	55
$20,000 to $50,000	50	17	3	6	185	9	17	75	185	58	4	109
$50,000 to $100,000	4	1	(1)	6	60	8	11	61	80	36	2	20
$100,000 and over	1	(1)	(1)	11	50	19	22	105	75	21	1	3
Total	700	50	10	25	850	50	70	300	750	170	10	300

Adjusted gross income class	Deductibility of interest on consumer credit	Deductibility of interest on mortgages on owner-occupied homes	Deductibility of property taxes on owner occupied homes	Depreciation on rental housing in excess of straight-line	Housing rehabilitation	Disability insurance benefits	Provisions relating to aged, blind, and disabled: Combined cost for additional exemption, retirement income credit and exclusion of OASDHI for aged	Additional exemption for blind	Sick pay exclusion	Exclusion of unemployment insurance benefits	Exclusion of workmen's compensation benefits	Exclusion of public assistance benefits
0 to $3,000	(1)	(1)	5	1	(1)	30	880	1	8	60	12	25
$3,000 to $5,000	10	15	25	4	(1)	45	820	2	16	95	26	20
$5,000 to $7,000	40	85	95	7	(1)	35	460	2	18	95	41	15
$7,000 to $10,000	145	310	240	14	(1)	35	640	2	34	160	66	5
$10,000 to $15,000	275	845	590	28	1	12	265	1	62	200	96	(1)
$15,000 to $20,000	235	835	640	25	1	7	135	1	55	60	63	(1)
$20,000 to $50,000	285	1,160	1,135	86	3	7	235	1	27	25	65	(1)
$50,000 to $100,000	60	195	340	53	8	3	75	(1)	4	5	5	(1)
$100,000 and over	50	55	180	32	12	1	40	(1)	1	(1)	1	(1)
Total	1,100	3,500	3,250	250	25	175	3,550	10	225	700	375	65

Adjusted gross income class	Net exclusion of pension contributions and earnings: Plans for employees	Net exclusion of pension contributions and earnings: Plans for self-employed	Exclusion of other employee benefits: Premiums on term group life insurance	Deductibility of accident and accidental death premiums	Medical insurance of premiums and medical care	Privately financed supplementary unemployment benefits	Meals and benefits	Exclusion of interest on life insurance savings	Deductibility of charitable contributions (other than education)	Deductibility of medical expenses	Deductibility of child and dependent care expense	Deductibility of casualty losses
0 to $3,000	45	(1)	10	(1)	45	(1)	3	10	5	5	1	(1)
$3,000 to $5,000	150	(1)	40	2	180	(1)	13	35	20	60	12	5
$5,000 to $7,000	240	1	50	3	225	1	22	65	80	155	21	5
$7,000 to $10,000	580	2	95	6	430	1	33	105	195	300	36	10
$10,000 to $15,000	1,080	5	150	10	675	2	37	175	410	460	42	25
$15,000 to $20,000	740	9	90	5	400	1	27	160	380	320	43	30
$20,000 to $50,000	885	93	95	6	420	(1)	28	400	820	435	25	40
$50,000 to $100,000	195	76	15	2	85	(1)	5	130	450	115	----------	15
$100,000 and over	85	14	5	1	40	(1)	2	120	740	50	----------	20
Total	4,000	200	550	35	2,500	5	170	1,200	3,100	1,900	180	150

Adjusted gross income class	Excess of percentage standard deduction over minimum standard deduction	Capital gains: individuals	Parental personal exemption for student age 19 or over	Deductibility of contributions to educational institutions	Exclusion of scholarships and fellowships	Exclusion of certain veterans' benefits	Tax credit or deduction for political contributions	Exemption of interest on State and local debt	Deductibility of nonbusiness State and local taxes (other than on owner occupied homes)
0 to $3,000	0	20	(1)	(1)	4	20	(1)	5	(1)
$3,000 to $5,000	1	70	8	3	26	45	1	(1)	30
$5,000 to $7,000	12	120	39	7	32	50	2	(1)	110
$7,000 to $10,000	63	190	102	20	26	110	7	5	335
$10,000 to $15,000	609	340	207	58	19	140	21	10	785
$15,000 to $20,000	254	340	122	70	12	60	17	25	835
$20,000 to $50,000	98	1,260	69	90	6	45	37	125	1,770
$50,000 to $100,000	2	1,080	72	20	(1)	9	11	375	770
$100,000 and over	1	3,580	21	7	(1)	1	4	455	665
Total	1,040	7,000	640	275	125	480	100	1,000	5,300

1 Less than $500,000.

WHAT WAYS AND MEANS AND TREASURY DIDN'T TELL US

WHO REALLY BENEFITS FROM TAX PREFERENCES

TAX PREFERENCE BENEFITS PER INDIVIDUAL IN EACH ADJUSTED GROSS INCOME CLASS, CALENDAR YEAR 1972

[Dollars per return]

Adjusted gross income class	Number of returns per income class [1]	Percent of returns in each income class	Exclusion of benefits and allowances to Armed Forces personnel	Exemption for certain income earned abroad by U.S. citizens	Exclusion of income earned by individuals in U.S. possessions	Farming: Expensing and capital gain treatment	Timber: Capital gain treatment for certain income	Expensing of exploration and development costs	Deferral of income of foreign controlled subsidiaries
0 to $3,000	17,180,193	23.1	0.87	*	*	0.87	*	*	*
$3,000 to $5,000	9,981,704	13.4	15.03	0.10	*	5.01	0.20	0.10	*
$5,000 to $7,000	8,839,820	11.9	20.36	.34	0.11	10.18	.23	.11	*
$7,000 to $10,000	12,606,192	16.9	10.31	.40	.08	10.31	.24	.16	*
$10,000 to $15,000	14,613,620	19.6	7.87	.48	.14	11.63	.27	.62	0.07
$15,000 to $20,000	6,455,678	8.7	8.52	2.48	.46	15.49	.46	1.08	.15
$20,000 to $50,000	4,427,371	5.9	11.29	3.84	.68	41.79	2.03	3.84	1.36
$50,000 to $100,000	405,463	.5	9.87	2.47	*	147.98	19.74	27.13	14.80
$100,000 and over	91,286	.15	10.95	*	*	574.73	208.14	241.00	120.50

Adjusted gross income class	Number of returns per income class	Percent of returns in each income class	Excess of percentage over cost depletion	Investment credit	Depreciation on buildings (other than rental housing) in excess of straight line	Asset depreciation range	Dividend exclusion	Deductibility of interest on consumer credit	Deductibility of interest on mortgages on owner occupied homes
0 to $3,000	17,180,193	23.1	0.06	*	0.06	*	0.12	*	*
$3,000 to $5,000	9,981,704	13.4	.50	4.51	.30	*	1.00	1.00	1.50
$5,000 to $7,000	8,839,820	11.9	.45	6.22	.57	*	2.04	4.51	9.62
$7,000 to $10,000	12,606,192	16.9	.87	7.54	.79	0.08	2.14	11.50	24.59
$10,000 to $15,000	14,613,620	19.6	1.23	8.55	1.30	.07	3.84	18.82	57.82
$15,000 to $20,000	6,455,678	8.7	3.10	13.94	2.63	.15	8.52	36.40	129.34
$20,000 to $50,000	4,427,371	5.9	16.94	41.79	13.10	.90	24.62	64.37	261.98
$50,000 to $100,000	405,463	.5	150.45	197.29	88.79	4.93	49.33	147.98	480.93
$100,000 and over	91,286	.15	1,150.23	821.59	230.05	10.95	32.86	547.73	602.50

Adjusted gross income class	Number of returns per income class [1]	Percent of returns in each income class	Deductibility of property taxes on owner-occupied homes	Depreciation on rental housing in excess of straight-line	Housing rehabilitation	Disability insurance benefits	Provisions relating to aged, blind, and disabled: Combined cost for additional exemption retirement income credit, and exclusion of OASDHI for aged	Provisions relating to aged, blind, and disabled: Additional exemption for blind
0 to $3,000	17,180,193	23.1	0.29	0.06	*	1.75	51.22	0.06
$3,000 to $5,000	9,981,704	13.4	2.50	.40	*	4.51	82.15	.20
$5,000 to $7,000	8,839,820	11.9	10.75	.79	*	3.96	52.04	.23
$7,000 to $10,000	12,606,192	16.9	19.04	1.10	*	2.78	50.77	.16
$10,000 to $15,000	14,613,620	19.6	40.37	1.92	0.07	.82	18.13	.07
$15,000 to $20,000	6,455,678	8.7	99.14	3.87	.15	1.07	20.91	.15
$20,000 to $50,000	4,427,371	5.9	256.36	19.42	.68	1.58	53.08	.23
$50,000 to $100,000	405,463	.5	838.55	130.71	19.74	7.40	184.97	*
$100,000 and over	91,286	.15	1,971.82	350.55	131.45	10.95	438.18	*

Adjusted gross income class	Number of returns per income class [1]	Percent of returns in each income class	"Sick pay" exclusion	Exclusion of unemployment insurance benefits	Exclusion of workmen's compensation benefits	Exclusion of public assistance benefits	Net exclusion of pension contributions and earnings: Plans for employees	Net exclusion of pension contributions and earnings: Plans for self-employed
0 to $3,000	17,180,193	23.1	0.47	3.49	0.70	1.46	2.62	*
$3,000 to $5,000	9,981,704	13.4	1.60	9.52	2.60	2.04	4.51	*
$5,000 to $7,000	8,839,820	11.9	2.04	10.75	4.64	1.70	27.15	0.11
$7,000 to $10,000	12,606,192	16.9	2.70	12.69	5.23	.40	46.01	.16
$10,000 to $15,000	14,613,620	19.6	4.24	13.69	6.57	*	73.90	.34
$15,000 to $20,000	6,455,678	8.7	8.52	9.29	9.76	*	114.63	1.39
$20,000 to $50,000	4,427,371	5.9	6.10	5.65	14.68	*	199.89	21.01
$50,000 to $100,000	405,463	.5	9.87	12.33	12.33	*	480.93	187.44
$100,000 and over	91,286	.15	10.95	*	10.95	*	931.14	153.37

Adjusted gross income class	Number of returns per income class [1]	Percent of returns in each income class	Exclusion of other employee benefits: Premiums on group life insurance	Exclusion of other employee benefits: Deductibility of accident and death benefits	Exclusion of other employee benefits: Medical insurance premiums and medical care	Exclusion of other employee benefits: Privately financed supplementary unemployment	Exclusion of other employee benefits: Meals and lodging	Exclusion of interest on life insurance savings	Deductibility of charitable contributions (other than education)
0 to $3,000	17,180,193	23.1	0.58		2.62	*	0.17	0.58	0.29
$3,000 to $5,000	9,981,704	13.4	4.00	0.20	18.03	*	1.30	3.51	2.00
$5,000 to $7,000	8,839,820	11.9	5.66	.34	25.45	0.11	2.49	7.35	9.05
$7,000 to $10,000	12,606,192	16.9	7.54	.48	34.11	.08	2.62	8.33	5.471
$10,000 to $15,000	14,613,620	19.6	10.26	.68	46.19	.14	2.53	11.97	28.06
$15,000 to $20,000	6,455,678	8.7	13.94	.77	61.96	.15	4.18	25.78	58.86
$20,000 to $50,000	4,427,371	5.9	21.46	1.36	94.86	*	6.32	90.35	185.21
$50,000 to $100,000	405,463	.5	36.99	4.93	209.64	*	12.33	320.62	1,109.84
$100,000 and over	91,286	.15	54.77	10.95	438.18	*	21.91	1,314.54	8,106.39

Footnotes at end of table.

WHAT WAYS AND MEANS AND TREASURY DIDN'T TELL US—Continued

WHO REALLY BENEFITS FROM TAX PREFERENCES—Continued

TAX PREFERENCE BENEFITS PER INDIVIDUAL IN EACH ADJUSTED GROSS INCOME CLASS, CALENDAR YEAR 1972—Continued

[Dollars per return]

Adjusted gross income class	Number of returns per income class[1]	Percent of returns in each income class	Deductibility of medical expenses	Deductibility of child and dependent care expense	Deductibility of casualty losses	Excess of standard deduction over minimum	Capital gains: Individuals	Parental personal exemption for students age 19 or over
0 to $3,000	17,180,193	23.1	0.29	0.06	*	----------	1.16	*
$3,000 to $5,000	9,981,704	13.4	6.01	1.20	0.50	0.11	7.92	0.90
$5,000 to $7,000	8,839,820	11.9	17.53	2.38	.57	.95	9.52	3.09
$7,000 to $10,000	12,606,192	16.9	23.80	2.86	.79	5.00	15.07	8.09
$10,000 to $15,000	14,613,620	19.6	31.48	2.87	1.71	41.67	23.27	14.16
$15,000 to $20,000	6,455,678	8.7	49.57	6.66	4.65	39.35	52.67	18.90
$20,000 to $50,000	4,427,371	5.9	98.25	5.65	9.03	22.14	284.59	15.58
$50,000 to $100,000	405,463	.5	283.63	----------	36.99	4.93	2,663.62	177.57
$100,000 and over	91,286	.15	547.73	----------	219.09	10.95	39,211.40	230.05

Adjusted gross income class	Number of returns per income class[1]	Percent of returns in each income class	Deductibility of contributions to educational institutions	Exclusion of scholarships and fellowships	Exclusion of certain veterans' benefits	Exemption of interest on State and local debt	Deductibility of non-business state and local taxes (other than on owner occupied homes)	Tax credit or deduction for political contributions
0 to $3,000	17,180,193	23.1	*	0.23	1.16	0.29	*	*
$3,000 to $5,000	9,981,704	13.4	0.30	2.60	4.51	*	3.01	0.10
$5,000 to $7,000	8,839,820	11.9	.79	3.62	5.66	*	12.44	.23
$7,000 to $10,000	12,606,192	16.9	1.59	2.06	8.73	.40	26.57	.56
$10,000 to $15,000	14,613,620	19.6	3.97	1.30	9.58	1.68	53.72	1.44
$15,000 to $20,000	6,455,678	8.7	10.84	1.86	9.29	3.87	129.34	2.63
$20,000 to $50,000	4,427,371	5.9	20.33	1.36	10.16	28.23	399.79	8.36
$50,000 to $100,000	405,463	.5	49.33	*	22.20	924.87	1,899.06	27.13
$100,000 and over	91,286	.15	76.68	*	10.95	4,984.33	7,284.79	43.82

*For calendar year 1971 (1972 data not available at time of publication).

Source: Tables based on official U.S. Treasury data published by the House Ways and Mean Committee in "Estimates of Federal Tax Expenditures", June 1, 1973

JOINT INQUIRY INTO WARRANTLESS WIRETAPPING

Mr. ERVIN. Mr. President, I am pleased to have the Constitutional Rights Subcommittee join with the Administrative Practice and Procedures Subcommittee chaired by Senator KENNEDY and the Foreign Relations Subcommittee on Surveillance chaired by Senator MUSKIE to investigate electronic and other surveillance.

The main focus of these hearings will be a thorough examination of warrantless wiretapping and other electronic surveillance. During the past few years one new revelation after another, some with explosive public impact, and others equally serious but perhaps of lesser notoriety have indicated widespread governmental surveillance activities directed at American citizens. These citizens have broken no law but the unwritten and unconstitutional law that says you cannot disagree with the Government. This official notetaking on the political and personal activities of citizens has prompted increased public interest and complaints about unwarranted governmental invasions of privacy. It was with these concerns in mind that this joint undertaking was initiated.

The role of the Constitutional Rights Subcommittee in this wiretap study is part of its larger investigation into political surveillance and its impact on the individual rights of all Americans. Warrantless wiretapping and electronic surveillance is but one aspect of the mushrooming political intelligence collection activities of the Government which have overstepped permissible constitutional bounds and invaded personal privacy.

Over the years the subcommittee has been concerned with many such privacy-invading programs. Most notable recently are the subcommittee's investigations of domestic surveillance, the Government's information gathering and dissemination practices, Federal data banks and computers, and military surveillance of civilians.

Our studies show that Americans share the same concern about invasions or privacy and the same apprehensions about excesses of Government surveillance and inquiries regardless of the form they take. While recognizing that in some instances there may be a legitimate Government function involved, citizens are nonetheless concerned about what appears to be the open contempt for the Bill of Rights exhibited by some executive branch officials.

Government has always had the power to make inquiries and conduct investigations, and to detect unlawful behavior of individuals. However, when this power is exercised unrestrained, misuse and abuse is encouraged. A heavy burden is placed on the Government to maintain the proper balance between the acquisition of information and the necessity to safeguard constitutional principles. Events of the past year demonstrate that the Government has not always met that burden.

Political wiretapping, bugging, burglary, opening of mail and other illegal activities cannot be justified under any theory of expediency, not even "national security." These practices have no place in a free society.

The Constitution guarantees every American the right to think and speak as he pleases without having to fear Government interference. There can be no doubt that the effect of political surveillance and intelligence gathering aimed at the beliefs, views, opinions, or political associations and activities of Americans is to inhibit the exercise of freedom of expression and stifle opposition. There simply is no justification for Government to collect intelligence on its political opponents for the purpose of suppressing dissent.

Certainly there is no more important work which the Congress can undertake to protect privacy than to discover the complete truth about the domestic surveillance activities of the executive branch and to determine what remedial action is necessary to prevent future abuses of our constitutionally protected rights.

For this reason I am confident that the forthcoming joint study and hearings will help Congress determine how these guarantees may best be protected.

NATIONAL SECURITY WIRETAPPING

Mr. MUSKIE. Mr. President, during its consideration of the nomination of Henry A. Kissinger to be Secretary of State, the Foreign Relations Committee began an examination of wiretapping in national security areas. On September 18, the same day it recommended confirmation of Dr. Kissinger, the committee adopted by a vote of 17 to 0 a motion that the senior Senator from New York (Mr. JAVITS) and I put forward:

Resolved, that the Foreign Relations Committee pursuant to its oversight duties undertake a full examination of the use of electronic and other means of surveillance

of American citizens in connection with alleged intelligence gathering of other activities related to foreign policy and the areas of national policy over which this Committee has legislative responsibilities, to the end that more satisfactory guidelines and opportunities for more effective congressional oversight may be developed than those set forth in the letter of the Attorney General to Senator Fulbright dated September 12, 1973.

Ten days after this motion was passed, a Subcommittee on Surveillance was created consisting of myself as chairman and Senators PELL, MCGOVERN, CASE, and JAVITS. And now working with Senator KENNEDY'S Judiciary Subcommittee on Administrative Practice and Procedure and Senator ERVIN'S Judiciary Subcommittee on Constitutional Rights, the subcommittee is undertaking a full investigation into the governmental practice of employing warrantless wiretaps of Government officials, newsmen, and other American citizens in the name of "national security" interests.

This issue which we are to explore is extremely sensitive, for it centers on the question of Presidential power and the efforts made to stretch that power to new extremes. All this year—in our debates on war powers, on impoundment, on executive privilege—we have been working to restore the constitutional balance that guarantees the individual liberties of all Americans against the abuse of concentrated power by any one branch of government. Our work on the question of government surveillance without court warrant continues that pattern of congressional activity.

One matter of specific concern to me is the President's authorization in May 1969, of the wiretapping of at least 17 Government officials and journalists as a device to stop leaks of sensitive information to the press. Even though former Secretary of State William Rogers has made public his disapproval of such activities, the administration continues to defend the legality and propriety of its actions, both in the courts and in official statements.

In our investigation, we will ask the administration to clarify the purpose of these wiretaps, to explain why they were judged necessary, to tell us what purposes were served and how effectively. But beyond these instances of which we know, we must try to find out how extensive such practices are and have been, and what formal procedures exist to control both the surveillance and the dissemination of information gathered by such wiretapping, and what actual benefit such surveillance has been to our security.

The problem is composed of two parts: what circumstances, if any, can justify the suspension of the Constitution's guarantees against unreasonable search and seizure and who decides that such circumstances exist. If the decision lodges exclusively with the President, there is a grave risk that Americans are forfeiting a basic liberty to the unrestrained discretion of one man or group of men. In a government of laws, such risks must be closely circumscribed, if they are to be tolerated at all.

It is clear that new guidelines and procedures must be developed which will, on the one hand, safeguard this country's legitimate national security interests and on the other hand, uphold the constitutional rights of all American citizens. It is my fervent hope that the joint Foreign Relations-Judiciary investigation will lead to the development of these guidelines and procedures.

WILLIAM B. SAXBE, ATTORNEY GENERAL NOMINEE

Mr. HOLLINGS. Mr. President, due to a long-scheduled operation on one of my eyes, I will necessarily be absent next week when the confirmation vote is taken on the nomination of the distinguished Senator from Ohio, WILLIAM B. SAXBE, to be Attorney General of the United States.

I believe that the senior Senator from Ohio will be an outstanding Attorney General, and I welcomed his nomination with enthusiasm.

Since then, I have followed his confirmation hearings closely, and they confirmed what I long have known—that BILL SAXBE is eminently qualified to serve in this position of vital responsibility. He has already been an Attorney General, having served in that capacity in his native State from 1963 to 1968. He has the administrative experience to step in and get right on the job. He has the organizational ability to give direction to the Department of Justice. With BILL SAXBE taking over the job, we will not have to endure any period of trial-and-error or on-the-job training.

Mr. President, I believe that this very dedicated and very able man can help restore a sense of stability and direction to the present troubled administration. The senior Senator from Ohio will help bolster the sagging plank of "law-and-order" that was promised in the campaigns of 1968 and 1972. That promise has turned to ashes, destroyed by fires from within the Government itself. An Attorney General of the caliber of BILL SAXBE will dedicate his every effort to true law-and-order, both within the Government and through the Nation.

For 5 years, it has been my privilege and my pleasure to work alongside BILL SAXBE. I have seen in him the competence to succeed handsomely in whatever he attempts—the commitment and dedication to inspire those who work with and for him—and the wit and wisdom to see the world as it is, and the world as it can be.

Mr. President, I sincerely regret that I cannot be on hand next week to cast my vote for confirmation. No vote could make me happier. No vote could give me more confidence and satisfaction.

All of us in this Chamber are of course sad to see BILL go. We will miss seeing him and working with him at the close range in which Senators work. But we know that we are not losing a co-worker, because BILL will go on fighting for the same ideals and the same sense of justice for all that he fought for right here in the Senate. And we know that we are not losing a friend, because we will have the opportunity to work with one another and to visit with one another in the challenging times ahead.

Mr. President, it is a privilege for me to salute the nomination of WILLIAM B. SAXBE. And I join in wishing him Godspeed in all his future endeavors.

NASA CONTRACTING

Mr. MOSS. Mr. President, in November, after a competition stretching over many months, the National Aeronautics and Space Administration selected Thiokol as the contractor for the initial phases of Space Shuttle solid rocket motor development. This completes NASA's selection of contractors: for the orbiter, the main engines, the external tank, and the solid rocket motors. The Shuttle can now go ahead as an integrated system development.

Each selection of a NASA contractor for a major acquisition is documented in a "Selection Statement" by the selecting officials, normally the Administrator, the Deputy Administrator, and the Associate Administrator for Organization and Management. Documentation relating to earlier selections has appeared in the printed record of hearings before the Committee on Aeronautical and Space Sciences.

To my knowledge, such documents have not previously appeared in this RECORD. So that my colleagues may be better informed as to NASA selection procedures in general and the deliberations in this specific selection, I ask unanimous consent that the "Selection Statement" for the Shuttle solid rocket motors be printed in the RECORD.

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

SELECTION OF CONTRACTOR FOR SPACE SHUTTLE PROGRAM SOLID ROCKET MOTORS

On November 19, 1973, Dr. Low, Mr. McCurdy and I, along with other senior officials from NASA Headquarters and the Marshall Space Flight Center, met with the Source Evaluation Board appointed to evaluate proposals for the design, development, testing, evaluation, production operation, and refurbishment of the Solid Rocket Motor (SRM).

PROCUREMENT DESCRIPTION

The Space Shuttle system consists of a reusable, delta-wing orbiter vehicle, an external oxygen/hydrogen tank and twin solid rocket boosters. The orbiter will be boosted into space through the simultaneous operation of the two solid propellant booster rockets and the three high pressure liquid oxygen/hydrogen main engines. The booster rockets will burn in parallel with the orbiter main engines during lift-off and initial flight. They will then be separated from the external tank and safely descend by parachute for water recovery and reuse. Just prior to achieving orbital velocity, the main engines are shut down, the external tank is jettisoned and impacts downrange in a remote ocean area. The orbiter then proceeds into orbit.

The main engines, external tanks and solid rocket motors are being procured separately from the orbiter. NASA has previously selected contractors, following competitive solicitations, for the design, development, and production of the orbiter, main engines, and external tank.

The Solid Rocket Motor Program presently planned consists of three increments. The first is for design, development, testing and

evaluation (DDT&E) including fabrication of ground test and development flight motors. The second increment will be for an initial production effort. The third increment will be for the major portion of the production effort. It is anticipated that the third increment will be separately completed. The proposed contract will be for the first increment only with the terms of the contract expected to run through calendar year 1979.

Four firms were solicited for this procurement by issuance of a Request for Proposals (RFP). All four firms submitted proposals. These firms were:

Aerojet Solid Propulsion Company.

Lockheed Propulsion Company.

Thiokol Chemical Corporation, Wasatch Division.

United Technology Center (UTC).

MISSION SUITABILITY FACTORS

The areas evaluated by the Source Evaluation Board (SEB) consisted of Mission Suitability, Cost, and Other Factors. Prior to the receipt of proposals, the SEB established evaluation criteria and a numerical scoring system to assess Mission Suitability. The evaluation of Mission Suitability was divided into three factors: Design, Development and Verification; Manufacturing, Refurbishment and Product Support; and Management. The Design, Development and Verification factor contained a Design criterion, and a Development and Verification criterion. The Manufacturing, Refurbishment and Product Support factor contained a Manufacturing Safety and Product Assurance criterion and a Refurbishment and Product criterion. The Management factor was subdivided into a Management Approach and Organization criterion and a Key Personnel criterion. A statement describing the factors and criteria under Mission Suitability and a general indication of the relative importance of the criteria were included in the RFP.

To assist in its evaluation, the SEB established a team for each of the three factors under Mission Suitability and a cost team. Each of the four teams was subdivided into panels and subpanels. Approximately 289 people representing five NASA Centers, NASA Headquarters, U.S. Air Force, U.S. Army, and U.S. Navy participated in the evaluation.

With the assistance of the teams and panels, the SEB conducted an initial evaluation of the proposals prior to any written or oral discussions. The SEB determined that all four proposals were within the competitive range. Written questions were sent by the SEB to each of the offerors and each offeror was invited to participate in oral discussions at the Marshall Space Flight Center concerning their proposals. The invitation also established a common cut-off date for the submission of any additional information along with an offeror's best and final offer. Following the oral discussions and receipt of further information by the common cut-off date, the SEB conducted its final evaluation. The SEB considered Lockheed, Thiokol, and UTC as being virtually equal in the Mission Suitability evaluation with Lockheed having a slightly higher score than the other two. Aerojet was significantly lower in score. The following represents the substance of the SEB's evaluation of the individual firms in the Mission Suitability area.

MISSION SUITABILITY EVALUATION, LOCKHEED PROPULSION COMPANY

Lockheed presented an approach to the Space Shuttle Solid Rocket Motor Program that clearly focused on a highly reliable, low risk, conservative design, using all proven materials. Numerous trade studies were performed to optimize design and cost for the life of the program, without jeopardizing reliability. New facilities tailored to the program were proposed starting with DDT&E, with a controlled buildup to the stated 60/30 launch per year rate. Detailed plans for manufacturing, transportation, launch operations, and refurbishment exhibited the depth to which the proposer penetrated all areas throughout the proposal. The new facilities to be provided at MAF and MTF would be wholly owned by the Government at the completion of Increment II, thereby enhancing beneficial competition for Increment III; however, this advantage was offset by the high early-year funding and high total facility costs required to pursue all new facilites for the entire program. The Lockheed proposal received a slightly higher Mission Suitability score than the next two highest ranking proposers although the Board did not feel that the difference was significant. Lockheed was ranked first under the Design, Development and Verification Factor, first under the Manufacturing, Refurbishment and Product Support Factor and third under the Management Factor.

DESIGN, DEVELOPMENT, AND VERIFICATION

In general, the overall design of the SRM as proposed by Lockheed was considered by the Board to be very good and to meet all the major requirements of the RFP. The forward and aft domes of the Lockheed case design are inert (contain no propellant) and are separable. The design provides advantages in handling and transportation, because these items are not constrained by ordnance restrictions. At the launch site the SRB can be assembled and checked out in an unrestricted area. This significant feature was considered the most innovative case design item among all proposers and illustrated the thoroughness and detail that Lockheed utilized in designing for low cost during DDT&E and production. Lockheed determined that the prelaunch bending loads were the critical loads, and designed the case to be sufficient for those loads. The case design also met the requirements for water impact loads, and thus provided a well balanced design which contributed to overall performance. Lockheed was the only proposer to show the design and analysis trade-offs to optimize for all RFP load requirements. The nozzle design was simple and was made from conventional, moderate cost materials, which added to reliability and decreased program risk. Lockheed had limited experience with the propellant formulation proposed for the SRM, which contributed to technical risk, and made this item the most significant Lockheed weakness under the design criterion.

Lockheed proposed to grind ammonium perchlorate at the Mississippi Test Facility during DDT&E, and change to grinding at the vendor's plant during Increments II and III. This major change in the process was not supported by a reverification plan. For the purpose of characterizing the propellant, Lockheed proposed to proceed directly from laboratory scale tests to full scale SRM system firings with no intermediate subscale motors which increased program risk. Lockheed proposed a case hydroburst test which provided a cost effective means of verifying the structural integrity of the case for the combined pressure and thrust loading.

MANUFACTURING, REFURBISHMENT AND PRODUCT SUPPORT

Lockheed proposed a well-balanced, sound production approach to fabricating the segmented motor in the proposed new MTF facility. The production flow was designed to make effective use of a Prime Mover and multiple use pallets for handling and moving segments during in-plant processing. Lockheed minimized tooling and machining costs at the case fabricator and at the case machining subcontractor by the use of common center segments in the case design. There was a deficiency noted by the Board in production planning in processing AP during Increments II and III. Lockheed proposed to abandon an AP grinding facility used during Increment I in favor of grinding at the AP processing plant during the follow-on production which introduced an unnecessary safety hazard and increased transportation costs.

Lockheed proposed an integrated cost effective water transportation concept which took full advantage of the efficiency derived from the vertical handling and transportation of segments with the Prime Mover, and provided cost savings by combining the shipment of SRM segments with External Tanks. This same total handling concept contributed to well planned launch site operations which minimized the handling equipment and facilities as well as launch site operations. Reduction in assembly and disassembly times was provided by the clevis joint design which enhanced pin installation and removal.

MANAGEMENT

The Lockheed management approach to the SRM Program appeared straight forward and conventional for a self-contained, projectized management system. They assembled a capable team of knowledgeable people to manage the program; however, the proposal was considered to be weak in several very important areas by the Board. Lockheed's construction schedules for MTF were optimistic based on comparably sized facilities built at MTF in the past. The relocation of the SRM organization to MTF/MAF was not adequately planned or described. A well executed and timed move would be essential. There was also a very large number of new hires during startup. The net result was low confidence by the SEB in the facility construction and activation schedules, with attendant program and cost risks. The new facility approach resulted in high early year funding which is contrary to one of the key project goals.

The Program Integration and Control Office was heavily staffed and showed a tendency toward overcontrol and duplication. The relatively high rate of retention in the Engineering/Management category after DDT&E appeared to support the tendency toward overcontrol. Lockheed did not plan to have a full-time Deputy Project Director, yet they would have major activities underway at scattered locations, which would cause the Project Manager to be spread quite thin. The lack of a full-time Deputy was considered a weakness by the SEB. Lockheed proposed a good design-to-cost technique which included component target costs established by the Project Manager, design-to-cost teams and tracking of indicated *vs.* target costs by Program Integration and Control.

Lockheed proposed a team of Key Personnel who have recently worked together and demonstrated a high degree of managerial and technical capability on the Air Force SRAM program. However, the majority of the team members had no experience on a solid rocket motor program comparable in size or scope to the SRM effort. The Board considered the proposed Program Manager and Operations Manager to provide particular strength to the team, however, the Board had reservations concerning the qualifications and related experience of the proposed Logistics Manager and Chemical Program Manager.

THIOKOL CHEMICAL CORPORATION

Thiokol presented an approach to the SRM Program which clearly focused on maximum utilization of existing facilities and low early year funding. In-house production effort would be accomplished in the Wasatch Division, Utah facility. Increment III production would be accomplished by acquisition of portion of the adjacent Air Force Plant 78 as Air Force requirements phased out. AP requirements would be met by increasing the capability of existing facilities in nearby Henderson, Nevada. Use of an existing,

skilled, stable work force in a low labor rate area would minimize new hires and provide low labor costs. Thiokol's decision to fabricate nozzles in-house provided cost savings and good control over this extremely critical component; however, the Board concluded that this introduced some early risk because of lack of experience in fabricating nozzles of this size. Facility location resulted in high transportation cost of the SRM's; however, these costs were more than offset by low facility investments. The Thiokol proposal received the second highest overall Mission Suitability score by the SEB, being tied with UTC. The SEB ranked Thiokol fourth under the Design, Development and Verification Factor, second under the Manufacturing, Refurbishment and Product Support Factor and first under the Management Factor.

DESIGN, DEVELOPMENT, AND VERIFICATION

The Thiokol case design met the general SRM requirements; however, the cylindrical segment was close to the upper limits of size capability of the case fabricator. The nozzle design included ablative materials not currently developed or characterized. This offered potential savings in program cost, but with attendant technical and program risk. An expanded characterization and development program would be required. The thickness of the nozzle material was insufficient to meet required safety factors and thus degraded reliability. The amount of material required to correct the deficiency was substantial and the deficiency could require a redesign of the metal portions as well as the ablative portions. The design was complex and would contribute to difficulty in manufacturing. The Thiokol motor case joints utilized dual O-rings and test ports between seals, enabling a simple leak check without pressurizing the entire motor. This innovative design feature increased reliability and decreased operations at the launch site, indicating good attention to low cost DDT&E and production. The thickness of the internal insulation in the case aft dome was marginal and created a technical risk.

Thiokol provided comprehensive test plans and development verification objectives; however, they proposed to verify propellant burning characteristics by testing four to six full scale mixes which was excessive, and could be reduced by establishing correlations with smaller mix size data during DDT&E. Also, Thiokol proposed to hydroburst two motor case assembly specimens, whereas one test would be sufficient.

MANUFACTURING, REFURBISHMENT AND PRODUCT SUPPORT

Thiokol had extensive processing experience with their proposed propellant formulation, having processed over 150 million pounds of this general type of propellant. Thiokol's major weakness in this area of evaluation was in the area of case fabrication. The segment fabricator would be unable to fabricate the case segments strengthened with stiffening rings as proposed by Thiokol for alternate water entry load as proposed by Thiokol for alternate water entry load conditions, if required. This would probably require a case and grain redesign. Thiokol's manufacturing approach provided a good mechanized method of installing insulation, coupled with an innovative method of preparing the insulation surface for the liner by peeling off a dacron cloth from the inner surface of the insulation. A minor weakness in the manufacturing approach was the decision to fabricate nozzles in-house due to Thiokol's lack of experience in fabricating nozzles of this size.

Thiokol proposed to utilize existing facilities which, with minor modifications, were totally adequate for all three increments. The one exception to this was a failure to meet Quantity Distance safety requirements between casting pits for Increment III, however, there are ways to adequately cure this problem. Thiokol maximized the refurbishment of components and the potential cost savings provided by refurbishment. Another less significant strength was the enhancement of segment assembly provided by three alignment pins thereby reducing the assembly hours on the launch pad. Thiokol failed to provide enough new cases and nozzles to meet the launch schedule. Eight additional cases and nozzles would be required to provide assurance that launch dates could be met.

MANAGEMENT

Thiokol structured the development program so that all major costs were deferred to the latest practicable date. This resulted in low early year funding, which is a key program objective. The availability of an operating plant, with ample experienced personnel and a proven organization which could be phased to the SRM effort with minimum modification added considerable maturity and confidence and proved to be cost effective. The Board considered this to be a major strength for all three increments. A strong matrix management was evident and key line organization supervisors were experienced and had worked together as a team on many successful development and production programs such as Minuteman and Poseidon. Strong management participation and visibility in variance analysis was another strong feature as was the approach to corrective actions and their effect on estimate-to-complete. Procurement Management was thorough and well planned. SRM commodity purchases would be consolidated with that of other programs at Wasatch, which should result in lower cost. The Procurement of major items was well matched to overall SRM schedule requirements. Thiokol proposed a strong Configuration Management System which included thorough identification and traceability during DDT&E, production and refurbishment. The tentative decision to make the molded and tape wrapped nozzle in-house was considered a strength in this area. It would contribute to the low cost-per-flight goal by using available resources, avoiding subcontract fees, lowering overhead rates, and taking advantage of lower cost labor. The inherent risk management aspects also were considered.

In the area of Key Personnel, the proposed Program Director was considered exceptionally strong and had successfully performed as a Project Manager on other major programs. He is widely known for his excellent performance. The proposed Deputy Program Director would also be the Chief Project Engineer. He had important and successful engineering management roles in previous major motor programs and has an excellent reputation in the trade.

Although adequately qualified for their proposed assignments, the proposed Functional Managers and their Team Members in the Project Organization did not reflect the depth of experience available in the Functional Departments of the Thiokol matrix type organization and had not previously performed as a team. This was not considered a significant weakness by the Board because of the strong experienced matrix organization at Thiokol.

UNITED TECHNOLOGY CENTER (UTC)

The UTC approach clearly focused on utilization of the management team and design and production experience from the Titan, 120 inch motor program plus maximum use of existing facilities. UTC Division management proposed to take a strong role in the SRM program. The project team proposed was headed by a strong manager and a deputy both from the Titan III Program, who together provided an exceptional combination of managerial and technical skills. The functional managers were qualified by comparable demonstrated performance on Titan III. The motor design approach, including materials, fabrication and assembly methods, and propellant formulation, was virtually identical to that of the 120 inch motor produced for Titan III. UTC proposed to use their existing facilities and processes for SRM production for Increments I and II and for the WTR deliveries for Increment III. They would require a new facility at MTF for Increment III production for ETR delivery. This portion of their proposal, wherein they departed from their existing experience base, was poorly developed. UTC was tied with Thiokol in the overall Mission Suitability evaluation. The SEB ranked UTC second under the Design, Development and Verification factor, third under the Manufacturing, Refurbishment and Product Support factor, and second under the Management factor.

DESIGN, DEVELOPMENT, AND VERIFICATION

The case proposed by UTC was a segmented design comprised of eight identical roll-shear formed segments plus forged forward and aft closures. The propellant formulation selection by UTC was fully developed and flight proven in the Titan Program. The total solids were relatively low resulting in several desirable features. Low flame temperature decreased the severity of the environment for inert components. Low viscosity facilitated processing of high quality, defect-free grains. The advantages were somewhat counteracted by a small loss in specific impulse and density, and propellant cost was slightly higher. The nozzle design included ablative materials which were not developed or characterized. This offered potential savings in program cost, but with attendant technical and program risk. The torque of the UTC nozzle was high which increased the weight and cost of the SRB thrust vector control actuators and hydraulic power supply.

UTC submitted comprehensive test plans and objectives which indicated in-depth planning and good understanding of the development and verification programs; however, the proposed specimen for the modal survey was a subscale segment, whereas a full scale specimen must be utilized to give meaningful data. Also, UTC failed to include a reverification firing of a motor from the MTF facility at the beginning of Increment III where new equipment and new personnel would be operating in a new facility.

MANUFACTURING, REFURBISHMENT, AND PRODUCT SUPPORT

UTC had excellent processing experience with the specific PBAN formulation proposed. It was essentially the same formulation successfully flown in the Titan III Program. UTC also proposed to retain many of the hardware fabrication techniques proven in the Titan III Program. UTC's weakness in this area of evaluation was in the proposed use of an unproven 20,000 pound helical blade mixer. There was a risk associated with the introduction of this mixer which required propellant processing proof not proposed by UTC.

UTC's major strength lay in the use of existing facilities, with only minor modification, for Increments I and II; however, there was inadequate definition of proposed MTF facilities for Increment III. A unique curing procedure was proposed for moving segments immediately after completion of casting. This procedure minimized the number of casting pits required. UTC failed to identify subcontractor facilities as required by the RFP.

MANAGEMENT

The Board considered that UTC proposed a very good management approach. The availability of an operating plant with ample experienced personnel and procedures which

could be phased over to the SRM effort for Increments I and II added considerable maturity and confidence and was a major strength for Increment I and II. There was a degree of programmatic risk associated with a new production site for Increment III. For the production phase, UTC planned to consolidate the Launch Operations and SRM Development Departments into a single office for sustaining engineering. This forced a de-emphasis of engineering and properly placed more emphasis on operations. They proposed an excellent design-to-cost system under the direction of the Deputy Project Manager, who assigned cost goals for each component. Parallel design-to-cost and engineering cost teams would review all hardware before and during procurement. The UTC approach to risk management was strong and methodical, utilizing risk identification analysis. risk assessments and tracking.

In the evaluation of Key Personnel, the Board was of the opinion that UTC's proposed SRM Project Manager was an excellent choice. This was primarily due to his Titan III experience. The proposed Deputy SRM Project Manager has an outstanding background of academic achievement and technical experience, and would strongly complement the Project Manager. A qualified well balanced project management team was proposed with uniquely applicable Titan III development and production experience. A large portion of the team had previously worked together successfully.

AEROJET SOLID PROPULSION COMPANY

Aerojet presented an approach to the Solid Rocket Motor Program that centered on a monolithic design and utilization of their existing Florida facility. The approach utilization design and manufacturing techniques based primarily on the company's experience with the 260 inch monolithic motor and supported by technology gained from Minuteman stages, Polaris motors, 100 and 120 inch motor studies. The inherent advantages of the monolithic design in higher mass fractions, and enhanced reliability through jointless construction were clearly recognized and treated in the Aerojet proposal. The Increment I manufacturing and refurbishment capability at the fully depreciated Florida facility would, with only small modifications, exceed the DDT&E requirements and could partially support Increment II and III production. The location of these facilities provided low cost, safe SRM shipment via water. However, the necessity of starting the SRM design and engineering effort in California and then moving to the Florida production facilities created a significant rephasing and discontinuity near the peak DDT&E workload. Aerojet received the lowest overall score in the Mission Suitability evaluation. The Board ranked Aerojet third under the Design, Development and Verification factor, and last under the Manufacturing, Refurbishment and Product Support, and Management factors.

DESIGN, DEVELOPMENT, AND VERIFICATION

The monolithic case design proposed by Aerojet precluded the potential failure modes associated with joints and seals and, thus, contributed to a highly reliable design. Technical competence was exhibited by choosing a design which had the inherent advantage of high mass fraction that contributes to performance. The strength of the case was found inadequate for the prelaunch bending moment loads and was not designed with an adequate safety factor for water impact loads. An inert weight adjustment would be required to correct for the load inadequacy. Aerojet proposed ablative materials in the nozzle which were not developed or characterized. The use of these materials offered a potential saving in program cost, but with attendant technical and program development risk. The proposed thickness of the ablative materials was insufficient to meet required safety factors. The propellant formulation proposed by Aerojet was selected on the basis of data from 30-gallon mixes, which was a high technical risk. New formulations would have to be qualified in mixers of the size required in production. To obtain the necessary data regarding performance, processing, and aging characteristics, an extensive propellant development and characterization program was considered necessary by the SEB, which would add to early year funding requirements.

Aerojet proposed three subscale motor firings to confirm the selection of ablative materials used in the nozzle, whereas an extensive characterization program is required. For the modal survey test program, Aerojet proposed a half-scale specimen with a length to diameter ratio of 1.0 whereas a full scale specimen was required. A good verification of case structure would be obtained during the hydroburst test wherein thrust loads would be applied to the aft structure to simulate combined pressure and thrust loading.

MANUFACTURING, REFURBISHMENT, AND PRODUCT SUPPORT

Aerojet used many proven fabrication methods and had specific experience with proposed materials which were successfully used on the 260 inch solid motor demonstration program. Examples of this were the proposed use of the same fabricator for the maraging steel case and Aerojet's bayonet casting technique and insulating method. One deficiency noted was the inability of the aft closure fabricator to fabricate the aft closure and skirt as proposed. The SEB confirmed that the proposed skirt length could not be fabricated integrally with the aft closure. Aerojet would have to attach an additional length of skirt extension to the integral stub skirt to correct this deficiency. Aerojet proposed a cost effective tool for removing inert propellant from the ground test motors at MSFC at the conclusion of the dynamic testing of the lift-off configuration. The tool allowed the proposer to convert the motors, while on the test stand, to the maximum dynamic pressure configuration and to proceed with the remainder of the dynamic testing on the same two motors, thus eliminating two ground test motors.

Aerojet proposed to completely check out the motor and seal it prior to shipment to the launch site. This approach significantly reduced launch operations. The proposal offered an integrated, cost-effective water transportation concept which took full advantage of potential cost savings by combining the shipment of SRM's with External Tanks from MTF/MAF to WTR. Aerojet proposed siting its erection facility so close to the Vehicle Assembly Building that activities inside the VAB would be seriously disrupted. This was considered a major weakness by the Board as was the requirement for a rather extensive Integration and Checkout Facility. The proposal did not provide a sufficient number of cases and nozzles to meet the scheduled launches. Five additional new cases and nozzles were required to provide assurance that scheduled dates could be met.

MANAGEMENT

A two-stage organizational approach was proposed: one arrangement for the DDT&E phase; and a modification of that arrangement for the production phase. A weakness was noted by the Board in the proposed project organization having five deputies, four of whom were Vice Presidents with no number two man designated. Poor horizontal integration was indicated. A weakness was also noted in the planning for the move from California to Florida which was not reflected throughout the otherwise detailed logic networks. The transfer of personnel and operations to Florida was not defined adequately to permit proper evaluation. The configuration management of Class II changes was weak. Class II changes were controlled by the configuration manager (who is three tiers down in the organization) and the system appeared to be primarily a coordination and releasing function.

In the Key Personnel evaluation, the Board assessed the proposed Project Manager as having had very limited solid rocket motor experience, although his performance was adjudged to be impressive for the Air Force on the Minuteman Project. The Board was concerned with the continued availability of the proposed Project Manager due to the fact that he is also the President of Aerojet Solid Propulsion Company. The proposed Director of the SRM Division in Florida has had substantial applicable production experience as well as demonstrated capability.

Four of the five proposed functional managers were Vice Presidents with a wealth of Polaris, Minuteman, Titan and AF/NASA 260-inch development and production experience; however, except for one of the individuals, some concern existed regarding their transition back to functional managers. No recent major development activity since the AF/NASA 260-inch motor program was completed was evident in the backgrounds of the majority of the engineering managers reporting to the proposed SRM Engineering Manager. This was also considered a weakness by the Board.

COST FACTORS

All proposals contained estimated costs in "1972" dollars and in "real year" dollars for all increments of the SRM project as required by the REP. As stated in the RFP, the Board evaluated the cost factors and assessed the cost of doing business with each offeror, the possible growth in proposed costs during the course of the program, a comparison with NASA's estimates of the probable total development cost as well as the probable per-flight unit repetitive costs, the magnitude of cost differentials identified, and the credibility of cost differentials.

In analyzing the cost proposals, there was close coordination between the technical evaluators and the cost evaluators. The SEB Design Team identified design weaknesses and proposed methods of curing the weaknesses, and then referred them to the SEB Manufacturing Team. This team estimated the manhours and materials required to correct the weaknesses. This information was then provided to the SEB Cost Team for application of appropriate labor rates, material costs, overhead and escalation factors as necessary. The Cost Team then presented the information to the SEB.

In addition, there were several areas which were given special attention by the SEB. One involved the necessity to make adjustments in the nozzle area, another involved an assessment of the validity of proposed transportation rates, and another involved facilities costs.

NOZZLE ADJUSTMENT

Each of the proposers proposed nozzle designs which contained different combinations or applications of ablative materials. Six different materials were proposed, only two of which were considered by the Board to be adequately characterized for evaluation purposes. Lockheed was the only firm that proposed a design utilizing all currently standard materials, however, the Board noted that the cost proposal indicated large, unsubstantiated reductions in the cost of nozzle materials during later production which is not apparently consistent with the continued use of these materials. The Board concluded that there would be potential program risks associated with the uncharacterized materials; therefore, appropriate adjustments were made to the proposals to minimize such risks. Essentially, this resulted in the Board's providing for more conservative

materials development test programs where considered necessary. In addition, the Board also adjusted material weights and costs as well as labor costs for processing new and refurbished units as required.

As a result, ablative material weight additions were made to the Thiokol and Aerojet nozzle designs. Low cost material development test programs were increased for Thiokol, UTC, and Aerojet to eliminate unacceptable development risks. Labor and other materials costs associated with processing new and refurbished nozzles were estimated for all four firms. The resulting cost adjustments increased all four cost estimates in varying degrees. The Lockheed proposal received the least nozzle cost-adjustment followed by Thiokol, Aerojet and UTC in ascending order.

TRANSPORTATION RATES

The cost proposals of two firms, Thiokol and UTC, were predicated upon the use of particular transportation rates proposed by rail carriers to the United States pursuant to Section 22 of the Interstate Commerce Act. These rates become an important cost factor in Increment III more so than in the earlier Increments. Since the quoted rates appeared to be significantly lower than those on file for shipments connected with the Air Force Titan program, and because Section 22 rates can be canceled or modified on short notice, the SEB became concerned with the credibility of the rates. The Board was also aware that various legislative proposals could affect the continued existence of Section 22 as presently constituted.

Accordingly, the Board sought advice from several sources regarding the various concerns it had in this area. Advice was sought from NASA Headquarters, the General Services Administration, the Military Traffic Management and Terminal Service, railroads, and the two affected proposers at the oral discussions. After analyzing the advice and information received from the various sources, the Board concluded as follows: although the future of Section 22 as a part of United States transportation law is uncertain, it would be speculative to conclude that it will be eliminated; however, if Section 22 is eliminated, approximately the same rates as proposed by Thiokol and UTC could be established as specific point-to-point commodity rates under other aspects of the law; the railroads are considered to be reliable in formulating and observing reasonable rate levels; and, the SRM's will have a higher car loading capacity than present Titan shipments resulting in a good revenue to the carrier. This latter conclusion is supported by information received by the Board in writing from the President of the Union Pacific Railroad which demonstrates that the quoted rates, when coupled with the car loading capacity of the SRM's results in a revenue per freight-ton-mile which is very attractive from a business standpoint.

Based on the extensive and informative data analyzed, the Board concluded that the quoted Section 22 rates are credible and could be relied upon for evaluation purposes.

FACILITIES COSTS

The Board analyzed the costs associated with the various facility plans proposed by the four firms. The amount of new or modified facilities varied considerably with the concomitant cost consequences. The Board also made adjustments to the facility cost proposals, as required, to include expenses such as Government support which would be necessary in some cases. This was essential in order ot assess the total cost impact of the various facility proposals.

Thiokol had the most favorable cost posture in the facility area due to the fact that the additional facility capability required was minimal in comparison with the other proposers. This has the effect of minimizing early year funding requirements which is one of the SRM program goals.

UTC also presented an attractive facility plan from an early year funding standpoint; however, a heavy Government outlay would be required later in the program when UTC proposed that the Government build a production plant at MTF for Increment III. In addition, UTC planned the construction of a new perchlorate plant in the same time frame. Even so, UTC had the second lowest facility cost in the Board's view. Aerojet also proposed a large facility requirement for Increment III which drove their Government financed facility costs upward in later years.

Lockheed had the highest evaluated facility costs due to the need for far more facilities than any of the other proposers. A major facility was proposed at MTF with a resulting substantial requirement for Government funds in the early years of the program. Although it was recognized that Lockheed probably had no other better alternative available, the proposed approach had the dual unfavorable impact of high total facility cost and high early year funding requirements.

The facility proposals were also evaluated by the Board with regard to their cost effectiveness under the "Other Factors" category.

COST SUMMARY

The Board's evaluation of costs included an assessment of the probable costs of each proposal in all three increments and cost per flight. Although the probable cost projections resulted in upward adjustments in all four cost proposals as originally submitted, in no case did this result in a change of relative cost position between the competitors on an adjusted cost comparison. For example, the initial cost proposals for Increment I, with C of F and Government support costs taken into account, revealed that Thiokol was the lowest followed by Aerojet, UTC and Lockheed in ascending order. After the SEB adjustments resulting in the probable cost assessment, the order remained the same.

The Board's final conclusions in the cost area were as follows:

Thiokol would be the probable lowest cost performer in all cost categories (all three Increments; total program cost, and lowest cost per flight).

Lockheed would be the probable highest cost performer in Increments I and II, and second lowest in Increment III, total program cost, and cost per flight. The reason why Lockheed's cost becomes more favorable in later years of the program is largely due to the efficiencies attributable to a large new, well-planned facility at MTF plus a favorable transportation plan which would have maximum impact in the large volume production effort contemplated in Increment III.

UTC would be third lowest for Increment I, second lowest for Increment II, and highest in Increment III, total program cost and cost per flight.

Aerojet would be second lowest in Increment I and third lowest in all other categories.

The Thiokol cost advantages were substantial and consistent throughout all areas evaluated. This is primarily attributable to a low cost facility approach plus favorable labor rates.

OTHER FACTORS

The SEB evaluation included several factors which were not scored in the Mission Suitability evaluation nor considered in the evaluation of cost. These "Other Factors" were identified in the RFP and in subsequent discussions as Financial Capability, Past Performance, Related Experience, Equal Employment Opportunity, Utilization of Small Business, Utilization of Minority Owned Business, Proposed Contract, Proposed Fee Structure, Facilities Flexibility, and Facilities Cost Effectiveness.

Although no major discriminators were identified in the Other Factors evaluation, there was one area considered by the Board which was of particular significance. This involved consideration of the various facility proposals from the standpoint of their cost effectiveness. The evaluation technique employed by the Board was to offset probable total program transportation and facility maintenance expenses against the probable facility costs for each proposal in order to determine the most cost effective approach.

The Board concluded that high cost new facility investments would not be cost effective from the Government's standpoint. This can best be exemplified by analysis of the outer parameters of the spectrum of possibilities encountered. Simply stated, this involved a comparison of Thiokol at one end of the spectrum having a low facility investment but transportation expenses which are relatively high compared to some others, and Lockheed at the other end having a high new facility investment but favorable transportation expenses. UTC and Aerojet fell within the two extremes.

The SEB concluded, after extensive analysis, that Lockheed's favorable transportation position did not extinguish its high facility expenses over the life of the SRM program. Conversely, the Thiokol transportation plan, which is more expensive than Lockheeds, does not extinguish the Thiokol cost advantage related to its minimal facility requirements over the planned life of the SRM program.

SEB PRESENTATION SUMMARY

The results of the SEB presentation to the Source Selection officials are portrayed in the tabulation which follows. The Mission Suitability (MS) ranking reflects a descending order of total scores from the highest to the lowest (i.e., number one was awarded the highest score); the cost position represents the relative standing of the competitors from lowest to the highest (i.e., number one represents the lowest probable cost).

Mission suitability	Cost				
	Including I	Including II	Including III	Program	Per flight
(1) Lockheed [1]	4	4	2	2	2
(2) Thiokol [2]	1	1	1	1	1
(3) UTC	3	2	4	4	4
(4) Aerojet [3]	2	3	3	3	3

[1] The Lockheed mission suitability advantage over Thiokol and UTC was minimal.

[2] The Thiokol cost advantage was relatively significant in each area of consideration.

[3] The Aerojet mission suitability score was significantly below the scores of the 3 higher ranked firms.

SELECTION DECISION

At the conclusion of the SEB presentation on November 19th, we met with a small group of key NASA personnel who had heard the presentation of the Board and who carry responsibilities related to the procurement. Their views on the presentation and findings were solicited and given. Following this, the key NASA personnel withdrew.

In considering the results of the Board's evaluation, we first noted that in Mission Suitability scoring the summation resulted essentially in a stand-off amongst the top three scorers (Lockheed, Thiokol and UTC) though with a varying mix of advantages and disadvantages contributing to the total. Within this group, Lockheed's main strengths were in the technical categories of scoring, while they trailed in the management areas. Thiokol led in the management areas but trailed in the technical areas, and UTC fell generally between these two. We noted that Aerojet ranked significantly lower than the other three competitors in the Mission Suit-

ability evaluation, and the proposal offered no cost advantages in relation to the higher ranked firms. Accordingly, we agreed that Aerojet should no longer be considered in contention for selection.

We noted that the Board's analysis of cost factors indicated that Thiokol could do a more economical job than any of the other proposers in both the development and the production phases of the program; and that, accordingly, the cost per flight to be expected from a Thiokol-built motor would be the lowest. We agreed with the Board's conclusion that this would be the case. We noted also that a choice of Thiokol would give the agency the lowest level of funding requirements for SRM work not only in an overall sense but also in the first few years of the program. We, therefore, concluded that any selection other than Thiokol would give rise to an additional cost of appreciable size.

We noted that within the project logic and the cost proposals, there was a substantial difference in basic approach caused by the varying amount of new facilities needed by the several proposers. Their situations ranged from Thiokol, who needed little new facilities investment to do the job, to Lockheed, who proposed creation of a new facility complex on the Gulf Coast to handle the program, commencing at an early date and building up to full size by the production phase. The prospect of such a major new facility raises a question regarding the basic operational economics involved, and also a question of what other important benefits or drawbacks there might be to such a plan. In regard to the economics proper, the Board's evaluation made it clear that such an investment could not at this time, under any reasonable view of the forecasted economic factors, be considered likely to pay its way as against Thiokol's existing facility. As regards other considerations, we recognized that it may well be advantageous, when the major production phase arrives, to plan to have two or more suppliers in the country capable of competing for the manufacture of SRM's in quantity; however, there is no need to embark upon the construction of a new major facility at this time in order to secure these benefits in a timely manner.

We found no other factors bearing upon the selection that ranked in weight with the foregoing.

We reviewed the Mission Suitability factors in the light of our judgment that cost favored Thiokol. We concluded that the main criticisms of the Thiokol proposal in the Mission Suitability evaluation were technical in nature, were readily correctable, and the cost to correct did not negate the sizeable Thiokol cost advantage. Accordingly, we selected Thiokol for final negotiations.

JAMES C. FLETCHER, *Administrator.*

OIL—THE CREATED CRISIS

Mr. HART. Mr. President, a national debate has developed over responsibility for the energy crisis. Confusing the debate is the absence of reliable information about the extent of petroleum reserves in this country and the steps the oil industry might have taken to prevent a shortage.

As a significant contribution to this debate, I commend a series of articles published by the Philadelphia Inquirer, entitled, "Oil—The Created Crisis." Two able investigative reporters, Donald L. Bartlett and James B. Steele, have given us important help and I ask unanimous consent that the series be printed in the RECORD.

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

[From the Philadelphia Inquirer]

OIL—THE CREATED CRISIS

Periodic "crises" in the oil industry have begun to remind Americans of the boy who cried "Wolf" once too often. So much so that necessary conservation controls may be difficult to impose should a genuine oil shortage ever materialize.

This summer, independent gasoline dealers were forced to close their stations, while major refining companies in many cases limited the amount of gasoline a motorist could buy.

The Philadelphia Inquirer wanted to know why.

Two outstanding investigative reporters—Donald Bartlett and James B. Steele—were assigned to uncover the answers. With The Inquirer since 1970. Bartlett and Steele won Sigma Delta Chi's Distinguished Service Award for 1971, the George Polk Memorial Award and the PNPA Public Service Award for a series of articles on misconduct in the Federal Housing Administration in Philadelphia. Their stories brought about sweeping reforms in the FHA office.

"Oil—The Created Crisis" appeared as a three-part series in The Inquirer, beginning Sunday, July 22. The series has been reprinted in this form as a public service.

(NOTE.—Charts and tables mentioned in the following articles will not appear in this reprint in the RECORD.

OIL FIRMS SELL ABROAD, UNITED STATES PAYS

(By Donald L. Bartlett and James B. Steele)

Question: If we have enough crude oil, why is there a fuel shortage?

Answer: The real problem is a shortage of refinery capacity.

Over the last decade, the five largest, multinational American oil companies have invested billions of dollars in facilities for producing, refining and marketing petroleum products in foreign countries.

The American consumer now is feeling the effect of those huge investments. This summer, it is called the gasoline shortage. It will be followed this winter by a fuel oil shortage, which in turn will be followed next summer by another gasoline shortage.

A two-month investigation by The Inquirer into the so-called energy crisis of 1973—a probe that reached from the offices of the U. S. Securities and Exchange Commission in Washington to the oil fields of Texas and Oklahoma—established that:

American oil companies some years ago made deliberate, long-term policy decisions to sharply expand operations in foreign countries to meet the spiraling demand for oil products in Europe and Asia. That expansion came at the expense of the United States.

The Nixon Administration made one blunder after another in dealing with oil policy matters, beginning with the President's failure to lift oil import restrictions after taking office in 1969 and climaxing with soothing assurances last winter that there were no oil supply problems.

At the same time American oil companies with worldwide operations are telling their customers in the United States to cut back on their consumption of oil products, the companies are urging their customers in Europe and Asia to buy more oil products.

The American taxpayer is subsidizing the sale of petroleum products across Europe and Asia through a variety of tax allowances and benefits granted to American oil companies. The cost to the American taxpayer can be measured in billions of dollars over the last 10 years.

Contrary to the claims of the oil industry and the Nixon Administration, the current gasoline shortage was not caused by an energy-guzzling American public or the unreasonable demands of environmentalists. It was created through default and administrative bungling by the oil companies and the Federal government.

Late last spring, the oil industry launched a massive advertising campaign designed to make the American consumer feel responsible for the nation's gasoline shortage.

A Standard Oil Co. (Indiana) advertisement, published in Business Week magazine on May 19, 1973, summed up the industry's position:

"America has a tremendous appetite. Not just for food, but for the natural resources that produce energy—gas and petroleum.

"And we're running short of them, because the country is growing so fast, and using up its currently available resources even faster."

President Nixon, in an energy message delivered to Congress April 18, put it this way:

"Today, with six percent of the world's population, we consume about a third of all the energy used in the world. Our energy demands have grown so rapidly that they now outstrip our available supplies."

The United States is indeed the world's largest single user of crude oil. And the demand for crude oil has indeed soared over the last 20 years. But that growth in demand has occurred in Europe and Asia—not the United States.

And American oil companies, foreseeing that growth, began concentrating their exporation and oil-drilling efforts and their refineries and sales operations overseas to capture a share of the emerging markets.

The story is told in statistics, gathered by Inquirer reporters from dozens of different sources in Washington and New York and Austin and Houston and Tulsa, from state and Federal agencies, financial institutions, Congressional committees, industry trade organizations, academic studies and the oil companies themselves.

The important statistics are those from the five largest American oil companies. Ranked in terms of sales, they are Exxon Corp., Mobil Oil Corp., Texaco, Inc., Gulf Oil Corp. and Standard Oil Co. of Calif.

Their sales in 1972 totaled $50.2 billion. Their net income after taxes was $3.7 billion. These five companies—along with two foreign-owned companies—control the world oil market.

SALES DOUBLE ABROAD

Item. For every barrel (42 gallons) of oil products sold in the United States during 1972 by the five companies, the same companies sold nearly two barrels in other countries.

Ten years ago, the sales of the five companies were about evenly divided between the United States and other countries. And 10 years before that, the bulk of their sales was made in the United States.

ITEM. Product sales of the five companies increased 46 percent in the Western Hemisphere, where the United States is the major market, from 1963 to 1972. During the same period, sales increased 119 percent in the Eastern Hemisphere—most notably in Western Europe and Japan.

Item. The number of barrels of crude oil processed by the five companies at refineries in the Western Hemisphere increased 32 percent from 1963 to 1972. In the Eastern Hemisphere, the increase was 137 percent.

Item. The percentage of crude oil refined by the five companies has steadily declined in the United States and has steadily risen in foreign countries. In 1972, the companies refined 31 percent of their oil in the United States, compared with 40 percent in 1963. The volume refined in other countries in-

creased from 60 percent in 1963 to 69 percent last year.

ITEM. The demand for crude oil has increased 110 percent in the United States over the last 20 years. In Japan, the demand has increased 2,567 percent. In West Germany, 1,597 percent. In Italy, 1,079 percent.

Throughout the non-Communist countries of the Eastern Hemisphere, the demand for crude oil rose 674 percent from 1953 to 1972, compared with a 132 percent increase in the Western Hemisphere.

REASONS FOR INCREASE

The reasons for the sharp increase in demand overseas fall into three general areas. The devastation of Europe and Japan during World War II, the relaxation in Europe of national policies designed to protect the coal industry and the booming economies of Western Europe and Japan.

Anticipating the growth, American oil companies moved to meet the demand and—especially in the last 10 years—began promoting sales with the same zeal that made the United States the world's largest consumer of crude oil.

Now, in fact, at the same time American oil companies are offering American consumers advice on how to cut down on the use of gasoline and home heating oil, and are urging American industries to reduce their use of crude oil, they are pushing the sale of those same products in Europe and Asia.

A subsidiary of Standard Oil Co. (Indiana)—the nation's sixth largest oil company in terms of sales—placed a full-page advertisement in The Financial Times of London on May 15 that was aimed at industrial oil buyers in the United Kingdom.

The caption over a sketch of a worried businessman biting his nails read: "The exciting life and times of the industrial oil buyer."

The advertisement pointed out that the United States was emerging as a major importer of crude oil, thus reducing the availability of world oil supplies. The advertisement continued:

"Where does this leave the industrial oil buyer? It leaves him having to think very carefully about the price he pays for his oil and the reliability of his supplies. If he is sensible, he will start looking carefully at alternative sources.

"The following are just a few of the reasons why he should start looking at Amoco. Our parent company is Standard Oil Co. (Indiana), which has an enviable supply of established crude resources.

"In this country (Great Britain) we are building one of the world's most modern refineries at Milford Haven. . . . Our representatives are trained to make your operations as secure and economic as possible."

A DIFFERENT TONE

Six days after that advertisement appeared in The Financial Times of London, a two-page, Standard Oil Co. (Indiana) advertisement—with a somewhat different tone—appeared in the Washington (D.C.) Evening Star and Daily News.

That advertisement carried the caption: "Does Amoco really have to allocate gasoline?" It said:

"Recently, Amoco started allocating gasoline and other petroleum products. . . . We think the American public has the right to know the facts behind this decision.

"Primarily, the situation is this: Demand has outstripped our country's crude oil supply. . . . What's more, domestic crude supplies are short. And growing shorter. And foreign crude availability isn't up to the level this country needs right now.

"Does Amoco really have to allocate gasoline? Yes, and all of us may have to get by with a little less for a while, so there'll be enough to go around."

Oil company officials see no contradiction between their policies of pushing the sale of oil products in Europe and Asia at the same time that they are telling Americans they must cut back on gasoline and fuel oil consumption.

When asked why Texaco was not urging consumers in other countries to conserve their use of gasoline and oil, a senior vice president of the company said: "The same shortages do not exist elsewhere."

How is it, then, that American oil companies are able to supply their European and Asian markets, but are unable to meet commitments in the United States?

TWO ANSWERS

There are two answers to the question and both explain generally why the United States will have recurring shortages of gasoline and fuel oil over the next two or three years.

First, American oil companies have focused their exploration efforts overseas, drilling for oil and gas in such places as Mauritania, Mozambique, Papua, Equatorial Guinea, the Gulf of Thermaikos, the East China Sea and the Gulf of Thailand.

Second, American oil companies have concentrated on building refineries throughout Europe and Asia, rather than in the United States.

As a consequence of those two decisions—considerably aggravated by foggy government policies and ill-timed administrative actions—the production of crude oil in the United States has leveled off and there is a shortage of refinery capacity.

Because these same American oil companies searched for oil overseas, and built their refineries overseas, they now have sufficient oil to meet the demands of their overseas markets.

To understand what has happened, it may be best to begin with the production of crude oil. A single company, in this case Mobil Oil Corp., provides a typical example.

In 1963, Mobil's net production of crude oil and natural gas liquids in the United States and other countries in the Western Hemisphere was 409,000 barrels a day. By 1972, the company was producing 625,000 barrels a day—an increase of 53 percent.

But during the same period. Mobil's production in the Eastern Hemisphere went from 452,000 to 1,286,000 barrels a day—an increase of 185 percent.

SIMILAR FOR OTHERS

The statistics are similar for other multinational American companies. Although there certainly are exceptions, oil produced in the Eastern Hemisphere generally is earmarked for sale in Europe and Asia—and not in the United States.

This policy was explained by M. A. Wright, now chairman and chief executive officer of Exxon Co., U.S.A., during an appearance before the U.S. Senate Antitrust and Monopoly Subcommittee on May 22, 1969.

At the time, the committee was studying the role of the Federal government in relation to the petroleum industry. Wright told the committee:

"I think the important thing to you gentlemen is that, in a company like Jersey (at that time, Exxon was known as Standard Oil Co. of New Jersey), the foreign production that is developed is primarily for the purposes of supplying foreign markets.

"We do not develop crude on the outside of the United States primarily to supply markets inside the United States. Now, this I think is something that many people do not quite understand."

The same philosophy of foreign oil for foreign markets was indicated by Mobil Oil Corp. in its 1972 annual report.

Commenting on the company's search for oil and gas in the stormy waters of the North Sea off the coasts of Great Britain, Norway and The Netherlands, Mobil stated:

"Although severe weather makes exploration unusually difficult in the North Sea, the incentive to find hydrocarbons there is great.

"CUT IMPORT NEEDS

"The area is at the doorstep of the most heavily industrialized region of Europe, where Mobil has an important position in a big, expanding market and several large refineries in operation with another about to be built.

"Also, the countries bordering the North Sea actively encouraging exploration there to minimize their dependence on imports."

Indeed, while Mobil and other American oil companies are warning that the United States will become increasingly more dependent on imports in the coming years, the discovery of vast oil and gas deposits in the North Sea by these same companies will drastically reduce Great Britain's dependence on imports.

In fact, the British, who now import almost all of their oil, expect to meet two thirds of their needs in the 1980s with North Sea oil and gas, according to estimates made by that country's unusually conservative Department of Trade and Industry.

It should be noted that the American oil industry is not a monolithic organization that speaks with a single voice.

Its membership ranges from thousands of small, independent producers and marketers to about two dozen large, integrated companies, sometimes loosely referred to as the majors. An integrated company is one involved in all phases of the petroleum business, from production to sales.

The various groups often have conflicting interests and there are even marked differences among the so-called majors. For example, the five companies studied by The Inquirer all have extensive worldwide marketing operations.

On the other hand, the Philadelphia-based Sun Oil Co., which ranked 14th last year among oil companies in sales and is considered one of the majors, has few markets outside the United States and Canada. Last year, the two countries accounted for 96 percent of Sun's sales.

Sun, like the five multi-national companies, also is exploring for oil in other parts of the world. But unlike the other five companies, Sun's overseas exploration is designed to serve its markets in the United States.

DRILLING IN ALGERIA

As Darwin W. Ferguson, an executive vice president of Sun, explained it:

"We're now drilling in Algeria. We've been the first company in recent years invited to do that. If we find oil there, we would bring it right into Philadelphia."

Such is not the case with the multinational companies like Exxon. As Exxon's Wright told the U.S. Senate subcommittee in 1969:

"This is purely a business question and you also build up an obligation over a period of time with your customers in any place.

"And generally speaking, over the years Jersey (Exxon) has supplied the Eastern Hemisphere markets from Eastern Hemisphere crude source, and the Western Hemisphere market from Western Hemisphere crude sources. This has a great deal to do with the economics of transportation."

When asked why Exxon did not sell low-sulfur crude oil from its Libyan fields in the United States—where there is a demand for that oil because of air pollution controls—Wright replied:

"It is a question of economics. If they (buyers in the United States) want to pay enough for it, we would do it. But the normal market is Europe for Libyan crude."

EXCHANGE WITH SENATOR

Pressed further as to why Libyan crude was not sold in the United States, Wright had

this exchange with Sen. Philip A. Hart (D., Mich.):

Sen. Hart—"The answer would be understandable if you can make more money selling it in Europe."

Wright—"Right. That is a very simple answer and that is the kind of answer it is. It is a question of how much people want to pay for it, if they want to pay enough for it to make the market profitable in Europe, sure, we will sell it there. We are in business."

Interestingly, the American taxpayer is subsidizing the sale of petroleum products in foreign countries by American-owned companies.

Over the last decade alone, the multi-national American oil companies have escaped payment of billions of dollars in Federal income taxes as a result of special subsidies, allowances and tax loopholes—covering oil produced and sold outside the United States.

The special allowances have contributed to some curious pricing practices in the oil industry, as was disclosed during the 1969 Senate Antitrust and Monopoly Subcommittee hearings.

Dr. John M. Blair, the committee's chief economist, noted that Exxon had sold Arabian crude oil to affiliate Japanese companies for $1.63 a barrel in early 1965, but that in 1966 the price went down to $1.57 and that by late 1968 it had dropped to $1.46.

"Are we to conclude," Blair asked of Exxon's Wright, "that at the same time that you were raising the price to the American consumer, your company was reducing the price to foreign buyers?"

Wright said, "You are working in two separate worlds when you speak about what you do in the United States compared to what you do abroad, and what you say is exactly right.

"In the foreign circuit where there has been tremendous competition, the price has gone down. I accept your figures. They sound right to me. And, of course, the crude price in the United States is a matter of record."

PRODUCT SALES BOOM

Thus, while the American taxpayer has subsidized the overseas operations of American oil companies, sales of petroleum products have soared around the world.

Listen to a few accounts from the annual reports of the companies:

Exxon (1965)—"In 1964 Japan became the free world's largest consumer of petroleum after the United States, and it continued to outstrip other areas in percentage growth during 1965. The company's sales in Japan for the year increased 18 percent (compared with 8 percent in the United States)."

Standard Oil Co. of Calif. (1968)—"In Western Europe, fastest-growing major Free World market outside Japan, Chevron Oil Europe, Inc., a subsidiary, completed its first full year of operation. In this region, which accounts for some 50 percent of free foreign petroleum consumption, Chevron Europe sales increased approximately 20 percent."

Texaco, Inc. (1970)—"Product sales in the Eastern Hemisphere increased 14.7 percent (compared with 0.2 percent in the United States). Sales of refined products in Western Europe continues to show significant growth in both volumes and revenues."

To help supply its markets in Europe, Exxon—like more than a dozen other American oil companies—has been active in exploratory drilling in the North Sea.

In reviewing its 1972 operations, Exxon stated in its annual report that the company, in partnership with Shell Oil Co., "initiated construction of the first of several large and expensive drilling production platforms . . ."

"The platform will be placed in 460 feet of water, deepest of any industry location in the North Sea. It will be built to withstand waves of up to 100 feet and winds gusting to 150 miles per hour.

FIRST BRITISH CRUDE

"The severe wave and wind conditions, combined with the water depth, necessitate the use of some 24,000 tons of steel, which is more than three times the requirement of the largest platforms in the Gulf of Mexico.

"It is expected that oil from this Exxon-Shell field will be brought ashore by shuttle tanker in 1974, possibly making it the first British crude oil delivered from the North Sea."

So it is, then, that at the same time Exxon is meeting the crude oil needs of Great Britain, the company is putting out a somewhat different story relating to its capabilities in the United States.

J. K. Jamieson, chairman of the board of Exxon Corp., told the 91st annual meeting of the company stockholders last May 17 in New York City:

"Currently, the (energy) shortages are centered in the United States, where supplies of domestic crude oil and natural gas are inadequate and where there will be inadequate refining capacity for a few years until additional refineries can be built.

"Exxon U.S.A. recently announced that it would make products available to our various customer groups in the same basic proportions that we have been supplying in the recent past.

"I should also mention that it is unlikely that Exxon will have the capability to supply potential new customers in the near future."

The Exxon chairman, of course, was talking about potential new customers in the United States—not elsewhere around the world.

Ten days after he delivered his address to Exxon stockholders in New York, the following advertisement appeared in the London Sunday Express on May 27, 1973:

"Install your Esso central heat wave now . . . pay nothing till October 1st! When all's said and done oil's cheaper to run."

YOU GET STAMPS

The advertisement, promoting the sale of home heating oil by Esso—a European subsidiary of Exxon—urged Britons to convert their home heating systems to oil because it costs less and "it's only with Esso that you get Green Shield stamps on every gallon of oil you buy at schedule price . . ."

"With Esso you're sure of your deliveries wherever you live."

That means, of course, if you live in Great Britain rather than the United States.

Following hearings held in Minnesota May 2 concerning the gasoline shortage, Sen. Hubert H. Humphrey (D., Minn.) reported to the U.S. Senate:

"For the last 20, 30 or 40 years school districts (in Minnesota) have contracted with big companies like Standard Oil for fuel.

"Now, in every instance where they have sought bids to maintain their contracts, they are unable to do so. In Minnesota, we cannot get bids on fuel oil for this winter."

The situation appears equally bleak for New England this winter. The Independent Fuel Terminal Operators Association, an organization of independents who say they supply 40 percent of New England's fuel oil needs, report that their stocks are at record low levels and that they are unable to obtain commitments for supplies this winter.

In a memorandum to former Colorado Gov. John A. Love, who is President Nixon's latest energy czar, the association said that as of July 1 its members had 1.1 million barrels of fuel oil—down 67 percent from the 3.2 million barrels on hand a year earlier.

THIRTY PERCENT OF DEMAND

Perhaps even worse, the memorandum stated that "independents have assured supplies of only 85,000 barrels a day. This represents only 30 percent of their projected demand."

So how is it that Exxon and other American oil companies selling overseas can promise to supply their customers in Europe and Asia without interruption, but cannot supply markets in the United States?

James E. Lee, president of Gulf Oil Corp., explained the situation this way in an interview with The Inquirer.

"The problem we have in the United States is not a shortage of crude oil. We can import whatever we want. What we have here is a refining capacity problem.

"Demand has outstripped capacity. This is not the situation in Europe where our refineries are running at 85 to 87 percent of capacity."

That there is a shortage of refining capacity in the United States is one of the few areas in which there is agreement among oil company officials and industry critics.

The United States used 15,980,000 barrels of crude oil every day last year, according to data compiled by the British Petroleum Co., Ltd., which publishes an annual, worldwide review of the oil industry.

At the same time, refineries in the United States were capable of processing only 13,450,000 barrels a day, acoording to the British Petroleum Co. study.

The difference of 2,530,000 barrels a day between demand and refinery capacity was covered by imports of finished petroleum products—largely from Canada, Venezuela and the Caribbean.

From the mid-1960s until now, fewer than a half-dozen new refineries with capacities exceeding 50,000 barrels a day each were constructed in the United States.

DIFFERENT STORY

Overseas, it was a different story. The annual reports of the oil companies read like a catalog of refinery construction projects:

Standard Oil Co. of Calif.—"In the Eastern Hemisphere, the new 130,000-barrels-a-day refinery at Feluy, Belgium, began operations, materially increasing the company's ability to supply its expanding markets in northwestern Europe . . . In the Far East jointly owned Caltex and its Japanese affiliates placed a new 76,000-barrels-a-day refinery on stream at Osaka."

Exxon Corp.—"In Singapore, which has become an important refining center, a 100 percent-affiliate owned refinery went on stream with a capacity of 81,000 barrels a day . . . The company concluded arrangements to build a 72,000-barrel-a-day refinery in Okinawa, the first such facility in the Ryukyu Islands."

Texaco, Inc.—"Texaco's equity in refinery runs in the Eastern Hemisphere increased 18.8 percent to 918,000 barrels a day. Contributing to this gain were the . . . completion of the 80,000-barrel-a-day Vexin refinery in France, now 15 percent owned, and the start up of the wholly owned, 100,000-barrel-a-day Ghent refinery in Belgium."

Mobil Oil Corp.—"Projects completed in 1968 include the wholly owned 80,000-barrel-a-day refinery at Amsterdam . . . In southwest Germany, our wholly owned 70,000-barrel-a-day refinery at Woerth went on stream early in 1970 . . . Construction is scheduled to begin in 1973 on a 160,000-barrel-a-day refinery at Wilhelmshaven, Germany—the largest single refinery building project Mobil has ever undertaken overseas."

Gulf Oil Corp.—"Three new refineries were completed during the year adding 166,000 barrels a day of refining capability to the Gulf system. The refinery located near Milan, Italy, is wholly owned and the refineries at Bilbao, Spain, and on Heianza Island, Okinawa, are partially owned. . . . The year also was one in which the new refinery at Milford Haven in Wales completed its first full year of operation."

Throughout this period of rapid refinery expansion around the world by American oil companies, there was very little new construction in the United States.

This was due largely to the fact that during the early 1960s there was an excess of refinery capacity, so that American compa-

nies were in the position of being able to turn out more gasoline and fuel oil than they could sell.

AWARE OF SHORTAGE

But by 1970, oil industry officials were clearly aware of an impending shortage in refinery capacity. The Oil & Gas Journal, the authoritative trade magazine for the petroleum industry, sounded the warning more than two years ago.

In an editorial headlined "U.S. refineries are heading into a period of trouble," published March 22, 1971, the magazine stated:

"During the Seventies, domestic refiners will be forced to take on a heavier share of a burgeoning demand for energy. Those refiners who do not look beyond the new residual needs of the East Coast and arrange their plant capacity according are missing the mark. Failure to expand will invite an industry crisis of the first rank.

"Total of new plant construction is not high today. Jobs on the books are for the most part "tail-end" projects with completions due this year or early next. After that, there is nothing—not a single major construction project committed against the needs of 1973.

"If refiners generally do not cut through their many problems and close some new construction contracts this summer, they will face difficulties they haven't dreamed of. Since it takes two to three years to complete any modern refinery, a crunch on domestic petroleum products appears almost inevitable by the mid-1970s."

As everyone now well knows, all the predictions made in 1971 by the Oil & Gas Journal have come true. But perhaps even more revealing than the magazine's accurate forecasts was a story it published a year later on March 27, 1972.

In that issue, the magazine again warned of the coming crisis: "The U.S. is rapidly running out of time to avert a refining-capacity crunch for clean products—notably gasoline."

This time, the magazine put forth a theory as to why American oil companies had failed to expand existing refineries or build new ones:

"The conviction of many refiners—who point to widespread price-warring and distress gasoline—is that a lull in construction is needed to let demand catch up a bit. That sounds reasonable—if the lull doesn't last too long. At this point, it appears there's a definite danger of this."

FALSE CLAIMS

What all this means is that: The claims of oil industry spokesmen that environmentalists are to blame for the current gasoline and fuel oil shortage because they blocked refinery construction are without foundation.

The general industry tone has been set in a series of advertisements published in recent months by Mobil Oil Corp. One advertisement, which appeared in the New York Times on April 12, 1973, asked:

"Why haven't oil companies built more refiners here?" The company then offered the following answer:

"Mainly environmental and financial constraints. While the vast majority of consumers are unaware of it, legislation and litigation arising from exaggerated environmental fears have effectively prevented oil companies from obtaining satisfactory sites for new refineries. And the wholesale prices we get for gasoline and other products do not recover the increased cost of building refineries."

True, environmentalists have aggravated the current energy shortage. They have so far blocked construction of the Alaskan pipeline. They blocked construction of a proposed refinery in Delaware. But they did not create the oil shortage. The oil companies and the Federal government did that.

In the last three months, for example, several major oil companies have announced plans to substantially expand existing refineries—a step that could have been taken at any time in the past and one that involved no controversy over sites.

PROPOSALS KILLED

As for environmentalists halting the planned Delaware refinery, the major oil companies themselves—aided by the Federal government—killed proposals in the late 1960s to build two new refineries, one at Machiasport, Maine, the other at Savannah, Ga.

The Machiasport refinery, with a projected capacity of 300,000 barrels a day, was proposed in 1968 by Occidental Petroleum Corp. It would have been one of the largest refineries ever constructed in the United States.

The refinery was designed to alleviate expected home heating oil shortages in New England. At the time, Gulf Oil Corp., like other companies, argued that there had been "no real shortages" of home heating oil.

Now the oil industry generally acknowledges that there is a shortage of petroleum products, including fuel oil.

Oil industry opposition to the Machiasport refinery was so intense and so bitter that the large oil companies, headed by Exxon Corp. and the industry trade organization, the American Petroleum Institute, finally took their case to President Nixon.

The Machiasport refinery was never built.

FOREIGN MARKET LURES INDUSTRY

OIL GIANTS DEFEND EXPANSION

The five largest multi-national American oil companies see no conflict between their expansion overseas and their present inability to meet demand for petroleum products in the United States.

Asked to comment on their expansion in foreign countries, and whether that expansion was made at the expense of the United States, oil company official's made the following statements:

Standard Oil Co. of Calif.—"We expand abroad for the same reasons we have been expanding domestically. We expand where there are markets to serve and we don't feel that this expansion in one area is at the expense of another.

"In the first place, much of the money used in expanding abroad has been generated there. We have been borrowing money in Europe. If we build a refinery in Belgium to use South Arabian oil for the benefit of Eastern hemisphere customers, they are our customers too, and we owe them a continuity of supply.

"If the oil comes from the Eastern Hemisphere the funds are borrowed there and the refinery is built in their countries, we have an obligation to serve them. Their expansion has been even greater than ours.

"They are going through their car-crazy stage. Their market is expanding even faster than our market. So they are good customers. These people have rights too."

Mobil Oil Corp.—"Investments in this country by the oil industry have been discouraged by various restrictions. For example, the import control system discouraged refinery building. The proof of this is soon after controls were lifted various companies, including Mobil at our Paulsboro, N.J., plant, announced expansion plans.

"Also, environmentalists and the government delayed lease sales, the Alaska pipeline and construction of bigger ports in the United States.

"North Sea nations have given every incentive to drill and explore. We feel this is so because all of these nations want to control their own energy supply. They have lived on imports and they recognize the risks in this."

Exxon Corp.—"We have consistently followed a policy of seeking attractive opportunities whenever they exist, whether in the United States or abroad, and have invested heavily in all functions on a worldwide basis.

"From 1963 through 1972, 42 percent of the money we invested in additions to property, plant and equipment was spent in the United States, although only 31 percent of our petroleum product sales were here.

"The share of property additions dedicated to the United States market would be even higher if we were to include investments made in the Caribbean and other areas to serve the specific needs of the United States.

Texaco, Inc.—"Over a period of time, Texaco refinery construction has been about the same in the United States and overseas. In recent years, construction has not kept pace in the United States for several reasons: Uncertainty as to an assured crude oil supply source, environmentalists' objections to siting and the oil import program, which was an incentive to build offshore (Caribbean) refineries.

"The oil industry over the years has provided the capital for investment in both the United States and overseas. With declining production of crude oil in the United States, it's to the United States' best interests to have a crude supply any place in the free world."

Gulf Oil Corp.—"The United States is a completely separate market from Europe and Japan. What we have in the United States is a refinery capacity problem. The situation in Europe is different. They are not short on capacity.

"Why have we lagged behind in this country? There is no single reason. One has been the environmental problems with respect to finding a suitable site for the refinery construction; the second was the uncertainty over a supply of crude oil created by the import control program and third, an inadequate return on our investment.

"We face these problems here, but not in Europe, and this is the reason for the problem, not a favoritism of foreign markets over the United States.

"We are not sacrificing any efforts in the U.S."

WILL THE OIL SHORTAGES BOTHER YOU?

Here are some questions and answers about the current gasoline shortage and the so-called energy crisis in the United States:

Q.—Is the Federal government going to ration gasoline?

A.—There is no legitimate reason it should do so.

Q.—How serious is the gasoline shortage then?

A.—As of mid-July, not very serious. There have been, and will continue to be, spot shortages.

Q.—What does that mean?

A.—Gasoline stations are more likely to close early, or close all day on Sunday, in certain sections of the country, the Midwest, far Northwest and deep South.

Q.—What is going to happen next?

A.—There will be shortages of fuel oil this winter, especially in New England and the Midwest.

Q.—How serious will these shortages be?

A.—It depends on the weather. A prolonged, bitter cold wave could spell real trouble. If, on the other hand, it's a very mild winter, no shortages at all may develop.

Q.—What's wrong? Are we running out of crude oil?

A.—No.

Q.—But I read somewhere that we only have enough oil for 20 years.

A.—That's simply not true. There is enough crude oil on the North American continent (including offshore areas)—with modest imports—to keep the United States running well into the 21st century. We are, though, running out of oil at today's prices. In the future, we will have to pay more.

Q.—Does this mean I won't have to change my lifestyle, like the newspapers and television say I will?

A.—That's correct. But that doesn't mean you should not practice conservation or use petroleum products inefficiently.

Q.—If we have enough crude oil, why is there a shortage of gasoline and fuel oil?

A. Rather than an oil shortage, the real problem is a shortage of refinery capacity.

Q. What do you mean?

A. The United States does not have enough refineries to turn crude oil into all the gasoline and fuel oil the country needs.

Q. Why not?

A. Two reasons: The oil companies have been building their refineries overseas and government policies have discouraged refinery expansion in this country.

Q. But I read an advertisement in my newspaper that said no refineries were built because of the environmentalists.

A. That isn't true. Environmental groups certainly have aggravated the problem, but they did not create it. The oil companies and the Federal Government did that.

Q. You mean companies like Exxon and Texaco and Mobil have been building refineries in other countries but not in the United States?

A. That's right.

Q. Why?

A. Because contrary to all the stories you have been reading and hearing, the great demand for petroleum products over the last 20 years has come in Europe and Asia—not the United States. The oil companies concentrated their building overseas to fill those needs.

Q. Do the companies have enough oil to sell overseas?

A. Let's put it this way: The companies are, at the present time, running advertisements and pushing the sale of their products overseas as they did two or three years ago in the United States.

Q.—You mean the companies are doing this at the same time they are telling me I should not drive my car so much and I may have trouble getting fuel oil this winter?

A.—That's right.

Q.—How can this be?

A.—Right now there is an excess refinery capacity abroad. In other words, the companies have the ability to turn out all the products they can sell.

Q.—Why don't they just refine the crude oil over there and ship the gasoline and fuel oil here?

A.—It's not profitable and European refineries are designed different from those in the United States. The companies are, though, bringing small amounts of finished products into the country.

Q.—Is there anything else I should know about the oil companies expanding their operations in foreign countries?

A.—Yes. You are subsidizing the sale of petroleum products around the world.

Q.—In what way?

A.—Special tax benefits and allowances have enabled the oil companies to escape payment of billions of dollars in Federal income taxes on oil that was produced and sold in other countries.

Q.—You mean I'm subsidizing the sale of gasoline and fuel oil in Europe and Asia and there's a shortage of these products here?

A.—That's correct.

U.S. Policy: Rx for Disaster

BLUNDERS ROUTINE IN NIXON YEARS

As late as last September, when the nation was on the eve of a winter fuel shortage and heading into a summer gasoline shortage, Nixon Administration officials were assuring Congress they did not foresee a petroleum crisis developing.

"The industry has the necessary refining capacity and the feedstocks required to insure an adequate supply of petroleum products," Gen. George A. Lincoln, director of the Office of Emergency Preparedness (OEP), told the Senate Small Business Subcommittee on September 19.

"There certainly is, or will be shortly, enough crude oil for refiners and enough refinery capacity," the general assured Ohio Sen. Robert Taft Jr. "And I have very considerable faith in the industry meeting the challenge."

As everyone knows, the industry did not meet the challenge. There was a heating oil shortage last winter. There has been a gasoline shortage this summer. The industry now predicts similar shortages in the future.

How, then, could an agency of the Federal government make such a colossal miscalculation on a matter of such vital national interest?

Quite simple: Such blunders have become routine for the Nixon Administration in dealing with the oil industry.

In fact, ever since the first commercial oil well was drilled in the United States at Titusville, Pa., in 1859 by a one-time train conductor and hotel clerk, Col. Edwin Drake, the Federal government has never developed a national policy on oil or other energy forms.

As a result, the government is consistently ill-equipped to evaluate the industry, is unable to see crises such as the present one developing and repeatedly makes the wrong move in trying to set oil policy.

A two-month investigation by the Inquirer into the causes of the gasoline shortage have established that over the years oil policies of the Federal government have served as a prescription for disaster. A few examples:

The policy: The late President Dwight D. Eisenhower signed an executive order in 1959 that clamped tight restrictions on the amount of foreign crude oil that could be brought into the country. The import controls, the President said, were needed for "national security" reasons.

The effect: The quotas actually were designed to protect small independent oil producers. They accomplished that goal but they also kept the price of oil at an artificially high level. The cost to the American taxpayer has been calculated at between $3 billion and $7 billion.

The quota system also encouraged oil industry expansion overseas and discouraged refinery building of the United States, the chief reason for the current gasoline shortage and the fuel oil shortage to come this winter.

The policy: The U.S. Internal Revenue Service issued a private ruling in 1951 for oil companies operating in the Middle East. The ruling had the practical effect of allowing the companies to write off royalties paid to Middle East shieks against Federal income taxes owed in the United States.

The Effect: The American taxpayer now is subsidizing the sale of petroleum products around the world. In 1970, the latest year for which figures are available, the oil industry claimed $1.3 billion in foreign tax credits.

The policy: On March 10, 1970, President Nixon slapped restrictions on petroleum imports from Canada at a time when there was a growing demand for those products in this country and there was a desire in Canada to expand oil exploration efforts.

The effect: Now, at a time when the U.S. needs Canadian oil, the Canadians—still smarting from the way Washington has treated them in recent years—have placed controls on oil exports into this country.

LOW GAS RATES

The policy: Over the years, the Federal Power Commission (FPC) has set unrealistically low rates covering the sale of natural gas.

The effect: Not only has natural gas exploration declined markedly, industry—because of the cheapness of the clean-burning fuel—has used large volumes of natural gas uneconomically, contributing to the drain on reserves.

The policy: The Bureau of Mines opened an experimental plant in 1926 designed to devise a process to extract oil from shale. The plant was closed less than year later. In 1945, another shale-oil plant was opened by the Bureau of Mines and a few years later, it, too, was shut down for economic reasons.

The effect: Today, half a century after the Federal government began its research, the United States still does not have the technological capability to market oil extracted from shale at a competitive price. There is enough shale oil to provide the United States' needs for decades.

The most recent failure in Federal policy—the inability to forecast oil supply and demand just three months in advance—can be traced to a lack of statistics, at least statistics gathered and independently audited by the Federal government.

Although the government can tell you the number of outdoor plumbing facilities in the country, it cannot tell you how much of the nation's refiney capacity is capable of processing high-sulfur crude oil, one of the factors in the current gasoline shortage.

In fact, all statistics relating to the oil industry are furnished to the government on a voluntary basis by the oil industry itself, and are not subject to verification.

Last year, the Nixon Administration like previous administrations, made the mistake of relying on the oil industry to supply statistics and to advise on energy problems. The result was a fuel oil and gasoline shortage.

FIRMS OPTIMISTIC

Last summer, the OEP consulted with oil companies about the fuel oil outlook for the winter of 1972–73. OEP said the companies were optimistic about meeting market demands.

". . . Humble (now Exxon) could not speak for the remainder of the industry," an OEP memo of a Sept. 25 telephone conversation with the nation's leading oil company stated, "but felt in a tight situation the industry would do its best including going beyond its contract commitments if it were capable of doing so."

The OEP remained stubbornly oblivious throughout last year to any suggestions of a fuel crisis in the U.S.

As early as April 13, 1972, Sen. Thomas J. McIntyre (D., N.H.), wrote OEP director Lincoln, to alert him about a possible fuel shortage the following winter.

Gen. Lincoln wrote back saying there was nothing to worry about: "My office has checked with the major suppliers on the availability of Number 2 heating oil for the coming winter and have assurances that, if anything, the industry capacity to produce Number 2 oil has been under-used, and that the industry can supply the heating oil needed for the coming season."

When Lincoln appeared before a Senate subcommittee of which McIntyre was chairman, in September, he tried to assure a skeptical group of senators—who kept getting reports of threatened fuel shortages for the coming winter—that no shortages would occur.

"As I say, we don't see a shortage in fuel oil," Lincoln said. "And we don't see a shortage in other products, either."

Less than a year later, the United States had experienced sporadic shortages in virtually all of its vital petroleum products—from home heating oil to aviation fuel.

Such foulups are made possible, in part, largely because of the unique position the oil industry occupies at the Federal level: No Federal agency collects independent data on the industry.

UNIQUE POSITION

"The petroleum industry," said Thomas F. Field, executive director of Tax Analysts and

Advocates, a law firm in Washington, D.C. that analyzes government tax policies, is one of the very few industries that still collects, without much governmental supervision, most of the statistics that relate to the industry."

Without this data, the Federal government and Congress are able to do little more than speculate on the state of the oil industry.

Sen. Henry Jackson (D., Wash.), chairman of the Senate Interior Committee and the Senate's leading energy expert, is equally distressed.

Jackson, in a Senate floor speech, said the U.S. needed the same kinds of statistics about the oil industry that the Bureau of Labor Statistics gathered regarding the economy. Jackson added:

"I could not agree more . . . as to the ridculous situation we find ourselves in, in which the government of the United States does not have the figures, but has to go all over the country to obtain them from private companies."

The Joint Economic Committee of the Congress said in 1971 that the Federal government was in the ironic situation of subsidizing the oil industry by "over $7 billion a year with tax and import programs," yet was dependent on the beneficiaries of the tax break to analyze the subsidy program.

"It is absolutely essential that the Federal government develop an analytical capability so we can have some kind of an early warning system about this industry," said William Van Ness, chief counsel of the Senate Interior Committee.

"We rely on the industry to provide 95 to 98 percent of the information. It is absolutely ludicrous. Their interests have nothing to do with national interests."

Not only does the government not have the ability to independently analyze the oil industry, but the industry also tenaciously fights government requests for information about its operation.

PRICE DATA SOUGHT

The Bureau of Labor Statistics (BLS) has been trying for more than a year to obtain from the companies information on wholesale gasoline prices.

The response from the oil companies, especially larger ones, has been so poor the BLS has been unable to complete the study. The BLS has even modified its request once in an effort to make it easier for the companies to comply.

A June 25 letter from Peter Brennan, Secretary of Labor, to New England Congressmen Thomas P. O'Neill Jr. and Silvio O. Conte told how the oil companies have frustrated the program:

"A considerable amount of effort has been spent trying to make this program operational. The companies have been contacted by letter, personal visit and telephone, not only to gain their co-operation, but also to help them resolve difficult reporting problems.

"Nevertheless, the response has been disappointing. Only about half of the companies selected for the sample have been able to furnish national data and a substantially smaller proportion were able to provide regional data.

"Based on this level of nonresponse, especially for important companies, the data collected by BLS are insufficient to publish reliable and representative national average prices and price indexes, much less regional data."

Perhaps the greatest failure of Federal oil policies over the last decade has been the oil import quota program.

Imposed in 1959 by President Eisenhower as a barrier against cheap Middle Eastern oil, the program restricted the flow of foreign oil into the U.S.

TO PROTECT INDUSTRY

Its aim was to protect the domestic oil industry from a flood of cheap Middle Eastern oil, encourage exploration and drilling in this country, and protect the nation's "national security" by not making the U.S. too dependent on foreign oil.

When it was abolished in April by President Nixon, the import quota program had mostly failed. There was still a large domestic oil-producing industry, but it was far from healthy.

Except for discoveries such as the Alaskan North Slope, drilling and exploration had decreased in the U.S. as more and more large U.S. oil companies stepped up exploration abroad.

In its later years, the oil companies began using the import program, which they supported, as an excuse to explain why they had not built or expanded refineries in the United States.

The import quota program's failure to promote domestic drilling and exploration was evident from the start, but the program was never revised to correct that flaw.

Contrary to making the United States less dependent on oil, which was its purpose, the program made the United States much more dependent on foreign oil in the 14-year period it was in force.

The United States imported about 1 percent of its oil in 1958, the year before the program began. By the end of 1972, the figure had increased to 30 percent.

Not only did the country's need for foreign oil grow, but the import program tended to make the East Coast less secure, because it became overly dependent on imported oil during the life of the program.

In a statement to the Senate Interior Committee this year, Richard Mancke of the University of Michigan said that continuation of the present program guarantees that the East Coast's oil demand will soon be satisfied almost entirely from insecure non-Canadian foreign sources."

ANOTHER FAILING

Another failing, according to S. David Freeman, then a University of Pittsburgh professor and now head of a Ford Foundation energy study, was that the program did not assure Americans of a future supply of oil.

"The quotas keep Arab oil out," Freeman told a Senate Commi'tee early in 1972, "but they don't assure that the energy gap will be filled."

In a roundabout way, that's exactly what happened in 1972, which led to some gasoline and fuel oil shortages.

The oil import program was too cumbersome a mechanism to react to mounting shortages of domestic crude oil last year. The import program was supposed to be able to make up the difference between domestic oil production and domestic demand. But in the last year it failed to take up the slack for many companies, and forced them to run, temporarily anyway, at less than capacity.

As for the oil industry, as late as Feb. 22 of this year, an Exxon official was still talking as if this import quota program were indispensable to America.

"The oil imports control program has been an important part of U.S. energy policies in the past and should be retained with the overall level set as needed to fill the gap between domestic production and demand," said Randall Meyer, president of Exxon U.S.A. at a Senate Interior Committee hearing.

But the import program was coming apart so rapidly that another major oil company could no longer restrain its disenchantment with the program which had deprived the company of several hundred thousand barrels of crude oil it needed to serve its customers.

"In Texaco's view, said Annon Card, senior vice president of Texaco, before the same committee that day, "the present oil imports program and the administration of the program have contributed substantially to the current shortages."

AGAINST DROPPING IT

Over the White House that week, John D. Ehrlichman, the President's former domestic affairs adviser, and other Nixon aides were trying to throw water on ideas about junking the program.

"The administration has consistently supported the concept that some program was necessary to insure adequate domestic production," Ehrlichman wrote in a letter to the Independent Petroleum Association of America.

"Although the mandatory oil-import program has always been under some criticism, we are not aware of any proposal by any responsible officials to allow unlimited crude oil and products."

Less than two months later, President Nixon did just what Erhlichman said he had no intention of doing, he abolished the oil import quota program.

By the time it was scrapped, however, the Nixon Administration had managed to alienate Canada, the most secure and accessible foreign source of petroleum for the growing U.S. market in part by its clumsy administration of the import program.

Throughout the 1960s, the informal controls existed between the Canadian and U.S. governments restricting the flow of Canadian oil into the U.S. They were imposed by pressure from the U.S. oil industry.

But as demand continued to grow in the U.S. in the late 1960s, the controls began breaking down, and more and more Canadian oil began coming into the United States.

In 1969, when a task force headed by Labor Secretary George Shultz began its study of import controls, the Canadian government delivered a note to Washington stressing the importance of Canada remaining free of import restrictions and said Canada looked forward to selling more oil in the United States.

Canada asked for unrestricted access to the U.S. market for its oil, stressing that the two nations are interdependent with one another and have a natural partnership in continental defense.

INFLUENCED BY EXPORTS

"Canada's capacity to provide a growing market for U.S. goods and services is inevitably influenced by the level of its exports to the U.S.," the Canadian note said.

It emphasized that the development of Canada's vast petroleum resources was dependent almost entirely on the ability to import the oil into the United States.

"Exploration on the scale necessary to supplement U.S. supplies adequately requires the incentives of progressive growth and assured stability of market access," the note said.

The note was the culmination of an aggressive Canadian sales campaign that year to sell more oil in this country. A New York Times story of May 17, 1969, summed it up this way:

"Throughout Canada, government and industry are talking about a 'continental approach' by the two countries (U.S. and Canada).

"In essence, this means an end to border restrictions as such on the delivery of Canadian oil and natural gas to the United States, and acceptance by Washington of the view that Canada's oil reserves are as much a part of the United States strategic resources as Texas and Louisiana."

This year, U.S. officials were talking the same language as the Times was in 1969. "I share with you," Interior Secretary Rogers B. Morton told the Senate Interior Committee

in January, "the idea that we must pursue a North American energy policy."

But Canadians were no longer interested. What happened to dampen their enthusiasm? Simply that the Nixon Administration slapped restrictions on the amount of Canadian oil that could be imported into the U.S. in 1970.

The President's act caused "suspicion, annoyance and puzzlement in Canada and probably will complicate the increasingly delicate economic relations between Canada and the United States," the Times said on March 11.

SOFTENING UP CANADA

"The common interpretation," the Times continued, "was that Washington was flexing America's economic muscles to soften up Canada for negotiations over long-term access to Canadian fuels."

If that indeed was what the Administration intended, the move was a spectacular failure because Canada, angered by America's arrogant attitude on the oil question, has refused to listen to U.S. proposals for a common energy policy ever since.

A Senate Interior Committee report this year described the shortsightedness of the Administrations restriction on Canadian oil.

Saying that the quotas "dampened petroleum incentives" and "retarded leasing," the report noted: "A clear policy on this question would remove the kind of uncertainty generated by U.S. actions that has tended to retard petroleum exploration and development in Canada."

Canadian nationalism and a desire to preserve its own resources have now risen to complicate joint energy policy talks. But the Administration clearly missed a chance in its first year to work out a policy with our closest neighbor that could have eased this year's sporadic shortages.

"If we can't get along with our brethren to the north, with a border 4,000 miles long, that is undefended, (if) we can't work out economic arrangements with them, how are we going to work out arrangement elsewhere?" asked Sen. Jackson in January.

Indeed, the senator's comments point up the United State's current difficulties in interesting Japanese and European allies in developing a common front to deal with the Middle Eastern countries over oil.

If the U.S. State Department has been unable to work out a satisfactory arrangement with its closest neighbor and ally, Canada, on matters of such joint interest, how then, can it hope to succeed in developing similar energy alliances with nations whose interests and needs are often at cross purposes with our own?

Yet that is exactly what the State Department is now trying to do.

"We have raised with the Europeans and Japanese the possibility of co-operation in the energy field," said James E. Akins, director of the Office of Fuels and Energy for the State Department.

AGAINST ARABS

The phrase "co-operation in the energy field" is State Department language for a common front against the Arabs.

But even the State Department and Akins admit the results are disappointing. Neither the Europeans nor the Japanese are interested in joining this new American initiative, a reluctance that Akins decries.

Apparently the only one who has been surprised by the attitude of the Europeans and Japanese is the State Department.

For, as The London Economist recently pointed out, Europe and Japan would have little to gain from such an alliance with the United States because if the Arabs cut off oil shipments they "would probably not deny oil to everyone, only to America."

The Nixon Administration's inability to come to grips with oil issues is by no means unusual with the Presidency.

In fact, not much has changed since a 1947 Senate Committee reported that in the past and "even in more recent days, it could hardly be claimed that there was conscious or comprehensive national petroleum policy."

Each administration usually finds overlapping and conflicting forces in the bureaucracy trying to deal with energy matters. Virtually every branch of government has an office dealing with energy in one form or another.

Although the White House or Interior Department officials may talk of the need for a North American energy policy, it is up to the State Department to try to negotiate it.

In the Kennedy Administration, oil policy matters were decided in the White House. Lyndon Johnson, because he was from oil-producing Texas, delegated oil to the Interior Department.

AT WHITE HOUSE

Now oil policy is once again decided at the White House, although the chairman of the influential Oil Policy Committee is William Simon, deputy treasury secretary.

In 1969, President Nixon appointed then Labor Secretary Shultz to a task force to study imports. When he disagreed with the group's findings, he appointed another task force excluding Shultz.

Nothing better illustrates the inconsistency of Federal policy on oil matters than sporadic government-backed attempts to extract oil from the vast shale oil deposits in the western United States.

U.S. agencies have been talking about these deposits, estimated to contain 1.8 trillion barrels of oil, for years. A 1928 report of a Federal board referred to shale as a "future supply of oil in case there is a shortage of petroleum."

Oil has been economically produced from shale on a small scale in several countries, most notably Scotland, for more than a century. But the U.S. government has never developed a consistent national policy leading to development of those resources.

Instead, ever since the 1920s, the Federal government periodically opens and closes demonstration shale oil plants at a cost of millions of dollars.

In 1926, for example, the Bureau of Mines opened an experimental plant on naval oil shale reserves in western Colorado but was forced to close it less than a year later when Congress refused to appropriate more money.

In 1945, the Federal government opened another experimental plant in western Colorado. Nine years and $17 million in public funds later, the Federal government cut off funds and the plant was closed.

Is there any reason to believe now, given the extent of the gasoline and fuel oil crisis the past year, that the Federal government may finally be prepared to adopt a national energy policy?

So far, some of the solutions coming out of Congress and the executive branch are not promising.

CUT SPEED LIMIT

Sen. Jennings Randolph of West Virginia, in a move to meet gasoline consumption head-on, has introduced legislation to lower the speed limit on Federal highways.

"A speed reduction from 70 to 50 increases efficiency by about 2 miles per gallon," Randolph said. "Small cars will benefit by an even greater savings."

Randolph did not neglect to point to the side benefits of such a move: "Tire use would drop and, since synthetic rubber is a petrochemical product, oil use for this purpose would be lower."

Interior Secretary Morton voluntarily reduced his gasoline consumption. He turned in his limousine, which used to squire him around Washington, and exchanged it for a standard-sized sedan, which uses less gasoline.

The Secretary's gesture did not go unnoticed in Congress. Rep. John R. Rarick of Louisiana said if Morton sincerely wanted to set an example, he should have followed the lead of Scottsdale, Ariz., which rented bicycles for use by city employees.

"Mr. Morton will surely have more success pedaling a bicycle," Rarick said, "than pedaling his ideas for a technological halt as an answer to the energy crisis."

RULING COST TAXPAYERS BILLIONS

A private ruling issued by the U.S. Internal Revenue Service (IRS) for the benefit of American oil companies operating in the Middle East helped spur expansion of the overseas petroleum industry—at a cost of billions of dollars to the American taxpayer.

The IRS ruling, handed down in 1951, enabled the Arabian American Oil Co. (Aramco) to convert royalties paid to Saudi Arabia into foreign taxes. Aramco is jointly owned by Exxon Corp., Texaco, Inc., Mobil Oil Corp. and Standard Oil Co. of Calif.

For tax purposes, a royalty is handled as a business expense. But the IRS decision allowed the oil companies to treat their royalties as foreign taxes. And foreign taxes may be written off against United States income taxes, dollar for dollar.

"What the foreign tax credit enables you to do," says Thomas F. Field, executive director of Tax Analysts and Advocates, a public-interest law firm in Washington, D.C., that analyzes government tax policies, "is to substantially escape all United States taxes on foreign operations.

"We've almost totally forgiven the oil companies their taxes when they go overseas and certainly that has made it a lot easier for them to go overseas and produce overseas."

In addition to the foreign tax credit, American oil companies operating abroad receive the same special tax benefits granted to companies in the United States, including the 22 percent depletion allowance and the rapid write off of intangible drilling costs.

Through those tax benefits and the foreign tax credit, the American taxpayer is subsidizing the sale of petroleum products around the world—at a time when American oil companies say they are unable to meet the demand for those same products in the United States.

In 1970, the latest year for which figures are available, the IRS reported that oil companies claimed $1.3 billion in foreign tax credits.

It is worth noting that the Federal government says it has no figures on how much American oil companies have claimed over the years in depletion allowances and intangible drilling costs covering oil products and sold outside the United States.

But it would not be unreasonable to say that the loss to the United States treasury—through percentage depletion, intangible drilling costs and the foreign tax credit—can be measured in the tens of billions of dollars since 1951.

Field, who formerly worked as an attorney-adviser in the U.S. Treasury Department's Office of Tax Legislative Counsel, explains the advantage of the IRS ruling and the foreign tax credit this way:

"If an oil company pays a dollar royalty to farmer Jones in the state of Texas, for the privilege of having gone on farmer Jones' land to drill for and find oil, that is a deduction when computing the company's taxable income.

"And since the company's nominal tax rate is roughly 48 percent, every additional dollar of deduction reduces the tax bill by 48 cents.

"In contrast, if the company pays the sheik of Kuwait an additional dollar in royalty type tax, that dollar of tax reduces the company's United States tax bill by one dollar instead of 48 cents.

"So the ability to convert royalties into taxes, which the Internal Revenue Service has permitted, is a definite subsidy in favor of foreign exploration and probation.

"The net effect has been to relieve United States firms that produce oil in foreign countries of one of their major costs (income taxes) of doing business in the United States.

The IRS ruling and the foreign tax credit also have contributed to the rising cost of crude oil. Unlike other industries, where production costs are a major factor in determining price, the cost of producing oil has very little to do with the price for which it is sold.

When, for example, an automobile company determines the price of a car, it considers the cost of materials and labor and adds to that what it believes to be a reasonable profit.

But the actual cost to produce oil in the Middle East is about 20 cents a barrel—or less than half a cent a gallon. Yet the selling price of a barrel of typical Middle East oil is about $2.90.

Much of the difference between the 20-cent production cost and the $2.90 selling price can be attributed to increases in royalty taxes paid to Middle East countries by the oil companies. And, because of the tax advantage the royalties provide, the companies have had little reason to object to the increases.

Before the IRS ruling, says Field, "if a sheik wanted to collect an extra dollar in royalty, roughly 50 cents came out of the pocket of the oil company and the other 50 cents came out of the United States treasury. So the oil company had a strong incentive to resist increases in royalties.

"After the IRS ruling, when the royalty tax, as it became, went up a dollar, that dollar came out of the United States treasury and there was little or no effect on the company."

Field and other economists believe that if the IRS had not issued its ruling, the oil companies would have acted much more forcefully to resist royalty increases.

He offers this analogy:

"Let's assume you have an expense account where you work. If you take somebody out to lunch and pick up the bill, you pass that whole bill on to your employer. What that means is that you probably have a pretty good lunch in a pretty nice restaurant.

"But suppose that half of every business lunch came out of your pocket. Wouldn't you, under those circumstances, be a little more cautious about what restaurant you went to and how many you invited along in the party, and a little more cautious about whether you ordered filet mignon?

"It's the same way with the oil companies. For 20 years we have given the companies no incentive to resist the sheiks' demands."

OIL SHORTAGE MYTH—PAST, PRESENT

Police cars in two Detroit precincts run out of gasoline and the commissioner warns that police vehicles throughout the city will be out of fuel in 24 hours because of a gasoline shortage.

A prestigious New York brokerage firm reports on the precarious position of the U.S. oil industry, showing that reserves will last only 13 years at the present rate of consumption.

A national magazine blames the gasoline shortage on America's sprawling use of the automobile.

The Secretary of Commerce calls leading oilmen to his office and urges them to go after foreign reserves "because domestic sources of petroleum will last only a generation."

So this, then, is the picture of the great gasoline shortage of 1973. No, it's not. This was the picture of the great gasoline shortages of 1947, 1935, 1923 and 1921, respectively.

Although some of the incidents might sound like last week's news, they actually date back half a century during one of the United States' earlier oil scares, when the country feared, like now, that oil was running short.

Indeed, ever since automobiles rolled onto the American scene and up to the first gas pump, Americans have experienced an almost pathological fear of running out of oil, a fear fed periodically by the oil companies, politicians and the press.

An investigation by The Inquirer of the current gasoline shortage has disclosed that during all those previous oil scares, the crisis was remarkably similar to today's.

During each crisis oil companies complain of a shortage of crude oil and a lack of "incentives" to find more. Independent gasoline marketers and refiners say the major oil companies are trying to squeeze them out of business. Congressmen call for investigations and promise to break up monopolistic practices in the oil industry.

The American consumer is portrayed as having an insatiable appetite for oil. The same solutions are proped over and over again to solve the oil problem. And, finally, the impression is left in the public's mind that the United States is rapidly running out of its most precious fuel.

None of that has changed much in 50 years or recurring oil crises. And, ironically, each time the crisis is resurrected, crude oil reserves in both the United States and the world usually stand all-time highs.

Still, the myth is perpetuated with each generation that the United States is about to run out of oil and that Americans—the world's leading oil users—will have to change their life-styles. This year's torrent of news stories, books, government warnings and oil company reports are no exception.

GETTING THE MESSAGE

A Washington Post editorial of July 1 said the American people were finally getting the message that "there will not be enough fuel to support us in the manner to which we are accustomed."

The Philadelphia Evening Bulletin of June 3 said flatly that "the oil shortage—a new harassment for Americans—could have long range economic, diplomatic and military consequences for the world."

A Gulf Oil Corp. statement this year said a "growing national demand for energy has moved the United States towards the unenviable position of Western Europe and Japan in becoming a have-not nation in terms of oil."

A new book entitled "The Energy Crisis," written by two Long Island University professors, Lawrence Rocks and Richard P. Runyon, goes even further by saying "our oil repositories are headed for exhaustion in two decades."

Now contrast those grim prophecies with an article that appeared 50 years ago in the Saturday Evening Post of May 23, 1923, during an earlier oil scare:

"Whether we have ten, twenty or thirty years to go—and these are the variously estimated periods . . . the fundamental fact to be borne in mind . . . is that the oil reserves of the United States are more nearly exhausted in their relation to demand than any other mineral.

"Many eminent government geologists maintain that the supply of oil in the United States subsoil does not exceed 7 billion barrels. (Current estimates of recoverable oil range anywhere from 200 to 400 billion barrels.)

"You have only to take a passing glance at the statistics to realize why a foreign oil supply is essential to our industrial well-being . . . Prodigal in our expenditure of this precious but dwindling possession, we now reach the point where we must conserve or tap new areas."

Such dire warnings have become commonplace in the lexicon of oil shortage phobia. Goodbody & Co., New York brokers, concluded in 1935 that major oil companies had only 10 to 20 years before oil supplies would be depleted and said most major oil pools in the U.S. were "long since spotted."

RUN OUT BY 1955

Goodbody's figures showed that Standard Oil of New Jersey, now the Exxon Corp., had 3.6 billion barrels in oil reserves and would run out of oil by 1955.

As everyone knows, Exxon did not run out of oil in 1955, and at the beginning of this year had reported worldwide oil reserves of 33 billion barrels—nine times the 1935 figures.

Government agencies have been willing partners in fomenting oil fear. A prediction by the U.S. Geological Survey in 1920 that domestic oil production would possibly peak in three years and then "fall off" sounds much like a prediction of the National Petroleum Council (NPC) in 1971.

"Domestic production of conventional crude oil, excluding the Alaskan North Slope," the NPC report said, "was projected to increase slightly in the next 1 to 3 years, but to decline thereafter."

Not only is the same rhetoric revived each time, but so are the alleged causes of the "shortages." The appetite of Americans for oil has been a favorite cause.

"Demand has got to come down," a Gulf Oil spokesman told the Associated Press in Philadelphia in July, citing the need for smaller cars, among other things.

"The increase in motor equipment is bound to go on while the oil supply, with the prodigal drain in it, will not," said the Saturday Evening Post in May 1923.

Talk of energy conservation is not quite the new idea it might seem.

"There is a growing drive to get Americans to cut down on fuel consumption," said U.S. News & World Report on Feb. 19, 1973.

"The Federal Oil Conservation Board recently directed a questionnaire to the General Motors Corp. requesting available data relating to improvements in engine design that call for less demand for motor fuel," read a press release of the board on Jan. 24, 1927.

DECLINE IN WELLS

A decline in oil wells drilled is an old symbol of an industry in trouble.

"Drilling rates have declined steadily since the mid-1950's. Now slightly more than half as many wells are drilled each year as were drilled in 1956," stated a Senate Interior Committee report in 1972.

"Discoveries of new fields in the United States during the past ten years have been decreasing in size and importance," warned a Senate Committee investigating the oil industry in 1947.

A world struggle over oil is another frequent fear conjured up during oil scares.

"The U.S. has had to come out onto the world market to buy where the Europeans are already well-established and have their supplies sewed up," a British oilman told the Associated Press in London in a June 30, 1973, dispatch.

"The story of oil now unfolding on the international horizon is a political and economic drama of the first magnitude. It is a drama of peace and war and progress that may affect the future of civilization even more profoundly than it has in the past," said a 1947 Senate Committee report.

Although the scenario of the present oil shortage has changed little from previous ones the most crucial part of the worldwide energy picture that has changed dramatically in recent years has been ignored by the oil companies in their energy crisis rhetoric.

Oil consumption in Western Europe and Japan has risen at a far greater rate than in the United States, although the United States is still the leading consumer of oil.

As The Inquirer disclosed on Sunday, consumption of petroleum products jumped 284 percent in Japan and 142 percent in Western Europe from 1963 to 1972. That compares with a 51 percent increase in oil consumption in the United States during the same period.

NEW FACILITIES BUILT

To meet that huge demand for oil products in Europe and Asia, the major, multi-national American oil companies poured billions of dollars into the construction of facilities for producing, refining and selling their goods around the world.

But at the same time the companies were building refineries in such places as Singapore, Amsterdam and Ghent, they were not building refineries in the United States—a policy decision that has contributed to the energy crisis of 1973.

The Inquirer reported Monday that Federal policies—including special multi-billion-dollar tax benefits—also encouraged the oil companies to expand abroad and discouraged investment in the United States.

All of that has helped lead the country to this summer's gasoline shortage, and the fuel oil shortage that will come this winter.

And all of that has contributed to the enormous credibility problem that both the oil industry and the Federal Government have developed over the last half century in dealing with the public on oil matters.

On no point is credibility more strained than on the question of the United States' oil resources. Today, as in the past, the United States is in no danger of running out of oil.

However, reading newspapers and magazines this year—which have been publicizing figures on U.S. oil reserves that have been supplied by the oil industry—might lead the average American to conclude that a shortage does exist. An article in the June 3 Philadelphia Evening Bulletin is typical.

Accompanying a story about the "oil shortage," was a four-column map showing the countries of the world and their oil reserves. The United States was listed as having 36.8 billion barrels; Canada as having 10.2 billion barrels and the Middle East as having a whopping 355.9 billion barrels.

But the figures listed on the map represented only the so-called "proved" reserves of those countries. And proved reserves, as the oil industry knows but rarely explains to the public, have nothing to do with the amount of oil in the ground.

PROVED RESERVES

Proved reserves refer only to the amount of oil that can be "extracted profitably with existing technology and under present economic conditions," according to the U.S. Geological Survey. In other words, reserves mean essentially the amount of oil that can be pumped from the ground at today's prices. Even academicians have done little to make this point clear as the new book, "The Energy Crisis," illustrates.

The book uses the figure of 100 billion barrels of oil "as our reserve of oil that is recoverable under present technological practices."

"The 1970 consumption rate was 5.4 billion barrels," the authors continue. "At this rate, our oil reserves would be depleted in about 20 years."

In reality, there is considerable disagreement among geologists as to how much oil may be ultimately recoverable from U.S. soil. But the figure of 100 billion barrels is, at best, conservative. Most studies place the figure at several hundred billion barrels, excluding shale oil.

"The (Geological) Survey now estimates 450 billion barrels of oil and 2,100 trillion cubic feet of natural gas to be recoverable by discovery of the potential resource base," Thomas B. Medders Jr., president of the Independent Petroleum Association of America, told a Senate Committee last year.

"These recoverable resources are in the order of 100 years' supply at present rates of U.S. consumption of both oil and gas."

A 1969 study by the geological consulting firm of DeGolyer and MacNaughton placed additional recoverable reserves of crude oil in the United States, including Alaska, at nearly 200 billion barrels.

A Senate Interior Committee report last year, after reviewing many projections, said estimates of recoverable oil ranged from 575 billion to 2,400 billion barrels of oil.

LOW ESTIMATES

Historically, the amount of recoverable oil has always been underestimated and there is no reason to believe that many of today's figures are not conservative as well.

T. H. McCulloh, writing for the U.S. Geological Survey, said estimates of oil reserves were "no doubt subject to further evolutionary change as economic incentives enlarge, as competition pressures force improvements in conservative efficiency, and as technologic advances permit involved and expanded explorations."

Thus, proved oil reserves have more to do with current crude oil process than with the amount of oil in the ground. An increase in the price of crude always means an increase in proved reserves, even though not one well is drilled.

Oil scares such as the present one, whatever their stimuli, always have the net effect of increasing the price of crude oil, which in turn expands reserves.

And of course most estimates exclude possible oil recovery from the vast oil shale deposits in the western United States. Other countries, notably Scotland, have been economically extracting oil from shale for decades.

The Green River formation of Colorado, Utah and Wyoming is the world's largest known shale oil deposit and contains an estimated 1.8 trillion barrels of oil, according to the Geological Survey.

As in the case of conventional oil resources, estimates vary on how much of this valuable petroleum deposit could be recovered for commercial use. A 1967 Geological Survey report identified one deposit of 160 billion barrels as potentially recoverable.

And of that figure, the report said 80 billion barrels could be mined under existing technology. At the time, the figure was nearly three times the proved reserves of the United States.

None of these estimates includes possible future development in Canada, which has far more oil than its current proved reserves of 10.2 billion barrels. In fact, many geologists believe Canada has as much or more oil than has ever been found in the United States.

WRONG PREDICTIONS

On other oil matters, the oil industry has consistently been wrong or off target in its predictions or has simply reversed its position on crucial policies when it became expedient to do so. The oil import quota program is a good example.

In 1959, President Eisenhower clamped mandatory controls on foreign oil imports. The reason was to avoid a flood of cheap Middle Eastern oil into U.S. markets that might supplant the U.S. producing industry.

Ostensibly, the program was to protect the country's "security" and to prevent the U.S. from becoming too dependent on foreign oil.

As the program increasingly came under attack in the 1960s for maintaining artificially high oil prices in the United States, the oil industry sought to defend it. The industry's most spirited defense was in 1969, when a cabinet-level task force headed by now Treasury Secretary George Shultz recommended junking the import quotas in favor of a tariff system.

In a series of statements filed with the task force, the oil companies all predicted disaster for the United States if the import program was scraped. Without exception, they strongly recommended that it be continued, adding that the control program would encourage domestic exploration.

"If the present incentives are continued," a confident Standard Oil of New Jersey (now Exxon) predicted, "it is our judgment that the domestic industry can find and develop increasing quantities of oil reserves over the next decade."

In a move that pleased the oil industry, President Nixon declined to scrap the program, even though his own task force said it should be abolished. But now, four years later, oil industry leaders are telling a different story about U.S. energy resources and are trying to give the impression they have warned of a crisis all along.

"For approximately the last four years," M. A. Wright, chairman and chief executive of Exxon USA, said recently in Los Angeles, "my associates and I in Exxon USA have been predicting the possibility that the nation could encounter serious energy problems."

UNDERMINE INDUSTRY

Texaco, in a statement typical of the industry's position, warned in 1969 that elimination of the oil import program "would undermine the structure of the domestic oil industry."

"Oil import policy has been a major factor in the growth of domestic supply during the past 10 to 15 years and it will be even more significant in the future," Texaco said.

But by 1973, Texaco officials were admitting that the domestic industry was experiencing a decline anyway, even though the import program had been retained—as they recommended.

"Domestic production has already peaked," said Kerryn King, Texaco senior vice president, in March. "Indeed, our nation's oil production in 1971 and 1972 actually declined from the all-time high of 1970."

The companies said eliminating the import program would lead to higher prices in foreign crude oil. Standard Oil of New Jersey said that by keeping the program "there will be no marked change in the prices of foreign oil at the exporting points over the coming decade."

Again, the oil companies were wrong. Foreign crude oil prices have steadily increased since 1969 and today much of the foreign crude oil that comes into the United States costs as much as domestically-produced oil.

But even more of an industry about-face, in light of cries of a refinery shortage today, is a Mobil Oil statement to the 1969 task force that saw additional refinery construction as more of a threat than a boon to the industry.

"Removal of the (import) controls would result in a fairly rapid construction of additional East Coast refining capacity," Mobil said. "Gulf Coast refining capacity would not be expected to show any growth in future years and some capacity might be idle.

"Much of the East Coast tanker fleet would become surplus and Gulf Coast terminals for crude shipments to the East Coast would become largely inoperative."

POSITIONS CHANGE

By this year, the oil companies were blaming the import program they had so staunchly defended over the years as being one of the reasons for the shortage in refining capacity.

"Foreign oil import quotas, for over a decade, were allotted to refineries in a most inequitable manner, deterring refinery construction because of uncertainties in crude supply," said O. N. Miller, board chairman of Standard Oil of California.

In summary, virtually everything the oil industry warned would happen if the import program was scrapped happened anyway while the program remained in force. Foreign oil prices soared, the United States became more dependent on imported oil and the domestic oil industry declined. And the program cost the American consumer billions of dollars in higher prices.

Then, in April of this year, in the most adroit policy reversal of all on the import question, the big oil companies backed President Nixon's decision to remove quotas on all imported foreign oil, a move they had said four years earlier would destroy the American oil industry.

What happened in those intervening four years was quite simple: Once-cheap foreign oil rose in price to equal oil produced domestically.

The industry's reversal on the import question is typical of its flexibility. It has little trouble reversing its position or working both sides of the street on oil policy matters.

For years, oil companies have promoted gasoline consumption by giving away with gasoline purchases everything from drinking glasses to rubber dinosaurs.

As recent as the spring of 1970, the Oil and Gas Journal quoted industry sources on the outlook for that summer's gasoline market and concluded "prospects look good for a healthy motor-gasoline season this summer."

The only factor that might interfere with the rosy prediction was a general economic malaise, the magazine said. But one industry source dismissed such pessimism and looked to older cars to boost gasoline sales.

BURN MORE GASOLINE

"On the other hand," the magazine said, "one source notes the dip in new cars wouldn't necessarily mean less demand. 'Older cars might burn more gasoline than new ones,' he said. 'And the growing use of credit cards can tide people over.' "

Now, of course, the industry is blaming the new cars for excessive gasoline consumption because of anti-pollution devices.

"These vehicles consume more, not less fuel, and get less, not more, mileage per gallon—yet another burden on the energy system," declared King of Texaco, in June.

On another environmental matter, oil companies have repeatedly blamed the switch from coal to low-sulfur fuel oil by utility companies—as required by new air pollution control standards—as being a partial cause of soaring fuel oil consumption.

Exxon, for example, in its latest annual report, put part of the blame for last winter's fuel oil shortages on the switch from coal. "Use of coal from traditional sources has been restricted by environmental regulations," Exxon said.

But two years earlier in its 1970 report, Exxon took note of how the shift from coal to fuel oil was boosting the corporation's sales all over Europe:

"Fuel oil sales were particularly strong in the United Kingdom, Esso's largest European market for this product, because of the growth in demand for electric power and the short-fall of other fuels.

"Utilities' coal supplies were reduced by strikes, and power from nuclear plants was restricted by technical difficulties. Distillate sales in West Germany, the largest Esso heating oil market in the world, as well as in France, benefitted from the continuing shift from coal."

INCREASED PROFITS

So although the industry says the switch from coal to oil in the United States has agravated the energy crisis, the transition from coal to oil in Europe has increased oil company profits.

Concerning tax breaks for their overseas operations, the oil companies have always maintained seemingly contradictory positions.

"Continued foreign exploration and development by U.S. companies is also necessary to meet U.S. energy requirements," Emillio G. Collado, executive vice president of Exxon told a House committee earlier this year.

But a former executive of the same corporation, Dr. Richard J. Gonzales, told a Senate Committee a few months before that "there is no question that most of the foreign oil being developed (by U.S. companies) is being developed for use abroad, not in the United States."

Amid each crisis in the industry, the government has always remained about as much in the dark as the public. Being unable to separate fact from fiction and falling victim to false scares and ill-founded predictions.

"There are vast areas of the globe which apparently are without petroleum deposits," said a 1947 Senate committee report.

"Most of Africa and Australia offer little prospect to the driller," the report went on, echoing prevailing theories of the oil industry. "China, Japan, eastern Siberia, a large part of Russia in Europe, the Scandinavian peninsula, France, Spain, Italy and the British Isles are virtually without local sources . . . of oil supply."

Time has disproved those theories. Africa, which is still in a state of oil exploration, already has . . . three times the proved reserves of the United States (90 percent of the crude oil refined in Gulf's refinery in South Philadelphia is from Nigeria).

The Soviet Union has vast oil deposits. And huge oil and gas reserves discovered in the North Sea off the British Isles now mean that Britain, long dependent on the Middle East for oil, will become largely self-sufficient by the 1980s.

DIFFERENT IN FUTURE?

Is there any reason to believe now, given this background of periodic oil scares and strained oil industry and government credibility on the oil question, that the future might be different?

Will the United States be able to get more oil out of the ground? Will the Federal government collect the needed statistics to determine an oil policy? Will the monopolistic practices of the oil industry be eliminated?

Consider what is happening today.

The way to increase U.S. oil reserves, according to Dr. Gonzalez, the former Exxon official and now an oil industry consultant, would be to increase the amount of oil taken from existing reservoirs.

By increasing the yield from "30 percent under current conditions to 60 percent with adequate incentives," Dr. Gonzalez told a Senate committee last year, the U.S. would triple its proved reserves.

Of course, the industry was saying the same thing in 1935, offered this explanation as to why seasoned oilmen were not worried about an oil shortage:

"Science may develop methods for removing more than the small proportion (about 30 percent) of petroleum now taken from oilbearing sands."

The way to get the Federal government involved, according to Sen. Henry Jackson (D., Wash.), is to start gathering statistics about the oil industry.

"We are considering legislation now," he told the Senate June 4, "and I hope we will have something introduced shortly, probably giving this authority to collect the data to the General Accounting Office, to marshal all the facts and the information so that we can get it on the basis of sound data, of objective facts."

Of course, a Senate committee headed by Robert M. LaFollette in 1923 could not have agreed more. That committee's report—50 years old in March—suggested this remedy:

"A compulsory system of reports to a government bureau every month showing the operations of each oil company engaged in interstate commerce, and particularly the quantities of crude oil and its products in storage or transportation, and this data should, by such government bureau, be assembled and arranged so that any time the exact condition of the industry can be ascertained either by concerns engaged in the oil business, by officials or the public generally."

The way to limit the power of the big oil companies, according to oil industry critics today, is to take away their control over oil pipelines, a power that now enables them to put the squeeze on independent refiners and oilmen.

The Federal Trade Commission, as a followup to its just-released report on the oil industry, is considering recommending a "concerted antitrust attack on the biggest companies' control over pipelines, refining operations and marketing," according to the Associated Press.

Of course, the LaFollette committee of 1923 reached essentially the same conclusion—that big companies dominate the oil industry. And the report recommended in part:

"Pipe lines must be made real common carriers. Delivery stations must be established wherever reasonable demand for them can be shown to exist, so that pipelines shall no longer serve simply the great companies, but shall serve on an equal basis every transporter of petroleum."

INVENTOR TO USE "PIG POWER"

CAR DEVICE EXTRACTS GAS FROM MANURE

Harold Bate isn't worried about the energy crisis.

No indeed. Mr. Bate, an enterprising British inventor, has perfected a device that will enable him to drive "as far as he likes in a car powered by pigs." Or so says the London Daily Express.

In a story headlined "Harold's Pig Power Car Invention Gives the Green Light to Road Hogs," the Express recently said Bate ran his 1955 Hillman Minx on a "powerful gas extracted from pig manure."

What makes this possible is an auto-gas converter that Bate invented and patented and which he claims, can be fitted to any car, enabling it to run on the odorless gas.

Well, if pig power is not for you, then how about straw power, or corn cob power or sugar beet power? Why not put a potato in your tank?

Amusing as Bate's pig power car might seem, the U.S. government was serious in the 1920s when it asked scientists and engineers from around the country about the possibility of using potatoes, corn cobs, straw, beets and assorted farm products and vegetables to run automobiles.

That was back in 1927 when the Federal government feared that the United States would soon run out of oil.

The idea was to take vegetables and waste products such as straw or grain dust off the farm and convert them into alcohol or gas to run the internal combustion engine. Such a process was technically feasible, the government learned, but there were drawbacks.

"Alcohol could possibly be made from potatoes and other vegetables profitably," a California chemist answered, "but this would tie up an enormous acreage of good producing land."

"If corn were to furnish the only substitute for the gasoline we now use," a Federal oil conservation board report concluded, "two-thirds of the total tilled acreage of the farms of the United States would be required for this purpose alone, and the remaining third would be insufficient to grow the corn needed for all other uses."

Another engineer pointed out that crop failures could then lead to fuel shortages if agricultural products were used to run cars.

Not only would huge amounts of land be needed to feed the growing appetite of the motor car for vegetables and other products, the government wisely foresaw another difficulty that stood in the way of its scheme:

"To find the additional farm labor required to cultivate these raw materials might be an even more puzzling problem."

Such alternatives die slowly, however, and only this month, in a white paper, Sen. Mike Gravel (D., Alaska) referred to more recent government efforts to safeguard the American right to fuel.

"Another governmental study reported in 1970, that domestic animals—produce enough waste every year to make two billion barrels of low sulfur oil—or nearly 40 percent of our present consumption," Sen. Gravel's paper calculated.

WHAT IS U.S. GOVERNMENT DOING?

INTERIOR SECRETARY REPLACES LIMOUSINE WITH SEDAN

Here are some questions and answers about the current gasoline shortage and the so-called energy crisis in the United States:

Q.—What is the Federal government doing to ease the gasoline shortage?

A.—Well, Rogers C. B. Morton, Secretary of the U.S. Interior Department, has exchanged his government-issued Cadillac limousine for a Plymouth Fury sedan "to accommodate his official transportation needs."

Q.—What else?

A.—U. S. Sen. Dewey Bartlett (R., Okla.) introduced a resolution in the Senate asking the President to promote nationwide carpooling because it "would provide the cheapest form of mass transit."

Q.—Anything else?

A.—Yes, the President plans to direct the Federal Housing Administration to update its insulation standards for homes and to consider extending those standards to cover mobile homes.

Q.—Isn't the conservation of energy important?

A.—Of course it is. So is obtaining the most economical use of fuels. But the nation's energy crisis will not be resolved through conservation alone.

Q.—What else are Congress and the President doing about the oil shortage?

A.—Not much. And that's the problem. More than 100 years have gone by since the first oil well was drilled and the United States still does not have a national energy policy.

Q.—Why do we need a national energy policy?

A.—For one thing, it might help preclude the kinds of disastrous mistakes that one Washington administration after another has made in dealing with oil matters.

Q.—Can you give me an example?

A.—In the late 1960s, the Canadian government wanted to negotiate a North American energy policy, encourage exploration in Canada and ship more oil into the United States.

Q.—That sounds like a good idea.

A.—It was. But the United States wasn't interested. In fact, in 1970, President Nixon even slapped restrictions on oil imports from Canada, our most secure source of foreign oil.

Q.—What happened?

A.—Now, when the United States could use more Canadian oil, the Canadians are playing the same game. They have clamped restriction on oil exports to this country.

Q. What other mistakes has the government made?

A. Last September the Office of Emergency Preparedness told the Senate: "We don't see a shortage in fuel oil, and we don't see a shortage in other products either."

Q.—you mean the Federal agency in charge of emergency planning couldn't predict a fuel oil shortage three months in advance?

A.—That's right.

Q. Why?

A.—The Federal government gets a lot of advice from the oil industry and the industry assured the government there would be no problem.

Q.—Doesn't the government keep statistics about how much crude oil we have and how much we need?

A.—Yes, but only those statistics the oil industry wants to provide. There is no verification of the data, no independent audit by the government.

Q.—You mean there's a law that says I have to complete a census form, but there's no law that says the oil companies have to give information to the government?

A.—That's correct. In fact, the Bureau of Labor Statistics has been unable to complete a gas pricing survey because the companies refuse to cooperate.

Q.—If the government doesn't keep the statistics it should, is it at least doing research on some energy problems?

A.—Oh, yes.

Q.—What kind or research?

A. Back in the 1920s, the Federal government began looking into the possibility of extracting oil from shale, trying to find a process that would be economically competitive with regular crude oil.

Q.—What happened?

A.—The government is still looking into the possibility.

THE ENERGY CRISIS

Mr. STEVENSON. Mr. President, an excellent 3-part series on the causes of the energy crisis recently appeared in Chicago Today. Written by Brit Hume, a free-lance reporter, the articles provided some startling insights and answers in regard to the question of why we are where we are. In particular, the articles examined the role of the oil industry itself, looking in general at the anticompetitive nature of the industry and then focusing on such specific issues as why no new refineries were begun in the United States between 1969 and 1973.

I highly recommend these articles—which appeared in the December 5, 6, and 7 issues of Chicago Today—to my colleagues, and for the purpose of making the articles available I ask unanimous consent that they be printed in the RECORD.

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

[From Chicago Today, Dec. 5, 1973]

INSIDE LOOK AT OIL INDUSTRY: WHO'S TO BLAME FOR FUEL CRISIS?

(By Brit Hume)

WASHINGTON.—In September, 1972, supplies of home heating oil in the United States were dangerously low and stocks of crude oil, from which heating oil is refined, had fallen to their lowest level since World War II. A serious fuel shortage seemed inevitable as winter approached.

President Nixon authorized the petroleum industry to import more foreign crude oil. It was the second time in five months he had increased the allowable imports of foreign oil, which had been under tight government restriction since 1959.

A few weeks later, in a speech to the National Petroleum Council, Gen. George Lincoln, head of the White House Office of Emergency Preparedness, which had charge of oil imports, strongly urged industry leaders to crank up their refineries to full capacity to head off a heating-fuel crisis. Simultaneously, the Interior Department sent telegrams to the major oil refineries urging them to do the same.

The response of the major oil companies was to import only one-third of the additional crude oil the President had authorized and to run most of their refineries below capacity for the rest of the year.

Oil men say government indecision over oil import policy, coupled with price controls and antipollution regulations, were the main causes of fuel scarcity.

Regardless of the government's role, the major companies' own reports show that their conduct before the spot shortage of last winter is consistent with their behavior over the last three years.

The present decade began on a note of uncertainty for the larger American oil companies, despite growing energy needs which made demand for their products greater than ever.

The environmental movement was gathering momentum and promised to become an important political force in the country for years to come. Already, offshore oil drilling, such as that which had caused the disastrous spill in the Santa Barbara [Cal.] Channel, the burning of high-sulfur oil, and the construction of the trans-Alaska oil pipeline, were facing stiff environmental resistance.

In the aftermath of the 1967 Middle East war, the Arab states were taking a much more nationalistic attitude toward their massive oil reserves.

At home, Congress reduced from 27½ per cent to 22 per cent the oil depletion allowance, which allows the industry to write off for tax purposes a sizable chunk of its receipts from crude-oil production.

Moreover, the major oil firms found themselves losing an ever-larger share of the domestic market to smaller, so-called "independent" firms—particularly in the gasoline line—which were attracting business by doing something the majors rarely did: Competing over price. Costs were rising rapidly, but competition from the independents were helping to hold prices down. The balance sheets of the major oil firms showed record sales, but declining profits.

In addition, there were strong indications that domestic oil production, which had always been more than enough to cover the nation's needs, was at last peaking and would soon be outstripped by consumption. The Cabinet Task Force on Oil Imports Controls sent the President a report recommending abolition of the existing quota program and substitution of a more liberal tariff plan.

The industry was bitterly opposed. It had always contended vehemently that the tight import retrictions were vital to national security. Unrestricted imports, it was argued, would discourage domestic exploration and allow the country to become dependent on foreign oil which, however cheap and plentiful, could be instantly shut off.

The task force's advice was ultimately rejected by Nixon, but the administration did announce it would allow a small increase in the allowable imports of foreign crude oil in 1970.

The petroleum industry in the U.S. is dominated by 18 large firms which are, in the language of economists, "vertically integrated." This means that they operate in all phases of the oil business—exploration and production, transportation, refining, distribution and marketing.

These 18 generally are known as the "Majors," altho the term is used more and more often to refer to the top 10 oil companies. The majors produce about 70 per cent of the domestic crude oil, control about 30 per cent of the refinery capacity and market about 72 per cent of the gasoline sold in this country.

The largest of the majors also dominate the production of natural gas in the U.S. and have made heavy investments in the coal industry in recent years.

Despite this heavy concentration of a relatively small number of companies in all phases of domestic fossil-fuel production, the major oil companies vigorously resist any suggestions that they are not fully competitive. Nevertheless, they cooperate rather than compete in several ways.

It is common for several oil companies, for example, to submit joint bids on multi-million-dollar leases of government-owned oil reserves and to pool resources for joint exploration ventures seeking crude deposits.

Most of the huge pipelines which are the principal form of transportation in the oil business are jointly owned by several companies. Major firms often engage in exchange agreements under which one will supply the other's markets—for gasoline, for example—in one area where it lacks facilities in exchange for a similar favor in a different region. Reciprocal processing agreements among major firms are also frequent [one company will refine another's crude oil in one place in exchange for having its own crude processed in another].

[From Chicago Today, Dec. 6, 1973]

POOR REFINERY PLANNING A KEY TO OIL SQUEEZE

(By Brit Hume)

Perhaps the most obvious clue to the state of competition in the oil industry is its national advertising.

The majors spend heavily to gain recognition for their brand names, promote product ingredients, and advertise giveaways. Instead of bargains on gas and oil, the consumer hears about Tony the Tiger, Platformate, free drinking glasses and National Football League trading cards.

In contrast, the independents advertise little. Their stations are typically low-overhead, self-service operations which offer almost none of the mechanical services and auto supplies available at the majors' outlets. They stick to high-volume sales of gas and oil at prices below those at major stations.

Altho their share of the market was growing rapidly in the early part of this decade, the independents were still at a disadvantage: They are not vertically integrated.

Independent refineries have had to rely on the majors for a large part of their crude oil. And independent marketers must turn to other independents or to the majors to obtain refined products. What's more, the oil depletion allowance has encouraged the majors to push all their profits into crude-oil production where a large portion could be deducted. To do this, the majors kept crude prices as high as they could and cut profit margins on their refining and marketing operations to the minimum.

For them, this generally involved only bookkeeping transactions since they were selling their crude to their own refineries and their refined products to their own marketers, or engaging in reciprocal arrangements with other majors to achieve the same results. But for the independent refiner, high crude-oil prices usually represented a real additional cost.

Altho there could be no doubt that demand for oil products would continue to boom in the early Seventies, the majors decided not to increase their refinery capacity significantly.

An efficient refinery costs about $250 million to build and this has generally meant that only the majors have been able to afford new ones in the last 20 years. The majors' spokesmen have insisted that uncertainty about government policy on oil imports and environmentalist objections to new plant construction were the main reasons behind their reluctance to expand refinery capacity.

By early 1971, Oil and Gas Journal, the most authoritative of the industry's trade publications, reported that the nation might be on the way toward a shortage of refinery capacity. The American Petroleum Institute, the industry's voice in Washington, predicted that the shortage would come before 1975. The Interior Department's Office of Oil and Gas published a study containing a similar forecast and declaring that existing refineries would have to be run full tilt to keep up with demand.

In August, 1971, President Nixon imposed wage and price controls. Gasoline prices were frozen at seasonal highs and heating-oil prices at off-season lows. Gasoline was always more profitable to produce, but the freeze made it more so and created a strong barrier to the production of heating oil.

The freeze was lifted in November, but oil prices were still controlled. In February, 1972, the Cost of Living Council refused to grant the industry a price increase for either crude oil or gasoline and heating oil. For the first six months of 1972, profits fell almost 5 per cent, altho sales were up by an even greater amount.

In early 1972, industry journals were reporting that crude-oil production in both Texas and Louisiana, the two biggest oil states, was declining. While this was apparently true, it is difficult to know whether it was caused by an actual decline in reserves or by the industry's failure to produce as much as it could. There are at least some indications the larger companies might have been deliberately slowing production.

The Texas Railroad Commission requires the oil companies which do business in the state—which includes nearly all the larger firms—to report "desired" levels of crude-oil stocks.

The Commission's records show that the 10 largest of the oil companies reporting [all of them majors] "desired" smaller stocks of crude oil to feed most of their refineries in 1972 than they had had in 1971, even tho demand for petroleum products had risen almost 7 per cent. Their actual crude-oil stocks were also less than they had been the year before.

The commission's records show that the drop in "desired" levels was reported only by those top 10 oil companies, with the next 15 reporting increases in their desired levels. But since the top 10 account for about three-quarters of the oil production among the top 25 that report to the Texas commission, it averaged out to an overall drop in the "desired" stock of crude.

Besides indicating a desire for smaller crude oil stocks last year, the major petroleum firms also kept the bulk of their refinery capacity below maximum output for most of the year. In the first four months of 1972, according to their reports to the Texas Railroad Commission, the top 10 firms actually kept their refineries running below the level of the same period of 1971.

As a result, supplies of gasoline and heating oil dropped below their levels of a year before. Refinery runs were sharply increased in the next five months, largely to head off a summer gasoline shortage. But this meant that heating fuel was scarce by fall.

When the crunch came, they accelerated refinery operations to take up the heating oil slack but this got them behind in gasoline production and shortages of gasoline in the summer of 1973 became inevitable.

[From Chicago Today, Dec. 7, 1973]

OIL SHORTAGE—BIG FIRMS GUILTY OF MONOPOLY?

(By Brit Hume)

A number of the major oil companies have continued the process, begun some years ago, of shutting down marketing units in certain areas, apparently to withdraw from their least profitable operation.

Industry spokesmen insist the shutdowns were merely to liquidate "uneconomic" operations. But to some students of the oily business, it looked suspiciously as if the big oil companies were carving up the domestic market to share among themselves.

A Federal Trade Commission report on the industry completed last summer explained it this way:

"All the majors can increase their regional market concentration simultaneously by pulling out of markets where their share is lower than their national average and selling their operations to those majors who remain.

"This strategy will work, however, only if the majors can retain or expand their regional market shares. To do so, they must prevent the further entry and expansion of independent marketers. Ultimately, the only way to contain or reduce the independents' market shares is thru monopoly power at the refining or crude pipeline stages."

In fact, since the onset of the shortages, the majors have increasingly been telling independent refiners and marketers they could not supply them with either crude oil or refined products because they needed all they had for their own operations. Independent refiners have been forced to operate well below their normal capacity.

The impact on independent marketers has been devastating. Hundreds of independent gasoline stations have shut down because of a lack of supply. Many that stayed open were forced to raise prices, wiping out their competitive edge. And the majors increasingly opened up so-called, "fighting brand" stations which emulate the high-volume, low-overhead, discount approach pioneered by the independents.

For the most part, Nixon administration officials have agreed with the oil companies that price controls coupled with increased demand were the principal immediate causes of the shortages of last winter and spring. Last November, the Interior Department's Office of Oil and Gas concluded in a draft report that the best approach to licking the heating-fuel problem was to raise the price, providing the industry with an incentive to increase supply.

In mid-December in a memorandum to Nixon, Gen. George Lincoln of the Office of Emergency Preparedness said the shortage was due "in large part to the pressures on refinery capacity, coupled with the price control situation which has made gasoline production preferable to production of heating oil."

Nevertheless, the Cost of Living Council has refused to permit across-the-board increases. It concluded last winter, according to Lincoln, that "the oil industry can make a profit on current prices of [heating oil] and they know it."

So the industry's giants have failed to get the price increases they have longed for. But they have accomplished a number of other objectives. The Alaska pipeline has been cleared for construction by Congress. Environmental roadblocks—to offshore drilling, for example—seem about to fall. The pesky independent companies have been gravely weakened. And the majors' sagging profit picture of the late '60s and early '70s has taken a dramatic turn for the better.

Exxon, the nation's leading energy company, has seen its profits increase more than 80 per cent in the third quarter of this year from the same period a year ago. None of the top five oil companies has reported third-quarter profit increases of less than 50 per cent from last year. Gulf, the third-leading oil producer, says its profits are up 91 per cent from the third quarter of last year.

There are some who believe the major oil companies conspired to bring about these results. Indeed, the FTC has filed a huge antitrust case against the top eight oil companies accusing them of collusion to monopolize the industry.

The FTC's central allegation is that the eight oil majors have "maintained and reinforced a noncompetitive market structure in the refining of crude oil into petroleum products." They have done this, the FTC

charges, by—among other things—"pursuing a common cause of action to abuse and exploit the means of gathering and transporting crude oil to refineries . . . participating in restrictive or exclusionary transfers of ownership of crude oil among themselves and with other petroleum companies . . . using their vertical integration to keep profits at the crude level artificially high and profits at the refining level artificially low . . . accommodating the needs and goals of each other in the production, supply, and transportation of crude oil to the exclusion or detriment of independent refiners."

The commission also charges that similar practices have given the eight firms "monopoly power" over the marketing of petroleum products. The industry has vigorously denied the charges. The case will take years to litigate.

AN INCOMPLETE REPORT ON SECRET CAMBODIA BOMBING

Mr. HUGHES. Mr. President, on several occasions this year, I have addressed the Senate regarding various aspects of the Armed Services Committee's investigation into secret bombing in Cambodia and other hitherto secret operations by our armed forces in Southeast Asia.

Although we still do not have adequate information to reach final judgments, I want to take this opportunity, before the Congress adjourns, to review what we have learned and what we still need to know.

On July 23, I gave the Senate a "preliminary report" on our investigations until that time. On that occasion I noted that I suspected that "there are uncharted depths, perhaps more frightening than what has yet been disclosed, to be brought to light."

In the course of 4 additional days of hearings by the Armed Services Committee, we learned of several incidents in which hospitals had been bombed, cross-border ground operations involving more than 100 soldiers, and false reporting of tactical air strikes deep inside Cambodia during and after the American ground invasion.

These hearings, well reported by the news media at the time, have not yet been published by the Armed Services Committee because of the failure of the Defense Department to supply all of the requested, relevant information.

Let me express my gratitude to the committee, and particularly to the acting chairman during this investigation, the distinguished Senator from Missouri (Mr. SYMINGTON). They recognized the seriousness of the charges which had been raised and the urgency in getting at the truth.

Senator SYMINGTON has continued to prod a recalcitrant Pentagon to provide us the requested information, and I deeply appreciate his assistance and counsel.

On August 2, I told the Senate of my conclusion that the falsification of records was so routine and pervasive in U.S. combat air operations in Southeast Asia that it had become a way of military life, in which truth and accuracy were subordinated to service loyalty and obedience to orders. At that time I also announced my determination to give close examination to general and flag officers nominated for promotion.

When the Defense Department released its so-called white paper on these secret operations on September 10, I inserted that report in the RECORD but noted that it was incomplete and unacceptable in many important respects. Subsequently the distinguished acting chairman of the committee, Senator SYMINGTON, wrote to the Defense Department, pointing out some 20 instances in which requested information was not supplied or was incomplete.

Today, more than 4 months after those hearings and 3 months after the committee's first renewed demand for complete information, the record is still incomplete.

My staff has identified 11 instances in which information requested from and promised by the Defense Department still has not been furnished to the committee.

Several of these failures by the Pentagon are relatively minor—a report on reconnaissance activities and copies of documents cited or quoted in testimony but not provided in full to the committee.

But other requests go to the heart of the issue—how and why the President decided to begin the secret bombing without fully informing the Congress or the American people.

Although the chairman of the Joint Chiefs of Staff at the time, Gen. Earle Wheeler, remembered attending several meetings on the initiation of the bombing, and Gen. Creighton Abrams remembered sending requests for such bombing, we have not been provided any of the relevant documents. The only decision document provided was one dated from November 20, 1969—more than 8 months after the first strikes.

The official excuse now is that "Department of Defense records do not include any memorandum from the Chairman, Joint Chiefs of Staff, to the Secretary of Defense for the first menu operation which corresponds to the November 20 memorandum already provided to the committee."

Mr. President, that statement is evasive and unresponsive. The committee wanted to see the documents that started this secret war, regardless of whether or not they took the form of the one document which was provided.

I cannot believe—I do not want to believe—that there are now gaps or missing documents in this Government's records of this secret war.

We know that there were such documents at one time, and that our military machine required written orders approved by responsible officials before widening the war.

Where are those documents now? What do they say? The events of recent months only reinforce one's suspicions that missing documents are missing for a reason, and not because of innocent or inadvertent error.

I believe that the Armed Services Committee should act to subpena these documents, from the President, if necessary, so that it can evaluate whether the existing laws governing civil-military relations and the conduct of war are adequate to situations of clandestine operations.

The Senate cannot fulfill its role and the Armed Services Committee cannot perform its job if crucial information is withheld for any reason—and no credible reason has even been offered in this case.

Not only are the basic decision documents missing, but the committee still has no explanation of the details of how Members of Congress were informed about these operations. All the evidence is hearsay, and none of it is precise as to how and when selected Members of Congress were told.

This should be particularly disturbing to Senators because of the double standard followed—treating some Senators as more privileged than others. Nor did the administration pay any respect to our leadership institutions. In neither body was the majority leader informed, nor even the ranking minority member of the Armed Services Committees.

There was also a double standard in terms of secrecy which resulted in a perversion of our constitutional responsibilities to appropriate funds. Under the Johnson administration, the Appropriations Committees were apparently informed of the costs of the secret cross-border ground operations—and no breach of security classification was ever claimed. But in the Nixon administration the much more costly air operations were not disclosed.

Also missing at this time are the high-level orders permitting a U.S. ground invasion of Laos in 1969, within a few days of President Nixon's inauguration. Moreover, the official testimony that no American combat troops entered Laos after the December 1969 law prohibiting such operations was passed has been contradicted by witnesses who were involved in such activities after that time.

In addition, the Defense Department has failed to report on allegations of hospital bombings except in one case. Yet the committee record contains statements from four other men about such incidents.

In these circumstances, we cannot close the books on this investigation. Nor should we rest easy until we know all the facts and know how to prevent any future situation in which military men are in any way uncertain as to the legality of the orders which they have been given.

This is one of the most frightening discoveries in these hearings. Witness after witness told of receiving orders to report information in a special, distorted way. When General Wheeler was asked what would happen to a soldier who questioned an order, he responded that it would depend on whether he was right.

How is a man to know whether he is right? The Uniform Code of Military Justice forbids the falsification of official reports. Both Sgt. Lonnie Franks and Maj. Hal Knight received orders to falsify their reports. In one case the Air Force claims that the orders were unauthorized, but in the other case the raids and the false reporting were deemed legal. No one ever answered the crucial question of how these men should have known the difference.

Another instance of false reporting remains unresolved. Two witnesses testi-

fied that even after the American invasion of Cambodia had occurred and the world knew that we were bombing in that nation, orders from the 7th Air Force required that strikes deep inside Cambodia be reported as if they occurred near the South Vietnamese border.

The Defense Department does not dispute this testimony, nor can it explain it, but the "white paper" says merely that a system of "attributed targets" apparently arose "in the field." The documents implementing this system cannot be located, DOD says, and thus they probably "were disposed of in the displacement of the 7th Air Force."

In order to pin down who actually originated this system or knew of it and tolerated it, I have submitted questions to each of several nominees for high-level promotions who served in Southeast Asia during the period when this false reporting occurred. Each nominee has duly responded, and in each case so far, they have denied knowledge of or involvement in this activity. Although I do not doubt the veracity of these men, and in fact voted to approve their promotions, I was disturbed by their lack of awareness of this widespread practice.

For the sake of completeness of the public record, I ask unanimous consent that the letters from these several nominees be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. HUGHES. Mr. President, I shall continue to ask questions of future nominees until I am satisfied that we know what we can know about these operations.

We need to continue this investigation, Mr. President, because it goes far beyond simple matters of academic, historical interest. These secret operations were conducted without regard to the Constitution and involved procedures which raise serious questions about the integrity of the military command structure.

Until we know all the facts, we cannot be sure of finding the best legislative remedies. And until we find the remedies, we run the risk of having our military forces under uncertain control.

No group or individual within our society, however well-intentioned, should ever be permitted to make the momentous decision to wage secret war while officially deceiving the Congress and the public. History has shown that this is the way that free nations under civilian rule have forfeited their freedom.

EXHIBIT 1

DEPARTMENT OF THE AIR FORCE,
Washington, D.C., September 5, 1973.

Hon. HAROLD E. HUGHES,
Committee on Armed Services,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HUGHES: I welcome this opportunity to respond to the questions which were submitted for my action along with your letter of 19 September 1973. Specific answers, to the best of my knowledge, are provided below:

1. Q. As Vice Commander of the 7th Air Force, were you fully briefed on all operations by the 7th Air Force?

A. Yes, I believe so.

Q. Do you have any reason to believe that General Brown had any information regarding operations which you did not?

A. I am unable to relate the completeness of my information in comparison to General Brown's since his responsibilities and exposures were more extensive than my own.

2. Q. When and how did you learn of MENU strikes?

A. I do not recall specifically, but it was a gradual learning process throughout my tour of duty.

Q. What were you told regarding reporting procedures, either through SACADVON or from GCI sites?

A. I was told that operational reporting of these strikes was done by SACADVON through MACV using special communications channels.

3. Q. Were there any lengthy periods (more than three days) in which General Brown's absence left you in command of the 7th Air Force?

A. Yes. During his two plus years there and the one year of my duty, he took minimum essential respite.

Q. Can you recollect some or all of those dates?

A. I can recollect two periods of more than three days but I do not recall the dates.

Q. During such periods, did you become aware of any peculiarities in the reporting procedures for tactical air strikes in Cambodia?

A. The only tactical air strikes conducted in Cambodia during my tenure as Vice Commander, Seventh Air Force occurred in April, May, and June 1970. For the reasons stated in previous testimony, SSO channels were used for reporting the operations called PATIO. To the best of my knowledge, the other tactical air strikes were reported in normal operational reporting channels.

4. Q. To whom did FACs report on air operations in Cambodia?

A. Before 1 May 1970, when US ground forces entered Cambodia, FACs reported directly through MACSOG (PATIO operation). Subsequent to 1 May 1970 and until my departure on 7 June 1970, FAC reports for all operations other than PATIO were submitted through normal reporting channels. FACs supporting PATIO continued to report through MACSOG.

5. Q. Did you receive reports or briefings from both FAC and fighter-bomber elements regarding air strikes in Cambodia?

A. Not directly. I assume the reports were part of operational or intelligence summaries which I saw or heard.

6. Q. Were you aware of any differences in these reports, particularly in terms of where the strikes were conducted?

A. I don't recall being aware of differences.

7. The Armed Services Committee has received testimony to the effect that, on strikes deep inside Cambodia, there were written orders from 7th AF HQ instructing intelligence officers to call TACC for "reporting coordinates" which were at variance with the actual targets struck.

Q. Were you aware that this was being done?

A. No.

Q. Did you ever issue or see any orders to this effect?

A. No.

Q. Did you ever issue or see any orders that would have required only completely accurate reporting?

A. I did not issue any nor can I cite any, but accurate reporting was the agreed, prescribed principle and practice.

Q. Were there any instructions or guidance from higher authority which would have justified dual reporting procedures?

A. Although I am unable to cite such an instruction, I am positive they were authorized by valid authority during my tour.

Q. In your point of view, was there any justification for such dual reporting?

A. Yes. In my opinion the testimony to date justifies dual reporting prior to my departure.

8. The Defense Department has told the Armed Services Committee that "Instructions in the field relating to the reporting of such operations which occurred outside the designated Freedom Deal areas stipulated . . . that special security communications channels would be employed.

Q. Who "in the field" originated these instructions?

A. I do not know. This operation occurred after my departure.

Q. On what authority were these instructions issued?

A. I do not know. This operation occurred after my departure.

Q. Were you or General Brown aware of, and did you approve these instructions?

A. The directives concerning operations in areas outside FREEDOM DEAL were issued after my departure from Southeast Asia.

9. The Defense Department has also admitted that a system of "attributed targets" arose "in the field."

Q. Were you involved in any way in developing that system of reporting?

A. No.

Q. Do you have any knowledge of how that system developed or who was responsible for its creation?

A. No; but I can understand in a general sense what inevitably happens when security restrictions are imposed and subordinate commands have to meet them and still account for fuel, munitions, and other logistic data.

Q. Were you aware of any orders which could reasonably be interpreted as forbidding the development of such a system?

A. No.

Q. Were any Air Force personnel tasked with the responsibility of comparing after-action reports for completeness, accuracy, and consistency? If so, why do you believe they failed until 1971 to disclose the system of dual reporting?

A. Yes; I must assume appropriate people were tasked to check accuracy of after-action reports. As to your question regarding failure to disclose the system until 1971, I have no knowledge since the events to which you refer occurred after I departed Southeast Asia.

10. Q. Who conducted BDA and post-strike reconnaissance on strikes in Cambodia?

A. Post-strike reconnaissance missions on strikes in Cambodia were conducted by three categories of reconnaissance assets; strategic reconnaissance platforms (SR-71 and U-2), under the operational control of SAC; tactical aircraft (RF-4) assigned to Seventh Air Force; and helicopters and observation aircraft under the control of MACSOG. I do not know what agencies performed the assessments.

Q. Was the information from these missions ever available to the same people who received the reports with attributed targets?

A. I don't know how all the information from these missions was handled.

Q. If so, who were these people and why did they not notice the discrepancies?

A. Not applicable—see above.

11. Q. Who received the after-action reports which contained the attributed targets?

A. Those people in the normal reporting channels.

Q. Did any of these people ever rely on them for information such as the amount of ground fire or other matters of the threat from the ground?

A. I don't believe so.

12. Q. Although DOD investigation has thus far failed to find the source of the orders for attributed targets, can you say on your own knowledge whether such an

order existed or by whom it was probably issued or under what authority or guidance?

A. While I was Vice Commander, 7 AF, I was knowledgeable of the tasking and reporting directives received from higher headquarters. Reporting procedures complied with 7 AF understanding of these directives. As regards details of FREEDOM DEAL, I departed Southeast Asia on 7 June 1970.

13. Q. The Armed Services Committee has received conflicting testimony on the question of what limits on air operations were imposed by the President during the US operations in Cambodia in May and June of 1970.

A. I can't help the Committee because I simply don't have a recollection of these details in May of 1970. I left in the first week of June 1970.

14. Although top level US officials at the time denied that US air strikes during and for some time after the US ground operations were for purposes of giving close air support to Cambodian forces, the Committee has received testimony to the contrary from lower-ranking officers.

Q. When did the United States begin to give close air support to Cambodian forces?

A. I don't believe 7 AF provided close air support to Cambodian ground forces during my tenure as Vice Commander, 7 AF.

Q. In target planning and validation, what instructions did you have to distinguish between bombing requests which should have been classed as interdiction and those which were for support of Cambodian forces? How and when did those instructions change?

A. When I left Vietnam on 7 June 1970, there were no instructions distinguishing between interdiction and close air support for Cambodian forces because close air support for Cambodian forces was not being performed by 7th AF aircraft.

Q. What coordination procedures were there between US and Cambodian authorities to handle and verify bombing requests as being for interdiction purposes only?

A. As specified by higher headquarters mission statement directives, MACV, RVNAF, and FANK representatives in the TACC coordinated in the selection and validation of targets when air power was employed.

15. The Defense Department has said that on Menu strikes into Cambodia, "Pursuant to instructions from Seventh Air Force (issued by a personal representative's visit to the GCI site), officers on duty at those sites took no action to warn or to report the Menu missions since they had been informed that these were authorized missions.

Q. What orders, issued by whom, established this procedure?

A. I don't know.

Q. What were the standing orders for GCI sites regarding penetration of Cambodian air space?

A. GCI sites were to monitor all flights in their assigned zone and warn flights as necessary in order to prevent penetration of the Cambodian airspace by unauthorized aircraft.

Q. What were the standing reporting procedures for penetration of Cambodian air space? Were these suspended or were reports prepared differently when Menu missions occurred?

A. Unauthorized entry into Cambodian airspace was normally reported to 7th Air Force through voice channels to the TACC. I have no personal knowledge of how the procedures were amended during the Menu operation.

16. Q. From your knowledge of combat reporting procedures and your knowledge of the Strategic Air Command, would you say that SAC's post-strike report Form 15 was an official report? Were there orders or instructions requiring it to be completed? Or were there offices which collected these forms for official purposes.

A. To my knowledge, I have never seen a Form 15, nor am I familiar with the procedures for its use.

I trust that the above has explained my understanding of the circumstances which you questioned.

Sincerely,

ROBERT J. DIXON,
Lieutenant General, USAF, Deputy Chief of Staff, Personnel.

DEPARTMENT OF THE AIR FORCE,
Washington, D.C., September 5, 1973.

Hon. HAROLD E. HUGHES,
Committee on Armed Services, U.S. Senate, Washington, D.C.

DEAR SENATOR HUGHES: I appreciate this opportunity to respond to the questions which were posed in your letter of 19 September 1973. The following answers respond to each to the best of my knowledge.

1. Q. As Commander of the 366th Tactical Fighter Wing at Danang, were you aware of any false or dual reporting on any air strikes by planes under your command?

A. No.

2. Q. Did any of your planes ever conduct strikes in North Vietnam? If so,—

A. Yes; I assume "your planes" refers to the planes under my command as Commander of the 366th TFW.

Q. Were all strikes conducted only after planes had been fired upon—that is, in protective reaction?

A. I don't believe the 366th TFW conducted strikes in North Vietnam except in support of search and rescue (SAR) efforts to recover downed aircrews.

Q. Did an unarmed reconnaissance plane fly in all missions in which there was a protective reaction strike?

A. To the best of my knowledge there were no such protective reaction strikes conducted by the 366th TFW during my tenure as Commander.

Q. Were any targets struck besides surface to air missile sites and anti-aircraft batteries? If so, what?

A. As previously mentioned, during my tenure as Wing Commander, the 366th Wing did not conduct protective reaction strikes in NVN.

Q. Were all protective reaction strikes fully and accurately reported? Was there any dual or false reporting on such strikes by anyone in your command?

A. We flew no "protective reaction" strikes.

Q. Were there ever any occasions when pilots were expected to bomb regardless of enemy reaction?

A. Not in NVN. Strikes in SVN, Laos, and Cambodia were frequently executed on the basis of intelligence information.

Q. How and when did your operating authorities change with regard to conditions under which protective reaction strikes could occur?

A. To the best of my knowledge they did not change during my tenure in command.

Q. Were there ever any instances of "trolling"—that is, flying so as to provoke an enemy response so that a protective reaction strike could be conducted?

A. Not to my knowledge.

3. Q. When you became director of TACC, how and when did you learn of MENU strikes?

A. I learned that there were some across the border strikes being conducted during a brief, informal discussion with my predecessor as Director of TACC in October of 1969.

Q. What (were) you told regarding reporting procedures, either through SACADVON or from GCI sites whose mission was to prevent and report air penetrations of Cambodia?

A. I received no information on MENU reporting procedures either through SACADVON or from GCI sites.

4. Q. On tactical air operations in Cambodia (1) before (2) during and (3) after the US ground operations in that country, how were targets selected and validated?

A. PATIO was the only tactical air operation in Cambodia prior to US ground operations in Cambodia. Targets were selected based on information provided by ground intelligence gathering teams, their supporting Forward Air Controllers, and reconnaissance. They were, as you are aware, validated and approved by higher headquarters.

During US ground operations and until I departed SEA, selection of targets in Cambodia was based on a variety of information gathered by visual and photo reconnaissance, prisoner interrogration reports, attacks by fire, ground contacts, and long range reconnaissance patrols. Targets recommended by ground force commanders were validated with FANK representatives within the TACC and coordinated with FANK Headquarters.

I am not familiar with procedures after termination of US ground operations since I departed Southeast Asia prior to that time.

5. Q. To whom did FACs report on air operations in Cambodia?

A. Prior to US ground forces entering Cambodia on 1 May 1970, FACs reported directly to MACSOG (PATIO operation). After 1 May 1970, FAC reports on TACAIR support for US and ARVN ground forces were submitted via normal reporting channels, although results of PATIO operations continued to be reported through SOG.

6. Q. Did you receive reports or briefings from both FAC and fighter-bomber elements regarding air strikes in Cambodia?

A. I received some information, but not briefings, from FACs and tactical fighter units participating in PATIO air strikes. I received routine reports on all other TACAIR units.

7. Q. Were you aware of any differences in these reports, particularly in terms of where the strikes were conducted?

A. No. I did not see the reports that were made to MACSOG nor did I see the MACSOG reports. I only saw the normal operation reports from the tactical fighter units. Although there may have been differences in the reports, under the circumstances these differences would not come to my attention.

8. Q. Were any Air Force personnel tasked with the responsibility of comparing after-action reports for completeness, accuracy, and consistency?

A. I'm certain that there were. However, I should note that the reports people were not under the TACC.

Q. If so, why do you believe they failed until 1971 to disclose the system of dual reporting?

A. Any answer I might give would be conjecture since the reports people did not work for me and I had departed Vietnam on 14 June 1970.

9. The Armed Services Committee has received testimony to the effect that, on strikes deep inside Cambodia, there were written orders from 7th AF HQ instructing intelligence officers to call TACC for "reporting coordinates" which were at variance with the actual targets struck.

Q. Were you aware that this was being done?

A. No, I was not.

10. The Defense Department has told the Armed Services Committee that "Instructions in the field relating to the reporting of such operations which occurred outside the designated Freedom Deal areas stipulated . . . that special security communications channels would be employed."

Q. Who "in the field" originated these instructions?

A. I do not know. This operation occurred after my departure.

Q. Were you aware of, and did you approve, these instructions?

A. No. As stated above, this operation occurred after my departure.

11. The Defense Department has also admitted that a system of "attributed targets" arose "in the field."

Q. Were you involved in any way in developing that system of reporting?

A. No, I was not.

Q. Do you have any knowledge of how that system developed or who was responsible for its creation?

A. I do not know how it was developed.

Q. Were you aware of any orders which could reasonably be interpreted as forbidding the development of such a system?

A. No.

12. Q. Who conducted BDA and post-strike reconnaissance on strikes in Cambodia?

A. Post-strike reconnaissance on strikes in Cambodia was conducted by RF–4s (photo recce) and the FAC aircraft (visual recce). I cannot say who performed the bomb damage assessment. I did not perform the BDA nor did anyone in the TACC.

Q. Was the information from these missions ever available to the same people who received the reports with attributed targets?

A. I do not know. Bomb damage assessment and distribution of such information was not a responsibility of the TACC.

13. Q. Who received the after-action reports which contained the attributed targets?

A. Personnel in the normal reporting channel.

Q. did any of these people ever rely on them for information such as the amount of ground fire or other matters of the threat from the ground?

A. Not to my knowledge.

14. Q. Although DOD investigation has thus far failed to find the source of the orders for attributed targets, can you say on your own knowledge whether such an order existed or by whom it was probably issued or under what authority or guidance?

A. From my own knowledge, I can say that 7AF reporting procedures were consistent with 7AF understanding of instructions received from higher headquarters.

15. The Armed Services Committee has received conflicting testimony on the question of what limits on air operations were imposed by the President during the US operations in Cambodia in May and June of 1970.

Q. What orders set limits on penetration of Cambodian air space?

A. I do not recall the specific limits. However I recall that they were changed during this period. I believe that when I departed SEA on 14 June 1970, authority existed for operations from the South Vietnamese border west to the Mekong.

Q. Were there any exceptions to the general limitation?

A. Yes, at the time when operations were restricted to 30 kilometers from the South Vietnamese border.

Q. What were they?

A. The exception of which I am aware was granted by MACV for PATIO. It involved a mission between the 30 kilometer line and the Mekong River.

16. Although top level US officials at the time denied the US airstrikes during and for some time after the US ground operations were for purposes of giving close air support to Cambodian forces, the Committee has received testimony to the contrary from lower-ranking officers.

Q. When did the United States begin to give close air support to Cambodian forces?

A. To the best of my knowledge the US did not provide close air support to Cambodian ground force operations during my tenure as Director of the TACC.

Q. In target planning and validation, what instructions did you have to distinguish between bombing requests which should have been classed as interdiction and those which were for support of Cambodian forces? How and when did those instructions change?

A. When I left Vietnam on 14 June 1970, there were no instructions distinguishing between interdiction and close air support for Cambodian forces because close air support for Cambodian forces was not being provided by 7AF.

Q. What coordination procedures were there between US and Cambodian authorities to handle and verify bombing requests as being for interdiction purposes only?

A. As specified by higher headquarters mission statement directives, MACV, RVNAF and FANK representatives in the TACC coordinated in the selection and validation of targets when air power was employed.

17. The Defense Department has said that on MENU strikes into Cambodia, "Pursuant to instructions from Seventh Air Force (issued by a personal representative's visit to the GCI sites), officers on duty at those sites took no action to warn or to report the MENU missions since they had been informed that these were authorized missions.

Q. What orders, issued by whom, established this procedure?

A. I don't know.

Q. What were the standing orders for GCI sites regarding penetration of Cambodian air space?

A. GCI sites were to monitor all flights in their assigned zone and warn flights as necessary in order to prevent penetration of the Cambodian airspace by unauthorized aircraft.

Q. What were the standing reporting procedures for penetration of Cambodian air space? Were these suspended or were reports prepared differently when MENU missions occurred?

A. Unauthorized entry into Cambodian airspace was normally reported to 7th Air Force through voice channels to the TACC. I do not know how the procedures were amended for MENU procedures.

Q. What were 7th Air Force representatives authorized to tell GCI personnel if questioned about their new orders for MENU missions?

A. I was not privy to the MENU details, nor were personnel assigned to the TACC.

18. Q. From your knowledge of combat reporting procedures would you say that SAC's post-strike report Form 15 was an official report? Were there orders or instructions requiring it to be completed? Or were there offices which collected these forms for official purposes?

A. I am not knowledgeable of the Form 15 or of the instructions pertaining to its use or disposition.

I trust that the above clarifies my understanding of the matters to which questions were submitted.

Sincerely,

JOHN W. ROBERTS,
Major General, USAF, Asst. Deputy Chief of Staff, Personnel.

DEPARTMENT OF THE AIR FORCE,
MAXWELL AIR FORCE BASE,
October 12, 1973.

HON. HAROLD E. HUGHES,
Committee on Armed Services, U.S. Senate, Washington, D.C.

DEAR SENATOR HUGHES: I appreciate this opportunity to respond to the questions which were submitted for my action in your letter of October 5, 1973. Answers to each question, to the best of my knowledge, are provided below:

1. General Gillem, the Defense Department "White Paper on Cambodia bombing says (p. 17) that "Crew briefing and notification procedures were proposed by the Commander Third Air Division, and approved by CINCSAC and OJCS."

Q. Is it correct that you were Commander of the Third Air Division at that time?

A. Yes. I was Commander of the 3rd Air Division from June 1968 until April 1970 when it was redesignated as 8th Air Force. I commanded 8th Air Force from April–July 1970.

Q. Were you aware that this would result in dual reports to several commands? If so, what steps were taken to inform those commands and guard against confusion?

A. In my mind "crew briefing and notification procedures" have nothing to do with operational reporting. Crews reported as they routinely did for all ARC LIGHT missions. I believe that those people requiring administrative and logistical data got it and those requiring operational data were able to get what they needed by correlating the reported information with mission identifier. This was a simple system that, to the best of my knowledge, caused no confusion.

2. The White Paper says (p. 12) that air crew procedures "were virtually identical to those used for normal B–52 ARC LIGHT operations." Does this mean that normal Arc Light operations also required:

Q. Dual reports?

A. No.

Q. Countermanding orders for GCI warning sites against cross-border penetration?

A. For normal ARC LIGHT, as well as MENU missions, B–52 aircrews were told to follow the instructions of the MSQ site. I am not aware that any GCI warnings were ever countermanded.

Q. Accurate target knowledge only for the pilots and navigators?

A. The entire crew was briefed on ARC LIGHT targets, but as I recall, for MENU missions only the navigators and pilot were told that the target was in Cambodia.

Q. No formal debriefings of crew members after missions?

A. The crews were debriefed after all ARC LIGHT sorties, including MENU.

3. The White Paper says (p. 8) that the Guam Command Post submitted on OPREP–4 showing only mission identifier, number and type of aircraft, time-over-target, and the guidance system utilized.

Q. Isn't it correct that an OPREP–4 normally contains target coordinates?

A. No, not for B–52 operations.

Q. If so, what special instructions were given to debriefers so that they would not normally include coordinates provided by crews?

A. Not applicable.

Q. Were times-over-target always correctly stated on the OPREP–4?

A. Yes. as far as I know.

4. The White Paper also says (p. 14) that, under MENU procedures, the debriefing form listed target coordinates only as associated with the original mission identifier.

Q. Who prepared the debriefing form and how was it different from the form used for other Arc Light Operations?

A. Intelligence personnel prepared the debriefing form and, to my knowledge, the same form was used in all ARC LIGHT operations, including MENU.

Q. Isn't it normal practice to include a question in debriefing as to whether a mission was diverted? If so, was such a question asked of Menu crews?

A. To the best of my knowledge, standard debriefing procedures were used for *all* ARC LIGHT missions, including MENU. This procedure would have included a question by the debriefing concerning deviation from the briefed mission.

Q. What instructions were given Menu crews regarding questions about mission di-

verts by the MSQ radar controllers? What did the Menu reports say regarding diverts?

A. They were told to follow MSQ instructions implicitly. If the mission were not flown *as briefed*, it would have been reported.

Q. If the divert question was not asked on *Menu* or *Arc Light*, what instructions and procedures were used for cases when there was an actual divert either in South Vietnam or in another country?

A. Not applicable because, as stated above, any deviation from the briefed mission was reported.

5. The White Paper claims (p. 10) that the Form 15 submitted by the radar sites with false target information was not a "formal, official report."

Q. What instructions required the Form 15 to be completed?

A. I am personally not familiar with the Form 15.

Q. What officers or commands collected these forms and for what purposes? Are not "maintenance and quality control" legitimate official purposes?

A. I do not know to what offices these forms went, but I am reasonably confident they never came to my headquarters.

Q. Then how can the Form 15 not be considered an official report? And what guidance was given to preparers of this form to assure that they were not in violation of article 107 of the UCMJ?

A. As stated above, I am not familiar with the Form 15.

6. Q. If a similar secret operation were to be instituted again, what changes would you recommend in the reporting procedures from those followed in Menu?

A. I've reviewed in my own mind the events leading up to MENU, the conduct of the missions, and the results of this very successful operation. From a military point of view, I can't think of any other system of procedures that could have insured the fulfillment of the mission as directed by the Commander in Chief. Should similar secret operations be necessary in the future, I would presume and expect that the procedures pertaining would be tailored to the circumstances existing at the time.

I trust that the foregoing is fully responsive to your interest in this important matter.

Sincerely,

ALVAN C. GILLEM II,
Lieutenant General, Commander.

DEPARTMENT OF THE AIR FORCE,
Norton Air Force Base, Calif.

HON. HAROLD E. HUGHES,
Committee on Armed Services, U.S. Senate, Washington, D.C.

DEAR SENATOR HUGHES: I welcome this opportunity to respond to the questions which were submitted for my action along with your letter of 25 October 1973. Specific answers to the best of my knowledge are provided below:

1. General Hardin, in your capacity as DCS/Operations, PACAF, during August 1968–March 1970,

Q. When and how did you learn of the B–52 (Menu) strikes into Cambodia?

A. I knew nothing of MENU during this time frame.

Q. To your knowledge, what reports and kinds of information on Menu planning and execution were regularly made available to PACAF?

A. To my knowledge we never got any reports on MENU strikes.

2. Q. After October 31, 1968, what responsibilities did you have relating to air strikes inside North Vietnam?

A. When I became Director of Operations of 7th Air Force in April 1970, I was responsible for the operational control of Air Force tactical air operations in Southeast Asia including North Vietnam. After I became Vice Commander of 7th Air Force in June 1970, I continued to play an active role in all aspects of Air Force tactical air activity in Southeast Asia.

3. To your knowledge, after October 31, 1968, except for the period (August 1971–March 1972) when Gen. John Lavelle commanded the 7th Air Force—

Q. Were all strikes inside North Vietnam conducted only and immediately after planes had been fired on—that is, in protective reaction?

A. This was true for all immediate protective reaction strikes conducted by Air Force aircraft escorting reconnaissance aircraft, however there were a very few limited duration protective reaction strikes directed by higher authority that were not immediate retaliation to attacks upon unarmed aircraft.

Q. Did an unarmed reconnaissance plane fly in all missions in which there was a protective reaction strike?

A. Yes, for all immediate protective reaction strikes. However, this was not true for the very few limited duration protective reaction strikes as noted above.

Q. Were any targets struck besides surface to air missile sites and anti-aircraft batteries? If so, what?

A. Yes, during limited duration protective reaction strikes there were more types of targets authorized to be struck. Additionally, during immediate protective reaction strikes, the military facility supporting the SAM sites, AAA batteries or hostile aircraft was a legitimate target.

Q. Were all protective reaction strikes fully and accurately reported? Was there any dual or false reporting on such strikes by anyone in the reporting channels to which you had access?

A. To the best of my knowledge, all protective reaction strikes were fully and accurately reported. I am confident there was no false reporting on any such strikes.

Q. Were there ever any occasions when pilots were expected to bomb regardless of enemy reaction?

A. Yes—as outlined above—during limited duration protective reaction strikes conducted in compliance with instructions from higher headquarters.

Q. How and when did the operating authorities change with regard to the conditions under which protective reaction strikes could occur?

A. There were many changes in authority for protective reaction strikes during my tenure in 7th Air Force such as actual fire, SAM radars, and AAA radar threats.

Q. Were there ever any instances of "trolling"—that is, flying so as to provoke an enemy response so that a protective reaction strike could be conducted?

A. Not to my knowledge.

4. To your knowledge, during the time that General Lavelle commanded the 7th Air Force—

Q. What operational reports on strikes in North Vietnam did you have access to?

A. I assume that I had access to the normal operational reports from these missions.

Q. Were you aware of any discrepancies in these reports, such as OpRep 4's listing SAMs or AAAs hit while other reports listed trucks?

A. No.

Q. Were you in any way suspicious of the increasing frequency of protective reaction strikes in February, 1972, such as from BDA or from the absence of reconnaissance planes on some missions?

A. No, I was not aware of any. I was Chief of Staff at PACAF at this time and thus was not directly involved in the operation.

Q. What and when were you told, formally and informally, regarding the cessation of protective reaction strikes on March 10, 1972 and the subsequent removal from command of General Lavelle?

A. My first knowledge of the Lavelle situation came from the press. I have since discussed the situation informally with many fellow officers.

5. Regarding the PATIO operations—

Q. Who devised the reporting system which had assigned cover targets in Laos in routine reports?

A. I was not aware that cover targets were used on PATIO missions.

Q. Did the same personnel who prepared the routine reports also prepare the special reports with accurate information?

A. I don't know.

Q. If so, what instructions were they given regarding the justifications for and legality of discrepant reports?

A. I do not know.

Q. What instructions and explanations were given when the PATIO reporting became accurate and identical on all reports?

A. I do not know. I cannot recall that this was ever an issue.

NOTE: The following several questions relate to Freedom Deal strikes in Camobdia.

6. Q. Did you receive reports or briefings from both FAC and fighter-bomber elements regarding air strikes in Cambodia?

A. I was familiar with 7th Air Force operations conducted in Cambodia, but I did not receive any reports directly from strike or FAC units. I am sure that data from these units was included in operational and intelligence summaries which I routinely received.

7. Q. Were you aware of any differences in these reports, particularly in terms of where the strikes were conducted?

A. I was not aware of any differences in reports from these units. I was aware that the sensitive nature of some targets required 7th Air Force Headquarters' operational reporting through special security channels.

8. The Armed Services Committee has received testimony to the effect that, on strikes deep inside Cambodia, there were written orders from 7th AF HQ instructing intelligence officers to call TACC for "reporting coordinates" which were at variance with the actual targets struck.

Q. Were you aware that this was being done?

A. No.

Q. Did you ever issue or see any orders to this effect?

A. No.

Q. Did you ever issue or see any orders that would have required only completely accurate reporting?

A. I did not issue any, nor do I recall any to this effect.

Q. Were there any instructions or guidance from higher authority which would have justified dual reporting procedures? If so, please specify.

A. I do not specifically recall any such instructions, for subordinate units below 7th Air Force. However, as noted above, I was aware of the requirement for 7th Air Force Headquarters to use special security channels in reporting to higher headquarters on certain sensitive missions.

Q. In your view, was there any justification for such dual reporting?

A. Yes. But while I believe dual reporting was justified it was not militarily essential to this particular operation.

9. The Defense Department has told the Armed Services Committee that "Instructions in the field relating to the reporting of such operations which occurred outside the designated Freedom Deal areas stipulated . . . that special security communications channels would be employed."

Q. Who "in the field" originated these instructions?

A. No one that I know of. Our reporting procedures at 7th Air Force were in strict compliance with our understanding of instructions and security requirements of higher headquarters.

Q. On what authority were these instructions issued?

A. I don't recall the specifics; however, instructions of this nature originated above 7th Air Force.

Q. Were you aware of, and did you approve, these instructions?

A. I was aware of the requirement for the 7th Air Force Headquarters to use special reporting procedures for these strikes and complied.

10. The Defense Department has also admitted that a system of "attributed targets" arose "in the field."

Q. Were you involved in any way in developing that system of reporting?

A. No, I was not.

Q. Do you have any knowledge of how that system developed or who was responsible for its creation?

A. No, I do not know how it developed.

Q. Were you aware of any orders which could reasonably be interpreted as forbidding the development of such a system?

A. No.

Q. Were any Air Force personnel tasked with the responsibility for comparing after-action reports for completeness, accuracy, and consistency? If so, why do you believe they failed until 1971 to disclose the system of dual reporting?

A. I am sure there were people who checked the reports, although I am unaware of the specific reports that they checked. I am confident that reporting from 7th Air Force Headquarters was in strict compliance with our understanding of instructions from higher authority.

11. Q. On tactical air operations in Cambodia (1) during and (2) after U.S. ground operations in that country, how were targets selected and validated?

A. During U.S. ground operations, target selection was based on information gained from intelligence sources and ground contact. Prior to being struck these targets were validated by a FANK representative attached to 6th Air Force and approved at FANK Headquarters. After ground operations ceased in that country, targets were developed based upon a variety of intelligence sources. They were approved at FANK Headquarters.

12. Q. Was the information from BDA and post-strike reconnaissance missions ever available to the same people who received the reports with attributed targets?

A. I don't know.

Q. If so, who were these people and why did they not notice the discrepancies?

A. I don't know.

13. Q. Who received the after-action reports which contained the attributed targets? Please specify the addresses in South Vietnam, Cambodia, and Thailand.

A. I do not recall any specific addressees but I am sure the information went to those who required administrative and logistic statistical data.

Q. Did any of these people ever rely on these reports with attributed targets for information such as the amount of ground fire or other matters regarding the threat from the ground?

A. I don't believe so. I am sure the people who needed this sensitive operational data got it.

14. Q. Although DOD investigation has thus far failed to find the source of the orders for attributed targets, can you say of your own knowledge whether such an order existed or by whom it was probably issued, or under what authority or guidance?

A. No, but I am positive that our reporting procedures complied with higher headquarter's directives as we understood them at 7th Air Force.

15. The Armed Services Committee has received conflicting testimony on the question of what limits on air operations were imposed by the President during the U.S. operations in Cambodia in May and June of 1970.

Q. What orders set limits on penetration of Cambodia air space?

A. There were a succession of instructions which revised the limits within which strikes were authorized. As I recall, we initially had authority to conduct operations from the Vietnamese border west to the Mekong, later this was extended.

Q. What were those limits?

A. See answer above.

Q. Were there any exceptions to the general limitation? Please specify.

A. COMUSMACV had authority to make exceptions, 7th Air Force did not.

16. Although top level U.S. officials at the time denied that U.S. air strikes during and for some time after the U.S. ground operations were for purposes of giving close air support to Cambodian forces, the Committee has received testimony to the contrary from lower-ranking officers.

Q. When did the United States begin to give close air support to Cambodian forces?

A. Although Cambodian forces may have benefited from U.S. air strikes, our primary mission in Cambodia during my tenure was interdiction. However, 7th Air Force was authorized on a case-by-case basis to conduct limited operations in situations which involved a serious threat to major Cambodian positions.

Q. In target planning and validation, what instructions did you have to distinguish between bombing requests which should have been classed as interdiction and those which were for the support of Cambodian forces? How and when did those instructions change?

A. I cannot recall any instructions which differentiated between interdiction and close support.

Q. What coordination procedures were there between U.S. and Cambodian authorities to handle and verify bombing requests as being for interdiction purposes only?

A. Coordination with FANK was designed primarily to protect cultural areas and insure that no civilian or friendly forces were attacked. U.S. authorities otherwise determined what were proper and appropriate military targets subject to approval by FANK Headquarters.

17. Q. Are you aware of any studies or discussions on the advisability or dangers of the use of CS gas munitions in conjunction with napalm?

A. I was not aware of any studies or discussions on the dangers of employing CS (a riot control agent) in conjunction with napalm. Recently, however, I have been advised that should CS and napalm be used in close proximity, it is theoretically possible that minute amounts of hydrogen cyanide gas might occur. The necessary chemical conditions are so extremely rare and transient in nature that such a consequence is on the order of a controlled laboratory phenomenon, totally beyond the realm of a planned military occurrence.

Q. To your knowledge, were any orders or guidance issued with regard to such usage of such munitions?

A. Not to my knowledge. The Air Force used CS in rescue and recovery operations under authorities granted by the JCS.

Q. Were such munitions ever used simultaneously on the same target?

A. Not to my knowledge.

18. Q. If a similar secret operation were to be instituted again, what changes would you recommend in the reporting procedures from those followed in MENU?

A. I have given this problem a lot of thought throughout my career. I am convinced that it would be more efficient from a military point of view if everyone concerned could be cleared for all details of every operation. However, the realities of national security with respect to protecting our forces and preserving our options has caused me to understand and live with special clearances, and special reporting procedures. I am unable to think of a better way to have carried out a highly sensitive operation such as MENU.

I trust that the above has clarified my understanding of circumstances to which questions were posed.

Sincerely,

ERNEST C. HARDIN, Jr.,
Major General, USAF, Deputy Inspector General for Inspection and Safety.

ABUSE OF FIREARMS

Mr. KENNEDY. Mr. President, I would like to enter in the RECORD a copy of the remarks presented by New York's Mayor, John Lindsay, concerning the abuse of firearms. In his address before the American Society of Criminology, Mayor John Lindsay spoke concerning the gun crimes in New York City involving weapons transported illegally from other States. Circumstances in most instances revealed that States and jurisdictions with lax gun laws are the primary source of weapons that wend their way on to infamy in New York City. Of some 3,000 handguns seized by the New York Police Department over a 6-month period, about 98 percent were found to have been stolen or were traced to retail sales outside of New York State.

Mayor Lindsay sees stringently enforced nationwide gun controls as the most effective way to stem the tide of lawlessness caused by these guns. I share the mayor's conviction and I am pleased to enter his remarks in the RECORD for a review by this Senate.

Mr. President, I ask unanimous consent that Mayor Lindsay's remarks be printed in the RECORD.

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

ADDRESS BY MAYOR JOHN V. LINDSAY

NOVEMBER 3, 1973.

I'd like to talk this morning about 6 people who were killed in a war one day last October. They were all Americans.

The war that claimed them was not in the Middle East. It did not make any headlines and will never have any winners. It ranks with the Civil War as being the most uniquely American of all wars. It has been going on for decades and intensifying every year. And it will be raging still more furiously next year—unless we do something about it.

On October 4, 1973, Police Officer Robert Marshall interrupted a hold-up in Philadelphia. He was shot and killed with a handgun.

On October 4th, Howard Lee got into an argument with some friends in his Cleveland apartment. He was shot and killed with a handgun.

On October 4th, Richard Anderson, a Denver businessman, committed suicide by shooting himself with a rifle.

On October 4th, in Seattle, 16 year old Lloyd Smith got into an argument over a narcotic transaction. He was shot and killed with a handgun.

On October 4th, Robert Seville's store in Jackson, Mississippi was held up. He was shot and killed with a shotgun.

On October 4th, in New York City Howard Schwartz's dog got into a fight with another dog. The owners of the two dogs argued. Mr. Schwartz was shot and killed with a handgun.

Though the names on this death list have been changed, nothing about it is unreal. In fact, if October 4, 1973, was just an average day in America, 57 people were killed in accidents, murders, and suicides that involved the use of what has become an American trademark—the gun.

It doesn't have to be that way. We can save many of tomorrow's 57 victims. All we have to do is treat guns not like toys, or badges of manhood, or symbols of the great American tradition—but like guns.

There are as many firearms in the United States as there are people.

This includes as many as 40 million handguns, which are now being manufactured and pumped into the civilian population at the rate of more than 2.5 million a year.

Which means that a new handgun is sold in the United States every 13 seconds. And one is used every hour of every day to murder one of our citizens.

But the legal restrictions we impose on the distribution of these weapons are almost non-existent.

In only three states and two cities is a license or identification card needed to acquire or carry a rifle or shotgun.

And in 42 states no license is required to purchase a handgun.

The only restriction on buying handguns in these 42 states is a provision in the Federal Gun Control Act of 1968 which requires that the purchaser fill out a form giving his name and declaring that he is not a minor, and has no history of alcoholism, mental disorder, or felony conviction. But this requirement is almost worthless since it mandates no verification—such as fingerprints and a police background check—to substantiate the purchaser's identity and his declarations.

And while the Act of 1968 banned the importation of cheap handguns—known as Saturday Night Specials—it allowed for the importation of their parts and their domestic assembly and distribution. And so, one million cheap handguns that can have no conceivable sporting purpose and cannot be used for anything other than killing human beings at close range were put together and sold in the United States last year—with no real controls on their distribution.

In a country that requires prescriptions for penicillin and licenses for dogs, that kind of legislative policy on firearms is incredible.

Indeed, that kind of permissiveness is suicidal.

It means that in the next two years more Americans will die at home from firearms fatalities than were killed by the enemy in the twelve years of the Vietnam War.

And nowhere are the numbers more frightening and our disregard of them more intolerable than in the category of police killings.

In 1967, there were 57 police officers killed in the United States. By 1972, the death toll reached 112, of whom 108 were killed with firearms and 74 were killed with handguns.

From 1966 through 1972, 621 policemen were killed across the United States. Ninety-five percent were killed with firearms, and seven out of ten were killed with handguns.

Indeed it is the cop on the beat who has the most to fear in the gun-crazed society. He is trained and equipped to defend himself. But there is little he can do about the bullet that greets him as he chases a suspect down an alley, interrupts a hold-up, or comes between a husband and wife in a family dispute.

That is why police leaders—including the late J. Edgar Hoover—have long supported stringent gun control. That is also why the President's consistent opposition to strong gun control makes his election campaign promise to "strengthen the peace forces against the crime forces" hard to believe.

The United States stands alone as the only supposedly civilized country in the world that does not regulate the ownership of firearms. Our per capita gun ownership rate is between five and thirty times that of any other free country. And in 1969, our murder rate was 16 times that of Finland, 120 times that of Sweden and 360 times that of Norway.

There will be more Americans killed by handguns in the next 39 hours than were killed by handguns in all of England in 1972.

It is illegal to own a handgun in Japan. And so in Tokyo, there were 217 murders in 1972, and only three of them were committed with handguns. In Detroit, with one tenth the population of Tokyo there were more than twice as many murders in 1972.

When I was in Japan last year the police told me they couldn't understand how we survived without gun controls. The answer is that many of us don't.

But we need not look overseas to see that gun control can work.

The fact is that even domestic comparisons between states or localities with weak versus strong firearms laws tell the same story.

The South, which has the highest rate of firearms ownership and generally the weakest gun control laws in the nation, also has the highest rate of homicides committed with firearms and the highest rate of accidental gun deaths.

New York City has the nation's most stringent state and local gun controls. And, so far in 1973, New York's murder rate ranks 9th among the ten largest cities.

In New York City, every gun is required to be registered and every owner licensed. To get a license, an applicant is first fingerprinted and his background is carefully checked by the Police Department, to weed out those with histories of alcoholism, mental disorder, or felony convictions. In addition, to get a license to carry a handgun in New York City, the applicant must not only go through this same background check, he must also prove to the police that he has a specific, legitimate need for the handgun.

Only 24,000 New Yorkers have these handgun licenses. And we know the system works—because only a handful of these 24,000 have ever used their weapons to commit an assault, robbery or murder.

But just as New York City shows how gun control can be effective, our experience here also demonstrates how even the best state and local controls are tragically undermined by the absence of stringent federal firearms control.

Although New York ranks 19th in crime among the largest 25 cities, the number of assaults and robberies involving firearms is rising sharply. And the City's chief Medical Examiner attributes almost the entire increase in murder in recent years to the increased availability of guns.

These are crimes that are almost always committed with illegal guns, not by our licensed owners. Crime guns almost always come from jurisdictions outside New York.

We have learned, in fact, that these guns are coming to us by the thousands through black market "gun running" networks. These operations thrive on the absence of strict federal standards which makes it possible for a gun runner to walk into a store in the South, give a false name and address on that federal form and exchange cash for several hundred handguns. In one case, for example, *one* man in South Carolina purchased 600 handguns in *one* day so that he could resell them in Northern cities.

Police Commissioner Donald F. Cawley and I have intensified efforts to put a dent in this deadly interstate traffic. We recently met with the City's District Attorneys and administrative judges to seek their cooperation in getting better information from those arrested on gun possession charges as to the origin of the gun they were carrying, and to seek stricter enforcement of New York's strong gun laws. In this way we hope to work our way back to the major profiteers in these operations.

We are also working with the Treasury Department's Alcohol, Tobacco, and Firearms Unit on a study aimed at learning more about these black market networks and quickly uncovering the most blatant of them. With ATF, we have begun tracing the approximately 3000 handguns seized by our police from persons arrested in the last six months in order to determine each handgun's last legal point of transfer.

Though the results of the survey are not yet complete, they promise to confirm our worst fears about how the absence of strict national gun control undercuts New York's tough local laws. Approximately 98% of the guns surveyed thus were either stolen or have been traced to retail sales *outside* of New York State. Two thirds of those traced outside the State came from just four states in the South: South Carolina, Georgia, Florida, and Virginia. Most alarmingly, South Carolina thus far accounts for almost one third of the total traceable guns seized.

Many of you may have read about the man who went beserk on 34th Street last week and killed two people before being gunned down himself. Of the two handguns he used, one has been traced to South Carolina and the other has been tentatively traced to Virginia.

A recent gun running operation uncovered by a joint Federal-City investigation tells us in broader terms what this interstate traffic means. The defendants in this case are alleged to have brought 200 handguns in just one shipment from South Carolina to New York—and the New York City Police Department has already seized 169 of them from persons arrested for attempted murder, assault and armed robbery.

That, very simply, is the case for federal gun control.

To put it another way, permissiveness in states such as Georgia, South Carolina, Florida, and Virginia is threatening the safety of police officers and citizens in New York City, and across this nation.

That is obviously a federal problem of the highest order.

Is Washington listening?

For seven years as a Congressman and eight as a Mayor I have pleaded for national gun control.

Specifically, this legislation would:

Require the registration of all firearms;

Ban the manufacture or sale of all cheap hand-guns not suitable for sporting purposes;

Require the licensing of all firearm owners; and

Require special licenses for handgun ownership, to be issued only after the applicant proves that he has an overriding, legitimate need for this dangerous weapon. Though the standard for such overriding need could vary among states and localities, it would surely not allow a civilian in South Carolina to buy 600 handguns at a time;

In addition, a strong federal law would mandate that firearm manufacturers, shippers, and retailers take strict safety measures to help prevent gun thefts, which now run into the tens of thousands every year, and which account for almost 20% of the guns traced in our survey so far.

Essentially, then, what we need is to treat guns the way we treat cars: they must be registered and those who use them must be licensed. That is hardly an extreme or unreasonable restriction on those tools of death.

And this must be done at the federal level—because we can't allow guns to slip through a hodgepodge of non-uniform state laws.

This kind of federal legislation has been

supported for years by mayors and police chiefs across the country. And every public opinion poll has found that a large majority of American citizens support it as well.

But in Washington our voice is drowned out by the power of the National Rifle Association—an industry funded lobby whose tax exempt status is mystifying, and whose half-truths are designed to mislead thousands of hunters into burying Congress in postcards everytime someone says gun control.

And this is one of the most unregulated industries in the nation, with barely any Federal monitoring of production and sales. This, itself, is a national scandal. If these firms were also producing heroin, there would be Federal action and national outrage. But their outpouring of guns, which annually kills far more people than drug addiction, barely causes a stir in Washington.

The only hunting that gun control would stop would be the hunting Americans do against each other.

All of us here know that.

But our knowing it isn't good enough. We must shatter the myths about guns and about gun control. We must disabuse those who believe that "If guns are outlawed only outlaws will have guns." That just isn't true. Police will have guns. Licensed owners will have guns. And the odds will be much better that more criminals will not.

We must also point out one more shocking truth. Almost three fourths of all murders are actually committed not by random thugs, but by normally law abiding citizens who get into an argument with a friend or relative and reach for a gun that is all too available. Nor should we forget the thousands of suicides and accidents that are the direct consequence of too many guns in too many places.

Indeed we must lead the way in re-examining the role of guns in our society and the myth that the gun has some sacred place in the American tradition.

This country was founded on cherished ideals, not guns.

The frontier was conquered by plows and axes and hope—not gun-slinging.

The hope we have always offered ourselves and the world has been that man could be free, not that he could carry a gun.

And today, in the wake of Watergate, we know too well that freedom depends on the rule of law not the exercise of raw power.

The question of how we face our gun mania is really a question of what kind of society we want to be.

Can we expect to be a nation of peace and good will abroad and yet be a country that sells handguns like bubblegum at home?

Indeed, can we show our children the glory of guns on television and in the movies and then convince them that the law—not the gun—is the great equalizer?

No one who loves his country can hide from these questions any longer. We must face them.

We must teach our children to think of torn flesh and slabs in the morgue when they think of guns, not mythology and manhood. We must remind them that the gun-slinger is the enemy of democracy—that here in America one Presidential election has been nullified, and two have been frustrated by firepower in just the last ten years.

And we must make Washington face these same questions.

We must stiffen up the Congress in the face of a lobby that for too long has used lies and cash from the gun industry to bully this country.

The crisis in Washington today is a crisis in confidence in the rule of law. There can be no better time to get on with the business of passing gun control legislation, for that would assert the rule of law over the rule of force.

It's time we ended the war at home. It's time we made freedom under the law—not the gun—once and for all the trademark of America.

In the last eight years, I have been to more than 20 funerals of police officers killed in the line of duty by guns. Each one has left an indelible mark on my memory.

I promise you, for as long as it takes, I intend to continue the fight to honor those slain men by passing the kind of stringent gun control law that will protect their comrades and the thousands of other Americans whose lives depend on it.

I hope you will join me.

U.S. POSTAL SERVICE

Mr. CANNON. Mr. President, although all of us have experienced difficulty with the U.S. Postal Service, I have been informed of an incident in Reno, Nev., in which the local post office deserves a pat on the back.

John R. Bullis, a Reno accountant, inadvertently dropped an envelope in the mailbox containing $10 and a birthday card for his son, Craig. The envelope was not addressed and unsealed.

In true Christmas spirit, the Reno Post Office located the envelope in the mass of holiday mail, and mailed the card and money to Craig with a personal note.

Although I have criticized the Postal Service in the past, I commend and thank the Reno Post Office employees for the handling of this situation.

I ask unanimous consent that copies of letters from John R. Bullis to the Reno Post Office and from J. E. Miller, foreman, to Craig Bullis be printed in the RECORD.

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

JOHN R. BULLIS,
Carson City, Nev., December 6, 1973.

POSTMASTER,
Main Office Station,
Reno, Nev.

GOOD MORNING: May I express our special "Thank You" to Your Fine Organization!

By mistake, I mailed a Birthday Card to our eleven year old son with some of my business letters. It not only was not addressed (I was to carry it home myself), but it was not sealed and it contained a Ten dollar bill.

The employees of the Reno Post Office not only treated me kindly (not laughing at my mistake), but they demonstrated their sincere desire to locate the card.

Our son recently received the card—intact with the $10.00—with a short note written by J. E. Miller, Foreman T-2. Our son Craig was very happy to receive it and we had cause to remember that the United States Post Office has many honest, friendly, competent workers.

We realize the incident came at your busiest time. Thanks Again!

Best Wishes for a Merry Christmas.

Sincerely,

JOHN BULLIS.

Mr. CRAIG BULLIS
J. E. Miller, Foreman T-2.

December 10, 1973.

You do not know me but I spoke with your father this morning and he explained that your birthday card got mailed by accident. We found it and would like to wish you a Happy Birthday also. Have a Happy Day and Happy Holidays to all.

LABOR-HEW APPROPRIATIONS BILL

Mr. RIBICOFF. Mr. President, HEW can no longer continue to run on continuing resolutions. In order to make sound planning decisions it needs a budget.

Recently Congress approved the conference report on Labor-HEW appropriations. It represents a reasonable compromise between the need to hold down spending and the need to provide adequate funding for worthwhile health, education and welfare programs.

As a former Secretary of Health, Education, and Welfare, I have joined with three other former secretaries, Marion Folsom, John Gardner, and Wilbur Cohen in requesting the President to sign the appropriations measure.

I ask unanimous consent that this letter be printed in the RECORD.

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

DECEMBER 7, 1973.

President RICHARD NIXON,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: As former Secretaries of Health, Education, and Welfare under three different Presidents, we respectfully and earnestly urge you to approve the Conference Report on the H.E.W. Appropriation bill (H.R. 8877) recently passed by the Congress.

While we recognize that the total appropriations in the bill are above those which you submitted to the Congress, we believe it is important to keep in mind that, as we understand it, the Congress intends to keep total appropriations for all governmental functions within the overall appropriations total you have established for the year. Therefore, we hope you will not be impelled to veto this important bill on budgetary grounds.

Our appeal to you is both bipartisan and nonpartisan. There are, of course, individual items in the H.E.W. Appropriations bill where reasonable persons can differ concerning the wisdom of the particular amounts. But, if the integrity of the Congressional review process is to be given due weight in our governmental system, we believe it is appropriate, especially in these troubled times, to accept the Congressional judgment unless some overriding national or constitutional issue is involved. We do not see either issue as a relevant one in this instance.

The very urgent needs for accelerating the biomedical research and training programs of the National Institutes of Health, the vital and innovative educational programs of the Office of Education and the National Institute of Education, and the basic humanitarian programs for the aged, blind, disabled and other disadvantaged persons—all supported by the H.E.W. Appropriation bill—deserve to be funded promptly and with the whole-hearted concurrence of both the Executive and Legislative branches. The domestic programs for the men, women, and children of our nation warrant this action.

At this very time when we need a greater sense of national unity and a community of interests, we believe it would further jeopardize attempts to resolve domestic differences if there were intense controversy and bitterness over a veto of the H.E.W. Appropriation bill.

Based upon our own extensive experiences in reconciling differences of opinion in various budgets of H.E.W., and in view of our

strong support for the program objectives in the H.E.W. legislation, we urge you, as vigorously as we can in the national interest, to approve the pending H.E.W. Appropriation bill.

Sincerely,

MARION FOLSOM, 1954–56,
ABRAHAM RIBICOFF, 1961–62,
JOHN GARDNER, 1965–68,
WILBUR J. COHEN, 1968–69.

OIL SHALE

Mr. HASKELL. Mr. President, the first Federal oil shale lease sale is scheduled in January. After years of discussion, exploration, and process experimentation, it appears oil shale will fulfill its promise as a major source of America's energy for the future. To that extent, I think we all welcome this event.

But I would like to call my colleagues' attention to a problem we in Congress have largely overlooked and one we will certainly be hearing more about as the United States accelerates efforts to develop domestic energy sources: the impact upon local communities which must cope with the sudden growth this development will bring.

I am afraid our very justifiable concern about the environmental effects of such development has not been matched by concerns about the local social and economic effects. Local communities, with their limited resources, will increasingly be forced to provide facilities for boomtown growth.

Obviously, we have lost any leadtime we may have had for long, studied appraisals of such needs. There will be no slowing the development now so local entities can arrange to cope with it—not with a fuel-short America looking to the vast coal and oil shale reserves of the West.

My immediate concern is the burden facing several western Colorado counties as the Interior Department prepares to lease the first tracts of public lands for oil shale development. A recent editorial in the Grand Junction, Colo. Daily Sentinel, outlines the problem well. I ask unanimous consent that the editorial be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. HASKELL. Mr. President, let me assure you that western Colorado is not complaining now that technology and rising world crude oil prices have finally combined to make oil shale processing economically feasible. This area has long staked its hopes for solid growth and prosperity upon oil shale development.

The early years of this growth, however, will be painful. And without some outside help, they could be disastrous.

The Colorado counties most directly affected by the oil shale boom will be Garfield, Mesa, and Rio Blanco. Neighboring Moffat County, already suffering problems due to coal development, will have its share of problems too. These Colorado counties will be joined by areas of Utah and Wyoming as the shale leasing program expands.

The situation for these counties, Mr. President, is this: Local governments will be called upon to provide essential services—roads, schools, water and sewer treatment plants, police and fire protection—far in excess of present levels. Obviously, this massive development will constitute a significant tax base for these counties which will one day rank among Colorado's highest. But the peak service demands will precede peak tax revenues from this industry by as much as 5 years.

The question for these localities is obvious and immediate: how to finance the service and facilities they will have to supply? For other areas in these counties, the question is just as immediate, but the ultimate answer is less certain. These are the communities which will house large numbers of people—first construction workers, later permanent employes—but which will never have the industrial tax base to offset the cost. This spillover of the shale boom could cause major problems for some Colorado communities which stand on the fringe of oil shale development.

Mr. President, a few figures will help explain the potential magnitude of the impact: The present population of Garfield, Mesa and Rio Blanco counties is 72,200. Assuming a growth rate of 3 percent and no oil shale development, these counties will house 121,900 people by 1987. That prospect offers problems enough.

But if we add the growth occasioned by shale processing plants turning out three-quarters of a million barrels of oil daily, by 1987 the population in these three Colorado counties will soar to 307,000.

Demands on the schools alone will be tremendous. Around 240 new classrooms will be required for a population such as this at a cost of between $14 and $16 million.

Keeping in mind that tax revenues will lag far behind local governmental expenditures, Mr. President, we begin to see what these counties are going to be up against. They will soon be making a major contribution to America's energy supplies. It is my view that the Federal Government has a definite responsibility to help them prepare for the sudden growth which will come as a direct result of the release of public lands to private industry which will produce that energy.

Mr. President, there is serious doubt among local officials in western Colorado that existing Federal impact aid programs will be adequate to this task. That is something we must determine. If the programs do exist, I believe we must make certain they are responsive and accessible. If they do not exist, some special help will obviously be necessary.

The first step, however, is to determine the local impact of oil shale development in western Colorado and the ability of local governments to handle it. For that reason, I am pleased to announce that the Interior and Insular Affairs Public Lands Subcommittee, which I chair, will hold hearings in Grand Junction, Colo. in January. We will invite local governmental officials, regional councils of government and planning groups to testify and hopefully give us some of the answers we seek.

While we will be examining a specific Colorado problem, I believe my colleagues, especially those from Western States, will find many similarities between this situation and those in their own States. The information we gather will be useful to them as well.

EXHIBIT 1

WE NEED HELP

That thunder we are hearing with ever more frequency upstream is oil shale development. True enough, right now it is a shower that is spreading across those mountains of shale, but soon, much sooner than we can prepare to meet it, it will become a flood of action.

Earlier announcements were a prelude to the big development, one that has been on the back burner for months, the decision to hold the first federal oil shale lease sale on Jan. 8.

Following the first lease sale in Denver, five other sales will be held in following weeks up through June 11. And from these sales, endless court action follows, will come the major oil shale program.

If all the leases are purchased, the active shale area will spread from the Mesa-Garfield-Rio Blanco section into Utah and Wyoming.

Each plant to retort oil is expected to cost from $200 million to $250 million, and with related facilities will provide a major tax foundation for those counties in which they are built.

While an active oil shale program still is years away, some plant construction probably will start in 1974, it is not too early to examine its effects and to prepare to meet them.

As we have explained before, it is likely that the growth pressure may fall on areas that will not have the advantage of the oil shale programs huge tax base.

We would anticipate that Palisade, in particular, will be among those areas facing all the problems of population growth without having any tax benefits to handle the demands for water and sewer lines, schools, streets, parks, and other services.

The De Beque and Clifton areas also could quickly find themselves with mounting demands for services without offsetting tax income.

According to Gov. John Vanderhoof, state laws dealing with oil shale revenue will assure that some money will become available to aid probem areas. Estimating that bids might total $20 million, the governor said that 37½ per cent (about $7.5 million) of that must go to Colorado roads and schools.

State law requires that $200,000 must go to the county of origin, in this case Garfield and-or Rio Blanco counties. The governor said, however, he hopes the legislature will set up a revolving fund to channel funds into the oil shale impact areas, primarily to finance water and sewage projects.

But our concern about the community impacts still remains despite the provisions for state aid, which we are certain will fall far short of needs.

We believe Senators Floyd Haskell and Peter Dominick and Fourth Dist. Rep. Jim Johnson also should be concerned with this area's problems . . . concerned enough to join in efforts to alleviate, if not solve, them.

The federal government stands to reap rich rewards from shale development, rewards that will benefit all Americans. With that in mind, we urge Haskell, Dominick and Johnson to move now in Congress to set up mechanism that will meet this coming impact with federal dollars.

It might be feasible to plow back into our

impact areas a percentage of the money the feds receive from the lease sales and from the later royalty payments. Perhaps a system of federal grants earmarked for water, sewer, streets, schools, law enforcement, parks and other problem areas would be possible.

We have a deep federal concern for environmental protection but we have noticed little concern for community impact. Oil shale developments time has come, and it is incumbent upon the Congress and the federal agencies involved to do their utmost to alleviate those problems this new program is bound to generate.

NATHANIEL KEITH, HOUSING LEADER

Mr. HUMPHREY. Mr. President, I rise to pay tribute to an old and dear friend, Mr. Nathaniel Keith, whose recent death we mourn.

A leader in the housing and development field, Nat Keith was one of those rare individuals who combined wit and good humor with the tenacity and drive that it takes to go to the top.

His leadership, both personal and intellectual, will be missed by all of us who worked with him over the years to improve national housing policy.

Nat was president of the National Housing Conference from 1960 to 1972 when he became chairman of the board. Many times during those years he spoke vigorously for the public interest before congressional committees working on housing and urban development legislation.

I extend my deepest regrets and sympathies to his wife, Marjorie, his daughter, Penny Trickett, and her family, and his sister, Margaret Friend.

IMPOUNDMENT OF APPROPRIATED FUNDS

Mr. BAYH. Mr. President, one of the critical issues facing Congress at the present time is the extent of its power to develop national policy through legislation. Impoundment by the President of congressionally authorized funds effectively subverts the will of Congress as expressed through legislation. We can hardly consider Congress a coequal branch of government if the legislation it passes may be ignored by the executive branch through the procedure of impoundment.

This is not a matter of the executive's attempting to save money or avoid waste and inefficiency, Mr. President, but rather a deliberate attempt to reorder the policy direction of the Government and ignore the wishes of the Congress in setting this policy direction. In the past year, for example, funds which Congress intended for water pollution control, the Neighborhood Youth Corps, and national defense education have been impounded. Almost without exception, whenever an impoundment case has come to the courts, the courts have found against the executive branch's assertion of authority to impound. Both Houses of Congress have passed legislation which would restore the Congress power of the purse, but this legislation—S. 373—is still in conference.

Mr. President, a scholarly article on the subject of impoundment, published in the University of Colorado Law Review, has just come to my attention. This article was written by Nile Stanton, an astute observer of Congress and the Presidency. The article sets forth the historical incidents of Presidential impoundment as a background, and then analyzes the current cases, and the congressional and judicial responses, in light of the historical precedents. Mr. Niles makes a very important point:

Contrary to the administration's argument that authority for its impoundments may be found in historical precedent, in fact, prior cases of impoundment are fundamentally different. Impoundment by previous Presidents has almost always related to instances where expenditure of funds; first, would have been wasteful or inefficient because the programs involved could have been accomplished with fewer dollars than had been authorized; second, where foreign policy or defense considerations were involved; or third, to combat inflationary pressures. The impoundment actions of the current administration are basically outside these historical precedents, for they seek to reorder domestic priorities in a manner antithetical to the priorities set by the Congress in its legislation. And these impoundments cover a substantial portion of Federal spending: approximately 17 to 20 percent of controllable funds have been impounded since 1969.

While Congress is still considering anti-impoundment legislation, I commend to the Members this article which reviews the entire controversy, and concludes that there is no constitutional right to impound funds appropriated by Congress. Unless Congress gives to the President discretionary power to change policy direction through impoundment, this power rests with the Congress. As Mr. Niles concludes:

The penumbra of presidential authority includes no strings on the purse which can be pulled or loosened, unless Congress first creates those strings.

Mr. President, I ask unanimous consent that the article "The Presidency and the Purse: Impoundment 1803–1973" by Nile Stanton be printed in the RECORD.

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

THE PRESIDENCY AND THE PURSE: IMPOUNDMENT 1803–1973

(By Nile Stanton) *

I. INTRODUCTION

Justice Holmes once observed that "great ordinances of the Constitution do not establish and divide fields of black and white" and that "however we may disguise it by veiling words we do not and cannot carry out the distinction between legislative and executive action with mathematical precision and divide the branches into watertight compartments. . . ." [1] This caveat on the separation of powers seems particularly applicable to the controversy concerning presidential impoundment [2] of appropriated funds. While the question as to whether the President has the power to impound funds may be a political one,[3] the corollary question, whether he has statutory or constitutional authority to do so, is answerable when the historical record [4] and recent developments are fully considered.

It would be a Procrustean task to identfy with mathematical precision the extent to which principles of the separation of powers might sanction or disallow presidential impoundment of appropriated funds. Nevertheless, it is now clear that, as a general rule, the President has only a very restricted statutory authority and even less constitutional authority to refuse to spend funds. That there exists a certain ill-defined penumbra of authority in the President to exercise discretionary power is indisputable. The historical record and recent cases, however, demonstrate that the power to impound funds is, except under limited circumstances, beyond the scope of any inherent or congressionally delegated authority which attaches to the presidency.

II. IMPOUNDMENT IN HISTORICAL PERSPECTIVE

The incident which is commonly recognized as the first recorded instance of impoundment in American history took place in 1803. In his Third Annual Message to Congress, President Jefferson announced that there remained unexpended $50,000 which Congress had appropriated for fifteen gunboats on the Mississippi River. He noted that a "favorable and peaceful turn of affairs . . . rendered . . . immediate [construction] unnecessary" [5] and that more time would be taken to develop the best boat possible. A year and a half later, ten of the boats had been built and more were in progress.[6]

The first truly significant impoundment of funds occurred in 1876, an instance which has heretofore received virtually no attention.[7] President Grant, upon signing an appropriations law for river and harbor projects.[8] sent a message to the House of Representatives in which he announced that he would not expend all of the funds.[9] The announcement sparked heated remarks in the House,[10] but President Grant refused to alter his position. Pursuant to his instructions, Secretary of War Cameron and the Chief of the Army Corps of Engineers spent only $2.3 million of the $5 million which Congress had appropriated.[11]

The House of Representatives responded to the impoundment by passing a resolution which asked the President to state the legal authority for his position.[12]

The Secretary of War replied that the President's discretion with regard to spending was not limited except by the public interest and the condition of the treasury and that, in any event, the language of the appropriations act was permissive.[13] In spite of this rather tenuous argument, the House—perhaps because some of the appropriations constituted pork-barrelling—let the matter down.

Twenty years later, in the 1890's, it was firmly established, through four formal Opinions of United States Attorneys General, that it is the intent of Congress which must control whether the expenditure of appropriated funds is permissive or mandatory in a given situation. In the first Opinion, Attorney General Harmon agreed that permissive language in an appropriate measure gave the executive branch some discretion over expenditures. However, he emphasized that there was a duty to spend funds so long as the condition which Congress wanted corrected still existed.[14] The second Opinion indicated that, despite mandatory language in the law, it was not the intent of Congress to require full expenditure if a designated project could be completed for less.[15] The third Attorney General Opinion declared that in the absence of language granting discretionary authority, the executive branch was not to consider the wisdom of congressionally approved projects and was to execute them

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to the extent that funds allowed.[16] And the final Opinion held that permissive language in appropriations laws was to be read as being mandatory when necessary to effectuate the intent of Congress.[17]

One of the most significant historical developments in the law of impoundment was the passage of the Anti-Deficiency Acts of 1905 and 1906.[18] The Acts provide a method by which excessive expenditures in one portion of a year that can require deficiency or supplemental appropriations may be avoided. Moreover, the Acts stipulate that the expenditure of funds may be waived in the event of extraordinary emergencies which could not have been foreseen when appropriations were made. In essence, the Anti-Deficiency Acts were designed to allow the executive branch to prevent waste and to budget funds over a given period of time. The Acts did not grant any general authority to impound funds.[19]

Impoundments pursuant to the Anti-Deficiency Acts were procedurally formalized during the Harding Administration soon after passage of the Budget and Accounting Act of 1921.[20] However, large-scale exercise of this procedure did not begin on a regular basis until President Roosevelt impounded funds in order to cope with the emergencies of economic depression and war.[21]

In the early 1940's Budget Director Smith ordered the impoundment of millions of dollars which had been appropriated for the surplus labor force of the Civilian Conservation Corps, civilian pilot training projects, the Surplus Marketing Corporation, and numerous civil and military efforts which the War Department could not complete because the projects did not have the requisite priority ratings to obtain scarce resources. These impoundments created a stir in Congress. The public cries and political pressures were greatest, however, when funds impounded were those which had been appropriated for a flood control reservoir at Markham Ferry, Oklahoma, and a flood control levee on the Arkansas River at Tulsa.[22]

The impoundment of funds for these Oklahoma projects precipitated a congressional reaction which, in mid-1943, culminated in the passage of a measure which prohibited any agency or official, except the Commissioner of Public Roads, from withholding funds appropriated as federal aid for the construction of certain highways.[23] Thus, Congress managed to slightly curtail the power of the Budget Bureau by diverting funds to avoid its tight-fisted Director.[24] In late 1943, however, Senator McKellar's efforts to restrict the executive branch's control of the purse failed. After it passed the Senate by voice vote,[25] a powerful anti-impoundment rider to the First Supplemental National Defense Appropriation Bill [26] was overwhelmingly defeated in the House.[27]

Pressures which mounted at the end of World War II [28] compelled Congress to accept a rider to the Omnibus Appropriations Act of 1951 [29] which amended the Anti-Deficiency Acts by adding a provision [30] which expressly allowed for reserves to be established for various reasons. Although the House of Representatives explicitly declared that the measure was not to be used to thwart congressional intent,[31] the section has subsequently been cited as a prime authority to legally justify executive impoundment of funds.[32]

Major instances of impoundment also occurred during the Truman Administration. Funds were withheld which had been appropriated for a 70-group Air Force [33] and the giant aircraft carriers U.S.S. *United States* and U.S.S. *Forrestal*.[34] President Eisenhower also impounded funds which had been appropriated for defense projects.[35] The most significant impoundments involved funds appropriated for strategic airlift aircraft and initial Nike-Zeus hardware procurements.

The major impoundment controversy during the Kennedy Administration concerned the RS–70, a long-range bomber system. Congress appropriated nearly double the amount the President had sought. Accordingly, Secretary of Defense McNamara refused to release the excess funds, emphasizing that America's missile deterrence capability combined with existing bomber strength was more than adequate. The House Armed Services Committee voted to command full expenditure of funds appropriated for the RS–70 and insisted that if the language directing expenditure "constitutes test to whether Congress has the power to so mandate, let the test be made . . ." [36] Attempting to avoid a constitutional crisis, President Kennedy wrote to Representative Vinson, Chairman of the Armed Services Committee, requesting that the language be made permissive rather than mandatory.[37] and Congress quickly honored the President's request.[38]

Thus while counsel to both President Eisenhower [39] and President Kennedy [40] strongly advised that the impoundment of funds appropriated for domestic programs was legally tenuous, both Presidents made such impoundments on occasion. President Johnson, in contrast, indubitably thought that impoundment relating to domestic projects was legally permissible and accordingly stepped up the pace by impounding agricultural appropriations, highway trust funds, certain education funds, and funds appropriated for low-cost housing and numerous other programs.[41] He was supported in his view by members of his administration. The Acting Attorney General and the Comptroller General concluded, in 1967, that the withholding of highway trust funds was a lawful practice,[42] and Budget Director Schultze argued that there existed a "general power of the President to operate for the welfare of the economy and the Nation in terms of combating inflationary pressures . . . ." [43] Director Schultze inferred that impounding some of the highway funds would help put the brakes on inflation.[44] Based on these opinions, President Johnson refused to release for obligation billions of dollars which had been appropriated as federal aid to highway construction projects.[45]

Summary. From the earliest years of the Republic through the presidency of Lyndon B. Johnson, the instances of executive impoundment of appropriated funds are generally divisible into three categories: Impoundments were made to (1) prevent the waste of funds, (2) make allowances for defense or foreign policy considerations, and (3) curb inflationary pressures.[46] For obvious pragmatic reasons, Congress did not raise its voice in opposition to impoundments which were made to prevent waste. However, the legislative branch did, without much success and with considerable vicissitude, oppose virtually every refusal to spend which was premised on other rationale. Members of Congress can, at a minimum, be said to have made timely objections. And the objections were made even though no President completely terminated any projects or attempted to reorder domestic priorities via the impoundment of funds.

This history of impoundment is of considerable importance today, for the Nixon Administration lays claim to the support of historical precedent as the touchstone justification for impoundment practices.[47] Additionally, President Nixon has maintained that there inheres in the presidency a constitutional right to refuse to spend appropriated funds.[48]

Does the President have statutory authority to refuse to spend money? Is there constitutional authority for the President to impound funds? If so, from what source is that authority derived and what limitations exist with respect to such authority? As measured against historical precedents, are the Nixon Administration impoundments justifiable? These questions are now answerable.

III. THE RECENT IMPOUNDMENT CRISIS

A. Specific instances of impoundment

The nature and scope of executive branch refusals to spend funds have dramatically changed during the Nixon Administration: [49] impoundment has been used as a tool to effectuate the reordering of domestic priorities. Approximately 17 to 20% of controllable funds has been impounded since 1969.[50] Pursuant to the requirements of the Federal Impoundment and Information Act, [51] the Office of Management and Budget reported on July 30, 1973, total funds impounded amounted to $7.7 billion.[52] In fact, however, the amount was approximately $16.7 billion,[53] a sum which far exceeded amounts impounded by any other President. And the nature of some of the impoundment efforts has taken historically novel forms, as a few illustrations will demonstrate.

1. *The Attempted Termination of REA 2% Loans.* Undoubtedly the terminations or attempted terminations of federal programs have been the most blatantly offensive recent impoundments. A vivid example is the attempted termination of the two percent loan program of the Rural Electrification Act of 1936.[54]

In the last half of 1972, Colorado alone was benefitted by well over $13.5 million in low interest loans from the REA.[55] Such loans are intended to finance the construction and operation of generating plants, distribution and transmission lines, and, in general, systems for furnishing electric energy to rural areas lacking central station service.[56] Despite the great need for such loans, the Department of Agriculture announced late in December 1972 that, effective January 1, 1973, all REA loans would be terminated.[57] After that date, loans were to be made as were guaranteed and insured loans under the Rural Development Act of 1972.[58] This abrupt "conversion" made loans available only at much higher interest rates and under more restrictive qualification standards.[59]

Congress reacted vehemently to the REA two percent loan termination.[60] The response was not surprising because allotment of funds is mandatory under the Act.[61] In addition, Congress had evidenced its clear intent that the loan program should in fact be expanded.[62] Likewise, Congress clearly did not wish to terminate REA loans when it enacted the Rural Development Act.[63] After five months of disputes and negotiations, the executive branch and Congress finally resolved the REA loan controversy with a compromise settlement in May 1973.[64]

2. *The Attempted Terminations of Department of Agriculture Programs.* On December 22, 1972, Secretary of Agriculture Butz indicated that the Rural Environmental Assistance Program (REAP) was being terminated through the impoundment of all REAP funds.[65] On January 10, 1973, the Department of Agriculture announced that the Farmers Home Administration's water and sewer grant program had been terminated effective ten days earlier,[66] *i.e.*, all funds appropriated for those grants had been impounded. On the same day, the Department also announced that its rural housing credit program, administered through the FHA, would continue, but on an unsubsidized basis.[67]

3. *The Impoundment of Water Pollution Control Act Funds.* Perhaps the most vehemently contested impoundment effectuated by the Nixon Administration was the President's refusal to allocate funds pursuant to the Federal Water Pollution Control Act Amendments of 1972.[68] In December 1972, the Environmental Protection Agency revealed that, pursuant to President Nixon's instructions, it would allocate among the states $6

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billion less than tne amount designated by statute for the fiscal years 1972 and 1973, in other words, it was withholding substantial funds.[69]

The background of the passage of the Act makes clear why Congress was outraged when Nixon impounded the funds. The bill had received great support, having passed both houses of Congress without opposition. When the President subsequently vetoed the measure, Congress immediately overrode the veto by an overwhelming vote. Under these circumstances Congress would not silently tolerate executive impoundment.[70]

B. The legislative response

Congress, faced with unprecedented impoundments, has responded to the Nixon Administration's practices with unprecedented zeal. Responses in some instances have taken the form of specific and general anti-impoundment measures, while in others compromises with the executive branch have been reached.

1. *Some Specialized Anti-Impoundment Measures.* The Ninety-third Congress attempted, in its first session, to thwart executive impoundments of particular funds by either making mandatory their expenditure [71] or prohibiting their impoundment. With respect to the attempted termination of the REA two percent loan program,[72] for example, members of Congress initially reacted by introducing a bill [73] which would mandate the complete restoration of the program. However, both this bill and second attempt to mandate the expenditure of funds failed, and Congress finally acceded to a compromise measure.[74]

Soon after the Department of Agriculture announced the termination of the Farmers Home Administration's water and sewer grant program,[75] Chairman Poage of the House Agriculture Committee asked the executive branch to state te legal justification for impounding the 1972 appropriations. The Agriculture Department responded that the refusal to spend was lawful because the appropriation act was permissive in nature.[76] Accordingly, the House Agriculture Committee attempted to make the expenditure of funds mandatory.[77] The Committee's amendment to that effect overwhelmingly passed both houses of Congress.[78] President Nixon, however, vetoed the bill because, in part, the mandatory spending provisos created "grave constitutional questions" about the separation of powers.[79] The House of Representatives sustained the veto.[80]

Although Congress had little success in its attempts to affirmatively require the expenditure of specific sums, the legislative branch did make limited headway in its attempts to prohibit the impoundment of funds. During the first half of the current term, the two houses were unable to agree to any anti-impoundment measure or to any specific anti-impoundment section of any bill. However, the progress made lies in the fact that on various occasions at least one house of Congress has approved strong anti-impoundment measures, which, prior to the Nixon Administration, neither house had been able to do.

On one significant occasion the Senate attempted to attach a tough anti-impoundment rider to a bill which provided for a temporary increase in the public debt limit. The bill, H.R. 8410,[81] passed the Senate by a wide margin, 72 to 19, even with the antiimpoundment rider.[82] Senator Dominick of Colorado, whose voting record generally illustrates his concern for both preserving the integrity of Congress' control over the power to spend and maintaining a reasonable ceiling on the national debt, voted against H.R. 8410 due to the bill's self-contradictory features.[83] This self-contradictory nature of the Senate bill caused the House to refuse to change its version of H.R. 8410, despite the Senate conferees' insistence that their version be adopted. The Senate, however, agreed to delete its amendment, and the bill passed the House.[84] H.R. 8410 was signed into law the following day.[85]

Another major attempt which Congress made to restore its power of the purse pertained to the Federal-Aid Highway Act of 1973.[86] The conferees agreed on a bill, S. 502, which prohibited the impoundment of funds.[87] However, in order to assure prompt passage and to avoid presidential veto, the House and Senate conferees finally struck the much debated anti-impoundment sections before the bill was signed into law in mid-August.[88]

2. *The General Anti-Impoundment Bills.* All other efforts which Congress has made in its attempted reassertion of control [89] over public monies pale beside the general anti-impoundment measures which were passed by the Senate in May and by the House in July 1973. On January 16, 1973, Senator Ervin of North Carolina and 45 other Senators introduced S. 373,[90] a carefully drafted anti-impoundment measure which was passed by the Senate on May 10, 1973,[91] and by the House on July 25, 1973, although passage was by bill number only in the House.[92]

Although the House bill, substantially H.R. 8480,[93] and the Senate's S. 373 differ in several respects, it is singularly important that for the first time in the nation's history the vast majority of congressmen concur that the penumbra of presidential power does not include any inherent authority to refuse to spend appropriated funds. No legislator who believed that the President has such inherent authority could have logically voted for either S. 373 or H.R. 8480.[94]

The general anti-impoundment bills, which have yet to be reconciled by conferees, take different paths in achieving the same goal. Whereas S. 373 provides for the automatic cessation of any impoundment which is not approved within 60 days after its initiation, H.R. 8480 allows the continuation of impoundments which are not disapproved within a 60-day period.[95] Although both bills require that all presidential impoundment messages be transmitted to the Comptroller General, only S. 373 provides that the Comptroller General would be responsible for ascertaining whether an impoundment is within the purview of the Anti-Deficiency Acts and thus lawful. H.R. 8480 provides that an impoundment can be terminated by a simple resolution of either house, whereas S. 373 requires that impoundments be approved by concurrent resolution of both houses to last longer than 60 days. Additionally, S. 373 provides for direct and expedited floor action on impoundment resolutions, while the House bill requires that resolutions be processed through an appropriations committee.[96]

To reiterate, although the two major anti-impoundment bills have many differences, their thrust is identical. H.R. 8480 and S. 373 forcefully acknowledge that a substantial number of congressmen oppose the notion that the President has unfettered control over appropriated funds and feel that it is time to revive Congress' proper role in the impoundment decisionmaking process. However, the possibility exists that the two bills will never be reconciled. As the preceding discussion has shown, both houses of Congress have previously passed anti-impoundment measures without those measures ever being enacted into positive law. In such an event, the courts, and, in particular, the Supreme Court, will be faced with deciding a number of impoundment cases, many of which have already been introduced to the judicial process.

C. The judicial response to recent impoundments

As one can glean from the foregoing discussion, Congress has vacillated in its response to the executive branch's refusal to spend appropriated funds. The federal courts, however, have been consistent in their response to the myriad complaints [97] which the Nixon Administration impoundments have precipitated. All the federal courts which have dealt with impoundment controversies with only one exception,[98] have held against the executive branch.

1. *The Highway Trust Fund Case.* When the United States Court of Appeals for the Eighth Circuit decided *State Highway Commission v. Volpe* [99] in early April 1973, it became the nation's highest court ever to decide an impoundment case. In 1966, President Johnson initiated the practice of impounding billions of dollars of highway funds,[100] a practice which President Nixon has adopted. Because of the use of this practice, the Missouri State Highway Commission sought the restoration of approximately $22 million in contract authority for fiscal 1971.[101] The issue raised was whether the Secretary of Transportation could lawfully withhold or defer authority to obligate highway funds which had been apportioned to Missouri when the reasons for impoundment pertained to economic considerations such as inflation.[102]

Secretary Volpe insisted that, although the trust fund had sufficient money to cover the contract authority which Missouri sought, the law gave him "discretion to withhold" authority from Missouri to obligate the funds.[103] Responding to the Secretary of Transportation's arguments, the district and circuit courts found that it was the intent of Congress to proscribe the impoundment of funds for purposes unrelated to the Federal-Aid Highway Act.[104] Secretary Volpe had urged that "the sense of Congress" language was hortatory and that Congress, by not expressly enacting proscriptive language, left impoundment authority in the executive branch.[105]

In addition to finding a clear congressional intent that the funds not be withheld from obligation, the circuit court held that the Secretary of Transportation's argument to the contrary missed the fundamental issue at stake. The court noted that the Constitution gave the authority to establish roads to Congress and that, beyond the authority given to the Secretary which could be "gleaned from the language of the Act," the executive branch had no discretionary control over the funds.[106]

The Eighth Circuit properly disposed of the two other arguments, though in conclusory fashion. With respect to Secretary Volpe's allegations that appropriations measures are permissive in nature and that states have no vested rights in the highway funds, the court retorted that even if such arguments were correct it would not mean that the executive branch had any lawful basis to refuse to expend funds.[107] In essence, then, the court of appeals in *State Highway Commission* affirmed the declaratory and injunctive relief granted by the district court for one compelling reason: absent a grant of authority from Congress that is express or clearly implied by the language of the appropriation measures, the executive branch of government has no justifiable basis upon which to premise a refusal to spend appropriated funds.

2. *The Indian Education Act Case.* On May 8, 1973, the United States District Court for the District of Columbia rendered two opinions which treated the impoundment controversy. One decision was *Minnesota Chippewa Tribe v. Carlucci.*[108] This case, initiated by the Native American Rights Fund (NARF) of Boulder, Colorado, and Harvard University's Center for Law and Education, was brought to compel the implementation of the Indian Education Act of 1972.[109] In order to partially ameliorate the adverse effects of past federal Indian education policies, the Act authorized the development of compensatory education programs, provided for com-

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munity-controlled schools, and established a National Advisory Council on Indian Education (consisting of 15 Indians) to supervise a new Bureau of Indian Education within the Office of Education. President Nixon refused to appoint the National Advisory Council, and the Department of Health, Education, and Welfare refused to spend the $18 million which was appropriated to fund the Act's implementation.[110]

The Act stipulated that appointments to the National Advisory Council "shall be made by the President," [111] and Acting Commissioner of Education John Ottina testified by deposition that the Act could not be implemented without the Council.[112] Hence, it was of critical import that the court in *Minnesota Chippewa Tribe* rejected HEW's contention that the court lacked jurisdiction over the President [113] and proceeded to order him to appoint the Council.[114] Since the Indian Education Act further mandated that "funds appropriated for any fiscal year . . . shall remain available for obligation and expenditure," [115] it was consistent with the intent of Congress for the court to set a tight timetable for the processing of applications for the obligation of funds [116] and, thus, prevent their impoundment.

3. *The Federal Water Pollution Control Act* Case. On the same day it issued the order in *Minnesota Chippewa Tribe*, the United States District Court for the District of Columbia resolved the hotly contested controversy which was precipitated by the withholding of funds appropriated to effectuate the Federal Water Pollution Control Act Amendments of 1972.[117] In *City of New York v. Ruckelshaus*,[118] a class action brought to compel the Environmental Protection Agency to allot among the states the total amounts authorized to be appropriated by the Act, the court granted summary judgment for plaintiffs.

To avoid any misinterpretation of *Ruckelshaus*, it must be emphasized that the case did *not* involve a refusal to *expend* funds. At President Nixon's direction,[119] the EPA refused to *allot* funds. Hence, the district court found it unpersuasive that the Act gave the executive branch some flexibility to control the rate of spending, for that flexibility was not at issue.[120] In *Ruckelshaus*, the court observed that the President had directed the EPA Administrator not to allot funds and that the President did not act in accordance with provisions of the Act which allowed discretion.[121] In finding that the language "shall allot" created a purely ministerial duty, the court added weight to the proposition that Congress can lawfully command at least some control over the affirmative power of the purse. Congress could not control the President's power with regard to discretionary matters.

4. *The Neighborhood Youth Corps Case.* A central feature of the Economic Opportunity Act [122] has been to develop Neighborhood Youth Corps programs.[123] These programs, which were intended to provide comprehensive work and training experiences and income as well as supportive services to the poor,[124] have been funded by the Department of Labor through the Community Action Agencies.[125]

In the First Supplemental Appropriations Act for 1973,[126] Congress appropriated nearly $830 million to the Manpower Administration of the Department of Labor. Approximately $240 million of that sum was designated for Neighborhood Youth Corps programs which were to operate throughout the nation during the summer of 1973 for the employment of 609,300 youths. On January 29, 1973, however, the President proposed a budget for fiscal 1974 which included a request for a rescission of $284 million which had already been appropriated to the Department of Labor.[127] This proposed rescission included all funds appropriated in October 1972 for the Neighborhood Youth Corps programs.[128]

When Congress refused to withdraw the appropriation which President Nixon wanted rescinded, the President impounded the funds. In *Community Action Programs Executive Directors Association v. Ash* [129] the impoundment action was defeated. The court granted plaintiffs' request for mandamus, declaratory judgment, and a permanent injunction. "[T]he unequivocal intent of Congress," the court determined, was "to make mandatory and not discretionary the obligation, release, and expenditure of the appropriation." [130] Finding that defendants had violated the Economic Opportunity Act as amended,[131] the supplemental appropriations measure, and article II, section 3 of the United States Constitution,[132] the district court gave defendants 24 hours in which to comply with its order to release and obligate $240 million.[133]

5. *The Mental Health Centers Case.* On June 28, 1973, in *National Council of Community Mental Health Centers v. Weinberger*,[134] a preliminary injunction was granted in which defendants were forbidden from allowing the reversion of approximately $51 million to the Treasury. Such an amount was impounded from use purportedly pursuant to the Community Mental Health Centers Act.[135] Injunctive relief was appropriate, the court suggested, because in 1970, Congress passed, over President Nixon's veto, a law which in pertinent part required that the funds "shall remain available for obligation and expenditure" until the end of the fiscal year for which the appropriation for the Act is made.[136]

Initial staffing grant applications for at least 78 community mental health centers had not been acted upon because defendants refused to make available for obligation funds appropriated for fiscal 1973. Adherence to the mandatory language of the statute was ordered by the district court. Neither the President of the United States nor the other defendants, it held, had any constitutional authority to do otherwise and impoundments made for reasons unrelated to the statute were wholly impermissible. Accordingly, the court commanded that the grant applications be processed and the funds released for obligation.[137]

6. *The National Defense Education Act Case.* During the last five days of July 1973, the United States District Court for the District of Columbia blasted the Nixon Administration's impoundment policies with two more decisions. In *Massachusetts v. Weinberger*[138] the court granted plaintiffs' motion for summary judgment, holding that the executive branch had no discretionary authority to withhold $50 million appropriated for Title III–A of the National Defense Education Act of 1958.[139]

The court noted that the Act stipulates that the Commissioner of Education "shall allot" [140] funds to the states and further declared that the language in the appropriations measures authorizing funds "not in excess of" certain amounts could not detract from the Congress' intent [141] to have Title III–A funded. The court was insistent that

> [T]here is no authority in either Article II of the Constitution or in the case law [for the proposition that the executive branch] may achieve this [impoundment] by refusing to comply with the terms of a statute.[142]

7. *The Farmers Home Administration Case.* In the other decision, the United States District Court for the District of Columbia ordered the Farmers Home Administration to resume a program, which had been discontinued in January 1973, that was designed to assist people with low incomes in the purchase of homes in rural areas. The Secretary of Agriculture had been authorized to set interest rates as low as 1 percent for families which could not otherwise afford rural housing.[143] The court, in *Pealo v. Farmers Home Administration*,[144] declared that:

> [d]efendants have chosen to disregard that evidence of Congressional intent and have ignored the stated goal of Congress—a goal which is tremendously important not only to those who cannot afford nonsubsidized housing, but a goal which is of importance to every citizen concerned with the welfare of our country.[145]

IV. SUMMARY AND CONCLUSION

Justice Frankfurter once stated that the imprimatur of history may be invoked to justify executive action if it is "systematic, unbroken, executive practice, long pursued to the knowledge of Congress and never before questioned." [146] With this in mind, one is thrust to the conclusion that the Nixon Administration's refusals to spend appropriated funds are sorely lacking the support of history.[147] When the executive branch has withheld funds in order to prevent waste, Congress has not voiced complaint.[148] Surely the "sharing of power" [149] must allow the branches of government enough flexibility of action to do what is reasonably within one branch's power without derogating the power of another branch. But this does not mean that the history of congressional acquiescence to impoundments for the purpose of preventing waste justifies the rash of more recent impoundments attempted for very different reasons. In fact, if we are to look to the words of Justice Frankfurter as a guide, the claim of historical justification advanced by the Nixon Administration is particularly inappropriate: where impoundments have flouted the will of Congress, they have been strenuously challenged.

It is also clear that the power to impound funds is not inherent in the executive office. There is no constitutional right to impound funds appropriated by Congress. Whenever a President withholds appropriated funds, he either curtails or prevents the implementation of a law. The framers of the Constitution discussed and expressly rejected the absolute veto power and the power to suspend an act as being incongruous with proper limitations on executive discretion.[150] Moreover, few outside the executive branch see any merit whatever in the brazen non sequitur that the duty to faithfully execute the laws [151] carries with it a corollary right to ignore the laws.[152] And it is at least of some small significance that every court in the nation which has cited, in an impoundment case, the Constitution has stated that article II, section 3 tends to forbid the refusal to spend funds, not justify such action.[153] It is true that "Congress may grant to the executive [branch] discretion to impound, but that discretion is always at the sufferance of Congress and has no independent constitutional base." [154]

Of course the President does have some limited statutory power to impound funds. The Anti-Deficiency Acts of 1905 and 1906 sanction impoundments to prevent waste and allow reserves to be maintained in order to meet obligations.[155] The Acts merely codified the sorts of practices to which Congress has always assented. The Act expressly contemplates that the only funds which may be withheld are those it is not necessary to use to implement the purposes of the laws.[156] Congress has directed, on rare occasion, that under certain circumstances the President has an obligation to impound funds. [157] But, absent statutory language which directs impoundment action or expressly creates discretionary authority to impound, there is no statutory basis upon which to premise presidential control of funds. Permissive language in appropriations bills operates simply to al-

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low the invocation of the Anti-Deficiency Acts. It does not create a grant of authority which the President may exercise at his pleasure.

The Constitution, the relevant statutes, the recent action in Congress, and the recently developed body of case law[158] mesh harmoniously. Congress has both the negative and affirmative power of the purse. The penumbra of presidential authority includes no strings on the purse which can be pulled or loosened, unless Congress first creates those strings.

FOOTNOTES

*Executive Director, Indianapolis Lawyers Commission. The views expressed herein are the author's and should not be construed to be those of the Lawyers Commission.

[1] Springer v. Philippine Islands, 277 U.S. 189, 209, 211 (1928) (dissenting opinion).

[2] The term "impoundment" is used in a generic sense. It can refer to delaying, freezing, reserving, sequestering, or withholding appropriated funds or deferring the allocation of funds. *Hearings on Executive Impoundment of Appropriated Funds Before the Subcomm. on Separation of Powers of the Senate Comm. on the Judiciary*, 92d Cong., 1st Sess. 1 (1971) (testimony of Senator Ervin) [hereinafter cited as *1971 Hearings*]; Fisher, *Funds Impounded by the President: The Constitutional Issue*, 38 GEO. WASH. L. REV. 124 (1969) ("In its broadest context, impoundment occurs whenever the President spends less than Congress appropriates for a given period.").

[3] *See e.g.*, Fisher, *supra* note 2, at 136; Miller, *Presidential Power to Impound Appropriated Funds: An Exercise in Constitutional Decision-Making*, 43 N.C.L. REV. 502, 533 (1965). *Cf.* Frankfurter, *Chief Justices I Have Known*, 39 VA. L. REV. 883, 895, (1953):

[B]y the very nature of our Constitution, practically every political question eventually, with us, turns into a judicial question.

[4] As one scholar has suggested,

[Historical materials] are of crucial significance to any conceivable process of judicial review, and in one fashion or another, and to one end or another, they have been consulted throughout the recorded experience of the Supreme Court. A. BICKEL, THE LEAST DANGEROUS BRANCH 98 (1962).

[5] 13 ANNALS OF CONG. 9, 14 (1803).

[6] Professor Cooper has demonstrated that President Jefferson neither frustrated the will of Congress nor asserted that he had any inherent right to impound funds. He simply took advantage of the fact that the boats were not immediately required in order to build better gunboats. *Hearings on S. 373 Before the Ad Hoc Subcomm. on Impoundment of Funds of the Senate Comm. on Government Operations and the Subcomm. on Separation of Powers of the Senate Comm. on the Judiciary*, 93rd Cong., 1st Sess. 676–77 (1973) [hereinfter cited as *1973 Hearings*].

[7] As part of a response to a series of questions posed by Senator Ervin, Deputy Attorney General Sneed presented some details of President Grant's impoundment of funds. *Id.* at 835–36. The only other published references to the instance are casual in nature. Comment, *Presidential Impounding of Funds: The Judicial Response*, 40 U. CHI. L. REV. 328 n. 3 (1973); Note, *Impoundment of Funds*, 86 HARV. L. REV. 1505, 1510 n. 20 (1973); *Hearings on Impoundment Reporting and Review Before the House Comm. on Rules*, 93rd Cong., 1st Sess., pt. 2, at 427, 483 (1973) (testimony of Professor Cooper) [hereinafter cited as *1973 Impoundment Reporting Hearings*].

[8] Act of Aug. 14, 1876, ch. 267, 19 Stat. 132.

[9] President Grant declared that certain appropriations in the Act were for "works of purely private or local interest, in no sense national." "[D]uring my term of office," he insisted, "no public money shall be expended on them," and that "[u]nder no circumstances will I allow expenditures upon works not clearly national." 4 CONG. REC. 5628 (1876).

[10] *Id.* at 5630 (remarks of Representative Hereford). Of the few congressmen who discussed President Grant's announcement that he would impound funds, most supported the President's position on the ground that the legislation failed to carry mandatory language. *Id.* at 5630–33 (remarks of Representatives Conger, Pierce, and Kasson). Representative Pierce noted that, "[the legislation] does not say that he *shall* spend a single dollar. . . ." *Id.* at 56.2 (emphasis in original).

[11] On December 5, 1876, President Grant acknowledged this impoundment in his last Annual Message to Congress:

The appropriations for river and harbor improvements for the current year were $5,015,000. With my approval, the Secretary of War directed that, of this amount, $2,000,000 should be expended, and no new work should be begun and none prosecuted which were not of national importance. Subsequently this amount was increased to $2,237,600, and the works are now progressing on this basis. 5 CONG. REC. 23 (1876).

[12] See 5 CONG. REC. 374 (1876), where the resolution is set forth in full.

[13] *See 1973 Hearings, supra* note 6, at 835–36 (prepared statement of Deputy Attorney General Sneed).

[14] 21 OP. ATT'Y GEN. 391 (1896). The Attorney General called attention to the fact that at a certain point the east bank of the Mississippi River was caving in and washing away and that Congress wanted the condition remedied. *Id.* at 392. The Attorney General then, addressing Secretary of War Lamont, declared, "[I]t is made your *duty*, if that condition be found . . ., *to proceed with the expenditure authorized* . . ." *Id.* (emphasis added).

[15] 21 OP. ATT'Y GEN. 414 (1896). The appropriation Act stipulated that a certain amount "shall be expended" for a specified project, but the Attorney General found that a nonmandatory construction of the statute was consistent with a congressional purpose to have the work done according to the recommendations of an advisory commission. *Id.* at 416. He concluded that the direction to expend funds was "not mandatory to the extent that you are bound to expend the full amount if the work can be done for less . . ." *Id.* at 415.

[16] 21 OP. ATT'Y GEN. 420 (1896).

The intention of Congress was, except in instances where a contrary intent is manifested . . . that you should proceed with the projects specified to the extent of the appropriations without inquiry as to their wisdom. *Id.* at 422.

[17] 22 OP. ATT'Y GEN. 295 (1899). Attorney General Griggs held that the words "to enable the Secretary of the Treasury to pay" were permissive in nature. *Id.* at 296. However, it was his opinion that Congress had intended to require the expenditure of funds and, accordingly, that "to enable" must be "read as mandatory whenever to do so is more in harmony with the context." *Id.* at 297.

[18] Act of Feb. 27, 1906, ch. 510, § 3, 34 Stat. 48 and Act of Mar. 3, 1905, ch. 1484, § 4, 33 Stat. 1257, *as amended*, 31 U.S.C. § 665 (1970). *See 1973 Hearings, supra* note 6, at 396–99. Material on the Anti-Deficiency Act is from a forthcoming book by Louis Fisher.

[19] *See generally* Note, *Presidential Impoundment: Constitutional Theories and Political Realities*, 61 GEO. L.J. 1295, 1301–02 (1973); Comment, *supra* note 7, at 334–38.

[20] Act of June 10, 1921, ch. 18, 42 Stat. 20. *See* Fisher, *The Politics of Impounded Funds*, 15 AD. SCI. Q. 361, 362–63 (1970); *1971 Hearings, supra note 2, at 174–75* (testimony of Professor Cooper).

[21] *See* WILLIAMS, THE IMPOUNDING OF FUNDS BY THE BUREAU OF THE BUDGET 7–8 (Inter-University Case Program No. 28, 1955); Church, *Impoundment of Appropriated Funds: The Decline of Congressional Control Over Executive Discretion*, 22 STAN. L. REV. 1240, 1242 (1970). The Economy Acts of 1932 and 1933 authorized the President to reduce compensation of federal employees, make layoffs, and attempt to economize by reorganizing executive departments. Act of Mar. 3, 1933, ch. 212, § 403, 47 Stat. 1518; Act of June 20, 1932, ch. 314, § 101, 47 Stat. 399. The 1933–1934 War Appropriation Act gave the President authority to impound funds determined unneeded pursuant to a presidentially ordered economy survey. Act of Mar. 4, 1933, ch. 281, § 4, 47 Stat. 1602.

[22] *See generally* WILLIAMS, *supra* note 21.

[23] Act of July 13, 1943, ch. 236, §§ 3, 9, 57 Stat. 560.

[24] *See* 89 CONG. REC. 6309, 6313 (1943) (colloquy among Senators McKellar, Hayden, and Vandenberg).

[25] *Id.* at 10,419 (Senate approved the rider). Objections to Senator McKellar's proposed rider were largely premised on the ground that it would interfere with the President's power as Commander-in-Chief. *Id.* at 10,362 (remarks of Senator Truman); *id.* at 10,405, 10,419 (remarks of Senator Lodge); *id.* at 10,780–81 (remarks of Representatives Cannon and Taber); Letter from Secretary of War Henry L. Stimson to Senator McKellar, Dec. 7, 1943, in *id.* at 10,360; *see* Hirabayashi v. United States, 320 U.S. 81, 93 (1943); Fisher, *supra* note 20, at 365; Note, *supra* note 19, at 1316 n. 155.

[26] H.R. 3598, 7th Cong., 1st Cess. § 305 (1943).

[27] 89 CONG. REC. 10,781 (1943). The House rejected the rider 283 to 18. Senator McKellar's proposed rider was "the first across-the-board curtailment of the Budget's impounding procedure to be accepted by either house of Congress." WILLIAMS, *supra* note 21, at 27.

[28] For example, when military needs subsided, appropriated funds exceeded amounts needed by several billions of dollars, Fisher, *supra* note 2, at 125; *Hearings on the Supplemental Appropriation Bill for 1951 Before a Subcomm. on Department of Defense Appropriations of the House Comm. on Appropriations*, 81st Cong., 2d Sess. 47, 120, 233 (1950); *See* Fisher, *supra* note 20, at 370.

[29] Act of Sept. 6, 1950, ch. 896, 64 Stat. 595.

[30] In part, the 1950 amendment states:

[R]eserves may be established to provide for contingencies or to effect savings whenever savings are made possible by . . . changes in requirements, greater efficiency of operations, or other developments [after an] apportionment [is] made available. 31 U.S.C. § 665(c)(2)(1970). It is disturbing that this language is relied upon to justify impoundments for virtually any purpose, for the same section continues with the following stipulation: "Whenever it is determined . . . that any amount so reserved *will* not be required to carry out the purpose of the appropriation concerned . . . rescission of such amount [shall be recommended] for estimates of appropriations." *id.* (emphasis added). Thus, it should be clear that the amendment cannot be properly invoked to curtail or cancel projects. Rather it can be invoked only to effect savings or promote efficiency of a project which is being implemented pursuant to congressional intent. *See 1973 Hearings, supra* note 6, at 105–09 (attachment to the prepared statement of Comptroller General Staats detailing the types of impoundments which are consistent with the section).

[31] H.R. REP. No. 1797, 81st Cong. 2d. Sess. 311 (1950):

It is perfectly justifiable and proper for all possible economies to be effected and savings to be made, but there is no warrant or justification for the thwarting of a major policy of Congress by the impounding of funds. If this principle of thwarting the will

of Congress by the impounding of funds should be accepted as correct, then Congress would be totally incapable of carrying out its constitutional mandate and providing for the defense of the Nation. *See also* 38 COMP. GEN. 501, (1959); Staff Memorandum on S. 3578 for the Committee on Government Operations, June 23, 1958, in *1971 Hearings, supra* note 1, at 527, 528–33.

[32] *See, e.g., 1973 Hearings, supra* note 6, at 271, 284, 286, 502 (testimony of Office of Management and Budget Director-Designate Ash); Boggs, *Executive Impoundment of Congressionally Appropriaed funds,* 24 U. FLA. L. REV. 221, 224 (1972).

[33] Letter from President Harry S Truman to Secretary of Defense Louis A. Johnson, Nov. 8, 1949, in *1971 Hearings, supra* note 2, at 525 (directing that the funds be placed in reserve). *See* 95 CONG. REC. 14,355 (remarks of Senator Thomas); *id.* at 14,855–56 (remarks of Senators Ferguson, Saltonstall and Knowland); *Hearings on the National Military Establishment Appropriation Bill for 1950 Before the Senate Comm. on Appropriations,* 81st Cong., 1st Sess., at 330 (1949) (testimony of Secretary of the Air Force Symington).

[34] *Hearings, supra* note 33, at 161–62 (testimony of Admiral Denfeld): W. MILLIS, THE FORRESTAL DIARIES 392–93, 464–77 (1951); *see* Fisher, *supra* note 20, at 367–68.

[35] For example, in 1956, $46.4 million appropriated to increase Marine Corps personnel strength was impounded. In 1959, $48 million in Hound-Dog missile funds, $90 million in Minuteman program funds, $55.6 million for additional KC–135 tankers, $140 million for additional strategic airlift aircraft, and other funds were withheld. In 1960, $35 million for advance procurements of nuclear-powered carriers and $137 million in Nike-Zeus procurement funds were impounded. *1971 Hearings, supra* note 2, at 526 (Exhibit 2, presented by Senator Russell to Senator Ervin in March of 1969).

[36] H.R. REP. No. 1406, 87th Cong., 2d Sess. 9 (1962). *See* Davis, *Congressional Power to Require Defense Expenditures,* 33 FORD. L. REV. 39, 40–44 (1964).

[37] T. SORENSON, KENNEDY 348 n. 2 (1965); Church, *supra* note 21, at 1246–47; Letter from President John F. Kennedy to Representative Carl Vinson, Mar. 20, 1962, in 108 CONG. REC. 4694 (1962), which stated in part: I would respectfully suggest that, in place of the word "directed," the word "authorized" would be more suitable to an authorizing bill . . . and more clearly in line with the spirit of the Constitution.

Each branch of the Government has a responsibility to . . . the Constitution and the clear separation of legislative and executive powers it requires. I must, therefore, insist upon the full powers and discretion essential to the faithful execution of my responsibilities as President and Commander-in-Chief, under article II, sections 2 and 3, of the Constitution. *See also id.* at 4645 (remarks of Senator Goldwater); *id.* at 4714 (remarks of Senator Ford).

[38] 108 CONG. REC. 4720 (1962).

[39] Counsel to President Eisenhower wrote a letter to a member of Congress in 1955 in which he made the following argument:

"Because of the President's Constitutional obligation to faithfully execute the laws, I am strongly of the view that when Congress has appropriated funds for a particular project, that President cannot set aside the will of Congress and direct that no funds be spent on that project.

"It is true that in the past Presidents have declined to spend funds appropriated . . . , but I have not found any instance of this that did not relate to funds appropriated for the national defense. . . . These national defense precedents, however, cannot, in my opinion, be used as precedents for withholding funds appropriated for a non-defense purpose." *1973 Hearings, supra* note 6, at 339.

[40] A memorandum, dated October, 1961, concluded:

"Previous Presidents, in their roles as Commander-in-Chief, have 'impounded' Defense Appropriations. Similar action in the civilian area is not customary and of doubtful legal basis." *Id.* at 333 (testimony of Senator Kennedy).

[41] *See* Fisher, *supra* note 20, at 371–72.

[42] 42 OP. ATT'Y GEN., No. 32 (1967); Comptroller General Decision B–160891, Feb. 24, 1967 (unreported), in *1971 Hearings, supra* note 2, at 65.

[43] *Hearings on the Budget for Fiscal Year 1968 Before the Senate Comm. on Appropriations,* 90th Cong., 1st Sess. 78 (1967).

[44] *Id.* at 111.

[45] *See* 42 OP. ATT'Y GEN., No. 32 (1967).

[46] *See generally* R. Waicukauski, The Impoundment Crisis: The Role of the Courts and the Constitution 6–22, June 1, 1973 (unpublished thesis in Harvard Law School Library).

[47] With reference to impoundment practices over the past thirty years, Deputy Attorney General Sneed remarked, "Such a long-continued executive practice, in which Congress has generally acquiesced, carried with it a strong presumption of legality." *1973 Hearings, supra* note 6, at 359. *See id.* at 271 (testimony of Office of Management and Budget Director-Designate Ash); 1973 *Impoundment Reporting Hearings, supra* note 7, pt. 1, at 228 (testimony of Office of Management and Budget Director-Designate Ash).

[48] At a news conference held in January, 1973, the President stated:

The constitutional right for the President of the United States to impound funds, and that is not to spend money, when the spending of money would mean either increasing prices or increasing taxes for all the people, that right is absolutely clear.

N.Y. Times, Feb. 1, 1973, at 20, col. 6 (city ed.). This bold assertion prompted one young scholar to chide, "[u]ndoubtedly, the President's penchant for seeing clarity where there is none has led him far off base. . . ." Waicukauski, *supra* note 46, at 35.

[49] *1973 Impoundment Reporting Hearings, supra* note 7, pt. 1, at 2 (testimony of Representative Madden). *But see* H.R. REP. No. 336, 93rd Cong., 1st Sess. 15–19 (1973); 119 CONG. REC. H6554–55 (daily ed. July 24, 1973) (remarks of Representative Latta).

[50] *Compare* figures set forth by Boggs, *supra* note 32, at 226, *with* Office of Management and Budget figures, in *1971 Hearings, supra* note 2, at 7–13.

[51] Act of Oct. 27, 1972, 86 Stat. 1325; 31 U.S.C.A. § 581c–1 (Supp. 1973).

[52] 38 Fed. Reg. 19,581 (1973). Representative Anderson of Illinois noted that this constituted only about 3.1% of the estimated total budget outlays for fiscal 1973 and further indicated that the 1973 reserves were "about half the average reserve percentage of the last 10 years." 119 CONG REC. H6558 (daily ed. July 24, 1973).

[53] Representative Anderson neglected to point out that, like earlier reports, the July 1973 report of the Office Management and Budget was far from accurate. Approximately $9 billion in impounded funds went unreported, and $6 billion of this sum constituted funds appropriated for water sewage treatment facilities. *See id.* at H6569 (remarks of Representative Badillo); Memorandum from Allen Schick of the Congressional Research Service to Representative Leggett, Mar. 8, 1973, in *1973 Impoundment Reporting Hearings, supra* note 7, pt. 1, at 200–01.

[54] 7 U.S.C. §§ 901 *et seq.* (1970).

[55] *See Hearings on the Impoundment of Funds for Farm and Rural Areas Before the Senate Comm. on Agriculture and Forestry,* 93rd Cong., 1st Sess. (1973). Over $2.4 million went to Poudre Valley Rural Electric Association, Inc., at Fort Collins, although 10% of the loan was from the National Rural Utilities Cooperative Finance Corporation. The loan was to finance facilities which would serve 1,309 consumers, and it included funds for the proposed construction of distribution and transmission lines and four substations. *Id.* at 649. Another loan of approximately $6.2 million was made in Denver to Tri-State Generation & Transmission Association, Inc., a power supply cooperative. *Id.* The Southeast Colorado Power Association located in La Junta received a loan of $1.9 million. *Id.* at 680. In Joes, Colorado, the Plains Cooperative Telephone Association, Inc., received a $2 million REA 2% loan. *Id.* at 695. And a loan of approximately $1.2 million went to the Union Rural Electric Association, Inc. of Brighton. *Id.* at 698. *See generally* Public Service Co. v. Public Utilities Comm'n, 142 Colo. 135, 350 P.2d 543, *cert. denied,* 364 U.S. 820 (1960).

[56] H.R. REP. No. 2219, 74th Cong., 2d Sess. 5–6 (1936). *See* Alabama Power Co. v. Alabama Elec. Coop. Inc., 249 F. Supp. 855 (N.D. Ala. 1965), *aff'd,* 394 F.2d 672 (5th Cir. 1968), *cert. denied,* 393 U.S. 1000 (1969); Missouri Power & Light Co. v. Lewis County Rural Elec. Coop. Ass'n, 235 Mo. App. 1056, 149 S.W.2d 881 (1941). Pursuant to 7 U.S.C. § 904 (1970), these loans "shall be self-liquidating within a period of not to exceed thirty-five years, and shall bear interest at the rate of 2 per centum per annum. . . ."

[57] Rural Electric and Rural Telephone Loan Programs Charge, Dep't Agriculture Press Release (Dec. 29, 1972), in H.R. REP. No. 91, 93rd Cong., 1st Sess. 2 (1973). The announced "conversion" undoubtedly violated the Reorganization Act of 1949, 5 U.S.C. §§ 901 *et seq.* (1970). The Reorganization Act does not allow the President to terminate an agency function unless he first submits a reorganization plan to Congress, which then has 60 days to reject the plan 5 USC §§ 902(2), 903(a)(2), 906(a)(1970).

[58] 7 U.S.C.A. §§ 1921 *et seq.* (Supp. 1973).

[59] Even in view of the sudden termination of the REA loans, the Department of Agriculture refused to give special consideration to such loans which were to have been made in January 1973. *Hearings, supra* note 55, at 41 (colloquy between Senator Young and Secretary Butz). After the "conversion," the interest rate was to be 5% to cooperative and market rate to commercial electric companies. *Id.* at 714. "[A] finding of no credit elsewhere; mandatory refinancing; comment by various planning agencies and local public bodies; and review by the Secretary of Labor" were to be among the more restrictive features of eligibility for RDA loans. H.R. REP. No. 91, 93rd Cong., 1st Sess. 5 (1973) (statement of Under Secretary Campbell).

[60] *See* notes 73 & 74 *infra* and accompanying text.

[61] "[S]ums herein made available or appropriated . . . *shall be allotted* . . ." and "such annual sums *shall be available* . . . in the several States." 7 U.S.C. §§ 903(c) & (d) (1970) (emphasis added).

[62] *See* H.R. REP. No. 1175, 92d Cong., 2 Sess. 4, 48 (1972); S. REP. No. 983, 92d Cong., 2d Sess. 27 (1972).

[63] *See* H.R. REP. No. 91, 93rd Cong., 1st Sess. 3 (1973); 118 CONG. REC. S13930 (daily ed. Aug. 18, 1972) (remarks of Senator Talmadge).

[64] *See* notes 73 & 74 *infra* and accompanying text.

[65] *See* Memorandum from Department of Agriculture General Counsel Shulman to Agricultural Stabilization and Conservation Service (ASCS) Administrator Frick, Jan. 5, 1973, in *1973 Hearings, supra* note 6, at 581. Administered by the ASCS, REAP has as its purposes the preservation and improvement of soil fertility, promotion of the economic use and conservation of land, diminution of the wasteful use of natural soil resources, protection and rivers and harbors against

the results of soil erosion, and the abatement of agricultural-related pollution. 16 U.S.C.A. § 590g (a) (Supp. 1973). *See also 1973 Hearings, supra* note 6, at 531, 540, 543, 547, 550 (testimony of Secretary Butz).

[66] Terminate FHA Water/Waste Disposal Grants, Dep't of Agriculture Press Release (Jan. 10, 1973), in H.R. REP. No. 21, 93d Cong., 1st Sess. 4 (1973).

[67] Rural Housing Program Proceeds on Unsubsidized Basis, Dep't of Agriculture Press Release (Jan. 10, 1973), in *1973 Hearings, supra* note 6, at 583.

[68] 33 U.S.C.A. §§ 1251 *et seq.* (Sup. 1973).

[69] 37 Fed. Reg. 26,282 (1972). The Act "authorized to be appropriated" an upper limit of $5 billion for fiscal 1972, $6 billion for fiscal 1973, and $7 billion for fiscal 1974. 33 U.S.C.A. § 1287 (Supp. 1973). *See* 119 CONG. REC., p. 1151 (remarks of Senator Nelson).

[70] With respect to the assertion that Congress did not clearly mandate that the pollution control funds were to be allocated, Senator Muskie, the Act's chief proponent, retorted:

[W]ithin 24 hours, both the House and Senate had overridden the [President's veto]. The President got only 12 votes in the Senate and 23 votes in the House to support his veto. Now, how many times, I ask, must Congress speak before our intention is clear? The Advocates, Public Service Television, WGBH-Boston (transcript), Feb. 15, 1973, at 11.

[71] Occasionally, Congress had included mandatory language in appropriations bills before the 1970–1973 impoundment crisis. *See* Memorandum from Louis Fisher of the Congressional Research Service to Senator Stevenson, May 16, 1973, in *1973 Hearings, supra* note 6 at 861–63, 870 nn. 6–22.

[72] *See* notes 54–64 *supra* and accompanying text.

[73] H.R. 2276, 93d Cong., 1st Sess. (1973). *See* 119 CONG. REC., p. 1638.

[74] The Department of Agriculture's strenuous objections to the poignant language of H.R. 2276 resulted in the development of H.R. 5683, 93d Cong., 1st Sess. (1973). *See* 119 CONG. REC., p. 8036. However, the Department also opposed H.R. 5683. H.R. REP. No. 93d Cong., 1st Sess. 6, 33–39 (1973). The measure which was ultimately enacted. Pub. L. No. 93–32 (May 11, 1973), contained no language which would compel the utilization of REA 2% loan funds and gave the REA Administrator unprecedented discretion in ascertaining whether the criteria for obtaining such loans have been met. *See generally* H.R. REP. No. 169, 93d Cong., 1st Sess. (1973) (the Conference Committee report on S. 394. the bill which passed). The Congress and the Department of Agriculture, however, reached an agreement to the effect that "not less than" $105 million would be available in fiscal 1974 for the low-interest loans. Letter from Secretary Butz to Representative Poage, May 8, 1973, in 119 CONG. REC., p. 14990.

[75] *See notes* 66 & 67 *supra* and accompanying text.

[76] *See* H.R. REP. No. 21, 93d Cong., 1st Sess. 1–2 (1973).

[77] H.R. 3298, 93d Congress., 1st Sess. § 306 (a) (2) (1973), carried the words "The Secretary shall make grants" in the place of original permissive language, and other sections were also rewritten in mandatory terms. H.R. REP. No. 21, *supra* note 76, at 8–9. *See also* 119 CONG. REC., p. 6019 (remarks of Representative Matsunaga); *id.* at p. 6024 (remarks of Representative O'Neill); *id.* at pp. 9283–9302 (remarks of Senator McGovern); *id* at pp. 9313–14 (remarks of Senator McClellan).

[78] H.R. 3298 passed in the House by a vote of 297 to 54, 119 CONG. REC., p. 6027. It passed the Senate by a vote of 66 to 22. *Id.* at p. 9312 (Senators Dominick and Haskell of Colorado were among those voting for passage of the mandatory expenditure bill.) *See also* S. REP. No. 77, 93d Cong., 1st Sess. (1973).

[79] In his veto message of April 5, 1973, the President insisted that the mandate to spend "conflict[ed] with the allocation of executive power to the President made by Article II of the Constitution." 1973 U.S. CODE CONG. & AD. NEWS 863–64. The President also suggested that the grant funds program duplicated funds available through revenue sharing projects and the Environmental Protection Agency.

[80] 119 CONG. REC., p. 11680.

[81] 93d Cong., 1st Sess. (1973). *See* H.R. REP. No. 267, 93d Cong., 1st Sess. (1973); S. REP. No. 249, 93d Cong., 1st Sess. (1973).

[82] 119 CONG. REC., p. 21708. The Senate version of H.R. 8410, in Sections 301–11, would have provided for impoundment control procedures similar to those in S. 373, 93d Cong., 1st Sess. (1973). Section 301 of H.R. 8410, as passed by the Senate, powerfully and cogently set forth in eleven paragraphs some constitutional arguments against the President's alleged authority to impound funds. *See* 119 CONG. REC., p. 22620.

[83] Alluding to the anti-impoundment rider, Senator Dominick remarked ,"[W]e have not only extended the debt limit, but increased it, due to the acumen of this great body in accepting amendments, many of them being good amendments, but by our act we have contradicted what we are trying to do in enacting a debt ceiling." 119 CONG. REC., p. 21707.

[84] 119 CONG. REC., p. 22631.

[85] Pub. L. No. 93–53 (July 1, 1973).

[86] S. 502, 93d Cong., 1st Sess. (1973). *See* H.R. REP. No. 118, 93d Cong., 1st Sess. (1973); S. REP. No. 61, 93d Cong., 1st Sess. (1973).

[87] Section 155 of the Senate version of S. 502 and Section 302 of the House bill contain the anti-impounding features. *See* 119 CONG. REC., p. 8240; 119 CONG. REC., p. 13264.

[88] The anti-impoundment sections discussed in note 87 *supra* did not survive in conference. *See* Pub. L. No. 93–87 (Aug. 13, 1973). Nevertheless, the conference report on S. 502, S. REP. No. 355, 93d Cong., 1st Sess. (1973), clearly stipulated that it was the intent of Congress that the funds not be impounded:

The fact that this section of the Senate bill [§ 155] is not contained in the conference substitute shall not be construed to indicate anything other than complete agreement with the decision of the United States Court of Appeals for the Eighth Circuit in [the State Highway Commission case]. 1973 U.S. CODE CONG. & AD. NEWS 2724.

[89] General anti-impoundment proposals not discussed in the text include the following: H.R. 6206, S. 2027 and S. 5193, 93d Cong., 1st Sess. (1973). In addition to the bills designed to attack the problem of executive refusals to spend appropriated funds directly, numerous efforts of a slightly indirect nature were made. *See e.g.*, S. 518, 93d Cong. 1st. Sess. (1973), which would have subjected the Director and Deputy Director of the Office of Management and Budget to Senate confirmation. The House passed its version of the bill, H.R. 3932, by a vote of 229 to 171. 119 CONG REC., p. 13834. And the Senate passed S. 518, 73 to 19. 119 CONG. REC., p. 14096. President Nixon asserted that the measure constituted a "grave violation of the fundamental doctrine of separation of powers" and vetoed it. 1973 U.S. CODE CONG. & AD. NEWS 1228. The Senate overrode the veto 62 to 22. 119 CONG. REC., p. 16506. However, the House sustained the veto by a vote of 170 to 236, 40 votes short of the needed two-thirds to override the veto. *Id.* at p. 16773.

[90] 93d Cong., 1st Sess. (1973). See 6 IND. L. REV. 523 (1973), a succinct commentary on impoundment and S. 373 as it was originally drafted.

[91] 119 CONG. REC., pp. 15212–257.

[92] 119 CONG. REC. pp. 25821–25854. Actually it was the House bill, H.R. 8480, which passed by a vote of 254 to 164. *Id.* at p. 25849. Passage was promptly vacated, however, and S. 373 was passed by voice vote in lieu of H.R. 8480, after S. 373 was amended to contain the provisions of H.R. 8480. The record on H.R. 8480 divulged that Colorado Representatives split on party lines: Democratic Representatives Schroeder and Evans voted for the anti-impoundment measures, while Republican Representatives Brotzman, Johnson, and Armstrong voted against the bill.
against the bill.

[93] 93d Cong., 1st Sess. (1973). *See* H.R. REP. No. 336, 93d Cong., 1st Sess. (1973), the report of the House Rules Committee on H.R. 8480.

[94] It might be contended that the bills, *eo ipso,* recognize inherent authority in the President to impound funds since neither measure purports to flatly proscribe impoundments and, in fact, both allow the President to impound funds for 60 days at a minimum. However, such an argument is ill-conceived. Examination of the debates on S. 373 and H.R. 8480 suggests that legislators acknowledge that, properly exercised, inherent authority is, by its very nature, not subject to restriction. Thus, when Congress restricts presidential authority, it is limiting something other than inherent power. Any power of impoundment has been statutorily conferred if it exists at all.

[95] Similarly, S. 373 stipulates that Congress by affirmative action can allow impoundments to last more than 60 days, and H.R. 8480 provides that Congress can terminate impoundments before the 60-day period elapses.

[96] *See generally* 119 CONG. REC. pp. 25546–25549 (remarks of Representative Bolling), where major differences between the bills are set forth in detail.

[97] *See* Note, *supra* note 19, at 1320 n. 178, where most of the complaints have been cited.

[98] *See* Housing Auth. v. HUD, 340 F. Supp. 654 N.D. Cal. 1972).

[99] 479 F.2d 1099 (8th Cir. 1973), *aff'g* 347 F. Supp. 950 (W.D. Mo. 1972). For another discussion of this case see Note, *supra* note 7, at 1524–27.

[100] *See 1971 Hearings, supra* note 1, at 59 (testimony of Federal Highway Administrator Turner); 42 OP. ATT'Y GEN., No. 32 (1967).

[101] At various stages of the case, the Highway Commission was notified that funds for fiscal 1971, 1972, and 1973 would be released for obligation. Accordingly, the writ of mandamus which the district court issued in ordering the release of funds, 347 F. Supp. at 953–54, was vacated as moot by the court of appeals. 479 F.2d at 1104,1118.

[102] 479 F.2d at 1103.

[103] 347 F. Supp. at 953. Secretary Volpe premised this assertion on three grounds: (1) that appropriations acts are permissive in nature and do not require the actual expenditure of sums authorized to be apportioned; (2) that language in the Federal-Aid Highway Act which expresses the desire of Congress that the funds not be withheld is precatory; and (3) that, until he approves arrangements for expenditure, no state has a vested right in the appropriated funds. 479 F.2d at 1108–09.

[104] The district court noted that Congress foresaw the "possibility of executive or administrative impoundment . . . for legally impermissible reasons [and] undertook to avoid such unauthorized action by making its intent clear and unambiguous in para-

graph (c) of § 101 of Title 23. . . ." 347 F. Supp. at 952–53; *see* 479 F.2d at 1111–14, 1116.

In pertinent part, 23 U.S.C. § 101(c) (1970) provides as follows:

It is the sense of Congress that under existing law no part of any sums . . . shall be impounded or withheld from obligation . . . by any officer or employee in the executive branch of the Federal Government, except such specific sums as may be determined . . . necessary to be withheld from obligation for specific periods of time to assure that sufficient amounts will be available in the Highway Trust Fund to defray the expenditures which will be required to be made from such fund.

This proscriptive language was not in the original Act. Act of June 29, 1956, ch. 462, 70 Stat. 378. It was, however, added soon after Acting United States Attorney Genral Clark opined that the trust funds could be withheld from obligation. *See* 42 OP. ATT'Y GEN., No. 32 (1967).

[105] *See* 479 F.2d at 1111.

[106] *Id.* Taking cognizance of the fact that the Federal-Aid Highway Act allowed the Secretary of Transportation a very limited authority to withhold funds, for the purpose stated in the last clause of 23 U.S.C. § 101(c), the circuit court made this observation: "Where Congress has consistently made express its delegation of a particular power, its silence is strong evidence that it did not intend to grant the power." 479 F. 2d at 1114, *quoting* Alcoa Steamship Co. v. Federal Maritime Comm'n, 348 F. 2d 756, 758 (D.C. Cir. 1965).

[107] The court of appeals observed:

[A]lthough a general appropriation act may be viewed as not providing a specific mandate to expend *all* of the funds appropriated, this does not *a fortiori* endow the Secretary with the authority to use unfettered discretion as to when and how the monies may be used.

479 F. 2d at 1109 (emphasis in original). *But see id.* at 1119–20 & nn. 1 & 2 (Stephenson, J., dissenting). In response to the fact that the Secretary of Transportation correctly noted that 23 U.S.C. § 106(a) stipulates that his approval is a prerequisite to the expenditure of funds, the court made this remark:

Assuming arguendo that the states have no vested right in the funds until such time as the Secretary approves the specific projects, we fail to see that this provides a basis for finding that the Secretary has lawful discretion to *withhold his approval* of projects for reasons not contemplated within the Act.

479 F. 2d at 1109–10 (emphasis in original).

[108] No. 175–73 (D.D.C., order of May 8, 1973), *modifying* 358 F. Supp. 973 (D.D.C. 1973).

[109] 20 U.S.C. §§ 1211a *et seq.* (Supp. II, 1972).

[110] 358 F. Supp. 973, 974 (D.D.C. 1973).

[111] 20 U.S.C.A. § 1221g(a) (Supp. II, 1972).

[112] *See* INEQUALITY IN EDUCATION, No. 14, July 1973, at 48–49.

[113] 358 F. Supp. at 976. Judge Green found that plaintiffs were not attempting to compel the performance of a discretionary act and concluded that the President was "not completely immune from the judicial process for the sole reason that he is President." *Id.* at 975.

[114] No. 175–73, *supra* note 108. The President appointed the Council before the order of May 8, 1973, but the district court nonetheless made the appointment and implementation of the act mandatory.

[115] 20 U.S.C.A. § 1226 (Supp. 1973). *But cf.* OFFICE OF MANAGEMENT AND BUDGET, THE BUDGET OF THE UNITED STATES GOVERNMENT—FISCAL YEAR 1974, at 225 (1973), where it was suggested that the $18 million appropriated for fiscal 1973 would be rescinded from the budget and no funds would be required for fiscal year 1974.

[116] *See* INEQUALITY IN EDUCATION, No. 14, July 1973, at 48–49.

[117] 33 U.S.C. §§ 1251 *et seq.* (Supp. II, 1972).

[118] 358 F. Supp. 669 (D.D.C. 1973).

[119] See 37 Fed. Reg. 26, 282, § 35.910–1(a) (1972).

[120] The EPA failed to accurately characterize the issue before the court, and, thus, was unable to detract from the validity of plaintiffs' argument that the Act made mandatory the allotment, rather than the expenditure of funds. The allotment section stipulated:

Sums authorized to be appropriated pursuant to section 1287 of this title . . . *shall be allowed* by the Administrator not later than January 1st immediately preceding the beginning of the fiscal year for which authorized, except that the *allotment for fiscal year 1973 shall be made* no later than 30 days after October 18, 1972. *Sums shall be allotted among the States* by the Administrator . . .

33 U.S.C. § 1285(a) (Supp II, 1972) (emphasis added). On the other hand, Section 1287 of Title 33 authorized appropriations "not to exceed" certain amounts for each fiscal year, and the rate of spending. *See* 118 CONG. REC., vol. 118, pt. 25, p. 33753 (remarks of Representative Harsha); *id.* at vol. 118, pt. 25, p. 33755 (remarks of Representative Ford). While EPA Administrator Ruckelshaus remarked to a Senate committee that it was the intent of Congress "that the President have the authority to limit the spending" of pollution control funds, he never recognized that mandatory allotment was different from mandatory expenditure. *1973 Hearings, supra* note 6, at 406. For another discussion of the *Ruckelshaus* case see Note, *supra* note 7, at 1526–27 n. 116.

[121] 358 F. Supp. 669 (D.D.C. 1973)

[122] 42 US.C. §§ 2701 *et seq.* (1970).

[123] *Id.* §§ 2737–49 (1970).

[124] *Id.* § 2740(a) (1970).

[125] *Id.* §§ 278–837 (1970). The Community Action Agencies were created by Title II of the Economic Opportunity Act.

[126] Act of Oct. 31, 1972, ch. 4, 86 Stat. 1498.

[127] *See* OFFICE OF MANAGEMENT AND BUDGET, THE BUDGET OF THE UNITED STATES GOVERNMENT—FISCAL YEAR 1974, at 250 (1973).

[128] *See* Complaint at 10, Community Action Programs Executive Directors Ass'n v. Ash, No. 899–73 (D.N.J., June 29, 1973).

[129] No. 899–73 (D.N.J., June 29, 1973).

[130] *Id.* at 1.

[131] *See* 42 U.S.C. § 2702b (1972).

[132] Among other things, the section requires that the President "shall take care that the laws be faithfully executed."

[133] No. 899–73, at 3. After June 30, 1973, the funds would have reverted to the Treasury pursuant to requirements of the Act. On July 10, 1973, the United States Court of Appeals for the Third Circuit refused to stay the district court's order.

[134] No. 1223–73 (D.D.C., June 28, 1973).

[135] 42 U.S.C. §§ 2681 *et seq.* (1970).

[136] Act of June 30, 1970, Pub. L. No. 91–926, § 601, 84 Stat. 353. *See* S. REP. No. 634, 91st Cong., 2d Sess. 163 (1970); H.R. REP. No. 1167, 91st Cong., 2d Sess. 25 (1970).

[137] No. 1223–73 (D.D.C., June 28, 1973).

[138] No. 1308–73 (D.D.C., July 26, 1973).

[139] 20 U.S.C. §§ 441–45 (1970).

[140] 20 U.S.C. § 442(a)(1)(1970).

[141] *See, e.g.*, H.R. REP. No. 20, 93d Cong., 1st Sess. 2 (1973); 119 CONG. REC., p. 4928 (remarks of Representatives Mahon and Perkins).

[142] No. 1308–73, at 10, *citing* Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952); Kendall v. United States *ex rel.* Stokes, 37 U.S. (12 Pet.) 524 (1838); State Highway Comm'n v. Volpe, 479 F.2d 1099 (8th Cir. 1973).

[143] The subsidies woud assist 60,000 families at a cost of $2 billion annually in government loans. But for the impoundment, about $1.2 billion would have been loaned between January 1 and June 30, 1973. *See* N.Y. Times, Aug. 1, 1973, at 14, col. 4 (city ed.).

[144] 361 F. 2d 1320 (D.D.C. 1973).

[145] *Id.* at 1324.

[146] Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 610–11 (1952).

[147] Deputy Attorney General Sneed, it should be recalled, stated to a Senate committee: "[T]he warrant of historic practice is perhaps the strongest support for my position [with respect to impoundment]." 1973 Hearings, supra note 6, at 842.

[148] *See* note 46 *supra* and accompanying text.

[149] *See* R. NEUSTADT, PRESIDENTIAL POWER 33 (1960).

[150] C. WARREN, THE MAKING OF THE CONSTITUTION 185–87 (1928); *see* J. MADISON, JOURNAL OF THE FEDERAL CONVENTION, 102–07, 387 (H. Scott ed. 1893). The concise argument is this:

[I]n impounding funds the President exercises a veto power that the framers [of the Constitution] rejected. If the President refuses to spend appropriated funds, he exercises an absolute veto, since Congress possesses no effective means to override such action. This refusal is contrary to the clear intent of the framers that the President possess only a qualified veto. If the President delays spending appropriated monies, he exercises a power of suspension rejected by the Constitutional Convention. If the President selects among the provisions of an appropriation bill, he exercises an item veto, a proposal never considered.

Note, *supra* note 19, at 1299. *See also* Comment, *supra* note 7, at 330; Note, *supra* note 7, at 1528.

[151] U.S. CONST. art. II, § 3. *See In re* Neagle, 135 U.S. 1 (1890); 19 OP. ATT'Y GEN. 686 (1890). *See also* Letter from Professor Robert A. Burt to Speaker Carl Albert, Mar. 21, 1973, in *1973 Impoundment Reporting Hearings*, pt. 2, *supra* note 7, at 379–80.

[152] Berger, *Executive Privilege v. Congressional Inquiry*, 12 U.C.L.A.L. REV. 1044, 1114 (1965): "It is a feat of splendid illogic to wring from a duty to faithfully execute the laws a power to defy them." *See also* Waicukauski, *supra* note 46, at 35–57.

[153] See pp. 41–48 *supra*.

[154] Waicukauski, *supra* note 46, at 42.

[155] See p. 28 *supra*.

[156] See p. 28 *supra*.

[157] *E.g.*, 42 U.S.C. § 2000d—1 (1970).

[158] *See* pp. 41–48 *supra; cf.* Housing Auth. v. HUD, 340 F. Supp. 654, 656 (N.D. Cal. 1972), in which it was determined that Congress had entrusted to administrative discretion the authority to ascertain whether certain funds should be spent, and, in any event, that a refusal to expend appropriated money was a political question. *But see* Note, *supra* note 7, at 1530–32. Other impoundment cases not treated in the text of this article are in accord with the writer's conclusions: Pennsylvania v. Lynn, No. 990–73 (D.D.C., July 23, 1973) ("it is not within the discretion of the executive to refuse to execute laws passed by Congress, but with which the executive presently disagrees."); Pennsylvania v. Weinberger, No. 1125–73 (D.D.C., June 28, 1973); Minnesota v. Weinberger, 359 F. Supp. 789 (D. Minn. 1973). *See also* 119 CONG. REC. p. 29088, where numerous impoundment cases have been collected.

CHILDREN OF VIETNAM: ORPHANS OF WAR AND NEGLECT

Mr. KENNEDY. Mr. President, one of the most tragic legacies of the Indochina conflict has been the millions of children who have forever been scarred by war—the orphans, the maimed, the homeless—

all victims of violence that continues even today.

In South Vietnam alone, there are some one million orphans or half-orphans, with perhaps as many as 30,000 now abandoned to the care of orphanages that are overcrowded, understaffed, and in need of help. An estimated 20,000 to 25,000 children in Vietnam have been fathered by Americans, some 1,000 of whom are now in orphanages and available for adoption. Uncounted more children are in need of help in the refugee camps and on the streets of Saigon, and in other areas of Indochina.

It is not surprising, Mr. President, that the plight of these children—so disadvantaged by a war which we helped to sponsor—should become a source of deep concern to the American people. What is surprising, however, is how little of this national concern has been translated into specific administrative actions by our Government to help bring relief to these children in need.

Frankly, the lack of substantive progress in this area of national concern is fast becoming a national disgrace. That so little should be done after so long, on an issue which has such obvious public support, where America bears such obvious responsibilities, and where the humanitarian needs of the children are so urgent, defies understanding.

During the debate over the conference report on the foreign assistance authorization, I very clearly stated these concerns in meetings with officials of the Agency for International Development—AID—and the Department of State. For the record, and in a letter to AID Administrator Daniel Parker, I am restating them again, as I have over the past several months on the Senate floor and in hearings of the Judiciary Subcommittee on Refugees, in the hope that the specific recommendations the subcommittee has made will now be acted upon expeditiously. Senator HUMPHREY, the floor manager of the foreign aid bill, has also joined me in expressing these concerns to AID.

Mr. President, over 7 months have passed since the refugee subcommittee held hearings on the problems of children and orphans in Indochina—hearings during which administration witnesses expressed their great concern over, and their willingness to act upon, programs and proposals for aiding these children in need. Since then, I regret to say, we have seen very little action.

This lack of progress is certainly not due to any lack of public support or concern. Literally thousands upon thousands of Americans have written to the Congress and to the executive branch expressing their concern over the plight of the orphans and children of Vietnam. My office alone has received several thousand inquiries. Voluntary agencies and church groups around the country have been flooded with requests for information and offers of support. Scores of Senators and Congressmen have themselves written to the Department of State and to the Agency for International Development urging greater efforts by our Government in this area. The CONGRESSIONAL RECORD over the past 2 years has been filled with statements in support of greater action to help orphans and children in Vietnam.

And, it is not for a lack of funds that so little progress has been made. The recent legislative history of all foreign assistance bills have reflected congressional concern and support for greater humanitarian aid to war victims generally, and to children and orphans in particular. This year's foreign aid bill, as it originally passed both the House and the Senate, and as it has been adopted, carries ear-marked funds for the children of Vietnam.

The administration has known for many months that, at a minimum, some $5 million would be available specifically to help orphans and to support child welfare programs in Vietnam next year. Moreover, under the continuing resolution, funds have been available all along for humanitarian purposes—including aid for orphans—if anyone cared to spend it. That so little of this available money has been spent for orphans and children in need, is a reflection of the administration's priorities, rather than legislative constraints. Meanwhile, the administration has freely chosen to spend our dollars for commodity imports and for military aid to Indochina.

Finally, it is not for a lack of specific proposals or programs on how our Government can best proceed in assisting the orphans of Vietnam. Specific recommendations have emerged from within AID and the U.S. mission in Saigon over the past many months. The voluntary agencies have submitted contracts and other recommendations, several of which are now idly awaiting official approval. And the study mission of the Judiciary Subcommittee on Refugees has reported a lengthy series of specific proposals for action during hearings in May and August.

So it is not, Mr. President, for any lack of concern, or funds, or an absence of public support or, for that matter, a lack of specific proposals for action, that explains our Government's paralysis in assisting the children of Vietnam.

Regrettably, there is a long history within our Government in neglecting humanitarian needs in Indochina—particularly the needs of children.

As early as 1965, witnesses came before the Subcommittee on Refugees and told us of the need for child welfare programs, for trained personnel, for a long range plan to meet the escalating needs of the children. In 1966 these needs were again cited. Token efforts were underway to help meet them—but these efforts were not enough. In 1967, at the urging of the subcommittee, an AID funded task force traveled to Vietnam to make program recommendations in the field of social welfare. The task force report outlined some immediate steps that could be taken, and some longer range plans as well. But this report, like so many others in 1970 and 1971, was quickly filed and ignored. Since then the cries of the children and the appeals of humanitarians have all but fallen on deaf ears.

It was for this reason that the Refugee Subcommittee again dispatched a study mission to Indochina to attempt, once again, to upgrade priority for humanitarian programs for refugees, civilian war casualties, and war orphans. The study mission's report, made informally in April and later in hearings on May 11th, was forwarded to the Department of State and AID. Later, in August, I met personally with then Secretary of State William Rogers, along with members of the study mission, to make another series of specific recommendations.

For the record—and to emphasize the continuing need for action—I would like to briefly review these recommendations and indicate what has happened since. The first and foremost recommendation was that "the primary bottleneck with regard to intercountry adoption at present is the lack of adequate services and staff in Vietnam." The team recommended the establishment of a consortium of voluntary agencies to be activated by AID "to facilitate and expedite intercountry adoption" by involving, perhaps on contract, the expertise and services of the voluntary agencies in this field.

To date, Mr. President, this bottleneck has yet to be broken. In July, AID convened an Interagency Vietnam Adoption Committee. This committee has had several useful conferences in Washington and New York to review the problem, and has opened important and crucial contacts with black adoption and community agencies to help develop opportunities for the placement of black-fathered American Vietnamese children in black homes. But from the beginning, this committee was seen as a first-step, not as the answer to the problem—as a coordinating mechanism for the adoption of black-fathered Vietnamese orphans, and not as the organizational vehicle for processing those adoptions.

And, from the beginning, a larger conference of all relevant voluntary agencies was to be convened as a prelude to the granting of specific contracts and the coordination of other programs for the benefit of not only orphans, but for all the children disadvantaged by the war in South Vietnam.

Today, well over 7 months later, no such general conference has been held. Although a conference is to be convened next week in New York, it has been called, not by AID, but by the voluntary agencies themselves.

However important these conferences are, Mr. President, they can hardly be expected to establish a coordinating mechanism for programs to help the children of Vietnam, if AID has not yet funded such programs, or if the U.S. mission in Saigon has failed to support them adequately. What we need now is not more conferences or more study missions, but firm decisions within AID to fund specific voluntary agency programs and proposals. We do not need to create new organizational mechanisms, but rather grant the contracts necessary to get the voluntary agencies programs going. The model for such an effort can easily be found in the U.S. Government's handling of the Cuban refugee program, or in the many other humanitarian programs which have been contracted to, and suc-

cessfully administered by, the voluntary agencies for our Government.

Mr. President, the voluntary agencies can only do so much, and they can go only so far, in helping the war orphans and children of Vietnam. They can, with Government support, help to administer child welfare programs, and they can undertake the process of intercountry adoption of Vietnamese orphans. But, ultimately, only a functioning ministry of social welfare within the South Vietnamese government—and an effective program of support for it within the U.S. mission in Saigon—can provide the long-term programs necessary to help the children of Vietnam.

These are governmental responsibilities for which government programs are required. Hopefully, our officials in the field will take these responsibilities seriously. Hopefully, our Embassy and the U.S. mission will give high priority to efforts to strengthen the social welfare capabilities of the South Vietnamese Government and to expedite programs for children.

It was to these ends that the subcommittee study mission addresed its recommendations last May, and it was for these reasons that I made the following additional points with Secretary Rogers last August—which I have again emphasized in a letter to AID Administrator Daniel Parker.

First. Funds for voluntary agency programs: First, I hope that the administration will finally act to provide funds and contracts to American voluntary agencies which have submitted proposals for processing intercountry adoptions or for establishing child welfare services within South Vietnam. A number of agency proposals have come to my attention, and I hope they will be sympathetically reviewed, on a case-by-case basis, by AID and the U.S. mission.

Second. Additional personnel: Neither AID in Washington or Saigon appears to be adequately staffed to handle the urgent requirements for American support of South Vietnamese child welfare programs. The two principal social welfare officers in the U.S. mission in Saigon have departed, and in Washington the responsibility for child welfare and orphan problems is vested in an officer who is also responsible for refugees, education, administration, land reform in Vietnam, as well as five other countries.

I would hope AID would secure adequate, qualified social welfare personnel, from outside the agency if necessary, to be assigned to both Saigon and Washington. There also needs to be, at a high level, a qualified and energetic officer, assigned the sole responsibility—for at least 12 months—of child welfare and orphan programs in South Vietnam. And there should be no question among other elements and programs of the U.S. mission that this officer carries the authority of the ambassador, and the concern of our highest officials, and his position should be so designated.

Third. Diplomatic representations to the South Vietnamese Government: We should instruct our ambassador to initiate, at the highest levels, discussions with the South Vietnamese Government to persuade it to give higher priority and more staff to implement effective adoption and child welfare programs.

Child welfare concerns, and the programs of the ministry of social welfare in general, have almost no priority within the South Vietnamese Governmental structure at the present time. Until the ministry of social welfare is given a clear mandate, sufficient priority and adequate funds, there is little hope that it will be capable of effectively responding to the initiatives or support offered by either the U.S. Government or the voluntary agencies.

Mr. President, in conclusion, let me repeat for the record a comment of Dr. James Dumpson, a member of the Refugee Subcommittee study mission and dean of Fordham University's School of Social Services, which he made during hearings last May. In response to a query as to what explains the lack of progress by our Government in meeting the needs of children in Vietnam, Dean Dumpson said:

> It represents something that is missing. And that is a clear-cut policy on the part of our Government, and a commitment of the total government, not just pieces of it, or branches of it, but a commitment on the part of the American Government and its people for doing what must be done in terms of the welfare of children in Vietnam.

I believe, Mr. President, that there already exists that sense of commitment on the part of the American people. However, it has yet to be reflected in the actions of our Government—either in Washington or Saigon. This administration must stop dragging its feet on programs for Vietnamese orphans and the U.S. mission in Saigon must stop sitting on funds for their relief.

The disadvantaged children of Vietnam measure their lives in minutes and days. They deserve better than America has given, and they must finally become a central focus of our post-war relief and rehabilitation program if that effort is to be worthy of its name.

Mr. President, I ask unanimous consent that the report of the study mission of the subcommittee on refugees be printed in the RECORD.

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

STATEMENT OF DR. JAMES DUMPSON AND MR. WELLS KLEIN ON CHILD WELFARE PROBLEMS IN SOUTH VIETNAM BEFORE HEARINGS HELD BY THE JUDICIARY SUBCOMMITTEE ON REFUGEES, MAY 11, 1973

Mr. Chairman, my name is James R. Dumpson. I am Dean of the Graduate School of Social Services of Fordham University, immediate past President of the National Conference on Social Welfare, and for seven years I was Commissioner of Public Welfare for the City of New York. With me is my colleague, Wells C. Klein, Executive Director of the American Council for Nationalities Service, who for five years was General Director of the American Branch International Social Service, after serving as Director of the Refugee and Social Welfare Division of the AID Vietnam Bureau.

Mr. Klein and I recently visited Vietnam in our private capacities as members of the Study Mission this Subcommittee dispatched to investigate postwar humanitarian needs in Indochina. Both Mr. Klein and I have worked in or visited Vietnam on numerous occasions in the past and have observed, at first hand, the steadily deteriorating conditions of children in Vietnam over the last eight years. We come before the Subcommittee this morning, as individuals, and as Americans, deeply disturbed over the welfare of children in Vietnam and deeply disturbed by the lack of sensitivity and responsible initiative our government has shown to even the most minimal needs of these children.

Since 1965 witnesses have come before this Subcommittee to testify as to the growing needs of children in South Vietnam. I, myself, testified nearly six years ago after heading a Social Welfare Task Force to South Vietnam on behalf of the Agency of International Development. But despite this Subcommittee's concern—and the concern of others in the Congress and countless Americans—little was done to meet their needs, even as the numbers of orphans and homeless children increased.

Mr. Chairman, when we speak of the children of Vietnam we are speaking of half the total population—that half, fourteen years and younger who, by reason of their age cannot, even under normal conditions, care for themselves and secure the physical and emotion requisites for survival and growth. But as you well know, in Vietnam we are not speaking of normal conditions. These eight million children have never known a day when the smells, the sights and the sounds of war were not all about them.

The gravity of the situation of children in Vietnam should surprise no one who can put two and two together and reach four. What surpasses surprise, however, is the insensitivity of our government, with some few exceptions which we shall detail later—the insensitivity to the situation that exists in Vietnam and to public concern here at home. We would submit, Mr. Chairman, that these children do not represent a political problem to be dealt with in terms of partisan politics, nor do they represent a problem in the allocation of resources. They are simply a large number of children for whom we share a responsibility—who desperately need our help—help which is not now forthcoming. At the end of this testimony, we shall submit some specific recommendations which we hope this Subcommittee, the Congress, and the Administration will consider as immediate steps which can be taken to alleviate some of the pain and heartbreak, and damage, and begin to turn the situation around so that the children of Vietnam may have a future.

We have spoken of eight million children, but who are these children—what has happened to them—what are their needs? Wherever one observed children, one observed children deprived of their birthright to grow and develop in security with the sustained support of one or more meaningful adults in their lives. There are some 700,000 orphans or half-orphans in Vietnam. They have been torn by years of war from their families or have seen their families decimated about them. Their circumstances vary, but in most every case they lack the minimum physical and/or emotional requisites for healthy growth and development. We have heard much of the need to establish "stability" in Vietnam. By this is meant economic stability with the various supply and demand factors in some order of balance. The need for such economic stability is not disputed. But what about social stability? What is stability for 700,000 orphans? It is more than solving a balance of payments problem, it is an environment in which they can grow and mature with adequate food, clothing, shelter, physical and emotional security, and human contact.

Over 750,000 persons are crowded into approximately 128 refugee camps in South Vietnam. Half of these are children. In camp after

camp, one observes children suffering from malnutrition, children with scrawny bodies, eye sores, eye cataracts, missing limbs, scarred face or limb tissue, some naked or half naked. One observes children who are hungry because of bureaucratic red tape or sheer malfeasance. And if this were not enough, the refugees and their children face a particularly bleak future in this would be post war era—an era often referred to as that of "ceaseless fire". They are pawns in the game of who controls the most population. For most of these children there is no prospect of returning home. They are subject to the relentless pressure of de facto physical confinement in squalid unbelievably crowded conditions. Children need to play—to move—they need stimulation, and new experiences. They need physical and emotional security. The refugee children have none of this and as time passes inevitably the lethargy syndrome becomes more and more deeply entrenched and their prospects for health development become less and less possible.

Some 23,000 children are known to be in orphanages. With rare exceptions, the care of these children is deplorable. The serious, dangerous overcrowding particularly in group care for infants, is nothing short of shocking. In one institution designed for less than 100 children we found nine dedicated nuns, four of whom are practical nurses, caring for 120 infants below one year of age, 95 children between one and two, and 75 or more children over five years of age.

In another institution equipped to accommodate not more than 150 children by the most minimal standards, we observed 400 children cared for by nine nuns, 5 to 7 "men on the grounds" assisting the nuns, and a small component of female custodians. Among these children, as in other institutions, were numerous severely retarded or handicapped children who need and should have intensive care and protection on a one/two or one/three basis.

Mr. Chairman, there is another particular group of children in Vietnam deserving of our concern, the same 25,000 children of mixed parentage whose fathers abandoned them or never knew of their existence, but children who bear the indelible imprint of their heritage. These children can be seen in the streets of Saigon and Danang, in the refugee camps and resettlement sites. Some 1,000 of these children are in orphanages living under the conditions described above. Half of the American fathered children in orphanages obviously had Black American fathers. The remainder of the American fathered children, black and white, at this time, are living with their mothers and families in the general population.

For a variety of reasons, the needs of children of mixed parentage, particularly those already abandoned to orphanages and those whose fathers were unquestionably black, command a high priority in our concerns for the well-being of Vietnamese children. While the great majority of the American-fathered children have not been abandoned by their mothers—we saw much love and warmth for many of these children—as they grow into school-age and adolescence, in all probability, their physical difference will give rise to problems among their peers—for the black child, because he is black, and for the black and white because their mothers "did business with the Americans" as it was expressed by one of the children's grandmothers in a refugee camp.

Of very real concern is the black child. There is no question but that the black Vietnamese child will face serious problems of social rejection based on his physical difference. The experience and present social position of children fathered by French Senegalese troops during the 1945–54 period presents supporting evidence to this contention. Furthermore, there is no black community in Vietnam. These children will group up and live a relative social isolation as have their French-Senegalese predecessors.

Meeting the needs of these children presents a number of issues that must be recognized and utlimately resolved by the government of Vietnam, hopefully with real and substantial assistance from the government of the United States. First, recognition must be made of the fact, frequently stated by Vietnamese officials, that these are Vietnamese children and the government affirms its ultimate responsibility for all Vietnamese children. This position, in our judgment, must be supported by the government of the United States and all of the voluntary agencies concerned with child welfare in Vietnam. Any program, however well motivated, that does not accept this fact, does violence to the welfare of all the children in Vietnam.

Second, serious questions must be raised concerning the capability of the Government of Vietnam, at this time, to meet the special needs of these children. A statement of public policy is one thing; translation of that policy into meaningful reality for those for whom it is designed is quite another matter. In the foreseeable present, the needs of children of mixed parentage, particularly those whose fathers are black, and who already have been abandoned to orphanages, cannot be met. Alternative acceptable care to continued orphanage existence must be found.

Third, while high priority attention must be given to this relatively small number of disadvantaged children, it must be done within the context of the pressing needs of other disadvantaged children in Vietnam who are not racially mixed, who may or may not live in orphanages or refugee camps, and who may not be abandoned. This issue underscores the war-induced plight of the general majority of Vietnamese children. They are all war victims as are their mothers and most other adults in Vietnam. We cannot single out for special attention the unique needs of the American-fathered child and ignore that large number of other children who have a right to our concern and assistance. To do this would be unethical, and in our opinion un-American in the true sense of the term.

Mr. Chairman, before proceeding to recommendations, it may be useful to detail exactly what our government has, or has not done, in regard to needs of children in Vietnam. Until 18 months ago there was essentially no U.S. government program directed towards these children. While some assistance was available through PL–480 food distribution and through the refugee program, this was indirect assistance not primarily designed to meet child welfare needs. Also, at one time, the U.S. government gave substantial support to U.S. and international voluntary agencies working in Vietnam, some of which was directed toward children. By the spring of 1971, however, it was no longer government policy to support the voluntary agencies. This was the process of "de-escalation", and with some sort of incomprehensible logic, our government chose to de-escalate voluntary agency support and the already minimal assistance going to children as one of its first steps.

In a way, the timing of this "de-escalation" was fortuitous, for it came at the very moment when a large segment of the American public was becoming increasingly concerned for the welfare of children in Vietnam. The down-grading of voluntary agency support and humanitarian assistance to children dramatically highlighted the lack of U.S. government concern. Thus, in the summer and fall of 1971 several events occurred simultaneously which resulted in a dramatic reversal of the government policy vis-a-vis children in Vietnam. A number of separate pieces of legislation were introduced into the Congress which, in one form or another, called on the government to respond to the needs of Vietnamese children. At the same time, a group of voluntary agencies made strong representations to the government requesting priority and funding for services for these children. Finally, and perhaps most important, the media and a significant and vocal segment of the general public began to focus attention on child welfare concerns, in effect demanding action from our government.

As a result, since the fall of 1971, or some 18 months ago, it has been government policy that the United States has an obligation to help the children of Vietnam. This has meant the beginning—just the beginning—of funding and priority to implement child welfare programs. In the past 18 months the Agency for International Development has done a commendable job of initiating responsible child welfare programs and engaging the Vietnamese Ministry of Social Welfare in developmental child welfare planning.

This brings us to the present. It is important to note that we have commended the AID response in the past 18 months, but not that of the government as a whole. Quite frankly, in our opinion, AID has gone about as far as it can without support from the U.S. Embassy in Saigon and from the White House and State Department in Washington. For the present, at least, some U.S. government funds for child welfare purposes seem to be available. However, these funds cannot be utilized effectively unless the Embassy in Saigon gives the matter of children reasonable recognition in its own priorities and reasonable support to AID and to the Vietnamese Ministry of Social Welfare.

At the time of our visit, the Embassy and AID were at loggerheads, with the real danger that the Embassy might pull the rug from under much of the responsible programming AID has initiated. There is nothing useful to be gained by discussing the details of this matter, except to say that in the immediate sense, and in the long run, most of what we can do for children in Vietnam can only be accomplished through Vietnamese institutions. It is, therefore, imperative to strengthen the Vietnamese government and voluntary agencies at the same time we are addressing ourselves directly to the immediate needs of children. This must be our policy if our assistance to the children in Vietnam is to be in their interest rather than simply a short range response to political pressures on our part.

Proceeding, now, to the future, we would suggest that any child welfare programs in the immediate future must include the following ingredients:

1. Programs and measures designed to prevent the abandonment of children. Among other considerations, this involves counseling services available to mothers to help them identify what is in their best interests and the best interests of their children. Mothers and their families should be helped to identify realistic alternatives to abandonment.

2. Improved institutional care for those children who require such care.

3. Improved maternal and child care including expanded day care facilities.

4. Programs designed to reunite families with high priority assigned to children in orphanages, and to programs designed to maintain children with their families.

5. Facilitation of adoption on a case by case basis for those children for whom this is the best alternative.

These are immediate child welfare goals for children in Vietnam. To achieve these goals, the United States on its part must undertake the following:

1. Ensure reasonable priority by all elements of the U.S. Government for child welfare and translate that priority into realistic meaningful programs with assurance of adequate long-term funding.

2. Raise the issue of the welfare of children with the Vietnamese government at the highest level so that child welfare programming will receive equivalent priority on the Vietnamese side. At this point, the Vietnamese Ministry of Social Welfare is at the bottom of the government's administrative structure and receives scant support in terms of funds and personnel. It is essential that the Ministry be able to hire and train competent personnel to implement reasonable and responsible programs within a Vietnamese context.

3. Support and encourage American and international voluntary agencies to expand their programs of service to Vietnamese children in cooperation with the Ministry of Social Welfare, and under the general supervision of that Ministry.

4. Seek out multi-level mechanisms within the United Nations family and/or the international voluntary agency structure through which to channel continuing child welfare assistance in Vietnam. While the United States must continue to provide major budget support for such endeavors, our government can best discharge its responsibility by working through multi-lateral mechanisms where direct U.S. involvement is minimal.

Further, Mr. Chairman, in very specific terms, we propose the following immediate steps. These can and should be implemented within the next two or three months. To the best of our knowledge, no new policy formulations or funds are required. It is simply a matter of acting with a concerted rather than a divided effort, and with a sense of priority.

1. Invite the establishment of, and fund, a consortium of experienced professional competent voluntary agencies to facilitate and expedite inter-country adoption of Vietnamese children for whom adoption is legally possible and clearly the best plan. Particular priority should be given to the racially mixed child. The primary bottle-neck with regard to inter-country adoption at present is the lack of adequate services and staff in Vietnam. We view this recommendation as an urgent requirement, though we recognize that adoption must still be handled on a case by case basis to protect all parties concerned. The expensive services for the few at the expense of the many is unconscionable. Therefore, the consortium must equally concern itself with providing counseling services to mothers who may be considering abandoning their children, and with the immediate up-grading and improvement of child care services and institutions in Vietnam.

2. Expedite the inter-country adoption process by assigning one additional officer to the INS regional office in Hong Kong so that U.S. government formalities will not represent a bottleneck as they have, on accasion in the past. INS is planning to transfer 1,000 inspectors to the U.S. Customs Bureau in the near future. We ask that one of these be diverted to Hong Kong.

4. The U.S. government, through its Embassy in Saigon, should urge the Government of Vietnam to expedite passage, or interim implementation by decree, of sound adoptional legislation which, we understand, is presently in draft form.

5. The government of the United States should formally transmit to the Government of Vietnam a clear statement of intent of support for programs designed to assure the welfare of children in Vietnam. This recommendation will have the duel effect of indicating American commitment particularly in terms of funds on a more than a year to year basis, and of stimulating the Government of Vietnam to give its own child welfare programs and Ministry of Social Welfare reasonable support and priority. One of the persistent problems is that U.S. funding is only available on a year to year basis. The Vietnamese, understandably, are reluctant to commit themselves to long range programs with only a few months of funding in sight.

6. The U.S. government should strongly urge the Vietnamese government to lift its present restriction on hiring new personnel within the Ministry of Social Welfare. At present, the Ministry does not have adequate personnel, in terms of numbers of professional competence, to supply many of the child welfare services needed.

7. AID should be authorized to proceed with direct hire from outside its own personnel resources in order to replace departing child welfare personnel in Vietnam and expand the AID child welfare advisory and support program by several additional positions.

8. The Subcommittee on Refugees should review the various pieces of legislation addressed to the needs of children of Vietnam which have been introduced over the past two years to determine whether modification of previously proposed legislation, or new legislation, is warranted to ensure that we can and will continue to exercise our responsibilities to the children of Vietnam.

9. The appropriate Subcommittee of the Judiciary Committee should be asked to explore some modification of our present Immigration and Nationality Act in order to enable American fathered children in Vietnam to obtain American citizenship, if they so wish, upon reaching their majority.

10. Until such time as multi-lateral mechanisms can be determined and utilized, the Agency for International Development should continue to work with the government of Vietnam, particularly the Ministry of Social Welfare, in an advisory and supporting role, to assist that government in carrying out its responsibility to the children of Vietnam, responsibilities which we share. After many years of inaction, AID had initiated a well-thought out program of child welfare assistance in Vietnam. The AID continuing effort should be encouraged and supported by this Subcommittee and by the Administration.

Mr. Chairman, we have presented a review of the needs of the children in Vietnam and we have made some specific recommendations for meeting those needs. We do not suggest that our review has been comprehensive or that our recommendations are by any means all inclusive. However, we have sufficient confidence in our own experience and judgments to suggest that careful consideration of the views and recommendations presented this morning will significantly enhance our government's ability to meet our national obligation to the children of Vietnam.

GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, I urge the Senate to take up the Genocide Convention for consideration at the earliest possible time. This Convention is one of several treaties which attempts to give the force of international law to the noble ideals expressed in the United Nations Declaration of Human Rights. That Declaration and the treaties which followed it are in the finest of American traditions.

The sentiments expressed in that document bear a striking resemblance to our own Declaration of Independence. Likewise, the human rights treaties can be compared to the Bill of Rights.

It has often puzzled me, then, that the United States has not yet ratified the Geonocide Convention. It attempts to outlaw, as a principle of international law, the crime of genocide. What is genocide? The term was coined by Prof. Raphael Lemkin in 1946 and refers to the attempt to systematically eliminate a group of people. The most striking example in recent years, of course, was the attempted Nazi extermination of the Jewish population in Germany.

Certainly, no sensible person could endorse a heinous crime. However, our lengthy delay in ratifying this Convention has raised doubts in the world as to our true position. Mr. President, it is time to erase all doubts. The United States must now regain the leadership position in the field of human rights—a position we have lost by default. I can think of no better way to accomplish this than through prompt consideration and ratification of the Genocide Convention.

DEFENSE DEPARTMENT APPROPRIATIONS, 1974

Mr. FULBRIGHT. Mr. President, I voted in favor of the Department of Defense appropriations bill approved by the Senate Thursday.

I want to commend the chairman of the Committee on Appropriations (Mr. McCLELLAN) for his efforts in reducing the administration's budget request by almost $4 billion and for the very thorough consideration which his committee gave to this bill. In view of the pressures upon him he has rendered a real service to the country.

The committee made a substantial reduction, although I had hoped that a larger cut could be made, and, as I outlined to the committee in a statement I submitted earlier this year, I believe such a cut could have been made without in any way jeopardizing our national security. Nonetheless, this is a step toward a more rational allocation of our Nation's resources.

I was especially pleased at the committee's reduction of military assistance funds for South Vietnam and Laos. I also took note of the following language in the committee report:

> The committee is in agreement that the budget request for military assistance to Laos and South Vietnam should revert to the Military Assistance Program as soon as practicable. The Foreign Assistance Act of 1973 transfers assistance to Laos effective in fiscal year 1975 to the Military Assistance Program but retains South Vietnam assistance in the Department of Defense budget. The committee feels that the fiscal year 1975 budget submission should follow the provisions of the Foreign Assistance Act.

Likewise I strongly support the committee's reduction of $240 million for the Trident missile submarine program and the deletion of $151 million for the F–111 planes which had been added by the House, although the Pentagon had not requested F–111 planes. I see absolutely no justification for further funds for this scandal-ridden project, which the chairman of the Appropriations Committee investigated and brought to public attention.

I hope that the Senate conferees will

maintain their position on the F–111 and on the other reductions in aircraft procurement which the Senate bill provides. However, there are two projects on which I would urge the Senate conferees to give serious consideration to the House position.

The House bill denies $65.2 million requested for the advanced medium STOL transport. The House deleted these funds because a new medium transport plane is not essential at this time and the C–130, as now confirmed and with modifications, will suffice as a future tactical airlift transport. I find this view to be especially persuasive in view of the continued large-scale procurement of C–130 aircraft. The bill includes $180.6 million for 36 C–130H aircraft and, I might add, $37.2 million to fund prior year deficiencies in the C–5A program.

Another project on which I would hope the conferees would agree to the House position is the advanced airborne national command post. I believe this to be one of the most outlandish projects ever proposed by the Pentagon. Last year funds were approved for a test bed aircraft and two 747 planes. The Senate bill would provide $32.3 million for an additional 747 and eventually seven of these planes plus complex and costly communications equipment.

I do note that the committee recommended a $10 million reduction in research and development funds for the airborne command post, but $27.3 million would still be provided for this purpose. The committee report states:

It has come to the attention of the committee that the Air Force has experienced increased costs in this program. To date, the service has not decided exactly what communications equipment should be placed on this aircraft.

During consideration of this legislation the chairman of the House Appropriations Committee stated:

We recommend against funding another advanced airborne command post this year because it is not required. The program has been changed drastically since last year in that it will be less capable until the communications and electronics package is developed 2 or 3 years from now. Last year we provided funds for a test bed aircraft and two operational aircraft which is sufficient for this program at this time. The test bed aircraft was not under contract at the time we marked up this bill.

Mr. President, I asked unanimous consent to have printed in the RECORD a column by Marquis Childs from the Baltimore Sun of December 5, 1973, in which he details the folly of the airborne command post.

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

U.S. DEFENSE BUDGET COULD BE DR. STRANGELOVE'S

WASHINGTON.—Although the House Appropriations Committee has cut nearly $3 billion from the defense budget of close to $75 billion, many strange and wonderful curiosities that escape most eyes are still more or less intact.

They are part of Dr. Strangelove's world of nuclear holocaust.

Take an item of $548 million for the National Airborne Command Post. Only a part of this is in the current budget and the Appropriations Committee has pared it a bit. To the distress of the triple domes who do the computer work for the Air Force it may be spread out over three or four years. And that, they say, means a period of danger when the commander-in-chief may be unable to direct the nuclear response.

The logic of the airborne command post is as follows: While the missiles rain down and millions die in the ruined cities, a command plane, flying at 35,000 feet, directs the response through a battle staff with a highly complex communications system.

Commander-in-chief Nixon may or may not be on board the command post. It will depend on where he was when the word first came that missiles in the Soviet Union had been sent off. He might well be on his way to San Clemente, Calif., and we would in that event, through the communications system on Air Force I, give instructions to the battle staff. The President and the President alone can, by an elaborate coding system, release America's nuclear arsenal.

Once the release has been given the battle staff will determine the response. They may decide it is unneccessary to wipe out all the enemy's cities. They may even find that the missile or missiles coming over were discharged accidentally.

An airborne command post was activated in the early 1960's. One is operated out of the Strategic Air Command near Omaha, the other near Washington. On the SAC station one of seven converted 707's is constantly in the air.

There are in a sense backup posts for two land-based command stations, one in the Pentagon and one at Fort Richey. The Pentagon is judged "soft" and even the post at Fort Richey, dug into the Catoctin Mountains, could be knocked out by a direct hit. Therefore, the airborne post is essential to accumulate in a place of "survivability" all information and to relay to the surviving forces battle orders.

The Department of Defense has found that the inverted 707's are no longer adequate. The need is for 747's that will take many more modes of communication that cannot be stuffed into a 707. This includes satellite communication and possibly an outsize computer, although the computer, not yet authorized by congressional committees, would mean probably an addition $10 million.

Then the battle staff must be enlarged to man the new and infinitely more complex system. You can see readily how all this conglomeration of men and machines could not be packed into a plane smaller than the 747, which is also faster and with longer flying time.

You can see readily, too, that if the President happened to be in Washington and were whisked by helicopter from the south lawn of the White House to Andrews Air Force Base, a larger plane is essential to give him a suitable command seat.

All this adds up to seven 747's with the development of new communications equipment, a giant new hangar at Andrews and training of additional battle staff total $585 million.

In the sanity of a past long vanished this must sound like the wildest kind of science fiction. To think that, while well nigh universal ruin and death rain down, the battle staff high above it all play those consoles that will mean the death of millions or hundreds of millions on the other side of the earth.

No, it is not science fiction, but the plight to which this tragic civilization has been brought.

DEVELOPMENT AND UTILIZATION OF SOYBEANS—A FOREIGN AID PROGRAM SUCCESS

Mr. HUMPHREY. Mr. President, I recently introduced legislation to establish a Sino-American Soybean Research Institute. I am hopeful that the Institute will be the catalyst needed to bring about a substantial increase in the yields of this vital source of protein.

For the past several years, soybean research has received considerable attention throughout the world, and it is upon this excellent base that the Sino-American Institute will begin its work of increasing yields per acre. One of the best and most far-reaching efforts to date has been the soybean development activities of the Agency for International Development through its contract with the University of Illinois.

The Illinois contract has included extensive studies in the fields of agronomy, entomology, and food utilization. Its field work has been impressive; 20 field trials have been conducted in 11 countries, demonstrating the adaptability of U.S. soybean varieties to tropical and subtropical environments. The result has been a widened availability of this important source of protein to the people of developing countries of the world.

Mr. President, further work remains to be done, especially on improved yields, and I am confident that the Sino-American Institute I have proposed will help find the solution to that problem. However, we must not disregard the excellent accomplishments of AID and the University of Illinois, and I think it is important that these accomplishments be recognized and understood. This is particularly true as we consider the subject of foreign aid, for it is this type of successful activity that best characterizes the people-oriented objectives of our Foreign Assistance Act.

Mr. President, AID and the University of Illinois have published an excellent report on their soybean work, entitled "Development and Food Utilization of Soybeans." I request unanimous consent that the summary of that report be printed in the RECORD.

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

DEVELOPMENT AND FOOD UTILIZATION OF SOYBEANS

SUMMARY

Experience with the "Green Revolution" in many developing countries has shown that the combination of available technology and adaptive research can lead to significant increases in the productivity of major cereal crops. That experience is now being applied to the development and introduction of high-yielding sources of vegetable protein.

Nutritionally and agronomically, soybeans have important advantages in attempts to alleviate critical world food shortages and to improve the diets of under- and malnourished people. Whole soybeans are an excellent source of protein—both in quantity and in quality. About 40 percent of the total dry-matter content of whole soybeans is protein and the amino-acid distribution of soybean protein is close to the distribution recommended by the Food and Agriculture

Organization of the United Nations for maximum protein utilization. Whole soybeans are also high in caloric value, containing about 20 percent fat. Thus, finding ways to use whole soybeans in human diets would also help to reduce widespread caloric shortages among people in many developing nations.

Technical assistance activities under contract AID/csd–3292 reported here had the following objectives (quoted from the contract document):

A. To demonstrate the University of Illinois process for making soybeans useable in the human diet, in two or more selected countries.

B. To establish a demonstration operation in selected countries.

C. To perfect for the LDC's a series of high-protein, highly productive soybean varieties, suitable for use as human food.

D. To conduct experiments to test the adaptability of improved strains of soybeans.

E. To provide other specified technical services and consultation, related to improvement and utilization of soybeans.

Agronomy studies under contract csd–3292 were concentrated initially on developing a field-trial linkage network, primarily in tropical developing countries. One basic objective of the trial program was to assist soybean workers in tropical and substropical countries to identify and overcome major agronomic limitations to soybean production in their countries; a second major objective was to identify the best-adapted germ plasm for use in a breeding program.

The trial program had been undertaken as part of the University of Illinois Program for International Research, Improvement and Development of Soybeans (PIRIDS) before the inception of contract AID/csd–3292. When the contract period began July 1, 1971, all of the cooperative field-trial activities, except those in India under UI/USAID University-Development contracts, were absorbed into the csd–3292 program. Since the program began, trials have been conducted at 20 locations in 11 countries: Brazil, Colombia, Ecuador, Costa Rica, Sierra Leone, Nigeria, Pakistan, India, Thailand, Vietnam and Indonesia.

The results of the U. of I. trials provide concrete evidence that high-yielding U.S. soybean varieties are adapted and can achieve high levels of production in tropical and subtropical environments. In fact, the general yield level in trials conducted at all locations except those in Thailand and Indonesia far exceeded expectations. Yields in excess of 3,000 kilograms per hectare (45 bushels per acre) were obtained in several trials. While obtained in small trial plots, these results are significant because future improvement of soybean varieties and performance level can begin from a high yield base. Moreover, there is ample evidence to indicate that such plot trials are reliable indicators of potential performance.

In the majority of the trials, U.S. varieties furnished by the International Soybean Program (INTSOY were highest yielding. Davis was the most consistently high-yielding variety and was particularly high-yielding at several equatorial-zone locations. In trials in Colombia, Nigeria and Thailand, local cooperator-selected entries produced higher yields.

Experience with the field-trial program points out, however, that careful management is essential to obtain top production with most "modern" soybean varieties. Essential management practices include adequate fertility, effective inoculation, high plant population and thorough weed control. All of the U.S.-developed varieties in the uniform set of varieties grown at each location showed a marked responsiveness to plant population. Significantly higher yields were produced with plant populations of 400,000 plants per hectare than with 100,000 plants per hectare.

Yields of plots inoculated with commercially available composite inoculums were significantly higher than yields of plots where no inoculum or nitrogen were used at three of five locations where appreciable populations of *Rhizobium japonicum* (nitrogen-fixing bacteria) were not already present in the soil. The efficiency of several inoculums, as measured by their effects on yields, nodulation of plants and seed composition, was relatively consistent across locations. Applying nitrogen at the rate of 100 kilograms per hectare produced a yield comparable to that of the most effective inoculum at only one of five locations. This indicates that nitrogen fertilization is not an effective substitute for adequate inoculation.

Another important part of University of Illinois agronomic activities under contract csd-3292 was the initiation of a computerized data bank containing information on soybean germ plasm. Initially, soybean germplasm information published in USDA-ARS manuals were coded under a modified taxonomic information retrieval system (TAXIR). Each of the 3,900 items held by the USDA-ARS Regional Soybean Laboratory was rated for about 140 variables. Computer-retrieved information on soybean germ plasma is available on request to soybean researchers throughout the world. Contract csd-3292 funds supported significant portions of this program, and will enable expansion of the system in the future to cover information derived from cooperating test sites.

Work in *entomology* was undertaken because insects are important factors in soybean production, both directly and indirectly through the transmission of viral diseases. Entomological activities under contract csd-3292 were concentrated on pest management and on developing effective and economical systems of international information exchange on soybean insects.

The two major activities undertaken under the contract were the Soybean Insect Research and Information Center (SIRIC) and the International Synoptic Collection of Soybean Arthropods. These two service-oriented units complement one another and provide a worldwide information and research for workers concerned with soybean insects. No such collection of this much-needed information existed anywhere in the world before the University of Illinois services were established. Contract csd–3292 supported processing, cataloging and computerization of the information and specimens that went into the services, as well as retrieval and distribution to interested scientists throughout the world.

SIRIC developed a literature-data base of about 9,000 references on arthropods associated with soybeans. The service is fully computerized and information can be retrieved either by subject or combination of subjects.

The International Synoptic Collection of Soybean Arthropods, in March 1973, contained about 1,000 specimens, representing 140 taxonomic families of arthropods associated with soybeans. Specimens from the 21 major soybean-producing states in the United States, as well as specimens from India, Indonesia, West Pakistan, the Philippines, Malaysia, Trinidad, Jamaica, Nicaragua, Colombia, Ecuador, Argentina and Brazil are included. A major objective of the synoptic collection and associated surveys is to determine what species occur on soybeans in what countries. The data provided allows researchers to predict what pest species and related problems can be expected in areas where soybeans are newly introduced. Up to the present, scarcity of dependable data has deterred development of effective pest-management programs to control soybean insects and related diseases.

The csd–3292-supported Soybean Insect Research and Information Center (SIRIC) and the International Synoptic Collection of Soybean Arthropods, plus the activities of eight other participants of the Illinois Soybean Entomology Research Team, form the basis of an active program for developing soybean pest-management systems.

Food-utilization studies under contract/csd–3292 were first aimed at refining and perfecting the basic "Illinois process" for using cooked whole soybeans and at developing prototype foods that could be demonstrated, introduced and tested in other countries. The basic process was developed before the inception of contract csd–3292, but must be described because it is the key to further development.

Soybeans in various forms have been used as a food staple by millions in the Far East for centuries. However, whole soybeans have not been generally accepted for human use in most other countries, including many of the developing nations, because of a characteristic flavor and odor—often identified as "painty" or "beany"—that many people find objectionable. This flavor is caused by an enzyme (lipoxygenase) that is almost instantaneous in action. Once the objectionable flavor has developed, it is practically impossible to eliminate or mask it.

The work of the University of Illinois food scientists who deveolped the "Illinois process" represents a twofold contribution. First is the development of a simple, inexpensive method to treat whole soybeans and deactivate the enzyme before it can catalyze any off-flavor development. Second is the recognition that the resulting bland whole soybeans can be used as the chief ingredient in a wide variety of food products.

The basic Illinois process consists of hydrating and blanching (by boiling water or steam) whole, undamaged soybeans before any further preparation or processing is attempted. The resulting bland, whole-bean product contains nearly all of the fats and protein originally present in whole soybeans. The nutritive value of the protein is apparently not affected by the treatment. The bland product can be used directly (with appropriate seasonings) as a "boiled-bean" dish or can become the basis for a wide variety of high-protein foods.

Five groups of prototype foods were developed from the basic bland beans prepared by the Illinois process. They are: (1) "home-cooked" or canned soybeans, (2) drum-dried powders, (3) snack foods, (4) beverages, and (5) intermediate-moisture foods or "spreads." Initial development of specific products within each prototype group began before inception of contract csd–3292. However, contract funds supported development of specific new products, as well as continued refinement of existing products.

All of the food products developed are prototypes, and were developed to demonstrate that a wide variety of foods can be prepared from soybeans. Each type of product must be tested and further modified if necessary to make it more suitable for local tastes.

Preliminary demonstrations of the basic process and its variations were conducted during the first half of 1972 in Brazil, Colombia, Ecuador, Costa Rica, India, Thailand, Malaysia, Vietnam, Indonesia, the Philippines and Taiwan by University of Illinois staff members not on contract salaries, but closely involved in contract operations. These preliminary contacts led to arrangements for more formal demonstrations and presentations in Brazil and Peru during February and March 1973.

On the 1973 trip, a contract food scientist spent three weeks in Brazil and a brief period in Peru, with the following objectives:

1. To present lectures on and demonstrate where possible the U. of I. process for preparing whole soybeans for use as human food. All such presentations will emphasize simple, home or village methods.

2. To prepare, or initiate preparation of,

local recipes using soybeans in place of local beans.

3. To arrange continuing cooperation with research groups in the areas of food science and nutrition where adequate facilities and personnel are available.

Institutions and agencies visited in Brazil include: Projecto Nacional da Soja (PNS), Ministry of Agriculture, USAID, University of Brasilia, the Armed Forces Commission on Food, and Instituto Nacional de Alimentos e Nutriciao (INAN) in Brasilia; Instituto de Pesquisa e Experimentacao Agropecuaria (IPEACO) in Sete Lagaos; Instituto Agronomico de Campinas (IAC) and Instituto de Technologia de Alimentos (ITAL) in Campinas; Centro de Tecnologia Agricola e Alimentar (CTAA) in Rio de Janeiro; Instituto de Pesquisa e Experimentacao Agropecuaria de Norte-este (IPEANE) and the Institute of Nutrition in Recife; and Instituto de Pesquisa e Experimentacao Agropecuaria (IPEAGRO) in Porto Alegre.

At these institutions and agencies, the food scientist met personnel and presented seminars and demonstrations on preparing bland soybeans by the Illinois process and using the basic bland beans in other preparations, e.g., "home-cooked" beans, roasted beans, bean salad and bread. He found that interest in soybean production and development of soybeans for human consumption is high in Brazil. An extensive, five-year program aimed at increasing soybeans production was started in September 1972 (the Projecto Nacional da Soja, PNS).

As a result of the contacts made, arrangements were subsequently developed for an exchange of personnel and an on-going demonstration activity in Brazil. Initially, the work will be concentrated at ITAL (Campinas) and an INAN installation at Belo Horizonte.

On the same trip several institutions and agencies in Peru were also visited to make initial demonstrations of soybean utilization as human food. Also visited were facilities and personnel at the University of Puerto Rico in Mayaguez and Rio Piedras.

Contract objectives, as cited above, were generally met during the effective life of the contract. Some difficulties were encountered in staffing, particularly in the Food Science group and also in Agronomy. Also, the total duration of the contract period was briefer than anticipated by Contractor (July 1, 1971–March 31, 1973). As a result, objective C (in listing above) could not be attained because insufficient time was available. Specific attainments and comments follow:

Objective A. Demonstrations of food process in two or more selected countries. This objective was attained, though quite late in the contract period. Staffing difficulties in the first contract year, and complications in selecting appropriate countries and agencies, delayed major demonstration activities until early 1973. Preliminary demonstrations and preparatory contacts in Brazil, Colombia, Ecuador and Costa Rica were carried out by a non-contract staff member early in 1972. Contacts made in Brazil prepared the way for the full-scale demonstration activity conducted in 1973. Another exploratory trip (not on contract funds) was carried out by another staff member in mid-1972, with the process being demonstrated in India, Thailand, Malaysia, Vietnam, Indonesia, the Philippines, and Taiwan. Much interest was shown by local agencies in these latter countries, and tentative plans were made for a full-scale demonstration activity in Thailand, in early 1973. However, these plans were cancelled at the request of USOM/Thailand.

Objective B. Establishment of an (on-going) demonstration operation in selected countries. The necessary contacts and preparations for such an operation were made in Brazil, late in the contract period. Subsequently, arrangements were made for Illinois staff to be stationed at ITAL (Campinas) to conduct such operations. More recently, INAN (Instituto Nacional de Alimentacao e Nutricao) has requested that a demonstration operation be conducted at its Belo Horizonte location, to be led by Illinois personnel. This operation would be concerned with the use of Illinois-process soybean foods in a school-lunch program under INAN sponsorship.

Objective C. To perfect new, high-yielding soybean varieties. This objective was not achieved, because of time limitations. As is commonly known, development of new soybean varieties requires 5 to 8 years from initial selection or hybridization, even if two generations can be grown per year. Initial efforts toward meeting this objective were concentrated on determining the most suitable existing types for use in a planned breeding program. This portion of the work is described more explicitly under D below.

It was determined that several varieties from the southern U.S., notably Davis, Improved Pelican, Hardee, and Bragg, have high-yielding potential and other valuable agronomic characteristics which would make them useful as breeding parental material. In general, "locally adapted" types furnished by cooperators did not yield well, but in some cases exhibited other valuable characteristics which would indicate their usefulness as genetic source material.

Objective D. To test adaptability of improved soybean strains

As indicated above, this was the major activity undertaken in the Agronomy portion of contract activities, since it is fundamental to both further improvement and to current possibilities for adopting soybean cultivation in new areas. In all, trials were conducted at 20 locations in 11 countries, mostly in equatorial or low latitude subtropical areas. Trials included tests of varietal performance, response to Rhizobia inoculation and plant population density.

As a general conclusion, these trials clearly indicated that modern soybean varieties, chiefly from the southern United States, can give highly satisfactory yields in most equatorial and subtropical areas studied. For such high yields to be obtained it is apparent that adequate Rhizobia inoculation, satisfactory levels of P fertilization and soil reaction, and fairly dense plant populations are necessary.

These tests indicated that in most cases, further varietal improvement would be most desirable, to fit the varieties to the specific requirements of the various agroclimatic areas. As indicated above, there is good evidence that desirable characteristics are present in available germ plasm, and therefore that even higher yield levels are possible.

Objective 5. To provide other technical services and consultation, related to soybean improvement and utilization. Personal visits were paid to cooperating trial sites in South America, Africa and Southeast Asia, by program agronomists. Extensive correspondence was conducted with USAID mission personnel and research institutions in more than 40 countries, related to soybean improvement and utilization. In effect, linkage network was developed, tying together several international centers and a large number of country agencies, with the INTSOY operation as the network nexus.

Contract activities set the stage for an expanded research and technical assistance effort in soybean development, which currently (mid-1973) is being considered for Consultative Group support.

THE NEED FOR TAX REFORM

Mr. BAYH. Mr. President, as Hobart Rowan said in a column in this morning's Washington Post, President Nixon in releasing information on the amount of taxes he has paid since being in office has made "the best case yet for tax reform." During the President's first term he became a millionaire, increasing his net worth from about $300,000 to over $1 million. At the same time, in spite of his earning $200,000 per year in salary, he paid no more in taxes then the average American worker, and in two of those years he paid considerably less.

Twice this year I along with Senators MUSKIE, NELSON, and KENNEDY have attempted to strengthen the minimum tax provisions of the tax code which were supposedly designed to prohibit high income individuals from doing exactly what the President has done—pyramiding tax deductions and exemptions to escape tax liability altogether. In practice the existing minimum tax provisions have clearly proven inadequate. We will have one more opportunity this session to strengthen the law in this area, and I hope that the dramatic new evidence of this inadequacy will convince the Senate that this change is needed and desirable. I ask unanimous consent that Mr. Rowen's column be printed in the RECORD.

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

MR. NIXON'S RETURNS: A CASE FOR TAX REFORM

It wasn't part of his plan, to be sure, but President Nixon has just made the best case yet for tax reform. One doesn't need to know all of the intracacies of the tax law to understand that Mr. Nixon, during his presidency, has not paid his fair share of taxes.

In the four year period from 1969 through 1972, the President became a millionaire, tripled his original net worth of about $300,000, and despite a $200,000 annual salary, paid taxes no heavier than a man earning an average of $15,000.

As a matter of fact, in a couple of those years, the taxes Mr. Nixon paid Uncle Sam were no higher than those of a man in the $5,000 bracket.

This demonstrates the ineffectiveness of the "minimum tax" provisions of the 1969 Tax Reform Act, which should now be reviewed.

The principal device the President used to lower his taxes to a ridiculous token was a gift of his vice presidential papers to the American people, valued at $576,000. Nobody has yet figured out what the American people can do with them.

But under a law which was scrapped in mid-1969, that amount was deductible from Mr. Nixon's income. Lyndon Johnson, and other public officials and private citizens, have used the same loophole.

Mr. Nixon, although he had denied it just a few weeks earlier at a press conference with managing editors at Disney World, also took deductions of $271,000 for interest on loans, and failed to pay any capital gains on his resale of San Clemente land to Messrs. Rebozo and Abplanalp, even though his own auditors now say he made $117,370 on that deal.

There is considerable doubt that Mr. Nixon actually beat the deadline on the gift of his papers. Instead, it appears that the gift was "back-dated" to make it appear that the deadline had been met. Politicians here know that in the fall of 1969, presidential aide Bryce Harlow was lobbying on Capitol Hill for a change in the July 25 cut-off date, which suggests that Mr. Nixon knew that he would be skating on thin ice in making the claim.

But the real point, whether or not the President ultimately has to cough up a larger

tax payment, relates to a matter of ethics. Should the President have jammed through a massive deduction for a tax gimmick so outrageous that Congress had already decided to abandon it? What sort of moral leadership does that show?

The President displayed similar insensitivity on other issues, ranging from the millions requisitioned from the U.S. Treasury to assure his comfort and communications ease in San Clemente and Key Biscayne, to accepting personal financial assistance from business acquaintances.

The picture that is drawn for us by Mr. Nixon's own tax returns is that of a man willing to take huge loans from private individuals (who also repurchased land he didn't require) in order to provide him an unusually favorable deal in buying his California home.

We see a man not embarrassed by gift of a $20,000 trust fund to the daughter of the Vice President of the United States from Elmer Bobst, then head of the Warner Lambert Pharmaceutical Corp.

We see a man not embarrassed by pocketing the unspent portion of his annual $50,000 presidential expense allotment, treating it as income instead of returning it to the Treasury.

We see a man who paid no California state taxes, relying on a District of Columbia statute designed to exempt federal officials from the burden of double taxation while temporarily domiciled here.

Incidentally, if San Clemente is not Mr. Nixon's prime residence, then the President is clearly not entitled—in the opinion of the best tax lawyers in the business—to the deferral of tax on his $150,000 capital gains on the sale of his New York apartment. That deferral was allowed because, presumably, it was invested in the San Clemente residence.

Taking it all together, what we learn this week is that Mr. Nixon was willing to play the tax laws so close to the edge of technical acceptability that the question remains whether he overstepped the bounds of legality.

But there can be no question about his faulty judgment. He is guilty of the same myopia in dealing with his personal finances that helped entrap him in Watergate. The whole affair must be a disillusionment even for Nixon die-hards.

PERIL TO DEMOCRACY IN SECRET MILITARY POLICIES

Mr. HUGHES. Mr. President, I also ask unanimous consent that an article that appeared in the August 14, 1973, Des Moines Register, be printed in the RECORD.

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

HUGHES—PERIL TO DEMOCRACY IN SECRET MILITARY POLICIES

(By Harold E. Hughes)

Now we know. For more than 14 months prior to the American invasion of Cambodia—from March, 1969, through May, 1970—U.S. B52s waged a secret war over an officially neutral country, flying more than 100 raids a day (a total of over 3,600), and dropping nearly 104,000 tons of bombs on the countryside.

Congress, empowered under the Constitution to appropriate the money spent by our government, only recently learned that this secret war, plus similar secret air bombardments over supposedly neutral territory in Laos, cost the American taxpayer $1.55 billion—not including the human and dollar cost of 222 aircraft lost.

Actually, this whole planning began just two weeks after President Nixon was inaugurated on Jan. 20, 1969. An unbelievable beginning for a man who was telling the country we were respecting the neutrality of a small nation of 7 million people.

"SECRET PEACE" OR SECRET WAR?

This planning went on at the level of the National Security Council with the full authorization of the President, which has now been completely disclosed. He ordered the bombing. The targets were selected at Military Assistance Command Vietnam (MACV) at Gen. Creighton Abrams's headquarters in Saigon and sent back to the National Security Council. The President gave the authorization on all of the raids and all of the targeting.

Could it be that the "secret peace plan" of the 1968 campaign was really a plan for secret war?

To call these massive war operations—and the previously disclosed unauthorized bombings over North Vietnam conducted by forces under Lt. Gen. John D. Lavelle—"secret wars" is perhaps a bit imprecise. The enemy knew about the bombings. Cambodian, Laotian and Vietnamese people knew about the bombings. So did Soviet and Chinese officials. But the American people and their elected representatives, including members of committees with authority over the armed services, were kept in the dark.

The disclosure of the secret Cambodian air war came about when a young man of courage and principle, Maj. Hal M. Knight, a former Air Force officer, took the initiative of writing Senator William Proxmire (Dem., Wis.) to inform Congress of secret large-scale air raids in Cambodia at a time when our officially proclaimed policy was one of strict neutrality. The letter was referred to me as a member of the Armed Services Committee.

CONSCIENTIOUS SERVICEMEN

The confirmation hearing of Gen. George S. Brown as Air Force chief of staff was coming up before the committee. Because he was 7th Air Force commander during that period of 1969–70. I requested that Major Knight be called to testify.

This is how the secret Cambodian war became known to the American people and the Congress, just as a year earlier General Lavelle's private war came to light when Sgt. Lonnie D. Franks, stationed in air intelligence in Thailand, wrote to me about clandestine raids and falsified reporting of unauthorized tactical air raids over North Vietnam.

The fact that both of these disclosures came from conscientious servicemen notifying members of Congress is particularly significant in the light of recent news reports from Germany indicating that military authorities there had launched a "counter-dissidents" program against GIs who complained to news media or members of Congress. (The Uniform Code of Military Justice states that no member of the military shall interfere with the right of a military man to communicate with his congressman.)

In his testimony before the Senate Armed Services Committee, Major Knight told of being the operations officer of one of our highly specialized radar sites that guided B–52s to their targets and timed the release of their bombs.

On 20 to 24 occasions between February and May, 1970, Major Knight said, an Air Force officer flew to his radar site and delivered a sealed envelope of targeted orders for raids in Cambodia. Using these target coordinates, his radar crew guided the B–52s to their Cambodian targets.

JUST ONE EXAMPLE

Afterward, Major Knight testified, he and his men prepared poststrike reports, inserting target coordinates for sites in South Vietnam. The written reports, containing the false target coordinates, were sent by secure mail to a Strategic Air Command unit in Saigon. Major Knight then phoned the SAC unit, reported mission accomplished, and, in accordance with orders, burned all of the computer tapes and records that contained the true information about the targets hit by B–52s.

As we now know, this procedure was just one example of falsification of official records that became so routine and pervasive in U.S. combat air operations in Southeast Asia that few dared to question orders from their superiors to falsify yet another report.

Meanwhile, from the highest levels of government and the military—where the order for secret warfare emanated—falsified official reports of these Cambodian bombing operations were passed to the Armed Services Committee.

Recently the Pentagon expressed regret over the falsification of reports. Regret is hardly enough.

When secrecy, deception and falsification of official reports become a way of life in our country's military operations, it scares the hell out of me. It should have the same effect on every other concerned American citizen.

This gets at the heart of our military command and control systems and the constitutional implementation of our national purpose. Unnecessary secrecy and pervasive falsification of official reports is not the way to national security. It is the way to insecurity for our most precious rights.

NATIONAL SECURITY

This is a subject that cuts across political administrations, party lines and positions of personal bias relating to our national security. It raises profound questions concerning the future of our country and its civilian, democratic rule as set forth in the Constitution. In this, whatever our other differences of opinion, we share common concerns.

If the military and/or its civilian command obscures this clear vision of the Congress and the public, we encounter the danger of private or secret policies that are subversive of the constitutional processes.

There is the ever-present danger, when high government operations are conducted in secrecy, of confusing the nation's national security with a particular administration's political security.

Since coming to the Senate, I have consistently pressed for maximum disclosure of facts about the Indochina theater, consistent with the safety of our troops in the field and the security of delicate diplomatic negotiations. This is out of conviction that, if we are to pursue peace or prosecute war, the people and the Congress must have a clear vision of the nation's direction.

OATH TO SUPPORT CONSTITUTION

Whether in military uniform or civilian garb, no group within our society, however well-intentioned, can be permitted to make the momentous decision to wage secret warfare while officially deceiving the Congress and the public. This, as history abundantly confirms, is the way free nations under civilian governance eventually forfeit their freedom.

Major Knight summed it up best in answering a question that implied some doubt of his loyalty to his service and superiors for making his courageous disclosures.

"I didn't take an oath to support the military," he said. "I took an oath to support the Constitution."

ANNOUNCEMENT OF POSITION ON VOTES

Mr. STEVENSON. Mr. President, I was necessarily absent from the Senate on November 26 and December 6, and thereby missed four rollcall votes. Although I did position myself on these four votes on the respective days the votes were held for the permanent RECORD, my positions were not recorded in the CONGRESSIONAL RECORD for those days. In order to clarify this situation, therefore, I

would like to reiterate my position on those votes.

On November 26, on the vote ratifying I would have voted "yea".

On November 26, on the vote ratifying Executive Q, a protocol to the Civil Aviation Convention International, had I been present and voting, I would have voted "yea".

On December 6, on the Bellmon amendment No. 771 to S. 1283, had I been present and voting, I would have voted "nay".

On December 6, on the Bellmon amendment No. 772 to S. 1283, had I been present and voting, I would have voted "nay".

TOWARD PEACE IN THE MIDDLE EAST

Mr. ABOUREZK. Mr. President, last month the National Conference of Catholic Bishops passed a resolution entitled "Toward Peace in the Middle East." The resolution imparts a judicious analysis of the contemporary political situation in the Middle East. It maintains that recognition of the right of Israel to exist as a sovereign state with secure boundaries is not the sole prerequisite of a comprehensive political situation in the Middle East. Recognition of the rights of the Palestinian people, including their right to participate in any negotiations, "acceptance of their right to a state and compensation for past losses to be paid not only by Israel but also by other members of the international community responsible for the 1948 partition plan" are also called for. And the resolution recognizes that any lasting political settlement in the Middle East must be based on the "stipulations set forth in the United Nations Security Council Resolution 242 of November 22, 1967."

I could not agree more that these elements are essential to peace in the Middle East. Israel's security is not incompatible with the rights of the Palestinian people, nor the rights of the Arab States to have lands returned to them which were taken in war. To the contrary, Israel's long-term security, and the interests of peace in the Middle East depend on a settlement which is based on the return of Arab lands and the recognition of Palestinian rights.

I ask unanimous consent that the resolution of the National Conference of Catholic Bishops "Toward Peace in the Middle East" be printed in the RECORD.

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

TOWARD PEACE IN THE MIDDLE EAST

The conflict in the Middle East is a complex fusion of political, military, economic and religious factors. As bishops of the Catholic Church in the United States, we speak to the issue as pastors concerned for the parties immediately involved, seeking to offer guidance to American Catholics on the issue, and eager to do what we can, even from this distance, to contribute to a just, peaceful and lasting resolution of this painful tragedy.

Faced with a problem which has frustrated the efforts of statemen for years, we offer our reflections with no pretensions of formulating a definitive solution. We seek instead to highlight factors which we believe point the way toward reconciliation, peace and justice in the Middle East. The problem must be viewed at a global and a regional level.

First, we are impelled to observe the grave dangers of this conflict. Because of the strategic significance of this area of the world and the relationships of major nuclear powers to the parties involved, this conflict contains the potential of wider war, even of nuclear war. Such a war must be avoided at all costs. We believe that we voice the sentiments of people everywhere when we recall Pope John's words that in such a situation, "it is hardly possible to imagine that in the atomic era war could be used as instrument of justice." (Peace on Earth, n. 127)

Second, the roots of the conflict reside in the region, these causes must be removed if the Middle East is to have peace and the world is to be secure from a greater war. The history of this region is one of claims and counterclaims which may never be perfectly adjudicated. We hope that the parties can transcend this troubled and complex past and move toward a new beginning for all the peoples of the Middle East. We believe all parties possess certain just claims, probably none of which can be perfectly fulfilled, all of which can be partially realized.

Rather than rehearse the past, we would point to the significance of the present moment: A convergence of international and regional forces has produced the situation in which all parties appear ready to make some concessions, to test alternatives and to take steps which offer hope for a reasonable settlement.

The road to such a settlement is still long, dangerous and complex; we have no illusion about the difficulties of the task ahead for all concerned. Yet we find in the history of the region and in previous attempts at a peaceful solution certain factors which we believe are essential to future progress. We wish to call attention to these elements in this resolution, making the following plea to the parties concerned.

We call for a comprehensive political solution involving the following:

1. Recognition of the right of Israel to exist as a sovereign state with secure boundaries;

2. Recognition of the rights of the Palestinian Arabs especially the refugees: this involves, in our view, inclusion of them as partners in any negotiations, acceptance of their right to a state and compensation for past losses to be paid not only by Israel but also by other members of the international community responsible for the 1948 partition plan;

3. Acceptance as the basis for negotiations by all parties to the conflict of the stipulations set forth in the United Nations Security Council Resolution 242 of 22 November 1967;

4. Recognition of the need for continued restraint and continuing responsible diplomatic involvement by the Soviet Union and the United States; we believe this can be most effectively achieved if superpower actions are mutually coordinated with U.N. activities in the region;

5. Continuing reliance on the United Nations diplomatically and through its peacekeeping machinery;

6. Given recognition of the unique status of the city of Jerusalem and its religious significance which transcends the interests of any one tradition, we believe it necessary to insure access to the city through a form of international guarantee. Moreover, the character of the city as a religiously pluralist community, with equal protection of the religious and civil rights of all citizens must be guaranteed in the name of justice.

In proposing these reflections we seek to fulfill our ministry of justice and peace. We ask men and women of good will to consider them in the spirit in which they are offered, as a contribution to reconciliation in the Middle East and peace in the world. We pray that the Prince of Peace will bless our efforts and those peoples and governments who labor as peacemakers.

THE STRUCTURE OF THE QUESTION

I wish to establish at the outset the limits of my remarks this afternoon. These limits are set by the purpose of this presentation. It is not designed to be either historical or programmatic but analytical. That is to say, I do not propose to review all the pertinent data about the Middle East conflict, nor do I propose to offer a full blown policy statement. Rather my purpose is to set forth the structure of the Middle East problem as it is presented to this religious body. The goal of this presentation is simply to set a framework or background in terms of which the proposed resolution can be discussed today.

The structure of the Middle East conflict is best indicated by distinguishing the levels of the question. There are three levels of the question pertinent to our deliberations. First, there is the superpower or strategic problem involving the United States and the Soviet Union. Second there is the regional level of the problem, involving Israel, the major Arab states, especially Egypt and Syria, and the special case presented by the Palestinians. Third, there is the ecumenical problem, involving the ties of the Roman Catholic community to Christians in the Middle East and to the Jewish community in the United States and abroad.

The proposition being argued here is that the whole issue is often seen by religious organizations only from the level of the ecumenical problem. This not only restricts our vision of the nature of the problem, it also limits the possibility of what we can say to the problem. My remarks will be devoted to elaborating the content of the three levels of the problem and analyzing the relationship among them.

I. The superpower problem: US and USSR

The essence of the superpower problem in the Middle East is constituted by the strategic significance of this area of the globe and the intense involvement of the US and USSR in the Middle East dispute. This fact must be viewed as a primary characteristic of the dispute because it reflects the basic moral and political characteristic of international politics since World War II: everything is acted out under the nuclear cloud. The Middle East continues to be intimately connected to the nuclear equation. As we deal with the problem, whether as churchmen, statesmen or citizens, none of us can forget this basic reality.

To indicate the nature and extent of the superpower involvement in the Middle East would require a full scale seminar. Perhaps the dimensions of the problem can be grasped if we understand that the political strategic structure of the Middle East today is often compared to the structure of the political problem in Europe which produced World War I. The essence of that configuration is an intense regional conflict with the local parties linked to outside major powers in such a manner that the local conflict can create a whirlpool effect which draws the major actors unexpectedly and even unwillingly into the fray. The Middle East, like central Europe, is one of the few places in the globe where this possibility still exists. In these strategically critical areas a direct line can be drawn from the local conflict to what is perceived by the superpowers as their vital interests. For most places in the globe, local conflict is contained—even if violent—by tacit agreement of the superpowers: it is not worth the risk of confrontation. The

Middle East remains one of those areas of the world where the superpowers still exist in a precarious relationship. The recent crisis has demonstrated a certain stabilization of the relationship under the influence of detente diplomacy. However, to underestimate the continuing danger would be irresponsible morally and politically. Conversely, it would be irresponsible to cencentrate only on the superpower problem since the roots of the conflict lie in the region.

II. The regional problem: Arabs, Israelis, Palestinians

The essence of the regional problem involves the conflicting claims of the Arabs, Israelis and Palestinians to territory and sovereignty. The regional problem is the heart of the issue yet it cannot be seen in isolation from the superpower problem. The uniqueness of the Middle East lies not only in the complexity of its substance but also in the scope of its implications: a mistake in the Middle East could involve the destiny of all of us. We all have a stake in a just and peaceful settlement.

To attempt a complete factual description of the regional problem would be futile because of the limits of time and the complexity of the data. I would rather call attention to the moral structure of the problem which should be of special concern to this body. In moral or ethical terms, the political problem in the Middle East can be defined as a case of conflicting justice claims. By this I mean that each party to the conflict sees its position rooted in a clear objective claim to justice which it expects the rest of the international community to recognize.

Each party believes the goals it pursues are objectives due to them in justice. This conveys a particular intensity to the problem and a certain rigidity on the part of all actors in the conflict.

Israel, for example, grounds its justice claims to statehood in at least three elements: a) theological and historical claims relating to their presence in the area and the special religious significance of the land; b) claims derived from the fact of continuous persecution culminating in The Holocaust which made it clear to Jews that a homeland is necessary for survival; c) the U.N. partition and Jewish development of the area since 1948.

The Arab peoples counter these claims with their own arguments for a right to possess the land of Palestine. The Arabs dispute the theological and historical argument, indicating that it is they who have been continuously present in the area for more than 1300 years. Moreover, they have never agreed with the idea that the right of Jews to a homeland should override their rights to self-determination, promised to them after World War I. Finally, the Arabs make the point clearly that they believe it supremely unjust for the Western nations to solve their conscience problems of anti-Semitism through the forfeiture of Arab lands.

My purpose here is not to evaluate these arguments but simply to indicate the nature of the problem they pose. The moral issue underlying the political problem in the Middle East is a conflict of justice claims no less intricate nor less difficult to solve than the classical "hard case" of Catholic moral theology when a fetus' life directly threatens the life of the mother. A solution guaranteeing total justice to all parties in this political case seems beyond the reach of mortal men.

Short of this, the regional problem is reduced to the question of how to adjudicate conflicting justice claims and thereby build a viable political solution upon a foundation which approximates what each party believes to be right in the area.

III. The ecumenical problem: Catholics and Jews

As complex as the global and regional issues are, they do not exhaust the nature of the problem presently before us. When the Middle East is under consideration, we have not only a foreign policy issue but also a religious issue. This added element distinguishes our considerations of the problem from other bodies of a purely political nature. Our ties to the parties of the conflict are more than political.

What is the nature of these ties? There are three distinct "ecumentical" relationships which bear upon our consideration of the Middle East: first, our ties with Christians in the Middle East as members of the household of the faith; second, our ties with the Jewish community to whom we are committed not only in fellowship and friendship but religiously linked as Vatican II declared; third, as we consider our response to this issue, we need to be aware of Vatican policy in the Middle East.

All of these relationships lay claims upon us; we are responsible to each of the parties I have listed. These multiple relationships constitute the ecumenical problem: it concerns how we link these particular ties to the larger elements of the foreign policy problem.

My principal concern in this presentation is to stress that as intense and important as our ecumenical ties are, they do not exhaust our responsibility for the Middle East. Hence, they should not exhaust our vision of the problem. The Middle East has progressively escalated since 1948 into a problem which touches the global community since it threatens it as few other places can threaten it. Consequently, the Church should speak to the ecumenical issues in the light of the issues of justice and peace which concern all peoples.

Too often statements from religious bodies ignore or do not deal specifically with these larger issues. The concern for the third level or ecumenical problem overshadows other elements for which we are also responsible.

I would argue that these three levels, superpower, regional and ecumenical constitute the structure of the question in the Middle East as it is presented to us. Thus far I have tried to articulate the elements involved on each level. In the concluding section of this presentation I shall try to analyze the relationships among the elements of the total problem.

IV. The superpower and regional levels

Often superpower involvement in a local conflict simply complicates and intensifies the struggle as our presence did in Vietnam. In the Middle East, however, the superpowers play an irreplaceable role. While their presence is far from totally beneficial, they can exert a kind of influence of which no other parties are capable.

The key question of the superpower/regional relationship is how to establish a framework which enhances their constructive role while containing their destructive potential. A shorthand formula for accomplishing this involves a process of *insulating* the superpowers from the conflict without *isolating* them from it. On the one hand, the superpowers must be insulated from the conflict in order to avoid having them drawn directly into the conflict thereby escalating into global proportions.

On the other hand, the superpowers should not be isolated from the conflict because they can play a unique role by restraining the local actors at critical moments and, perhaps at times, adding an incentive at key points to the negotiating postures of the various parties. If the superpowers are isolated from the conflict they cannot exert any influence on the course of events, yet if something blows up they will not stay isolated because of the crucial strategic significance of this part of the world.

The means of carrying out this proposal of insulating the superpowers without isolating them is not a topic on which there is broad agreement. Speaking in the most general terms one can say that the desirable situation is one in which some form of a buffer is inserted between the superpowers and the regional actors. Although it is not the only party capable of fulfilling this role, the United Nations seems best suited to act in this intermediary capacity through its diplomatic and peacekeeping mechanisms.

If some form of buffer is present between the superpower and regional actors, then superpower influence is to some degree filtered through the international agency. Obviously, the big powers can and do exert influence directly on the parties as we have seen in recent weeks. However, the existence of a third force is important diplomatically and even more important in fulfilling any peacekeeping or policing activity. To have such a third force directly involved in the area is qualitatively different from having a superpower presence fulfilling the same function. The third force keeps the superpowers one step removed militarily from the conflict—it is certainly a fragile barrier, but it may provide a critical margin of difference in the area.

V. The regional actors

In understanding the relationship of the regional actors in the Middle East, the perspective we take is crucially important. The region has a complex and conflicting history; it is probably impossible to right all past wrongs or to fulfill all present expectations. Yet, I offer you the proposition that the present moment in the Middle East offers some possibilities previously unavailable.

A combination of systemic forces and regional elements, stretching from the complex strategic process known as detente through the clear and concrete economic issues of oil to the psychological need of the regional parties for peace, has produced an apparent willingness among all the actors to go somewhat beyond previously held positions in search of a reasonable settlement.

I would argue that it is important to highlight this convergence of forces and the possibilities it offers. Nothing in the Middle East is either simple or clear or devoid of danger. Yet the situation is different; the question is what needs to be done to understand this opportune moment. Several factors stand out for consideration.

First, there is a need to see that all relevant parties to the problem are included in our definition of the problem. This is a question of justice with immense political significance. In a situation of conflicting justice claims, while a settlement of perfect justice is usually impossible, any settlement which leaves one party with the view that its claims have been totally denied makes that party ipso facto a revisionist element: its future goal is to overthrow the settlement.

This latter principle has special application to the Palestinians in the Middle East, as the Palestinians have special relevance for our view of the problem. The Palestinians, because of their status, is the party which has the least chance of being counted as an independent element in any Middle East settlement. Yet, it could be argued that no other party to the conflict has suffered more over the past 25 years. It is both politically sound and morally necessary that the Palestinians be accepted as an independent participant in any negotiations on the Middle East problem. They should not be simply a dependent variable in the political equation, a party whose future is totally determined by other actors. I think the Church should stand for this form of independent presence for the Palestinians because here as is in other areas of international life the weakest party becomes the forgotten party. Part of the Church's role in international affairs is to raise the forgotten factors to the level of conscious consideration, politically and ethically.

The second important element in our understanding of the present moment in the Middle East is the need to catalogue the factors of conflict, those elements which are

of primary concern to each party. In synthetic form, those elements are the following:

1. For Israel it is the question of an acknowledgement of her right to existence and the reinforcement of that right through the establishment of secure boundaries.

2. For the Arab states the question of what one means by secure boundaries is critical; they are not prepared to grant Israel land conquered in 1967 and since then.

3. For Palestinian Arabs the basic question is their right to a homeland and compensation for past losses.

4. Finally, for three of the major religious communities of the world the question of Jerusalem holds a special significance. The Vatican itself has been constantly concerned about specific issues relating to Jerusalem; these issues include international protection for the Holy Places, the future of Arab Christians in Jerusalem (and elsewhere in the area) and the special status which the city of Jerusalem itself has for our faith.

5. Finally, all the regional actors would distinguish between the big powers influencing a solution and imposing a solution. The first is inevitable, the second unacceptable.

These factors do not exhaustively describe the regional problem but they highlight, I believe, the central concerns of each party.

VI. The relationship of the political and the ecumenical problems

The total problem before us as a body is how we relate the complex political problem I have schematically and inadequately outlined thus far to the ecumenical ties we have on the ecumenical level of the problem. The purpose of my remarks this afternoon has been to say that we ought to view the ecumenical problem in light of the larger political problem.

If we speak to the total problem adequately, I think we will find this the best way to respond not only to our ecumenical relationships but also to the larger responsibilities we bear toward the total human community.

AIR FORCE ENDANGERS LAST REMAINING WHOOPING CRANES

Mr. PROXMIRE. Mr. President, an article in the Texas newspaper Express & News of December 9, 1973, has highlighted the danger posed to the 43 last remaining wild whooping cranes by increased Air Force bombing practice on Matagorda Island off Corpus Christi, Tex.

It has been reported that Interior Secretary Rogers Morton has protested this bombing to the Secretary of Defense, James Schlessinger. As of yet there has been no reply from the Secretary of Defense.

The situation seems critical. First and foremost is the question of the survival of the endangered whooping crane population. At least four pair of these rare birds have been seen directly on the bombing range itself. An Air Force officer had the presence of mind to comment:

Apparently we're not interfering with them or else we're off target.

Last year there were 51 whooping cranes but this year the number has gone down to 43. Some of this attrition may be due to the bombing near the nesting site or the hunting allowed by the Air Force on the island for high ranking officers and guest civilians.

According to a recent newspaper report on this issue, the Air Force has admitted to allowing 68 generals and 30 high ranking civilians to hunt there the past several years plus many others of lower ranks. The Air Force has established a distinguished visitors quarters, 1,255 quail shelters, 38 turkey roosts, and facilities for cleaning, storing, and freezing of game.

It may be the most exclusive hunting resort in the world—especially when the whooping cranes are considered.

Just how exclusive is indicated by the experiences of the president of a south Texas bank who went out to Matagorda Island to fish in an unrestricted area. While just beginning to rig up, the bank president and his companion were repeatedly buzzed by an Air Force plane which turned a spotlight on them and wagged its wings to chase them off. The bank president was later informed by the Air Force that this was an annual occurrence that preceded the opening of duck season so that the "big brass" could have exclusive hunting privileges. I understand he has protested directly to the Department of Defense.

Mr. President, the Air Force should be called upon to explain these unusual practices. Can they not find another target range, especially since they claim they are not using live ordinance? Why is the island equipped with extensive provisions for hunting and fishing if it is primarily a bombing range? How many men are assigned to help VIP's have a pleasurable hunting trip? What are the names of the generals and civilians visiting the island the past 3 years? Do helicopters or other aircraft overfly the nesting area? How is hunting controlled so that the whooping cranes are neither disturbed or shot? Have environmental impact statements been filed with regard to this bombing range?

I hope the Defense Department moves expeditiously to meet this situation and answer these questions.

Mr. President, I ask unanimous consent that two articles from the Sunday Express & News be printed in the RECORD.

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

GREAT BIRDS BATTLE THE ODDS IN FIGHT AGAINST EXTINCTION

WASHINGTON.—The whooping crane is one of the most spectacular of North America's native birds.

Adults stand five feet tall and have a crimson crown and pure white, black-tipped wings that spread almost seven feet. Its legs are long and thin and the toes are webless.

A hundred years ago the whooping cranes ranged widely over much of North America, from the Arctic to central Mexico.

As man moved across the continent the habitat and the numbers of whooping cranes diminished. There are less than 80 left in the world, 21 of them in captivity and the remainder in the wild.

The birds were killed for their feathers, even after they came under the protection of the Migratory Bird Convention in 1916.

Less than two dozen whoopers existed by the 1930s. The Aransas Wildlife National Refuge was established in 1937 and it soon became the winter home of the cranes.

The first actual count was made during 1939–40. Sixteen older birds and six young had wintered there.

SOME CHICKS

Usually a few chicks hatched in the summer in Canada are spotted when the flock arrives for the winter at the Aransas refuge.

From their nesting region of the Great Slave Lake in Canada they fly 2,600 miles each Fall, across the Dakotas, Nebraska, Kansas, Oklahoma and Texas.

Their autumn flight coincides with the duck and goose season, making their flight more perilous.

Those who have studied the whoopers in detail say they mate for life and are very protective parents. They feed and guard their young for about 10 months after hatching. They keep the young birds between them when flying.

The young cranes grow rapidly and are ready for flight after about three months. They make practice flights before taking the long trip south to the Aransas refuge.

While at the refuge the cranes feed on animal and plant life including acorns, planted vegetables and grain, blue crabs, small fishes, shrimp, worms and frogs.

Of the 21 in captivity, 17 are at the Patuxent Wildlife Research Center in Maryland and the other four in zoos in San Antonio and New Orleans.

The wild cranes live as family units. Each establishes a region of several hundred acres and guards it aggressively against intrusion by other whoopers. They show little aggression against wading birds and waterfowl which also share the habitat at Aransas.

The count varies each year, ranging during the last decade between 32 and 57—the highest count ever made, which was in 1970. Both the U.S. and Canadian wildlife services share in the responsibility for management of the cranes whose survival still is fragile.

MILITARY "PLAYGROUND" ENDANGERS WHOOPERS

(By Jim Wood)

WASHINGTON.—The American pull-out from Vietnam may spell new danger for the threatened whooping cranes.

That new danger also is spotlighting a hunting-recreation "playground" for military brass.

Focal point of the danger is Matagorda Island. And putting the island "on target" before the public is the nearby Air Force bombing range.

Worry about stepped up bomb practice runs sent a Department of the Interior observer to the island.

VIP HIDEOUT

That visit resulted in a report the island is more of a playground for military brass and VIPs who go there to hunt and fish.

The study found the island is replete with hunting and fishing gear, transportation vehicles and quail and turkey blinds.

Concern over the whoopers has prompted Interior Secretary Rogers Morton to ask the Department of Defense to reassess its need for the practice bombing range.

Whoopers began to move onto the marshes of Matagorda after the Air Force cut back bombing in recent years due to the war in Vietnam.

BIRDS CITED

Morton, coming down strong for the whoopers, requested the reassessment in a letter to Defense Secretary James Schlesinger, it was learned.

The situation also raises the question of whether use of the island for recreation is prudent in view of the energy crisis. Transportation to and from the island plus driving up and down it burns fuel.

NO RESPONSE

Defense hasn't yet responded to Morton. But the Air Force reassessment is likely to oppose any. A study by the Air Force last April found the island essential to the de-

fense effort. Some 125 Air Force personnel are stationed on the island.

Interior wants the island for expansion of the refuge. If it can't have the island it would at least like bombing halted during the winter. It also would like restrictions placed on hunting on and around the island.

Concern of biologists of the Bureau of Sports Fisheries and Wildlife and the National Audubon Society prompted Morton's request for a reassessment.

Also concerned is Nathaniel Reed, assistant secretary for Fish and Wildlife and Parks.

He dispatched special assistant Andrew Sansom to the island for a first-hand look and report. Sansom's findings prompted Morton's letter.

FINDINGS

Some of Sansom's findings and observations, provided in response to a reporter's query, are:

High and low altitude bombing by B–52s and F–111s will increase rapidly since the American war in Vietnam has ended. Missions are expected to increase four fold—to 4,000 a year.

Practice bombs weighing 250 pounds and general purpose bombs up to 1,000 pounds are used. In addition, experimental practice aerial gunnery, dive bombing and rocket firms are occurring.

The Army helicopter depot at Corpus Christi uses the range for practice firing—from the air and from the ground. The Huey Cobra choppers were flying across the refuge marshes, disturbing the whoopers habitat. Up to 450 sorties are flown annually.

Hunting by military personnel and civilians is increasing on and around Matagorda. Accidental killing of a whooping crane by hunters is possible. Hunting is poorly regulated.

Range activities if allowed to continue will pose a serious threat to the flock, which is migrating onto the marshes of Matagorda. An accident involving the whoopers is bound to occur. Past mortality may have resulted from range activity.

Matagorda Island is a prime recreation area for military personnel. Facilities include deluxe quarters for distinguished visitors. The facilities include a motor pool of 50 vehicles to transport hunters to quail, deer and turkey blinds; electric-powered facilities for cleaning fish, waterfowl and deer; an array of hunting and fishing gear. There are airmen available to serve as guides and quail flushers.

CLASSES

A recent visitor to the island found himself in a class on the art of fish cleaning. A few slashes with an electric-powered knife and you have a nice redfish filet.

The April report by the Air Force told of restoration efforts. It bragged that 1,245 quail and 38 turkey shelters were rehabilitated.

A Texas Senate Interim Committee on Parks and Recreation touched earlier on the recreational aspects of the island. "The question here is a straight forward one. Is Matagorda Island going to be the people's resource or the military officers plaything?"

(That same report described the island as having a "pleasant country club atmosphere . . . and a well-liquored old barracks.")

The Senate report was later incorporated into the current recreation and outdoor plan of the Texas Parks and Wildlife Dept. Acquisition of Matagorda Island is listed as a priority project.

The plan envisions a causeway from the mainland to the island. Interior would be opposed to this because it would invite intensive public use and vehicular traffic. These are not compatible with a refuge.

NEW CONCERN

Concern over the plight of the whopping cranes increased only last week when Refuge Manager E. F. Johnson advised Interior that only 43 whoopers have been counted this year. Johnson doesn't expect any more migration this year. This makes the bird count down eight from last year. It is the lowest level since 1966.

Also, some of the whoopers have moved onto the marshes of Matagorda, possibly due to the reduction in practice bombing over the past several years.

OFF TARGET

And only two weeks ago four pairs of whoopers were spotted on one of the bombing ranges, according to Johnson.

(An Air Force spokesman commented: "Apparently we're not interfering with them or else we're off target." Actually, the Air Force has an accuracy rate of 98 per cent.).

Matagorda is a slender 51-mile long barrier island of about 51,000 acres. It is owned in about equal amounts by the federal and state governments and Toddie L. Wynne. The Air Force occupies the island through leases.

LONG GOAL

Acquisition of the publicly owned lands for expansion of the refuge is the long-range goal of Interior. In the meantime, Sansom's study recommends that:

Helicopter gunship activity and low-level bombing be halted during the winter.

All areas southwest of the main bombing range be closed to hunting. Agreements should be made to control hunting in critical areas on St. Joe, Matagorda and Lamar Peninsula, which is also nearby.

Environmental impact statements should be required on any increases and changes in weapons training.

LOTS OF "BRASS"

WASHINGTON.—The president of a South Texas bank supports the view that the Air Force base at Matagorda Island is used mainly as a hunting and fishing area for "big brass."

In fact, he has told friends he and a companion were buzzed eight times by an Air Force plane as they attempted to set out fishing lines in Pringle Lake near Matagorda.

This is not in the restricted area. But Roy Selby, president of Citizens State Bank in Ganado, complained in early November a plane made eight passes over them. He said the plane wagged its wings and turned a spotlight on him and his companion.

ANNUAL RITE

Fearful, they left.

Selby said he conducted an investigation and was informed this is an annual occurrence that precedes the opening; of duck season so that the "big brass" can have exclusive hunting privileges.

In view of the energy crunch, he considers such use of fuel as wasteful.

Word of Selby's experience has reached Washington. It is understood he has filed a formal letter of complaint.

SHORTAGE OF PLASTICS RAW MATERIALS—THE IMPACT IN RHODE ISLAND

Mr. PELL. Mr. President, for several months now, I have been receiving correspondence from a number of Rhode Island firms unable to obtain sufficient quantities of various plastic raw materials from petrochemical suppliers. Most of the firms indicate they will have to cutback operations or close for periods of time until their stocks are replenished. As of today, these shortages are affecting several dozen firms in the State, employing more than 4,000 individuals.

These firms recognize the inability of their suppliers to meet the demand for plastic raw materials due to shortages of petrochemical feedstocks. However, they raise questions over the export of available plastics as well as the continuation of domestic price controls for these products which they argue only leads to increased export of the already scarce materials.

I have examined statistics from the Commerce Department covering the export of plastics materials for 1972 and 1973, and there is a significant increase in the trade of these critical items. The dollar value for all plastics exports amounted to $506 million in 1972 and that figure jumped to $710 million in 1973. These figures include the export of a number of the critical plastics raw materials Rhode Island firms desperately need.

Mr. President, I have written to Secretary Dent regarding the concern of these Rhode Island firms urging a careful examination of this situation and that appropriate action be taken under the Export Administration Act to insure an adequate supply of these critically needed raw materials for domestic use. I want to call this serious situation to my colleagues' attention, many of whom may be faced with a similar problem, and again urge Secretary Dent to give most serious attention to this matter.

There are over 30,000 employees in the plastics field in Rhode Island, and unemployment among these workers in a State already severely affected economically by several military base closings, would be an even more serious setback to the economy of my State.

NEW IDEAS IN FEDERAL HOUSING

Mr. CRANSTON. Mr. President, can you imagine buying a house for $2? It is possible in Wilmington, Del., where they are experimenting with a program to encourage "urban homesteading."

What is more, the Senate Banking and Urban Affairs Subcommittee on Housing, of which I am a member, is considering urban homesteading provisions I have cosponsored that would apply to the whole country through the omnibus housing bill. The idea is to get families to move back into houses that have been abandoned because the previous owners defaulted on an FHA mortgage. The U.S. Department of Housing and Urban Development has ended up owning tens of thousands of abandoned city dwellings.

Under urban homesteading, new owners who agree to live in the house for a period of time and bring it up to local housing codes could purchase the house for a nominal fee—the average has been a couple of dollars in Wilmington.

This is the kind of imaginative thinking that will someday conquer the taint of slums and inadequate shelter for low income Americans.

You might think it a safe bet to buy a house from the Federal Government. But you cannot be sure.

A Washington, D.C., mother of five recently told a Senate subcommittee that her housing troubles had just begun when she bought a small frame house from the

U.S. Department of Housing and Urban Development. First there was no water and no gas. The stove could not be connected because the carpenters did not allow enough space between cabinets. When the gas was finally hooked up a major gas leak was discovered in the boy's room. Other defects included a broken furnace that took 3 weeks to fix, a basement that flooded up to 18 inches when it rained, windows and doors that wouldn't close, and evidence of rats.

Only later did she find out the house had been condemned by District of Columbia inspectors for more than a year. By then sewage had begun to back up into the house.

I introduced legislation in the last session of Congress with Senator ADLAI STEVENSON III, Democrat, of Illinois, that would compensate the buyer of an FHA mortgaged home if substantial defects are found after the sale. It passed the Senate, but was dropped in a joint Senate-House conference. It is now being considered as part of the Omnibus Housing Bill. If it is accepted by both Senate and House committees, and becomes law as I expect. It will make the Government stand behind the older homes sold with a Federal mortgage.

After all, if you can't trust the Government, who can you trust?

There are other important bills on the front burner. I have introduced new legislation with Senator ROBERT TAFT, Republican of Ohio, to provide low-interest, long-term Federal loans for rehabilitating deteriorated, but basically sound, inner city housing. The bill would also encourage landlords to refinance FHA mortgages for the purposes of making necessary repairs.

But the best houses are not enough if neighborhoods and local communities are themselves declining. The Senate Banking and Urban Affairs Committee is spending most of its time these days working on the Community Development Act of 1973. The bill combines former Federal programs such as urban renewal, neighborhood development, Model Cities, open space, neighborhood facilities, water and sewer grants and pubilc facilities under a single funding umbrella. Grants for these programs would be made on the basis of greatest local need.

Unlike the Nixon administration's Better Communities Act, the Senate bill is specifically aimed at improving the living conditions, economic opportunities and neighborhoods of low- and moderate-income families.

Obviously, the pace toward providing every American with decent shelter has slackened in recent years. Just as the administration has backed away from other Great Society programs, it seems to have also abandoned the commitment to good housing and health neighborhoods for all Americans. You can see the results all about California. All you have to do is drive through the low income sections of Los Angeles, San Francisco, Oakland, San Diego, Sacramento and many smaller cities to see miles and miles of decrepit housing.

The steps I have outlined here are aimed at reinvigorating the promise of good housing. Along with food, housing is essential for human life. Our system is productive and inventive enough to provide both of these necessities.

THE ECONOMY

Mr. McGOVERN. Mr. President, Robert Lekachman, the distinguished professor of economics at Herbert H. Lehman College of the City University of N.Y., has written a thoughtful critique of the Nixon administration's handling of the Nation's economy. The article entitled: "Who's running this thing?—Nixonomics," appears in the December 2, 1973, issue of the New York Times Magazine.

Professor Lekachman contends that—

The chances of a 1974 recession are manifestly larger because the White House is seen to have lost its grip on the Nation's economy.

I ask unanimous consent that Professor Lekachman's article be printed in the RECORD.

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

WHO'S RUNNING THIS THING?—NIXONOMICS

(By Robert Lekachman)

How does a nice country like the United States get itself into such a dreadful economic mess?

A part of the answer is predictably located in the political crisis of the Presidency. The stock market, which in November experienced its worst single week in many years, testified to an erosion of general confidence in the capacity of Richard Nixon to manage the economy. As Harvard professor and former Council of Economic Advisers member Otto Eckstein gloomily noted, "The instability at the center of national power poses a major risk to the 1974 economy. The United States is not accustomed to doubts about the durability and continuity of national authority, but other countries such as Italy have demonstrated over and over again that the economy is affected adversely."

Mess is certainly the word. Mercifully, food prices have recently dropped, but even Administration spokesmen concede that soon they will resume their rise and, with them, the cost of living in general. It is a signal of things to come, that holiday turkeys are selling 90 cents a pound. Last year, the price was a mere 39 cents. December and January threaten New Yorkers with 15 per cent higher telephone bills, 3 or 4 cents tacked onto each quart of milk, rent hikes at 7½ per cent or more and as much as a quarter extra for each subway token. And with a long-term energy crisis clearly upon us, heating-oil and gasoline prices ascend to new heights. In short, one can hope but not sensibly expect that the cost of living will behave itself in the year to come. What is far more likely is a rerun of calamitous statistics, daily proclamations of new shortages, embarrassing disarray among Washington economic officials and increasing confusion among businessmen, all of which have been commonplace in this year of political and economic turnmoil. One recalls this year's record not out of masochism but from the apprehension that we shall soon see its like. Certainly private experts have turned almost universally gloomy, especially now in the energy crisis, due partly, of course, to some bad luck, but more significanlty to bad Government management and planning. Economist Sam I. Nakagma of Kidder Peabody & Co. expresses the typical judgment that, "without a change in the oil picture, we are now tending to believe that the American economy will be pulled down into recession." The National Petroleum Council, an industry group, has predicted unemployment for 1974 of 6.2 per cent if oil shortages run at two million barrels a day, as is generally expected, and a disastrous 7.7 per cent if the gap is three million barrels daily, as is quite possible. Such apprehensions are fed by news of continued decline in residential construction and cresting of corporate profits.

In August, food prices soared 6.1 per cent which would amount to an annual rate of 73 per cent; the cost of living in general jumped 1.9 per cent, or 23 per cent annually. On this performance, George Meany, labor's durable tyrant and Mr. Nixon's onetime friend, rendered the judgment that it amounted to "complete proof of the utter incompetence of this Administration." In his gentle way, he added, "Despite the deception, distortions and outright falsehoods of White House propagandists, it is obvious that the Administration has no constructive program for combating inflation."

The August disaster was not merely a one-month phenomenon uniquely related to the end of the latest price freeze. As The New York Times then accurately editorialized, "The reality is that over the last six months, even with a price freeze in effect through two of them, the over-all index of consumer prices has gone up at an annual rate of better than 10 per cent." Better in this context can only mean worse. Until fairly recently, Administration economists were able at least to claim that wages and salaries were rising still more rapidly than the cost of living. Unhappily, recent information unsurprisingly reveals that the real income of average workers in the last 12 months has diminished more than 2 per cent.

As usual, the erosion of real income is severest among pensioners on fixed stipends, unorganized workers and families on welfare. Unfortunates in the last category have been additionally harried by penurious legislatures and, in this state, the long-running political feud between John Lindsay and Nelson A. Rockefeller.

Unfair as it is to the financially vulnerable who are unable to raise the prices of what they sell or the wages of their labor to match the prices of what they buy, inflation generally confers the boom of high employment. Not this time. During most of the last year, unemployment has stuck stubbornly close to 5 percent, and students of the labor market now appear to think that the figure will soon grow again despite an unexpected and unexplained drop in October. Women, blacks and the young will be, according to custom, the principal sufferers.

This dreary record compels the conclusion that the Administration has managed the considerable feat of presiding over a boom which has depressed general living standards, tolerated high unemployment, enlarged the normal difficulties of life for low-income families, and coincided with the acts of public meanness like the President's veto of higher minimum wages and his attempt, until overruled by the Congress, to delay cost-of-living adjustments in the pay of U.S. Government employes.

Shortages—and not only of fuel—have been another unpleasant characteristic of this boom. In the last year, consumers have witnessed (or participated in) the spectacle of spontaneous meat boycotts in the supermarkets, conscientious withholding of animals from market on the part of engaged cattle breeders and feedlot operators and sporadic service-station shutdowns in protest against Phase 4 gasoline price ceilings. Belatedly, the Department of Agriculture, whose leader, Secretary Earl Butz, can barely restrain his glee at each escalation of farm prices, has removed acreage restrictions in effect, major wars aside, since the nineteen-thirties. But farmers grumble that unless

they can lay their hands on more fuel, fertilizer, feed grain and railroad boxcars, their new license to glut the universe will evoke less grain and beef than everyone hopes. Paper shortages, too, have occurred in some areas, some stores even running out of toilet tissue.

Apparently, the United States might even run out of steel. Seldom alarmist, The Wall Street Journal headlined on its front page, "A Shortage of Steel Likely in Next Boom; Price Controls Cited." The burden of the industry's tale of woe is the complaint that the price controllers had driven profits so far down that, in the words of former Nixon economic adviser Hendrik Houthakker, "It's unlikely that the steel industry as presently situated can ever be profitable enough to justify new expansion."

The steel shortage is merely potential, but the shortages of residential heating fuel are, of course, already upon us. According to Department of Interior projections, the United States, if winter temperatures are normal, must import 650,000 barrels daily of refined oil. Only 550,000 of these barrels are available. And if nature, along with the Arabs, plays dirty tricks, the shortage will be far more grave. On inspection, the difficulty is less with the Arabs or Mother Nature than with miscalculations on supplies and consumption and with still another shortage—of domestic oil-refining capacity, caused in part by the reluctance of carelessly regulated oil companies to have risked expansion in anticipation of demand. For this reason, we were compelled last year to import refined fuel from Western Europe at a 13,000-barrel daily clip. This year, the level of import is an unsustainable 168,000 barrels. Canada and Belgium have already imposed restraints on American purchases of refined petroleum products, and the Common Market may follow.

Never an especially good loser, the President has taken to poormouthing his economists in language like that of his Sept. 8 press conference: "I'm afraid I can't be any more perceptive than my economic advisers have been, and their guess with regard to—you know the numbers insofar as inflation this year have not been very good. I do not blame them, however, because as you know we had the problem of weather in the United States and abroad, an unprecedented demand abroad which was unforeseen as far as we were concerned. That gave the impetus to food prices. And there were other factors which led to the inflationary pressures which our economic advisers did not foresee." The syntax is evocative of the Eisenhower years.

For their part, the economic operators, new and old, have started airing their differences in public which in a glum time does add to the gaiety of nations. A leading case in point, the flap over tax increases. Somewhat rashly, Mr. Nixon had promised during the election campaign that he would not increase taxes if the voters saw fit to return him to the White House, Camp David, San Clemente, Key Biscayne and Grand Cay. But by September, Federal Reserve Board Chairman Arthur Burns and White House Counselor Melvin R. Laird were saying that the President was considering this very notion. Treasury Secretary George Shultz (fruitlessly negotiating in Tokyo as later in the month he was fruitlessly to negotiate in Nairobi) responded to these statements with choler. Was he not after all Mr. Nixon's anointed economic spokesman? Never noted in the past for colorful quotation, Dr. Shultz advised Mr. Laird to keep his "cotton pickin' hands" off economic policy. Just to make matters perfectly clear, two or three days later Mr. Laird promised on "Face the Nation" that there definitely would be no tax increase in 1973. The Washington Post accurately if unkindly summarized the Administration posture as follows: "Is the Nixon Administration inclined to favor a tax increase? The authoritative answer last week was: (1) Yes; (2) No; (3) Maybe; and (4) It's under consideration."

By the same token, anyone who addles his brain now trying to interpret the White House's long-term economic policy is left, for his pains, with a number of puzzles. Does or did the Administration believe in economic controls—during any phase from I through 4? Has the President given up on (a) inflation, (b) unemployment, (c) economists, (d) all three? Who if anyone is the legitimate spokesman on economic affairs? Does the White House favor higher taxes, tighter money, genuine price and wage controls, two or more or none at all?

Polled at a New York meeting of the National Association of Business Economists, 415 participants responded to the question "How would you rate monetary policy over the past year?" in this unenthusiastic fashion:

Excellent—1.4 per cent.
Good—15.2 per cent.
Fair—38.8 per cent.
Poor—41.2 per cent.
No opinion—3.4 per cent.

Tilford C. Gaines, economist and senior vice president of New York's Hanover Trust predicted "a stern, heels-dug-in [restrictive] policy for a few more months to be followed by a stern, heels-dug-in movement toward easier money in 1974." When bankers start laughing at the Federal Reserve, confidence in economic policy is at a really low ebb.

Error, sadly, has not been the monopoly of Republican economists. Kennedy and Johnson veterans, though generally opposed to White House curtailment of social programs, frequently supported the President's stabilization efforts. Among economists the August, 1971, freeze was popular and Phase 2 controls were adjudged a qualified success. And, although it is now conceded even by Administration spokesmen that relaxation of controls in the switch to Phase 3 on Jan. 11 of this year was a grave blunder, one never would have known it at the time from leading liberal economists. As the New York Times headlined a Jan. 13 story, "3 Democratic Economists Back Phase 3 Structure and Policies." The subhead noted that "Heller, Ackley and Okun are Joined by Dr. Burns Who Voices Full Support." Coming from three former chairmen of the Council of Economic Advisers in Democratic Administrations, such a position strongly suggests bipartisan disarray among the economists.

No wonder then speculation has begun to mount that 1974 will be the year, for good or ill, of new recession. Speaking for the monetarist position, Chicago's Milton Friedman has been flatly asserting that recession is necessary in order to correct the consequences of past errors and excesses of Government intervention. And Dr. William Fellner, the distinguished (and conservative) Yale economic theorist whom the President has nominated for membership on the Council of Economic Advisers, concurs. He is convinced that the United States must in 1974 risk a "mild setback." Less reconciled to the prospect. Arthur Okun, Council of Economic Advisers chairman during the Johnson era, warns that "maintaining the present level of [credit] restraint for much longer would create a serious risk of recession in 1974."

Enduring prosperity depends on the spending attitudes of businessmen and consumers. For this reason, the Administration's visible indecision has baleful implications. A President, generally perceived as unable to guide economic policy, settle internecine squabbles or, what produces the same result, having been so obsessed with possible impeachment, Watergate counterattacks, litigated tapes and indicted aides as to be able in the judgment of Business Week "to give only perfunctory attention to the pressing issues of inflation, the energy crisis, and world economic problems," is a Chief Executive all too likely to be "caught unprepared by an economic crisis that was not only predictable but inevitable if the Administration took no action to head it off." Ordinary families plunge on cars, vacations and home appliances as their estimates of their own job and income prospects fluctuate. Business investment, always a gamble on the future, is particularly sensitive to revision according to changing forecasts of the economic outlook and the astuteness of national economic policy. This is only to say that the chances of a 1974 recession are manifestly larger because the White House is seen to have lost its grip on the nation's economy.

How did we get where we are on prices, wages, unemployment? It's all been very sudden. As recently as the January economic report of the President, the Administration was boasting of the success of anti-inflation measures, clapping its hands decorously over the smooth transition from Phase II to Phase III, and averaging, in words that must haunt the Council of Economic Advisers: "By the end of 1972 the American anti-inflation policy had become the marvel of the rest of the world." The three elements of explanation are, again, bad luck, misguided policy and the politics of a Presidential election. Bad luck ignited the Middle East war when few expected it and consequently intensified the oil crisis, bad luck sharply reduced supplies of grain and meat and escalated the food component of the cost of living. Policy blunder and national politics added enormously to consumer and business buying power and facilitated inflationary pricing policies by major corporations. When supply is limited and demand is stimulated, the upshot is inevitable: a new outbreak of inflation.

The President and his helpers have naturally stressed the first item. Nature has indeed been unkind. In 1972 the anchovies which habitually swarm off the Peruvian coast mysteriously went somewhere else. Ordinarily, anchovies are converted into fish meal, an important source of cattle feed, but mutiny in the anchovy ranks compelled a hunt for substitutes of which American soybeans were a general favorite. Added to ascending domestic demand, Japanese and Western European orders sent soybean prices through the ceiling and aggravated existing demand pressures upon beef prices from Americans and the newly affluent citizens of Japan and the Common Market.

An old story in most of the rest of the world, food shortages have now emerged in luckier societies. Russian crop failure, American bad weather, Chinese shortages and rising living standards have combined to absorb the mountains of America farm products which traditionally have plagued farmers as well as urban taxpayers who finance farm subsidies. The 1972 Russian grain deal, by the admission of Secretary Shultz, "burned" American officials who caught on to the scale of Russian purchases only after it was too late. The joke, such as it was, was clearly on Department of Agriculture officials who actually subsidized the sales as though the Russians were doing us all a favor by graciously buying up our grain at bargain prices.

Currency relationships also played a role. Since mid-1971, two official and one unofficial devaluations have turned American dollars into relatively cheap currency. Holders of yen, marks, francs and other strong currencies have been able to purchase increasing American dollar equivalents and use the dollars to acquire American products. In good measure, Japanese have been buying high-quality American beef and, in company with Western Europeans, touring the United States, because of the abrupt shift of the dollar from the world's leading overvalued to its leading undervalued currency. It is a sign of the time that in New York City, Mamma Leone's Ristorante now gladly ac-

cepts foreign money on an equal basis with American dollars. When foreign goods become expensive and American goods cheap, the impact upon the balance of payments is favorable. The price paid for the improvement is the sight of the foreigners bidding up our prices and causing occasional shortages. The French have traditionally exported their best wine to foreigners rich enough to drink it. Although we have not yet matched the French situation, continued decline in the comparative value of American dollars would further deplete American stocks of timber, grain and high-quality meat.

One ought not blame the Nixon Administration for disloyal anchovies, but the President and his unmerry men do bear the responsibility for a number of erroneous economic judgments. Possibly the most notable failing has been a certain lack of seriouness in the application of any of the Nixon policies. As much as one can be certain in such matters, it is likely that if the game plan in vogue during 1969, 1970 and the first half of 1971 had been persevered in, inflation ultimately would have been tamed. Pursuing at this time a mildly monetarist policy of credit restriction and fiscal restraint, the Administration was slowly but surely purchasing with unemployment and recession respite from inflation. I hasten to add that this is not a policy which I, then and now, admire. It is, nevertheless, the traditional conservative remedy for overheated, inflationary economies.

The thunderbolts of August 15, 1971, might also have been efficacious if the Administration had truly believed in them. The New Economic Program, combining tax relief to Detroit, investment benefits, surcharges on imports and total freeze on wages and prices, was reasonably calculated to accelerate economic recovery, diminish unemployment and protect the auto industry from the harassment of the Germans and Japanese. Most important, the President's bold action was likely to restore the nation's confidence in his grip on the economy.

Unfortunately just as atheists make poor clergymen, economic controls fare poorly in the hands of those who detest them. It was never a secret that Drs. Stein and Shultz had fought hard within the White House against the President's resort to the wage-price freeze. As late as June, 1971, Shultz, then director of the Office of Management and Budget, had emerged from a Camp David economic conclave to assert with manifest gratification that the watchword was "Steady as you go." Shortly afterward John Connally (at the time Secretary of the Treasury) told the country and the world in bold Texas language that there were no Administration plans to abridge economic liberty by direct intervention in the wage and price decisions registered by free markets. In July Dr. Paul McCracken, then Council of Economic Advisers chairman, wrote a sharp Washington Post column specifically criticizing J. K. Galbraith and arguing that controls, always an inferior response to inflation, were particularly ill-advised because most of the inflation had occurred either in competitive industries or in medical and other services rather than in the concentrated industries identified by Galbraith as important culprits.

Although Phase 2, which lasted from November, 1971, to January, 1973, was comparatively successful, Nixon officials did nothing to conceal their yearnings to terminate all controls just as soon as possible. And much of the reason why the transition from Phase 2 to Phase 3, announced Jan. 11, 1973, was an unqualified disaster derives from the identity of the controllers and the ambiguities of the new phase. Early rhetoric emphasized voluntarism. However, George Shultz, by now Secretary of the Treasury, and Dr. John Dunlop, who had come from Harvard to be Executive Director of the Cost of Living Council, spoke also of big sticks in closets always available to be applied to disobedient unions and corporations. Did the 5.5 per cent wage guideline still rule? George Meany, John Dunlop and John Ehrlichman seemed to have trouble on this vital point. Corporations no longer required Price Commission approval of increases, but the Cost of Living Council might roll back excessive changes. But what was excessive? It soon became embarrassingly plain to one and all that the standards were vague, the enforcement machinery in disarray, the controllers eager to retire and the famous club fabricated of papier-mâché.

Inflation was also fed by Administration farm policy. Part of "the high price of Earl Butz," to borrow an apt phrase from the business periodical Dun's Review, was an outrageously slow reversal of outmoded crop restrictions. And the high price of turkeys now is the result of Butz's advice to turkey growers a year ago that they restrict their plans for 1973. "Our success," as Dr. Butz has unabashedly described the ascent of wheat in barely 12 months from $2.16 to $5.17 per bushel, "has brought the farmer into the mainstream of American affluence." As Butz has told cheering farm audiences, "We're gonna get farm income up and we're spending money like a drunken sailor to do it." Not until January, 1973, did Butz release farmers from all acreage restrictions. According to Dr. Houthakker, "Butz would still be pursuing that restrictive policy, if he hadn't been overruled." Willard Cochrane, a professor of agricultural economics at the University of Minnesota, judges that "they should have known that devaluation would stimulate feed-grain export, yet they did nothing to increase supplies."

The roster of blunder extends also to the Treasury's misadventures with income tax withholding. On January 1, 1972, the Internal Revenue Service began to apply new tax withholding tables which, through error, had the effect of deducting $10-billion more from 1972 paychecks than the nation's taxpayers actually owed. The bulk of that was refunded during the first part of 1973—just in time to administer still another inflationary nudge to an economy reeling from the premature lifting of Phase 2 controls, from the effects of previous fiscal and monetary stimulation and from the consequences of devaluation.

When all the tapes are played and all the memoirs written, we shall be better able to assess the comparative role of economic misjudgment and political calculation. In the meantime, there is general agreement that the President's re-election necessities unavoidably colored economic decisions. The Russian grain deal was of a piece with the Moscow and Peking television spectaculars and the détente which they signalized. The huge budget deficit fitted well into the rapid economic expansion which, after two and a half indifferent years, the Administration was able to generate in time for a November election.

After the election come the consequences. And now shortages, renewed inflation, continued unemployment, political instability, and signs of economic slowdown color the 1974 outlook. As Arthur Okun told the Joint Economic Committee, "The amount of braking action necessary to stop a boom becomes excessive once the boom halts." On top of all the other concerns, Chairman Thomas R. Bomar of the Federal Home Loan Bank Board fears that "if housing collapses next year, it could take the whole economy down the drain with it."

It is far easier to trace the history of inflation and recession than it is to mark a route from the detestable present to a more delectable future. Which is only to agree with President Nixon's opinion that we all make mistakes in life and we all have to pay for them. For next year the alternative prognoses are either continued inflation coupled with existing rates of unemployment or a combined assault upon inflation, an assault which deploys monetary, fiscal and other control weapons—and causes sharp recession.

Recession is worse than inflation because mass unemployment is humanly and socially even more destructive than the decline in value of a currency. But it is possible by the exercise of moderate ingenuity and compassion to mitigate the impact, upon the particularly vulnerable, of either economic malady.

Suppose first that along with the rest of the advanced nations we accept in 1974 and afterwards perpetual inflation as a way of life. What can be done to make it tolerable, even if it is freely conceded at the outset that perfect equity between affluent, sophisticated investors and ordinary citizens of small assets and average wits is beyond our grasp? Quite a lot can be done to mitigate gross injustice. Thus minimum-wage levels, like the contracts strong unions negotiate with major corporations, can be tied to the cost of living index, as can private pensions, veterans' benefits, welfare payments, and Medicare and Medicaid reimbursements.

Other losers during an inflation are small savers. When in a single year the consumer price index rises 6 per cent, a $100 deposit in a 5 per cent account is worth $99 twelve months later and the real rate of interest is a minus 1 per cent. The rich do better. Canny souls with a spare $100,000 can buy a certificate of deposit whose yield rises and falls with other interest rates.

In principle, the remedies are quite simple. Within the last year a Presidential commission has recommended that interest-rate ceilings be removed on deposits in thrift institutions. Once these ceilings were taken off, savings banks and savings and loan associations could compete for deposits by promising better interest earnings instead of toasters and transistor radios. The more saved, incidentally, the more benign the impact upon inflation. The Treasury could experiment with a bond whose return fluctuated with market rates of interest, and it could break down its marketable debt into $50 and $100 denominations, sold in post offices and banks. Home mortgage interest rates could be allowed to fluctuate, during the life of the mortgage, with market rates of interest.

The malign effects of recession can also be mitigated. When national policy dictates the need for economic slow-down, it is only fair that attention be paid to the innocent casualties of the policy who lose income and employment. Perfect justice is elusive. No doubt most men and women prefer to keep the jobs they now have rather than accept substitutes in the shape of either cash or specially created public employment. Nevertheless, generous income maintenance and a creative program of public employment would be far better than existing arrangements.

The duration and scale of unemployment compensation could readily be tied to general rates of unemployment or unemployment among such subgroups as women and blacks. A less repressive and more generous version of the President's Family Assistance Plan would approximate a true negative income tax, free of the unpleasant welfare regulations of the original Nixon scheme.

It is as true in 1973 as it was in 1958, when Galbraith deplored public poverty and private waste in "The Affluent Society," that the public sector is underfinanced, always with the exception of the Pentagon. A recession is an opportunity to staff hospitals adequately for a change, and the same holds true for schools, museums, libraries, parks and public protection agencies. If the recession comes in 1974, what is indicated is an emergency employment program several

times the size of that enacted in 1971 by Congress as a timid, temporary response to continuing unemployment.

Neither inflation nor recession is a sensible economic ideal. On rare occasions, most recently in the 1961–1965 expansion, it has proved possible to combine high employment and relatively stable prices. One of our present tragedies of lost opportunity is the probability that between August 15, 1971 when the President dramatically proclaimed a wage-price freeze and January 11, 1973 when for all practical purposes what ought to have been a useful and important control system was allowed to disintegrate, the Nixon Administration threw away an excellent chance to subdue the inflationary demons and to set the stage for renewed economic growth and high employment without serious inflationary consequences. In the Nixon era it was not the controls that failed, it was the controllers.

There will come another time of moderate wage and price behavior, prudent public policy and noninflationary prosperity. But unless a miracle comes to pass, that time will not be in 1974. The mistakes and misfortunes of the recent past have unavoidable consequences for the year ahead. About the best to be expected is a pace of inflation somewhat slowed and just possibly a bit more Government attention paid to the human victims of the process. The worst? If the White House continues to bungle the energy crisis, the grim New Year prospect is for the most virulent inflation since the early nineteen-fifties combined with the most catastrophic unemployment since the nineteen-thirties.

MR. DAVID NEWSOM

Mr. HUMPHREY. Mr. President, during the years he has headed the African Bureau, Assistant Secretary of State David Newsom has made a significant contribution to African-American relations.

Mr. Newsom combines qualities of integrity, insight, an ability to understand and sympathize with the views of others, and intellectual sophistication that make him a truly great statesman. He has in his years as Assistant Secretary won the request and admiration of all who have worked with him, Africans and Americans, Republicans and Democrats, employees of the State Department and Members of Congress.

These have been difficult years in the U.S. relations with Africa. Our development assistance to Africa has been steadily decreasing. Our commitment to human rights and racial equality in Southern Africa has been called into question by our violation of sanctions against Rhodesia and a series of abstentions and vetoes on this issue in the United Nations. Mr. Newsom has not been afraid to criticize U.S. policy toward Africa where he felt it had to be improved; and he has not been afraid to defend it when he felt the criticism of others was unjustified.

Mr. Newsom has been sensitive to the problems of poverty in Africa and has called our attention to the contribution the United States could make to the development of that continent's vast natural resources. He has long argued that an increase in U.S. development assistance to Africa would greatly strengthen the African-American partnership in the development of resources that would improve the standard of living in both areas. He called our attention to the devastating drought in West Africa long before it received public attention. He worked tirelessly to mobilize the scientific and technical resources of this country for the economic recovery of the area. He made certain our food surpluses were used to feed those threatened by famine.

Mr. Newsom has been keenly aware of the effect our policy toward white supremacy in Southern Africa has on our relations with the African States. He has worked hard to improve that policy and make it consistent with our principles of human rights and racial equality. His contribution to our efforts to end United States violation of sanctions against Rhodesia is deeply appreciated.

Finally, I am certain that all who have worked with Mr. Newsom will agree that his fairness of mind has contributed much to African-American relations. I know that anyone who discussed a problem with him could be sure that he listened with an open mind and understood their point of view. His understanding of the complexity of the problems he was dealing with and of the various views on those problems, coupled with his integrity in defending what he felt was right, won Mr. Newson the respect of all who worked with him. We are indebted to him for his outstanding service as Assistant Secretary for African Affairs and wish him well in his new post as Ambassador to Indonesia.

SOUTH CAROLINA BICENTENNIAL

Mr. HOLLINGS. Mr. President, in light of the festivities which will be taking place to celebrate our bicentennial, I know that my colleagues would be most interested in the recent celebration in my hometown of Charleston. I would ask unanimous consent that the materials connected with this celebration be printed in the RECORD, including the three prize winning essays written in our high schools in connection with this celebration.

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

BICENTENNIAL KICKOFF

CHARLESTON, South Carolina, November 1.—South Carolina will decisively demonstrate her Bicentennial leadership Dec. 3, 1973 in Charleston. Amid pomp and pageantry the General Assembly of South Carolina will commemorate its origin by reenacting a 1773 patriot protest meeting out of which grew the present governing body of the state.

No other state will have undertaken such a mammoth Bicentennial event by that date. Its magnitude may remain unsurpassed throughout the nation's Bicentennial.

The General Assembly, constitutional officers, and key staff members will be in Charleston for the dramatic Bicentennial kickoff. They will begin the three-day "spectacular" on Saturday, Dec. 1 with a ceremonial presentation to Charleston of the Bicentennial Community Flag awarded by the American Revolution Bicentennial Commission, the dedication of Ft. Moultrie as a nationally-designated Bicentennial focal point, tours of pre-Revolution homes, and a gala in Hibernian Hall.

Sunday, Dec. 2, churches, especially Charleston's many pre-Revolution houses of worship, will relate a portion of their services to Bicentennial subjects. Distinguished visitors from Columbia will attend a Sunday brunch at the Charleston Museum. The William Ranney painting of the "Battle of Cowpens" will be on display in the museum which recently observed its 200th birthday.

The Governor's Banquet in the Municipal Auditorium Sunday evening will highlight that day's activities. A black-tie event, it will present in costume prominent South Carolinians acting out the roles of their American Revolution predecessors: the four South Carolina signers of the Declaration of Independence; Generals George Washington and Lafayette who visited South Carolina in 1777; Christopher Gadsden, the prominent patriot; Gen. William Moultrie, Gen. Francis Marion, and Col. William Washington. At the banquet the winning essay on "What the Exchange Means to Me" will be presented. It was selected from those written by school children of Charleston County.

St. Michael's, the famous 1752 church at the corner of Broad and Meeting streets, will be the scene of a special service for the General Assembly at 10 a.m. From St. Michael's the General Assembly will process down Broad St. through an honor cordon of Citadel cadets to the accompaniment of martial music to the Old Exchange, built in 1767, site of the 1773 patriots' meeting.

The legendary mace and sword of the state will be carried by their bearers who will lead the processional.

Once at the Exchange, the General Assembly will formally convene inside the famous building known as South Carolina's Independence Hall. Then the legislators will move outside to participate in or observe a colorful reenactment of the 1773 meeting to which the General Assembly traces its lineage.

The public is encouraged to observe the reenactment.

TEA, TAXES, AND TEMERITY: A MEETING AT THE EXCHANGE BUILDING DECEMBER 3, 1773

(By Dr. Walter J. Fraser, Jr.)

In the autumn of 1773 seven ships dropped down the Thames to Deal and waited for favorable winds to carry them into the open sea. Stowed in their holds were more than 2,000 chests containing nearly 600,000 pounds of tea consigned by the East India Company of London to merchants in four major American ports. It was the first shipment under Parliament's new Tea Act which gave the East India Company a virtual monopoly over the tea trade in America. Although subject to a duty of three pence per pound, the East India Company tea consigned directly to a few favored importers allowed them to sell the product to consumers at a lower price than most American merchants could and still realize a profit. The duty was a tax designed to raise revenue and it was levied without the colonists' consent.

When the winds shifted northwesterly off Deal in mid-October, the seven tea-laden ships ran down-channel into the rolling swells of the Atlantic. Captains of six of the vessels set their courses for Boston, New York, and Philadelphia, while Alexander Curling, master of the *London*, steered his ship for Charleston. For years Captain Curling had been engaged in the London-Charleston trade, and he was well known and respected in the principal southern port. A contemporary described him as a "gentleman" admired for "his skill in seamanship."[1]

The bluff-bowed *London* had been bucking the green-grey swells of the Atlantic for nearly four weeks before the inhabitants of

Footnotes at end of article.

America's fourth largest city and seat of Royal Government in South Carolina were alerted to the imminent arrival of the tea. For years a handful of Charlestonians had opposed British efforts to tax the colonists and interfere with the hard-won prerogatives of the popularly elected Commons House of South Carolina. Charleston's Sons of Liberty, Christopher Gadsden, merchant and wharf owner, and Peter Timothy, editor of the *South Carolina Gazette*, had frequently led economic boycotts and violent demonstrations against Parliamentary Acts of "tyranny."

Rumors had circulated in Charleston during the early autumn that shiploads of tea were bound from England for northern ports. However, on November 15, Charlestonians learned through Timothy's weekly that "300 chests" of tea were destined for Charleston. "Ironicus" in a letter-to-the-editor announced that even the names of the consignees of the tea, the ship, and its master were known. "But," he wrote, "I do not presume to say, that the captain will receive thanks for having obtained the freight." In the same issue Timothy reprinted a letter which had appeared in the northern press cautioning those who were to receive the tea in America that they best reject their commissions as ". . . American Freemen can never approve of it." Those who aid or abet the implementation of the Tea Act, designed "to establish Parliamentary despotism in America," are "conspirators against . . . [the] rights" and liberties of Americans.[2]

With the tea ships a week closer to their destinations Patriot propagandist Timothy himself took pen in hand to alert his readers. On November 22 he boldly asserted that "the inhabitants of this province do not seem disposed to assist in the landing, or receive cordially, the 300 Chests of Tea, said to be shipped on the *London*, Captain Curling, now hourly expected from England." In fact, Timothy concluded, the people of the province desire that Charleston merchants enter into "an immediate voluntary agreement . . . never to import a single Pound of Tea more, while the Act of the British Parliament continues in Force. . . ." In the same edition Timothy summarized recent reactions to the impending arrival of the tea in Philadelphia. There a public meeting had been held which went on record as protesting Parliament's right to levy a tax on tea without the colonists' consent. Such action tended "to render assemblies useless and to introduce arbitrary government and slavery." Therefore it was the duty of every American to oppose any attempt to land and sell the East India Company tea.[3]

Although publisher Charles Crouch through the South Carolina Gazette and Country Journal joined Timothy in reprinting denunciations of the tea plan, a third port-city weekly edited by Robert Wells, and known for its conservative leanings, reprinted a letter signed "Z" in late November which defended the tea plan. Through Timothy's paper a reader replied by denouncing the letter by "Z" as one "wherein the cloven foot is very conspicuous."[4] However, the willingness of Wells to reprint letters defending the tea scheme does demonstrate that the opposition to landing and vending the tea was not unanimous in Charleston.

Timothy's reprints of northern press denunciations of the tea scheme were so numerous and lengthy in the Gazette of November 29 that a supplement was published. One piece under the patriotic title of Hampden boldly asserted that Americans had to oppose the landing of the tea because "the baneful chests contain in them a slow poison in a political as well as a physical sense. They contain something worse than death—the bonds of Slavery."

In the same edition of that Monday, November 29, Timothy printed a letter from a planter of rice and indigo along the Ashley, "Junius Brutus." He began by warning that the day of arrival was near for tea which carried a duty imposed by a Parliament "wherein you are not represented." This act, he declared, will "establish a precedent for subjugating you to future impositions equally unjust and impolitic—to raise a revenue out of your pockets, against your consent—and to render assemblies of your representatives totally useless. The measure is clearly the assertion of a right to tax you internally." Under these circumstances, "Junius Brutus" advised the freemen of South Carolina to assemble and "enter into serious deliberation . . . and . . . resolutely determine upon the prosecution of every justifiable measure . . . to avert the enormous evil . . . which hangs . . . by a single thread, ready to burst upon your heads." He concluded by lamenting that since some Charlestonians opposed any action against the tea scheme there was all the more reason to "Unite—be firm—and prove yourselves worthy of that Liberty which is the boast of British subjects." On the same page Timothy editorialized: "A Rumor prevails that there will be a General Meeting of the inhabitants, particularly of the landholders, before the close of the present week—on account of the large importation of tea hourly expected on the ship London."[5]

Two days later, on Wednesday, December 1, nearly seven weeks out of Deal, the London appeared off Charleston and on the evening tide came over the bar and "anchored before the Town."[6] The long-rumored arrival of the tea was now a reality; it played into the hands of the few radical opponents of the tea scheme such as Timothy and Gadsden. Timothy wrote: "So great a quantity of tea arriving at once gave an universal alarm."

On Thursday morning the Patriots spread their theories to the patrons of Shepherd's, Dillon's and Ramage's Taverns along Broad Street and throughout the town that the purpose of the tea scheme was not to raise revenue "but merely to establish a precedent; to confirm the power assumed . . . by Parliament . . . to pass laws binding upon the colonies in all cases whatsoever." Acceptance of the tea would therefore give assent to Parliament's assumed power and allow Parliament a precedent by which the colonies could be taxed "for even the light of heaven. . . ," thereby rendering the local popular assembly impotent. The radicals also made sure that the citizens of Charleston knew that Captain Curling was the master of the ship lying before the town and that the tea had been consigned for sale to merchants Roger Smith, Esq. and Messrs. Leger and Greenwood.

By mid-day Thursday Patriots were circulating handbills throughout the city and posting notices in public places mainly along Broad Street inviting "all the inhabitants," but particularly the landholders, to assemble in the "Great Hall" over the Exchange Building the following day at 3:00 in the afternoon. The "sense of the people" would be determined and plans laid for "what would be absolutely necessary to be done in the present case."[7]

Early Friday afternoon, December 3, animated crowds of people moved down Broad Street afoot, on horses, or in carriages to the Exchange Building. The recently completed structure in the grand Palladian style, costing more than 40,000 pounds, dominated the foot of Broad Street. At the basement level customs business was transacted, the entrance level was an open arcade, and the upper level or "Great Hall" was used for civil meetings. Charlestonians of all classes, both Patriots and Loyalists, radicals and conservatives, crowded into this "Great Hall" by three o'clock Friday afternoon to hold their extra-legal meeting.[8]

To Peter Timothy many had come because they "thought it would be criminal tamely to give up any of [their] essential rights as British subjects and involve [their] posterity in a state little better than slavery." They thought "it high time to contend, legally, and to dispute the assumed power" of Parliament. Among those present were Christopher Gadsden[9] and Captain Curling of the ship *London*.

The meeting got underway when "a very worthy and Honorable Gentleman," probably Colonel George Gabriel Powell, was unanimously elected to take the Chair. Debate then began on what course to pursue, and no doubt the old arguments were revived against Parliamentary despotism, taxation without consent, and the consequent threat to the powers of the popularly elected Commons House. No doubt, too, some conservatives inveighed against any hasty action. However, the arguments of the radicals prevailed. As the "sense of the people" was to have all merchants engaged in the import trade sign an agreement whereby they would covenant "not to import any more teas that would pay duties laid for the *unconstitutional* purpose of raising a revenue upon us *without our consent*," a document was drafted and signed by several of those present. The agreement read:

We the underwritten, do hereby agree, not to import, either directly or indirectly, any teas that will pay the present duty, laid by an act of the British Parliament, for the purpose of raising a revenue in America.

A proposal was then put forward and agreed upon that the consignees of the tea, Roger Smith, Esq. and Messrs. Leger and Greenwood, should be called before the assemblage and that the Chairman should convey to them the feelings of the people. When the three merchants appeared, the Chairman told them that if they received the 257 chests of tea "subject to a duty" believed to be "unconstitutionally laid" it would be "exceedingly disagreeable to their fellow citizens. . . ." In reply the merchants told the assemblage that they would not accept the tea. When Roger Smith added that he had decided weeks before "not to have any concern in a business which his countrymen conceived to have so fatal a tendency," the crowd clapped and roared its approval. However, as the cheering died the well known and liked Captain Curling arose and cautiously, even apprehensively, addressed the meeting. He expressed the feeling that he was impaled on the twin horns of a dilemma—his obligation to deliver the tea on the one side and the sentiment of the citizens present on the other. He wondered aloud how he might best resolve his situation. Members of the meeting quickly responded. Despite the esteem in which Captain Curling was held, members of the assemblage responded sharply with cries of, "keep . . . all the tea on board [your] Vessel and return . . . with it to England."[10]

A motion was then made that a committee be appointed to secure from those merchants not present their signatures to the non-importation of tea agreement. The motion passed and a group of leading Patriots distinguished by their wealth in land or commerce was appointed. Christopher Gadsden became chairman of the committee. Other members included Thomas Ferguson, Colonel Charles Pinckney, Charles Cotesworth Pinckney, Esq. and Mr. Daniel Cannon.[11] The meeting was then declared at an end and after appropriate thanks were made to the Chairman, the crowd flowed out of the Exchange Building into the fading light of the December day. Although the meeting had endorsed the sentiments of the Patriots, for one they

Footnotes at end of article.

had not gone far enough. "Junius Brutus" urged a public bonfire of the tea and boycott of *all* imports until the tea duty was lifted.[11]

As the days went by, no one would receipt for the *London's* cargo. When the duty on the tea remained unpaid by late December, the Collector of the Customs at Charleston seized the tea and stored it in the basement of the Exchange Building. On February 6 Captain Curling set sail for England minus his cargo of tea. During the next few months Charlestonians would adopt the even more violent measures advocated by "Junius Brutus." Other cargoes of tea coming into the port-city were seized and stored, a public bonfire of tea was held, and in November of 1774, seven chests of the leaves were "dumped" into the Cooper River. In early 1776 the tea stored in the Exchange was used to finance the rebel cause in South Carolina.

The temerity of those who assembled at the Exchange Building on December 3, 1773, for an extra-legal meeting to protest British taxes and tea aroused and united even further Patriot sentiment in Charleston and South Carolina.[13] The meeting was significant also in that from it "in a sense, has lineally descended"[14] the present-day Legislature of South Carolina.

FOOTNOTES

[1] Benjamin Woods Labaree, *The Boston Tea Party* (New York, 1964), v–vi, 77–79; David Duncan Wallace, *South Carolina: A Short History, 1520–1948* (Chapel Hill, 1951), 251; Marguerite Steedman, "Charleston's Forgotten Tea Party," *The Georgia Review* XXI (Summer, 1967), 1, 4–5.

[2] *South Carolina Gazette*, November 15, 1773.

[3] *Ibid.*, November 22, 1773.

[4] *Ibid.*, November 29; *South Carolina Gazette and Country Journal*, November 23, 1773; *South Carolina General and American Gazette*, December 24, 1773.

[5] South Carolina Gazette, November 29, 1773.

[6] *Ibid.*, December 6, 1773.

[7] *Ibid.*

[8] Rev. William Way, "The Old Exchange and Custom House" (Charleston, 1921) 6, 8; W. H. J. Thomas, South Carolina's Historical Exchange Building, Charleston, n/d), 3–4

[9] Richard Walsh (ed.), The Writings of Christopher Gadsden, 1746–1805 (Columbia, 1966), 93.

[10] *South Carolina Gazette*, December 6, 1773.

[11] *Ibid.*

[12] *Ibid.*, letter-to-the-editor signed "JUNIUS BRUTUS;" Wallace, *History of South Carolina*, 251. Conservatives maintained that the actions taken at the December 3 meeting did not truly reflect sentiment in the port-city.

[13] *South Carolina Gazette*, December 27, 1773, February 6, 1774.

[14] Wallace, *History of South Carolina*, 251.

[From the News and Courier, Dec. 12, 1973.]

LETTERS TO THE EDITOR

SETTING THE TONE

TO THE NEWS AND COURIER: We, the Charleston County Bicentennial Committee, wish to thank the local and regional news media and the entire Charleston County community for helping to make the Charleston County bicentennial events of Dec. 1–3 a success.

Charleston has set the tone for the nation's bicentennial celebration with a high-quality series of kickoff events of great magnitude. This was possible only because of the splendid backing and cooperation given by all of our local governmental bodies which have embraced the spirit of the bicentennial theme and its meaning to our community.

While we are deeply grateful for the cooperation of literally thousands of area residents who took part, we are especially appreciative of the business concerns and private individuals whose financial contributions made these initial events possible. In the forefront of those who contributed most is the Charleston Innkeepers Assn., which provided accommodations for members of the General Assembly and managed the food service for the Governor's banquet.

We acknowledge the valuable service of hundreds of volunteers whose massive contributions made the weekend events possible, with particular recognition for those packaging and mailing bicentennial commemorative coins, and those who are purchasing them, since a major portion of Charleston's celebration of the nation's 200th birthday will be underwritten from coin sale profits.

The weekend was one long to be remembered. Already, out-of-town guests, national level officials, national regional news media, and local citizens are heaping on Charleston well-deserved praises for the quality of this contribution to the early phases of the bicentennial.

The committee and I pledge that we will respond to the phenomenal cooperation we have been receiving by assuring that Charleston's observance of the bicentennial will be the grandest and best managed of any in the nation.

GORDON B. STINE,
Chairman, Charleston County Bicentennial Committee.

"THE EXCHANGE BUILDING AND THE COMING OF THE AMERICAN REVOLUTION IN SOUTH CAROLINA, 1771–1783"

(By Annabeth Swanson, Fort Johnson High School)

(First place winner)

The Old Exchange Building standing at the foot of Broad Street with East Bay running parallel is a Charleston, South Carolina historic civic building. This building was constructed on the fortifications of a semi-circular fortress-like sea wall called the Half-Moon Battery. The Half-Moon Battery was erected by 1701 to prevent the Cooper River's further encroachment upon Charleston wharves as the Battery sea wall does today.[1] A two-story Watch House called "The Old Watch House" or "Guard Post" (has similar other names) was erected in 1704 on this waterfront site for the purpose of administration and sometimes used as a prison for the colonists. The lower chamber of the Watch House was used as a prison for Stede Bonnet's crew until they were hanged on November 8, 1718.[2]

The Old Watch House was torn down in 1767. On April of that year an act was passed by the Commons Assembly asking his Majesty for the sum of 60,000 pounds in building of an Exchange and Customs house on this site.[3] The building was needed for commercial and government expansion. This money was granted.[4] The builders were Peter and John Horlbeck who received 41,740 pounds as payment. They built the Exchange in the Grand Palladian manner, then a popular architecture of England, and was made largely of imported Portland stone. Throughout the years, the building has greatly altered and has lost much of its original magnificence because of earthquake damage and changes that occurred during occupancy of the federal government.[5]

This elegant, finely made structure was completed in 1771, making it our nation's oldest custom house. The entrance level was an open arcade, the upper floor was used as a chamber for colonial government meetings, and the basement was used for custom purposes.[6] To pay the cost of construction, an additional tax was levied for five years on certain imported goods such as wine, rum, and various grades of bisket.[7]

Footnotes at end of article.

The American Revolution was well underway in the South before the construction of the Exchange Building. In October 1765, Charlestonians protested the Stamp Act that was passed earlier that year by seizing Fort Johnson where the British had stored the shipment of stamped paper for use in levying the tax. One hundred and fifty Charlestonians raised a blue flag with a silver crescent (some say three crescents) upon it in a demand to have the stamped papers returned to England. This the captain of the sloop of war, *The Speedwell*, agreed to do. In 1769 after the Townshend Acts were passed and enforced, Charleston citizens agreed to boycott all British goods except necessities in protest against these acts.[8]

The Exchange started to make history in 1773. Charleston at this time was the capital of South Carolina and a very active seaport. Josiah Quincy, a lawyer who defended the soldiers involved in the Boston Massacre, wrote during a visit to Charleston: "The number of shipping" (in the Charleston port) "far surpassed all I've seen of Boston. . . three hundred and fifty sails lay off shore of the town".[9]

The Tea Act of 1773 caused many Charleston merchants more concern with "the threat of a monopoly control of a few favored merchants than custom tax on the tea (which made tea less expensive). Meetings protesting the purchase of two hundred fifty-seven chests of taxed tea were held in the Great Hall of the Exchange. Finally on December 17, 1773 Charlestonians agreed not to buy the taxed tea. Five days later the tea was stored in the basement of the Exchange because the law required that tea not received within twenty days after arrival should be stored. The following year more shipments of tea arriving in Charleston were stored in the Exchange. John Rutledge, Governor of South Carolina, asked permission from the Continental Congress to sell the unreceived tea. On October 14, 1776, this tea was sold for the benefit of the state in the war.

Charleston had her own "Tea Party." A year after Boston, at noon, November 3, 1774 a few Charleston merchants boarded the ship *Brittance* and dumped seven chests of tea she carried aboard. On shore, Charlestonians cheered as they watched the tea go overboard. The Charleston "Tea Party" was much different from the Boston one in that the owners of the tea were the Charleston merchants and the ship's commander said that he knew nothing of the tea on board.[10]

During 1774 South Carolinians met under the arches in the Exchange to elect their delegates to the First Continental Congress. Henry Middleton, one of the delegates elected, was to serve as president of that body. A year later in 1775 after many meetings in the Exchange, South Carolina declared her independence from British rule and established one of the first independent governments in America.[11]

During the next five years, Charleston and South Carolina patriots fought hard to win independence from England. In the year of 1780, the British seized Charleston and turned the cellars of the Exchange into a foul and unwholesome dungeon. General Henry Clinton's victory over Charleston was one of the worst defeats for the American patriots.[12] The American prisoners of war either had to swear an oath of allegiance to the Crown to win parole or be imprisoned. The British assured them they would not have to serve in the King's forces as long as they did not bear arms against the crown.[13] Nevertheless the British attempted to force the prisoners on parole to serve in the British Army. Many patriots who refused were seized from homes by armed soldiers and were confined to prisons on ships and the Provost. Officers like Christopher Gadsden, a Charleston merchant and radical leader, refused to serve another

parole and were sent to St. Augustine. On an early Sunday morning August 27, 1780 General Gadsen along with Thomas Heywood, Jr., Arthur Middleton and Edward Rutledge, three signers on our Declaration of Independence were seized from their homes on suspicion of breaking parole.[14]

Thrust in to the forbidding British Provost were patriots, women of both excellent and infamous character, negroes and deserters making them all equal. Dreaded diseases among the inmates caused much suffering and many deaths in this crowded, dark place.[15] Francis Marion, "The Swamp Fox" meted out to Tories.[16]

During the British seizure of Charleston in 1780, a principal magazine (ammunition dump) behind St. Phillips' Church was nearly destroyed by a shell burst. General Moultrie wrote:

I had powder (10,000 pounds) removed to the northeast corner under the Exchange and had the doors and windows bricked up. Northwithstanding the British posession of Charleston so long, they never discovered the powder although their Provost was in the next apartment to it. After the evacuation when we came into town, we found the powder as we left it.[17]

When General Clinton defeated the City of Charleston, Isaac Hayne, a South Carolina planter and breeder of fine horses, was serving in the American militia on the outposts.[18] When the city surrendered, Hayne along with other American prisoners of war gave his oath of allegiance to the Crown and returned home to his farm where his wife and children lay ill with smallpox. However when the British tried to force his return to service in the British Army, he felt this good reason to break his parole and return to service with the Colleton militia. He was captured, and after instigating an insurrection at the rear of Lord-Rawdon-Hastings (in ill health and due to be invalided home to England) gave Colonel Balfour the order of execution and Hayne was hanged August 4, 1781.[19] Lord Rawdon-Hastings later wrote:

I had solicited the particulars of the case ascertained by a court of inquiry . . . the same form of investigation as had been used in the case of Major Andre (touche!) Major Andre was a British Officer arrested in civilian clothing carrying papers of the proof of Benedict Arnold's treason, and hanged by the Americans. This was an indiscretion on my part, but he (Hayne) was a spy in the strictest sense of the word.[20]

The British had intended to make an example of Isaac Hayne to help crush the rebellion. His hanging as a spy, however, had the effect of making him a martyr in a just cause and strengthened the rebels' determination to fight on.

The defeat of General Cornwallis lead to the withdrawal of the British in Charleston in 1782 and in 1783 the end of the American Revolution

The Exchange Building became the property of the City of Charleston by "an act of incorporation" in 1783. The building has been owned for over 50 years in trust by the Rebecca Motte, Chapter, DAR.[21]

FOOTNOTES

[1] The Wall and Fortifications from Status at large, Vol. 7, AD 1700, Act. No. 173, p. 16.

[2] Across the Cobblestones, Pub. by the Junior League of Chas., 1965, p. 21.

[3] S.C. Historic Exchange Building, W. T. J. Thomas, News & Courier, April 6, 1969, p. 7.

[4] Hamrick, Tom, Charleston Provost Dungeon, Sandlapper, Vol. 3, 1970.

[5] S.C. Historic Exchange Building, W. T. J. Thomas, News & Courier, April 6, 1969, p. 7.

[6] S.C. Historic Exchange Building, Lee, Charles E., Director, S.C. Department of Archives & History, May 1969, p. 4.

[7] S.C. Historic Exchange Building, W. T. J. Thomas, News & Courier, April 6, 1969, p. 7.

[8] Stockton, Robert P., Chas. "Tea Party" Was Significant, News and Courier.

[9] S.C. Historic Exchange Building, W.T.J. Thomas, News and Courier, April 6, 1969, p. 7.

[10] Stockton, Robert P., Chas. "Tea Party" Was Significant, News and Courier.

[11] Charlest Towne Half-Moon Battery, Provost Dungeon.

[12] Bulger, William T. (editor) "Sir Henry Clinton's Journal of the Siege of Charleston."

[13] History of American Biography, Charles Schribner's Sons, N.Y. N.Y., pp. 454–455.

[14] McCrady, Edward, History of S.C. in the Revolution (1775–1780) Vol. 3, pp. 716–717.

[15] S.C. Historic Exchange Building, Lee, Charles E., Director, S.C. Department of Archives and History, May 1969, p. 6.

[16] Stoesen, Alexander, R. S.C. Historical Magazine, The British Occupation of Chas., July 1962, p. 70.

[17] Moultries Memoirs, Moultrie's Powder Magazine, p. 85.

[18] History of American Biography, Charles Schribner's Sons, N.Y., pp. 454–455.

[19] Bulger, William T. (ed.) "Sir Henry Clinton's Journal of the Seige of Charleston."

[20] Encyclopedia of American Revolution, Mary Mayo Boatner, 1966, pp. 495 to 497.

[21] S.C. Historic Exchange Building, W.T.J. Thomas, News and Courier, April 6, 1969, p. 1.

THE EXCHANGE AND CUSTOM HOUSE

(By Lewis Bowen, St. Andrews High School)

(Second place winner)

In the late 1700's, the Exchange Building was constructed, and became one of Charleston's most versatile structures, serving as a storehouse for tea, a prison for rebels, a magazine for powder and a hall for social events. "Perhaps no other single structure in the state was so immediately a part of the important events from South Carolina's early history." [1]

When Josiah Quincy was in CharlesTown he described the city as the following. "The number of shipping far surpassed all I have seen in Boston." [2] With such a great volume of trade, it was evident that some structure should exist as a center for both the commercial aspect as well as a custom service.[3] Since no structure existed at that time for trade, one had to be constructed.

A design for the building was needed. William Rigby Naylor was chosen as architect. His plans called for a structure in grand Palladian style, then so popular in England.[4] The finished Exchange, except for the roof line, followed these plans.[5]

The agreement of construction stated:

The foundations were to be brick and mortar ninty-two feet from north to south, and sixty-five and one half feet from east to west . . .

The steps were to be made of "Solid Portland Stone, Handrail and Bannisters of Portland Stone, and under the said Steps and platforms, to be Brick Walls and Arches to support the same, the Wall to be three Bricks lengthways thick and thirty-four feet six inches high. The Piazza fifteen feet in the clear from the Stone Pavement to the ceiling, the Piazza Floor to be paved with gool Perbeck stone." [*sic*]

The agreement also specified that the parapet would be coped with stone and the "rustic work" would also be of this material. Two Venetian windows and twenty-four pilasters of the "Ionick Order" and the classic urns that formerly topped the parapet wall were specified. The roof of the cupola and the bed of the entablature to be of lead, "Hips and Ridges to be covered with Leadm as also all the Pediment and Cornices to Windows, the Lead to Hips and Ridges and also the Pediments to be five pounds weight to each square foot . . ." [*sic*]

The doors to the cellars were to be of cypress and the windows were to have iron bars and shutters. The girders to the floors were to be twelve by fourteen inches, joist to the floors were three by fourteen inches, roof girders eight by twelve inches, principle rafters eight by ten inches, common rafters three by six inches, purlins eight by eight inches, bond timbers for joist and girders to lay six by nine inches.[6]

Peter and John Horlbeck were chosen as contractors, now that the design was complete. They proposed completing the structure by 1770, for a sum of forty thousand, nine hundred and thirty pounds.[7]

Probably the reason the construction took such a great length of time was that the Portland Stone, the dull grey Perbeck, and the Welsh slate had to be brought from England.[8] The other materials, the cypress, the pine, and the bricks, were obtained locally.[9]

Perhaps the most notable features of the building no longer exist today, instead they were replaced or removed.

The original cupola, as designed by Naylor disappeared and was replaced by Charles Fraser in 1835.[10] Fraser's cupola was removed after being damaged during the earthquake of 1886. The parapet and large Portland Stone urns were also probably lost during this quake.[11]

One unique feature, the portico, was long believed to have been removed, but it apparently never existed. Somehow the plans were misinterpreted and no porch was ever constructed.[12]

The main feature of the second floor no longer remains. It was the "Large Room" where the ball for Washington was held.[13]

The Large Room was to be wainscotted fourteen feet high, with eight columns and twenty pilasters and an etablature of three feet of the Ionic order. There was a cove ceiling six feet high, two chimney pieces and pediments to every door. Frames were glazed with London glass, twelve by fourteen and one half inches, with eighteen lights to each window.[14]

"Today the Large Room is simply part of a stair well and landing. No paneling remains." [15]

The Exchange was finally completed after four years and 41,740 pounds had gone into its construction.[16] Now she was ready for her busy revolutionary life.

The Scent of Revolution was in the colonial air. Pressure was building up in every American and the time had come to release this pressure.

"When Parliament yielded to the demand for the repeal of Townshend duties, George III insisted on retaining the tax on tea." [17] This action left the colonists enraged. Although the tea was cheaper, just the thought of paying taxes kindled the spark for rebellion.[18]

Boston's "Tea Party" was tumult from start to finish.[19] "Charles Town's Tea Party, occurring at noon, with no disorders and no disguises . . . was a stately minuete in comparison." [20] Boston's tea party lasted an hour or two; Charles Town's own the endurance record, lasting for three whole days.[21]

Although the events of CharlesTown's Tea Party were calm compared to those of Boston, they were none the less interesting. On December 1, 1773, the first shipment of tea arrived. The cargo consisted of two hundred any fifty-seven chests consigned by the East India Tea Company to prominent merchants to be sold on commission.[22] This shipment was the reason landowners were invited to the Exchange for a meeting on Friday afternoon.[23] "This meeting was of great importance for from it . . . descended the government of South Carolina." [24]

On the seventeenth another meeting was held and decided, despite much opposition, "That the tea ought not to be landed, received or vended in this colony." [25] To prevent the sale, a law was devised which stated that if after twenty days no consignee received the goods, they would be confiscated.[26]

Footnotes at end of article.

Once confiscated, the tea would be stored in the Vaults of the Exchange.[27]

When the allowed time had expired, merchants removed the cases of tea from the ship and stored them beneath the Exchange in an area rented for this purpose.[28] On several other occasions, tea was confiscated and secured within the same area.[29]

The next big event took place on November 3, 1774. On this day, three merchants; Messieurs Lindsay, Kinsley, and Mackenzie; boarded the ship and made an oblation to NEPTUNE, of seven chests of tea.[30] In other words, those three merchants dumped tea, they already owned, into the Cooper River.

The last event was small yet very impressive. A radical group called Charleston's Liberty Boys also confiscated some tea, but instead of storing it or dumping it, they decided to burn it.[31]

This ended the events of the tea party, but on October 14, 1776, the tea was brought from the basement of the Exchange and sold by South Carolina for much profit.[32] So that "Charleston not only dumped and burned her tea, she drank it, too."[33]

The Exchange was not only used by the Charlestonians, but it was also used against them. During the British occupation of Charleston, the Exchange's basement was used as a dungeon, called the Provost.[34] The Provost was described by Edward McCrady as follows—

The middle part of the cellar under the Exchange was the place chosen for the imprisonment of those arrested . . . the dampness of this unwholesome place, with out any means of warming its temperatures, caused great sickness and suffering and some deaths among those confined within its walls. . . . Not only men, but women also were indescriminately cast into this place. . . . These were crowded together with the sick laboring under contagious diseases, with negroes, disenters, and women of infamous character to the number forty-six within narrow limits.[35]

Confined within the wall of the Provost, were many prominent citizens. Some were Christopher Gadsden, Thomas Heyward, Jr., Edward McCrady, Alexander Moultrie, Edward Rutledge, and Arthur Middleton.[36]

One important prisoner was Colonel Isaac Hayne, who was executed without trial. His story is an interesting one.

Hayne was captured near Charleston and taken prisoner. He gave his word not to fight again and was paroled. The British wanted Hayne on their side because of his influence on the people, so they recalled this parole and insisted he swear allegiance to the Crown. He refused.

Finally under much pressure Hayne signed a paper swearing allegiance and returned home, assured he would not have to bear arms against the United States. Again he was threatened, this time to join the British forces. Outraged, Hayne formed a militia against the British. Soon after he was caught and placed in the Provost, only to be executed as a spy.[37]

Before the formation of the Provost, the cellar was used for another purpose, a powder magazine.

During the terrific siege of Charleston by the British, General Moultrie placed his powder magazine under the Exchange (an estimated amount of powder was one hundred thousand pounds).[38]

"This large amount of powder was stored in the North East corner of the basement of the building. The doors and windows were then bricked up. When the British finally captured the City, the apartment next to the powder magazine was used as the Provost."[39]

The uniqueness of the situation was that after the British had left, Moultrie returned to the city and to his great amusement, found the powder magazine intact.[40]

The Exchange's cellar played a very important role in the American Revolution, both for and against the colonists. Now that the war is over, the social aspects appear.

The Charlestonians always enjoyed the finer things in life. They partied, attended theatres and gambled at the race track and cock fights.[41] Perhaps the most noteworthy event of the late 18th century was the visit of President Washington to Charleston in the spring of 1791.[42] He was then rushed to the steps of the Exchange where he received the honors of the procession.[43]

On the evening of May 4, an elegant ball was given in the Large Room of the Exchange to honor the great General.[44] The ball was described as follows:

In the evening a splendid Ball was given by the City Corporation which the President of the United States honored with his presence. There was a numerous and brilliant assembly of ladies and great number of gentlemen present. The ladies were superbly dressed and most of them wore ribbons with different inscriptions expressive of their respect and esteem for the President, such as, "Long live the President," "Health to Columbia's noblest son, Her light and Shield, great Washington."[45]

Throughout the years the Exchange Building has seen many events and played a part in most. It stands as a memorial to our great American Heritage. The Exchange saw CharlesTown become Charleston and the British Colonies become the United States of America. There is an old saying that at Charleston the Ashley and Cooper Rivers meet to form the Atlantic Ocean. With the pride and loyalty established by Charleston, the statement could be none the less true. On a birthday a person looks back over the years to remember the important events of his life, well as the bicentennial approaches one could not help but realize that "no other single structure in the state was so immediately a part of the important events from South Carolina's early history."[47]

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FOOTNOTES

[1] W.H.J. Thomas, *South Carolina's Historic Exchange Building* [n.p., no pub.], [n.d.], p. 1.

[2] William Way, *The Old Exchange and Custom House* (Charleston: Rebecca Motte Chapter, 1971), p. 10.

[3] *Ibid.*, p. 10.

[4] Thomas, *op. cit.*, p. 3.

[5] *Ibid.*, p. 3.

[6] Thomas *op. cit.*, pp. 8–9.

[7] *Ibid.*, p. 3.

[8] Thomas, *op. cit.*, *p.* 9.

[9] *Idem.*

[10] *Ibid.*, p. 10.

[11] *Idem.*

[12] *Idem.*

[13] *Ibid.*, p. 11.

[14] Thomas, *op. cit.*, p. 11.

[15] *Idem.*

[16] *Ibid.*, p. 3.

[17] David D. Wallace, *South Carolina, A Short History* (Columbia: University of South Carolina Press, 1969), p. 251.

[18] Marguerite Steedman, "Charleston's Forgotten Tea Party," *The Georgia Review* (Summer, 1967), p. 246.

[19] Robert M. Weir, *A Most Important Epocha: The Coming of the Revolution in South Carolina* (Columbia: University of South Carolina Press, 1970), p. 51.

[20] *Ibid.*, p. 246.

[21] Weir, *op. cit.*, p. 251.

[22] Wallace, *op. cit.*, p. 251.

[23] Thomas, *op. cit.*, p. 4.

[24] Wallace, *op. cit.*, p. 251.

[25] *Ibid.*, p. 252.

[26] *Idem.*

[27] Steedman, *op. cit.*, p. 248.

[28] Wallace, *op. cit.*, p. 252.

[29] *Idem.*

[30] Steedman, *op. cit.*, p. 250.

[31] *Ibid.*, p. 254.

[32] Wallace, *op. cit.*, p. 252.

[33] Steedman, *op cit.*, p. 251.

[34] William Way, *The Old Exchange and Custom House*, p. 11.

[35] *Idem.*

[36] *Ibid.*, p. 12.

[37] Robert Maeby, *Charleston: A Gracious Heritage* (New York: D. Appleton and Century Co. Inc., 1947), p. 75.

[38] Way, *op. cit.*, pp. 11–12.

[39] *Ibid.*, p. 11.

[40] *Idem.*

[41] Carl Bridensbaugh, *Myths and Realities* (Baton Rouge: Louisiana State University Press, 1952), pp. 58–118 *passium.*

[42] Thomas, *op. cit.*, p. 6.

[43] *Idem.*

[44] Way, *op. cit.*, p. 15.

[45] *Idem.*

[46] Thomas, *op. cit.*, p. 1.

OBSERVATIONS OF THOMAS SUMTER

(By John Lenartz, St. John School, third place winner)

Before the years of the Revolution Thomas Sumter was loyal to King George III. But after hearing Christopher Gadsen in 1766, Sumter changed to a fighter for independence. He fought not only with words but also with arms. His characteristics helped form a great general in the American Revolution.

Had it not been for his love for South Carolina Sumter may not have even fought in

the war. Many leaders like Francis Marion, Harry Lee and Nathaniel Greene considered him only a man who fought for glory, but as I read I tend to disagree. Sumter loved his wife and son for he once grasped his family and fled with them to safety while a small force pursued him. Since he probably could have defeated the force, his men were unusually complaining bitterly for his action. He of course received no glory at that particular instance. As you read this essay you may see he risked his life for South Carolina and also risked his glory and reputation for his family.

Another factor that made him a successful general was that he gained the deep respect of his men. After hearing the news of the British firing at Lexington the Second Provincial Congress of Carolina chose officers of the state. Sumter called a local militia together and in appreciation they elected him a captain. He taught his men military tactics but he was not a disciplinarian as were Moultrie and Marion. And it was for this reason they enjoyed having him as their leader. In June 1777 Sumter came down with malaria and was hospitalized at Sunbury. With the confidence and respect of his men who had served under him, on September 19, 1778, Thomas Sumter resigned his commission. On June 15, 1780 to rescue the land he loved, Sumter again formed a local milita. During the period of his resignation Cornwallis totally had control of South Carolina and there was therefore no army or government in the state to rule or guide the patriots. A small committee elected Thomas Sumter Commander in Chief of the South Carolina troops and promoted him to a brigadier general. South Carolinians were very grateful to Sumter in this effort to allay them from the British.

A woman named Rebecca Motte showed her respect when Sumter asked if he could burn her mansion down to rid the British from the occupied house and she boldly replied "If it were a palace, it should go." The British leaders also admired and yet feared him. Cornwallis relayed a message to Tarleton giving approval to assassinate Sumter, his statement was, "I shall be very glad to hear that Sumter is in a position to give us no further trouble; he certainly has been our greatest plague in this country." Many British leaders tried a assassinate him for they feared him. The major reason these men were trepidant towards him was because he was a great strategist and well experienced general.

In July, 1780, Sumter traveled to North Carolina searching for the Gillispie brothers who were famous for making guns. The Gillispie brothers favorite sport was cock fighting. They said that Old Tuck (Gillispie's favorite cock fighter) resembled Sumter because of Sumter's cock feather and fierce fighting. An example of his courage is shown at the Battle of Hanging Rock. Sumter had a bullet ripped into his thigh but only shouting a cry of pain he continued to ride cheering and directing his men. His men inspired by this went on to defeat the British. Once he had a battle with Tarleton on the Tyger River in which he courageously risked his troops to fight the calvary of Tarleton, before Tarleton's large number of infantry and artillery approached. In the battle he bravely received five buckshots that ripped into his chest and one that entered his left shoulder and ended up at his right. For the rest of the war this pain plagued Sumter.

This dauntless fighter had a record to be proud of as the war closed. He harassed and agitated British troops which helped quicken the defeat of Cornwallis at Yorktown. He won many battles and skirmishes in South Carolina.

After the war be became a United States congressman (1789–1793), (1797–1801) and a United States senator (1801–1810). He died a natural death on June 1, 1832, at the age of ninety-eight and was the last surviving general of the American Revolution. In later years Fort Sumter and Sumter, South Carolina, were named in recognition of his service to South Carolina.

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PLANT CLOSINGS

Mr. MONDALE. Mr. President, yesterday I was very pleased to introduce, together with the distinguished senior Senator from Michigan (Mr. HART), the National Employment Priorities Act of 1973.

Many of us fail to fully understand the pain and dislocation that the closing of an industrial plant may cause to employees, their families, and to their community.

We may know that those directly employed stand to lose not only jobs, but pensions and health benefits for themselves and their families—and that workers in their 40's and 50's may find themselves both unable to find comparable new work and unqualified for retirement or social security. We may know that there is often a "domino effect" on other businesses affecting the entire economy of an area. And we may know that the loss of tax revenues both from the plant closing and its broader economic impact may impair the ability of local government to respond.

But to really understand the tragedy of a plant closing, perhaps you have to see the job you have held for 20 years, the security you have tried to build for your wife and children, your future and your way of life, disappear like a cloud of smoke.

Charles Kotovich, an employee of Swedish Crucible Steel in Hamtramck, Mich., does understand. Mr. President, I ask unanimous consent that excerpts of Mr. Kotovich's statement before an ad hoc Congressional hearing, convened by the distinguished Senator from Michigan (Mr. HART) on June 16 of this year be printed in the RECORD.

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

EXCERPTS FROM STATEMENT BY CHARLES KOTOVICH

Recent newspaper stories have indicated that the Swedish Crucible Steel Foundry shall be closing. Prior to the announcement of closing, there were 275 members of Local 601 who were employees of the Foundry Division. At this point in time, there are approximately 147 people. Within two weeks, in all likelihood, there will be no one working at the Swedish Crucible Steel Foundry.

Before I talk about the human disaster occurring at the Swedish Crucible Steel Foundry, I would like to tell you the story of my life. When I was 18 years old, I went to work at the Tank Plant as a Government Inspector. At 19, I joined the United States Army and fought for my country in World War II. After the war, I returned and sought to get my old job back at the Tank Plant. I was informed by my supervisors that my job would last only about six months since the war had come to an end. So, at 19 I decided I would seek another job and went to work for Midland Steel Corporation in Detroit. I worked there for eleven years. That plant closed approximately in 1957–1958. I collected 26 months of unemployment compensation during that recession, seeking a job, and then I collected 13 weeks more unemployment compensation because of the extension granted by the U.S. Government.

I then went to work for Swedish Crucible Steel and I have worked at Swedish Crucible Steel for the last 14 years. I have 16 years left before I would retire. I had no vesting rights at Midland Steel and I doubt that my pension that I have coming from Swedish Crucible would be very much when I retire 16 years from now. I, like so many others at Swedish Crucible, must start all over again.

Maybe it is hard for people who hold public office in the U.S. Senate or in Congress to understand the problems I have had or the problem I have now. Maybe it is hard for people who hold high public office or are prominent in business and industry to understand the problems the average worker has today.

During World War II I made a contribution to my country—I fought in the war. I would like you to know that I have five children. Three of my sons have enlisted in the Army. One of them fought in Korea, doing two periods of service in Korea and subsequently participated in the combat in Vietnam. My second son has participated in the combat in Vietnam. Another son is serving in the U.S. Military today in Germany—all of them making a contribution to their country.

I have a daughter 13 years old who is an honor student at Dickinson Junior High School in the City of Hamtramck. She will want to further her education beyond high school, and all of us know that that takes money.

I own a house in the City of Hamtramck. For the last 26 years I have paid taxes to the City of Hamtramck and the County of Wayne. I pay taxes to the State of Michigan. I pay taxes to the Federal Government. I have never been in trouble with the law. I have raised my family, sent my children to school. I have been a good citizen; my children have been good citizens. I vote on Election Day. I do everything that any average American citizen does and fulfill my responsibility as a citizen. I have never been on welfare—I have always worked for a living and I have worked hard. I have believed that if you work hard—if you do what is right, things will go right for you. So I got close to nothing after 11 years at Midland Steel. Now, at Swedish Crucible, I will end up with close to nothing when the plant closes in two weeks or so. There is no protection for me and there is no protection for the people that I have represented for the last four years as President of this small local union; and I know full well that the only thing that can protect people in my predicament (and there are thousands like us all over the Metropolitan Detroit Area, in the State of Michigan and throughout the country) is a Federal law that provides the protection for me and for people like me, to assure that my life is not shattered as it is being shattered by the decision of Swedish Crucible Steel.

I would like to ask you some questions: Sure there will be some small unemployment compensation, but what am I to do in two weeks? How will I make a life? Who will pay my tax bills on my property—my small house and my small lot? Who will pay

my gas and electric bills? Who will make sure that my daughter can get her education if I can't find a job? Who will make sure that if and when I retire at 65, my wife and I will be able to live in dignity? Who will provide for my Blue Cross-Blue Shield to assure that if illness strikes myself or my wife or my child that the bills will be paid? Who will provide me with life insurance one month after the plant closes so that in case I happen to die, there will be enough to bury me and provide some money for my wife and my daughter? Is there anybody here who can give me those answers that will satisfy me in such a way that I can go on living my life in the modest way I have lived for the last 30 years?

Mr. MONDALE. And this is not a unique or unusual story. Every year thousands of working Americans throughout the Nation find themselves suddenly jobless, without warning and without consultation, because of the decisions of remote corporate managers.

In my own State, Minnesota, the closing of two plants by White Motor Co. last year left 500 employees without jobs, and left the pension fund underfunded by $15 million. Legal action by employee unions did lead to substantial restoration of pension benefits. But many of those who worked for White Motor for so long are still without jobs.

With the energy crisis threatening to produce a substantial slowing of our economy in the next year, it is time to begin a thorough study of the impact of Government policies on the location and relocation of employment opportunities. And it is time to explore ways to provide for fair treatment of those who have devoted their lives to jobs which have served the Nation and who have lost those jobs through no fault of their own.

There is a strong temptation for those of us in public life to write off these tragedies as none of our affair. But the Federal Government is already deeply involved in supporting the relocation of industrial plants.

Special provisions in our tax laws encourage conglomerate mergers that often lead to plant relocation. The Federal Government permits issuance of tax-free State and local industrial development bonds which can be used to subsidize relocations. The low $1.60 an hour minimum wage encourages plants to flee to low-wage havens. The investment tax credit and superaccelerated depreciation—ADR—make new investment more attractive, while the business loss deduction allows companies to write off any losses connected with moving. And companies which move plants abroad pay no U.S. taxes on the profits they keep overseas, and can subtract the full amount of foreign taxes from U.S. taxes.

So we, in Government, are already involved. And we are among the few major industrial countries continuing to ignore the social impact of plant relocation on employees and local communities. In England, Sweden and West Germany, as in many countries, government permission is required for plant location and relocation. Sweden maintains a substantial program of job training and retraining—with income support for those enrolled. In England, the so-called redundancy law requires companies to provide compensatory payments to displaced employees.

For not all the costs of industrial relocation appear on corporate balance books. When a plant closes, a terrible price is paid by the community—in lost revenues, in increased welfare costs, in human suffering.

And costs are often borne by the receiving community as well—costs of industrial pollution which can damage the quality of life and harm agriculture, costs for increased public services such as schools, hospitals, roads and public transportation. The location of a major industrial plant can dramatically change the life of a community—for better or for worse—yet often these considerations are ignored.

This bill represents a first step toward a national policy for industrial relocation.

The bill would require, wherever possible, 2-year notification of plant closings or relocations to employees and affected communities. Such notice would permit efforts to make the closing unnecessary, and bargaining over the terms upon which closing will take place. And it would permit advance planning by Federal, State, and local governments to reduce the economic and social impact.

The bill would establish a National Employment Relocation Administration to investigate and report on the economic justification for plant closings, upon request of 10 percent of employees or a collective bargaining representative; and it would provide for withdrawal of tax benefits related to unjustified plant closings for up to 10 years.

The bill would provide adjustment assistance to employees affected by plant closings, including assistance directed toward retraining or early retirement, relocation allowances, maintenance of health and pension benefits, and temporary income supports.

It would provide help through grants and loans to communities that suffer substantial unemployment as the result of plant closings, to permit the attraction of new industry.

And it would provide technical and financial assistance to businesses, to help prevent unnecessary plant closings.

Our bill is only an outline and a beginning—it is far from a finished proposal. I am hopeful that it will receive close attention from the business community, employee organizations, and State and local government. And I hope that it will be the focus for intensive hearings in the Senate.

We may find that it gives some wrong answers—but it raises the right questions. In the words of an Anniston, Ala., foundry worker:

You are going to have to help us in this community. We have people out there . . . they're hurt. They may not find other jobs.

We are learning the difficult lesson that we must conserve our limited natural resources, and use them wisely. But we must never forget that the crucial resources of our economy are American working men and women. Their lives are invested in their jobs. They have the right to ask their Government not to subsidize those who would destroy their economic security capriciously. And they should have the right to retraining for decent employment, or to dignified retirement, if their jobs must end.

Mr. President, I ask unanimous consent that the text of S. 2809, the National Employment Priorities Act of 1973, may be printed in the RECORD.

There being no objection, the bill (S. 2809) was ordered to be printed in the RECORD, as follows:

S. 2809

A bill to amend the Manpower Development and Training Act (Public Law 84-415, as amended) to require prenotification to affected employees and communities of dislocation of business concerns, to provide assistance (including retraining) to employees who suffer employment loss through the dislocation of business concerns, to business concerns threatened with dislocation, and to affected communities, to prevent Federal support for unjustified dislocation, 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 National Employment Priorities Act of 1973.

SECTION 1. The Manpower Development and Training Act of 1962 (Public Law 87-415, as amended) is amended by inserting immediately before title I of such Act the following chapter heading:

"CHAPTER I—MANPOWER DEVELOPMENT AND TRAINING"

and by inserting at the end of such Act the following chapter II:

"CHAPTER II—NATIONAL EMPLOYMENT PRIORITIES"

TITLE I—GENERAL PROVISIONS

DECLARATION OF POLICY AND PURPOSE

SEC. 2101. (a) The Congress declares that—

"(1) unemployment is a major economic and social problem that causes great economic loss to individuals, communities and the Nation;

(2) arbitrary and unnecessary closings and transfers of establishments of business concerns cause irreparable social and economic harm to employees, local communities and the Nation, and too often receive financial support from the United States Government;

(3) businesses wishing to close establishments or transfer certain operations to other establishments should take into account the social and community needs of employees and citizens in the areas in which the establishments operate and the social, environmental and community needs of citizens in the area to which the transfer is proposed;

(4) it is necessary to withdraw Federal support from arbitrary and unnecessary closings or transfers of operations of establishments of business concerns, so that wasteful loss to employees, communities and the Nation can be prevented, and

(5) assistance (including retraining) for employees and affected communities is needed to reduce the economic and social impact of dislocation of employment opportunities.

(b) It is the purpose of this Act to require prenotification to affected employees and communities of dislocation of business concerns, to prevent federal support for unjustified dislocation, and to provide assistance to employees who suffer employment loss through the dislocation of business concerns, to business concerns threatened with dislocation, and to affected communities.

DEFINITIONS

SEC. 2102. For the purpose of this Act—

(1) "Administration" means the National Employment Relocation Administration established in the Department of Labor;

(2) "Administrator" means the Adminis-

trator of the National Employment Relocation Administration;

(3) "business concern" means any commercial business enterprise employing at least fifty employees, and includes parent corporations together with all subsidiaries thereof;

(4) "Council" means the National Employment Relocation Advisory Council;

(5) "employee suffering an eligible employment loss" means any employee who, in any work week, by reason of the closing or transfer of operations of any establishment of a business concern, is unemployed, or receives salary, which is less than 85 percent of the average weekly wage of that employee prior to such closing or transfer of operations as determined pursuant to regulations of the Administrator;

(6) "establishment" means any factory, plant, mine, business office, facility, or other single working place of a business concern, and, pursuant to criteria established by the Secretary, shall include any major functional subdivision of an establishment;

(7) "Secretary" means the Secretary of Labor; and

(8) "transfer of operations" means the transfer as defined by regulations of the Secretary, of an operation conducted at an establishment of a business concern, including the closing of an establishment, within three years after the cessation of such operations at the old location, to an establishment of that business concern at a new location not within reasonable commuting distance of the old location, and includes any such transfer of operations if that transfer took place within three years prior to such cessation of operations at the old location.

TITLE II—ESTABLISHMENT OF THE NATIONAL EMPLOYMENT RELOCATION ADMINISTRATION

ESTABLISHMENT OF ADMINISTRATION

SEC. 2201. (a) There is established in the Department of Labor a National Employment Relocation Administration. The Administration shall be headed by an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) There shall be a deputy administrator of the Administration who shall be appointed by the President, by and with the advice and consent of the Senate. The deputy administrator shall perform such duties as the Administrator shall prescribe.

ADMINISTRATION

SEC. 2202. The function of the Secretary—

(1) under this Act; and

(2) with respect to any manpower development and training program under the Manpower Development and Training Act of 1962, or any other similar provision of Federal law being administered by him, shall be carried out through the Administration established under this title.

FUNCTIONS OF THE ADMINISTRATION

SEC. 2203. In order to carry out the purposes of this Act, in addition to any other functions transferred to the Secretary under this title, the Secretary is authorized to—

(1) conduct, in accordance with title III of this Act, investigations and issue reports on any proposed closing or transfer of operations of an establishment of a business concern in order to determine the extent of the employment loss that would result from any such closing or transfer, the effect of such employment loss on the individuals and communities involved, and whether such closing or transfer is without adequate economic justification;

(2) provide, in accordance with title IV of this Act, adjustment assistance to employees who suffer a loss or reduction in employment because of a closing or transfer of operations of an establishment of a business concern, including cash payments to provide income maintenance, maintenance of health and pension benefits, relocation allowances, rental and mortgage supplements, retraining assistance, early retirement payments, and food stamps and surplus commodities;

(3) provide, in accordance with title V of this Act, adjustment assistance to communities which suffer a significant rise in unemployment as a result of a closing or transfer of operations of an establishment of a business concern, including grants to the community to make up for the loss in tax revenues and loans or loan guarantees to the communities or to private enterprises for the purpose of expanding existing job opportunities;

(4) provide, in accordance with title VI of this Act, technical or financial assistance, including technical advice, loans, and loan guarantees, to a business concern that planned to close or transfer operations of an establishment of that business concern if the Administrator determines that such assistance will prevent or alleviate the potential employment loss from such closing or transfer; and

(5) conduct research into the problems of business closings, transfers of operations, and unemployment.

NATIONAL EMPLOYMENT RELOCATION ADVISORY COUNCIL

SEC. 2204. (a) There is established a National Employment Relocation Advisory Council which shall consist of 13 members as follows:

(1) the Secretary of Labor;

(2) the Secretary of Commerce;

(3) the Administrator of the Environmental Protection Agency;

(4) four members representing the general public;

(5) three members representing organized labor; and

(6) three members representing management or the business community.

The members appointed pursuant to clauses (4), (5) and (6) of the preceding sentence shall be appointed by the President, by and with the advice and consent of the Senate.

(b) Each member of the Council who is not an officer of the United States shall be entitled to receive compensation at not to exceed the daily rate prescribed for GS–18 of the General Schedule under section 5332 of title 5, United States Code, during such time as he is engaged in the performance of duties as a member of the Council. Each member of the Council shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of such duties as a member of the Council. Each member of the Council shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of such duties.

(c) The Council shall meet at the call of the Chairman but not less than four times a year.

(d) The Council shall—

(1) advise and assist the Secretary and Administrator with respect to the activities of the National Employment Relocation Administration under this Act;

(2) review and evaluate the effectiveness of programs carried out under this Act;

(3) conduct surveys and establish area and industry priorities for the application of economic adjustment assistance under this Act;

(4) carry out studies and prepare projections of future areas of economic activity in which the United States can expect to be competitively disadvantaged and identify industries in which economic adjustment assistance may be necessary; and

(5) conduct research and propose new measures and programs to provide economic adjustment assistance to employees and business concerns who may be eligible for assistance under this Act.

(e) The Secretary shall make available to the Council such professional and clerical assistance as the Council may require.

ADMINISTRATIVE PROVISIONS

SEC. 2205. In addition to any other authority vested in the Secretary by other provisions of this Act, the Secretary, in carrying out his functions under this Act, is authorized to—

(1) adopt, alter, and use a seal, which shall be judicially noticed;

(2) hold such hearings, sit and act at such times and places, and take such testimony, as he may deem advisable;

(3) request directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality information, suggestions, estimates, and statistics needed to carry out the purposes of this Act; and each department, bureau, agency, board, commission, office, establishment or instrumentality is authorized to furnish such information, suggestions, estimates, and statistics directly to the Secretary;

(4) under regulations prescribed by him, assign or sell at public or private sale, or otherwise dispose of for cash or credit, in his discretion and upon such terms and conditions and for such consideration as he shall determine to be reasonable, any evidence of debt, contract, claim, personal property, or security assigned to or held by him in connection with loans made or evidences of indebtedness assigned to or held by him in connection with such loans or evidences of indebtedness until such time as such obligations may be referred to the Attorney General for suit or collection;

(5) further extend the maturity of or renew any loan made or evidence of indebtedness purchased under this Act, beyond the period stated in such loan or evidence of indebtedness or in this Act, for additional periods not to exceed ten years, if such extension or renewal will aid in the orderly liquidation of such loan or evidence of indebtedness;

(6) deal with, complete, renovate, improve, modernize, insure, rent, or sell for cash or credit, upon such terms and conditions and for such consideration as he shall determine to be reasonable, any real or personal property conveyed to, or otherwise acquired by, him in connection with loans made or evidences of indebtedness purchased under this Act;

(7) pursue to final collection, by way of compromise or other administrative action, prior to reference to the Attorney General, all claims against third parties assigned to him in connection with loans made or evidences of indebtedness purchased under this Act, including authority to obtain deficiency judgments or otherwise in the case of mortgages assigned to the Secretary, and the power to convey and to execute deeds of conveyance, deeds of release, assignments and satisfactions of mortgages, and any other written instrument relating to real or personal property or any interest therein acquired by the Secretary pursuant to the provisions of this Act may be exercised by the Secretary or by any officer or agent appointed by him for that purpose without the execution of any expressed delegation of power or power of atorney;

(8) sue and be sued in any court of record of a State having general jurisdiction or in any United States district court, and jurisdiction is conferred upon such district court to determine such controversies without regard to the amount in controversy; but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Secretary or his property; and nothing herein shall be construed to ex-

cept the activities under this Act from the application of section 507(b) and 2679 of title 28, United States Code, and section 367 of the Revised Statutes (5 U.S.C. 316);

(9) acquire, in any lawful manner, any property (real, personal, or mixed, tangible or intangible) whenever necessary;

(10) appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this Act;

(11) obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code, at rates for individuals not to exceed the rate prescribed for GS-18 in the General Schedule under section 5332 of title 5, United States Code;

(12) accept and utilize the services of voluntary and noncompensated personnel and reimburse them for travel expenses, including per diem, as authorized by section 5703 of title 5, United States Code;

(13) enter into contracts, grants or other arrangements, or modifications thereof to carry out the provisions of this Act, and such contracts or modifications thereof may, if necessary, be entered into without performance or other bonds, and without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5);

(14) provide for the making of such reports (including fund reports) and the filing of such applications in such form and containing such information as the Secretary may reasonably require;

(15) make advance, progress, and other payments which the Secretary deems necessary under this Act without regard to the provisions of section 3648 of the Revised Statutes, as amended (31 U.S.C. 529); and

(16) establish such rules, regulations, and procedures as the Secretary deems necessary.

COMPENSATION OF ADMINISTRATOR AND DEPUTY ADMINISTRATOR

SEC. 2206. (a) Section 5314 of title 5, United States Code, relating to level IV of the Executive Schedule, is amended by adding at the end thereof the following new item:

"(60) Administrator, National Employment Relocation Administration."

(b) Section 5315 of such title, relating to level IV of the Executive Schedule, is amended by adding at the end thereof the following new item:

"(98) Deputy Administrator, National Employment Relocation Administration."

TITLE III—NOTICE, INVESTIGATIONS, HEARINGS, AND REPORTS, IN CLOSING AN ESTABLISHMENT OR TRANSFERRING OPERATIONS

NOTICES OF INTENT TO CLOSE AN ESTABLISHMENT OR TRANSFER OPERATIONS TO ANOTHER ESTABLISHMENT

SEC. 2301. (a) Whenever—

(1) a business concern intends to close or transfer all or part of the operations of an establishment of that business concern; and

(2) at least 15 percent of the employees who are members of any labor organization or 15 percent of all the employees (including the employees who are members of any labor organization employed) in that establishment will suffer an eligible employment loss as a result of any such closing or transfer, the owner, member, or other responsible agent of the business concern shall furnish the Secretary and the employees affected written notice of the intention to close the establishment or to transfer operation not less than 2 years prior to the date of any such closing or transfer; except that,

(3) where the Secretary for good cause finds that the business concern could not reasonably predict its intention to close or transfer within the period specified in clause (2) of this paragraph, the Secretary may approve notification with all reasonable promptness.

(b) The written notice required by this section shall include—

(1) the nature of the establishment affected by the closing or transfer of operations;

(2) the reasons for the proposed closing or transfer of operations;

(3) alternatives to the proposed closing or transfer of operations including any requests for assistance made available under this Act;

(4) the extent of the potential employment loss that would result from such closing or transfer of operations;

(5) plans to alleviate the effects of this potential employment loss on the employees and communities involved;

(6) the economic circumstances of the affected establishment, including present profitability or marginality, and future investment, employment and production plans for that establishment; and

(7) the economic circumstances of the business concern (including domestic and foreign subsidiaries or parent corporations) and the opportunity for transferring affected personnel to other establishments of that business concern.

INVESTIGATION OF A PROPOSED CLOSING OR TRANSFER OF OPERATIONS

SEC. 2302. (a) Whenever—

(1) within thirty days after the receipt of the notice required by section 2301 a written request for an investigation under this section is received from a labor organization at an establishment affected by a closing or transfer of operations subject to this title or by at least 10 percent of the employees of any such establishment; or

(2) the Secretary determines that it would serve the purposes of this Act, the Secretary is authorized and directed to conduct a thorough inevstigation, including public hearings, into the subjects described in section 2303.

(b) In carrying out the provisions of this section, the Secretary is authorized to administer oaths for the purpose of taking evidence in any such hearings and issue subpoenas to compel witnesses to appear and testify and to compel the production of any documentary evidence in any such hearing. Any hearing examiner authorized by the Secretary may administer oaths or affirmations to witnesses appearing in any proceeding held pursuant to this section.

(c)(1) Subpoenas issued pursuant to subsection (a) of this section may be served by any person designated by the Secretary or the Administrator for that purpose.

(2) The provisions of section 1821 of title 28, United States Code, shall apply to witnesses summoned to appear at any such hearing. The per diem and mileage allowance of witnesses so summoned under authority conferred by this section shall be paid from funds appropriated to the Department of Labor.

(3) Any person who willfully neglects or refuses to appear or refuses to qualify as a witness or to testify, or to produce any evidence in obedience to any subpoena duly issued under authority of this section shall be fined not more than $500, or imprisoned for not more than six months, or both. Upon the certification by the Secretary of the facts concerning any such willful disobedience by any person to the United States Attorney for any judicial district in which such person resides or is found, such Attorney shall proceed by information for the prosecution of such person for such offense.

(d)(1) The Secretary shall employ hearing examiners in the conduct of proceedings under this section.

(2) The assignment, removal, and compensation of hearing examiners shall be in accordance with sections 105, 3301, 5252, and 7521 of title 5, United States Code, except that appointments shall be made without regard to section 5108 of such title.

REPORTS

SEC. 2303. (a) At the conclusion of the investigation held pursuant to this title, the Secretary is authorized and directed to prepare and publish a report. Each such report shall contain the findings of the Secretary with respect to—

(1) the economic necessity or justification for the proposed closing or transfer of operations of an establishment of a business concern subject to such investigation or hearing;

(2) the potential economic and social loss to the affected employees, including the number of employees who will suffer eligible employment loss as a result of such closing or transfer of operations;

(3) the potential economic, social and environmental loss to the affected community; and

(4) recommendations of actions to be taken, including the extent and scope of assistance authorized under this Act that would be required to eliminate or alleviate the loss attending to such closing or transfer of operations.

(b) No recommendations shall be completed for a report required under this section unless the Secretary has consulted with the appropriate business concern, any affected labor organization, and the appropriate representatives of the affected communities.

DISCRIMINATION

SEC. 2304. (a) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act.

(b) Any employee who believes that he has been discharged or otherwise subjected to discrimination by any person in violation of this section may, within thirty days after such violation occurs, file a complaint with the Secretary alleging such discrimination. Upon receipt of such complaint, the Secretary shall cause such investigation to be made as he deems appropriate. If upon such investigation, the Secretary determines that any person has violated the provisions of this subsection, he shall bring an action in any appropriate United States district court against such person. In any such action the United States district courts shall have jurisdiction, for cause shown to restrain violation of subsection (a) of this section and order all appropriate relief including but not limited to rehiring or reinstatement of the employee to his former position with back pay.

(c) Within ninety days of the receipt of a complaint filed under this section the Secretary shall notify the complainant of his determination under subsection (b) of this section.

TITLE IV—ASSISTANCE TO EMPLOYEES WHO SUFFER AN ELIGIBLE EMPLOYMENT LOSS

PART A—ADJUSTMENT ASSISTANCE AUTHORIZED

SEC. 2401. (a) Pursuant to guidelines and criteria established by the National Employment Relocation Advisory Council, the Secretary, after consultation with the National Employment Advisory Council, shall establish a program of adjustment assistance for employees suffering an eligible employment loss.

(b) Adjustment assistance pursuant to subsection (a) shall include, but not be limited to—

(1) income maintenance payments;
(2) maintenance of pension and health benefits;
(3) job placement and retraining benefits;
(4) relocation allowances;
(5) early retirement benefits to employees entitled to receive retirement benefits under a retirement or pension plan of a business concern subject to the provisions of this Act, or to benefits under Title II of the Social Security Act, within 3 years of suffering an eligible employment loss;
(6) emergency mortgage and rent payments; and
(7) food stamps and surplus commodities for persons suffering an eligible employment loss with incomes below the poverty level determined pursuant to criteria established by the Director of the Office of Management and Budget.

APPLICATION FOR ASSISTANCE

SEC. 2402. (a) Any employee suffering or about to suffer an eligible employment loss may file an application with the Secretary for one or more of the forms of assistance provided under this title.

(b) The Secretary shall determine whether an applicant is entitled to receive the economic adjustment assistance for which the application is made and shall furnish such assistance if the applicant is so entitled. Such determination shall be made as soon as possible after the date on which the application is filed, but in no event more than thirty days after such date.

INCOME MAINTENANCE

SEC. 2403. (a) In no event shall income maintenance payments pursuant to section 2402(a) amount to less than the lesser of the moderate living standard budget established by the Bureau of Labor Statistics of the Department of Labor adjusted regionally and for changes in the cost-of-living or 85% of the employee's prior average weekly wage, reduced by the amount of any income maintenance assistance furnished to such employee from any other source, and by 50% of any earned income.

(b) Whenever, with respect to any work week, the total amount payable to an employee suffering an eligible employment loss as remuneration for services performed during such week, as unemployment insurance, as a training payment referred to in subsection (d), and as an income maintenance payment would exceed his average weekly wage, his income maintenance payment for such week shall be reduced by the amount of such excess.

PART B—JOB PLACEMENT AND RETRAINING BENEFITS

PROGRAM AUTHORIZED

SEC. 2411. (a) To assure the speedy readjustment of an employee who is suffering an eligible employment loss, the Secretary shall make every effort to place each such employee for substantially equivalent full employment in accordance with his capacity and prospective employment opportunities. To carry out this objective every such employee who applies for assistance under part A of this title shall also apply for testing, counseling, training, and placement services as the Secretary determines to be appropriate.

(b) Insofar as possible, the Secretary shall provide assistance under subsection (a) through existing programs established by law. To the extent that assistance cannot be provided through any existing program, the Secretary is authorized to furnish such assistance through programs established by him for purposes of this part, including programs carried out through grant or contract with private agencies, institutions and organizations.

(c) To the extent practicable, before employees suffering an eligible employment loss are furnished training, the Secretary shall consult with the business concern of such employees and with the appropriate recognized union or other duly authorized employee representative and develop an employee retraining plan which provides for training such employees to meet the manpower needs of such business concern.

PAYMENTS RELATED TO TRAINING

SEC. 2412. An employee suffering an eligible employment loss receiving testing, counseling, training, or placement assistance under section 411 shall be paid allowances for reasonable and necessary expenses incurred for travel and subsistence when the testing, counseling, training, or placement assistance is provided in facilities which are not within commuting distance of his regular place of residence. The Secretary shall by regulations prescribe the amount of such allowances for various areas of the United States.

REFUSAL OF TRAINING OR PLACEMENT

SEC. 2413. (a) An employee suffering an eligible employment loss shall not be entitled to payment of any assistance under part A unless he has applied for assistance under this part.

(b) Any employee suffering an eligible employment loss who, without good cause, refuses to accept or continue, or fails to make satisfactory progress in, training or placement which has been provided for him under this part shall not thereafter be entitled to income maintenance payment until he accepts or resumes, or makes satisfactory progress in, such training or placement.

TITLE V—ASSISTANCE TO AFFECTED COMMUNITIES AND TO BUSINESSES LOCATED IN SUCH COMMUNITIES

PART A—GENERAL PROVISIONS

AUTHORIZATION

SEC. 2501. The Secretary is authorized to furnish assistance in accordance with the provisions of this title to a unit of general local government, or to an establishment located in the jurisdiction of a unit of general local government, which meets (1) the requirements of section 2502 with respect to basic eligibility, and (2) the requirements of part B or C applicable to that unit or establishment.

BASIC ELIGIBILITY

SEC. 2502. (a) A unit of local government is eligible for assistance under part B of this title upon determination by the Secretary that the closing or transfer of operations of one or more business establishments has contributed substantially to an unemployment rate within such jurisdiction exceeding 8 per centum on a seasonally adjusted basis.

(b) An establishment is eligible for assistance under part C if it is located in the same labor market as a unit of general local government which meets the basic eligibility requirements of subsection (a).

PETITIONS

SEC. 2503. (a) A petition by a unit of general local government for assistance under part B may be filed with the Secretary by the unit of general local government or its governing body or an authorized representative thereof.

(b) A petition by an establishment for assistance under part C may be filed with the Secretary by the establishment or by the business concern which owns or controls the establishment.

DETERMINATIONS BY THE SECRETARY

SEC. 2504. (a) Upon the filing of a petition under section 2503 the Secretary shall determine and certify whether the unit of general local government is eligible for assistance under part B, or whether the establishment or business concern is eligible for assistance under part C, as the case may be.

(b) Determinations and certifications by the Secretary under subsection (a) shall be made as soon as possible after the date on which a petition is filed but in any event not later than sixty days after such date.

PART B—GRANTS TO COMMUNITIES

GRANT PROGRAM AUTHORIZED

SEC. 2511. A unit of general local government certified under section 2504 as eligible for assistance under this part may receive grants in amounts determined under section 2512, if the Secretary determines, under regulations prescribed by him, that such unit has experienced a substantial revenue loss as a result of a closing or transfer.

AMOUNT OF GRANT

SEC. 2512. (a) The amount of any grant under this part may not exceed 85 percent of the eligible revenue loss, as determined in accordance with subsection (b), for the fiscal year in which the closing of an establishment or transfer of operations which resulted in certification under section 2504 occurred and for the two succeeding fiscal years.

(b) The eligible revenue loss shall be determined as the difference between—
(1) the average annual revenues of the unit of general local government derived from payroll and real and personal property taxes during the three fiscal years preceding the year in which such closing of an establishment or transfer of operations occurred; and
(2) the actual revenues of that unit of general local government derived from such sources during the fiscal year with respect to which the grant is made.

PART C—ASSISTANCE TO BUSINESSES IN DISLOCATED COMMUNITIES

PROGRAM AUTHORIZED

SEC. 2521. The Secretary may furnish assistance, in accordance with the provisions of this part and upon such terms and conditions as he may prescribe, to establishments certified under section 2504 if he determines, under such regulations as he may prescribe, that—
(1) the establishment has the capacity to expand and offer additional employment opportunities to persons residing in the jurisdiction of the unit of general local government or in the same labor market in which that unit of general local government is located;
(2) the enterprise has the potential to continue to provide such employment opportunities over a substantial period of time; and
(3) the assistance available under this part is not readily available from other sources.

TYPES OF ASSISTANCE AVAILABLE

SEC. 2522. Subject to section 2608(d) and 2609 the Secretary is authorized to—
(1)(a) make such loans to enterprises meeting the requirements of section 2521 as may be necessary to carry out the purposes of this part; and
(2) guarantee private lenders against loss of principal or interest on loans to enterprises meeting the requirements of section 2521.

TITLE VI—THREATENED WITH DISLOCATION AUTHORIZATION

SEC. 2601. The Secretary is authorized to furnish assistance in accordance with the provisions of this title to an establishment or business concern which meets the requirements of section 2602. Assistance under this title includes—
(1) interim technical or financial assistance under section 2605;
(2) technical assistance under section 2607;
(3) financial assistance under section 2608; and
(4) retraining under section 2610.

ELIGIBILITY AND QUALIFICATIONS

SEC. 2602. Except as provided in section 2605, an establishment or business concern may receive assistance under this title if the Secretary finds that (1) such establishment or business concern is planning to close an establishment or transfer operations, and (2) that—

(A) such closing or transfer of operations will result in a substantial employment loss;

(B) such closing or transfer of operations is justifiable on economic grounds;

(C) assistance under this title will, with reasonable certainty, obviate the necessity for the proposed closing or transfer of operations and enable the establishment or business concern to operate the establishment on an improved economic basis within a reasonable period of time;

(D) the establishment or business concern will make all reasonable efforts to use its own resources for economic adjustment, and such resources are inadequate in the absence of assistance under this title.

PETITIONS

SEC. 2603. A petition by an establishment or business concern for assistance under this title may be filed with the Secretary by the establishment or by the business concern which owns or controls the establishment. Any such petition shall contain an economic adjustment assistance proposal setting forth, in such detail as the Secretary may by regulation require, the proposed applications of, and projected effects of, assistance under this title.

DETERMINATION OF THE SECRETARY

SEC. 2604. (a) Upon the filing of a petition under section 2603, the Secretary shall determine and certify whether the establishment or business concern is qualified for assistance under this title.

(b) Determinations and certifications by the Secretary under subsection (a) shall be made as soon as possible after the date on which a petition is filed but in any event not later than 60 days after such date.

(c) Any certification made pursuant to this section shall remain in force only for such period as the Secretary may prescribe.

INTERIM ASSISTANCE

SEC. 2605. In order to assist an enterprise or business concern which requires such assistance in petitioning for economic adjustment assistance, the Secretary may furnish technical assistance to such firm prior to its certification.

USE OF EXISTING AGENCIES AND PROGRAMS

SEC. 2606. (a) Insofar as possible, the Secretary shall provide assistance under this title through existing programs established by law. To the extent that a certified proposal for economic adjustment cannot be carried out through any existing program, the Secretary is authorized to furnish technical assistance under section 2607 and financial assistance under section 2608 to such concern.

(b) The Secretary is authorized to cooperate with State and local governments in furnishing technical and financial assistance under this title and, in connection therewith, to furnish technical assistance to such State and local governments.

TECHNICAL ASSISTANCE

SEC. 2607. (a) The Secretary may provide, on such terms and conditions as he determines to be appropriate, such technical assistance as in his judgment will materially contribute to the economic adjustment of the establishment or business concern.

(b) Technical assistance under subsection (a) may include assistance, by means of grants or otherwise, for research and development in connection with projects which will create new employment opportunities, including the development of new production or marketing techniques.

FINANCIAL ASSISTANCE

SEC. 2608. (a) Subject to the provisions of this section and section 2609 the Secretary may provide, on such terms and conditions as he determines to be appropriate, such financial assistance in the form of guarantees of loans, loans, or interest subsidies, as in his judgment will materially contribute to the economic adjustment of the establishment or business concern. The assumption of an outstanding indebtedness of the business concerns, with or without recourse, shall be considered to be the making of a loan for purposes of this section.

(b) A guarantee or loan shall be made by the Secretary only if he determines that the interest rate of the loan is reasonable.

(c) No financial assistance shall be provided under this section unless the Secretary determines that such assistance is not otherwise available to the establishment from related or affiliated establishments or business concerns, or from private lenders, or any other sources other than the United States Government, and that there is reasonable assurance of repayment by the borrower.

(d) The Secretary shall maintain operating reserves with respect to anticipated claims under guarantees and under agreements for deferred participation made under this section and part C of title V. Such reserves shall be considered to constitute obligations for purposes of section 1311 of the Supplemental Appropriation Act, 1955 (31 U.S.C. 200).

RETRAINING

SEC. 2609. The Secretary is authorized, under the authority conferred in part D of title IV, to develop and carry out, in cooperation with interested management and employee representatives, a retraining program for employees who will be required to acquire new or additional skills as a result of the economic adjustment assistance proposal.

TITLE VII—WITHDRAWAL OF CERTAIN BENEFITS ON ACCOUNT OF UNJUSTIFIED RELOCATIONS, AND MISCELLANEOUS PROVISIONS

WITHDRAWAL OF BENEFITS

SEC. 2701. (a) Whenever the Secretary determines, after an investigation conducted under title III of this Act that—

(1) the closing or transfer of operations of an establishment or a business concern was not justified; or

(2) if such closing or transfer of operations was justified, the transfer or closing could have been avoided if the business concern had accepted assistance under this Act; or

(3) the eligible employment loss of employees of the business concern could have been avoided except for the failure of the business concern to file a notice of intent to close or transfer an operation of an establishment as required under title III or because of some other unreasonable delay, bad faith or misrepresentation on the part of the business concern; or

(4) the transfer of operations of an establishment or a business concern is to a new location outside the United States while other economically justifiable alternatives to such transfer of operations exist, then such business concern shall be ineligible for the following benefits under the Internal Revenue Code of 1954, for a period not to exceed 10 years from the beginning of the second calendar year prior to such transfer of operations with respect to the establishment from which such operations have been transferred and the establishment or establishments to which such operations have been transferred: the investment credit under section 38 of the Internal Revenue Code, the accelerated depreciation range under section 167(m) of the Internal Revenue Code, the foreign tax credit under section 903 of the Internal Revenue Code and deferral of tax on income earned outside the United States under section 911 of the Internal Revenue Code, and deductions for ordinary and necessary expenses under section 162 of the Code to the extent such expenses are related to the transfer of operations.

(b) The benefits of paragraphs (4), (5), and (6) of section 103(c) of the Internal Revenue Code (relating to industrial development bonds) shall not be applicable in any case in which the Secretary has made a determination pursuant to subsection (a).

EMPLOYEE TRANSFER

SEC. 2702. (a) Pursuant to criteria established by the Secretary, each business concern to which this Act applies shall to the extent practicable offer to employees suffering an eligible employment loss suitable employment to the extent that such employment is available at other establishments of such business concerns. This section shall in no way supersede the terms of any collective bargaining agreement.

AGREEMENTS WITH STATES

SEC. 2703. (a) The Secretary is authorized on behalf of the United States to enter into an agreement with any State, or with any State agency. Under such an agreement, the State agency (1) as agent of the United States, will receive applications for, and will provide, assistance under titles IV, V, and VI, and (2) will otherwise cooperate with the Secretary and with other State and Federal agencies in providing assistance under such titles.

ADMINISTRATION OF FINANCIAL ASSISTANCE

SEC. 2704. (a) In making and administering guarantees and loans under section 2608 or under part C of title V, the Secretary may—

(1) require security for any such guarantee or loan, and enforce, waive, or subordinate such security;

(2) assign or sell at public or private sale, or otherwise dispose of, upon such terms and conditions and for such consideration as he shall determine to be reasonable, any evidence of debt, contract, claim, personal property, or security assigned to or held by him in connection with such guarantees or loans, and collect, compromise, and obtain deficiency judgments with respect to all obligations assigned to or held by him in connection with such guarantees or loans until such time as such obligations may be referred to the Attorney General for suit or collection;

(3) renovate, improve, modernize, complete, insure, rent, sell, or otherwise deal with, upon such terms and conditions and for such consideration as he shall determine to be reasonable any real or personal property conveyed to or otherwise acquired by him in connection with such guarantees or loans;

(4) acquire, hold, transfer, release, or convey any real or personal property or any interest therein whenever deemed necessary or appropriate, and execute all legal documents for such purposes; and

(5) exercise all such other powers and take all such other acts as may be necessary or incidental to the carrying out of functions pursuant to section 2608.

(b) Any mortgage acquired as security under subsection (a) shall be recorded under applicable State law.

RECOVERY OF OVERPAYMENTS

SEC. 2705. (a) If a State agency or the Secretary, or a court of competent jurisdiction finds that any person—

(1) has made, or has caused to be made by another, a false statement or representation of a material fact knowing it to be false, or has knowingly failed or caused another to fail to disclose a material fact; and

(2) as a result of such action has received any payment of assistance under this Act to which he was not entitled, such person shall be liable to repay such amount to the State agency or the Secretary, as the case may be,

or the State agency or the Secretary may recover such amount by deductions from any payment payable to such person under this Act. Any such finding by a State agency or the Secretary may be made only after an opportunity for a fair hearing.

(b) Any amount repaid to a State agency under this section shall be deposited into the fund from which payment was made. Any amount repaid to the Secretary under this section shall be returned to the Treasury and credited to the current applicable appropriation, fund, or account from which payment was made.

PENALTIES

SEC. 2706. Whoever makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, for the purpose of obtaining or increasing for himself or for any other person any payment or assistance authorized to be furnished under this Act or pursuant to an agreement under section 2703 shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

AUTHORIZATION OF APPROPRIATIONS

SEC. 2707. There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out the provisions of this Act. Sums appropriated pursuant to this section shall remain available until expended."

DUE PROCESS FOR STATE DEPARTMENT EMPLOYEES

Mr. BAYH. Mr. President, a Federal district judge here in Washington has issued a historic ruling on the constitutional guarantee of due process.

Judge Gerhard A. Gesell, in the case of Lindsay against Kissinger, ruled that the Department of State's "selection-out" process violates the basic guarantee of due process to which all Americans are entitled. The suit was filed last June by two Foreign Service officers, Mr. Philip Lindsay and Mr. Temple Cole. Subsequently it was amended to include two U.S. Information Agency employees who were being selected out, and then was designated a class action on behalf of all Foreign Service officers facing the same involuntary retirement.

The plaintiffs stated, and Judge Gesell agreed, that the issue was not at all whether an agency of Government had a right to dismiss unwanted or unneeded employees. The issue, rather, was whether the agency—in this case the Department of State—could dismiss employees without any hearing or right of appeal or even access to the facts on which the decision was based.

Put another way, those who brought this suit asked not that they be immune from dismissal but only that they be told the reason for their dismissal and given an opportunity to rebut the allegations made against them. That does not seem to me, Mr. President, nor did it seem to Judge Gesell, to be asking a great deal on behalf of men and women who, in many instances, have given their entire adult lives to the Foreign Service.

The correctness of Judge Gesell's ruling is attested to not only by considerations of abstract justice or the implicit meaning of the due process clause but by the State Department's own abysmal record in employee dealings. As only one instance of palpable and tragic injustice, Senators will recall the case of the late Charles W. Thomas, who was denied a well-merited promotion and then selected out because a highly favorable job-rating on him had been mistakenly put into another man's file. What made this instance so particularly shocking was that, even after the mistake was discovered, the Department refused to grant Mr. Thomas a hearing. And after 2 years of lonely, unavailing efforts to win just the chance for reconsideration, in April 1971 Charles Thomas committed suicide.

That appalling tragedy shocked many of us into an awareness of the kinds of injustice that were being perpetrated on employees by the State Department in its haughty isolation. Alone of all agencies of the Federal Government, State had not—and has not—a detailed, reliable system of grievance procedures through which an injured employee might appeal for redress.

Accordingly, Mr. President, Senator John Sherman Cooper and I drafted legislation to institute a Foreign Service grievance procedure. Incorporated into the State Department Authorization Act of 1972 by the Foreign Relations Committee, it was adopted by the Senate but was lost in conference with the other body. Thereupon the committee reported it out as a separate bill and it passed the Senate in June of the same year by a better than 2-to-1 margin. The House, however, failed to take action on it before the end of the 92d Congress because of a request by Congressman WAYNE HAYS that he be allowed to hold full hearings on the issue.

Those hearings were completed earlier this year. But when, however, it began to appear that Mr. HAYS was unwilling to let the bill be considered by the House, I offered it as an amendment to this year's State Department Authorization Act. And once again the Senate adopted it by a better than 2-to-1 margin. And once again it was lost in conference owing to the obdurate hostility of the gentleman from Ohio.

We have here, then, a clear record of Senate recognition of and support for the kind of desperately needed reform in State Department grievance procedures that led to Judge Gesell's landmark decision in this one area of selecting out. It is my profound hope that the constitutional issue he so lucidly delineated in his memorandum opinion will at last persuade our colleagues in the other body of the need to end, legislatively, 27 years of State Department evasion and bad faith in the matter.

Mr. President, I ask unanimous consent that the text of Judge Gesell's memorandum opinion and order be printed in the RECORD.

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

[U.S. District Court for the District of Columbia, Civil Action No. 1312–73]

PHILIP LINDSAY, ET AL., PLAINTIFFS, *v.* HENRY A. KISSINGER, ET AL., DEFENDANTS

ORDER

It appearing to the Court that plaintiffs, as a class, are entitled to a declaratory judgment and an injunction for reasons stated in the Court's Memorandum Opinion filed this date,

Now therefore the Court declares: That defendants' regulations and procedures now in force governing the selection out for inadequate performance of officers appointed in the Foreign Service or the United States Information Agency are constitutionally defective in that they deny all officers in the class here certified an adequate hearing comporting with the requirements of due process under the Fifth Amendment, and

It is accordingly ordered: That no officer appointed to the Foreign Service or the United States Information Agency, including the named plaintiffs, who has been notified that he is to be separated from either of such services in 1973 by reason of the selection out regulations and procedures in force in such agencies shall be separated from either of such services unless and until a hearing before the Special Review Panel or Retirement Board is held, on adequate notice, and the officer facing separation has been afforded a right to appear before such Panel or Board in person at Government expense to be represented by an attorney if retained by such officer, to present relevant and material factual information through witnesses willing to appear in person or by affidavit on his behalf, and such officer has been afforded reasonable opportunity at such hearing to confront in person or by written interrogatories any person then employed by the Department of State who has submitted adverse information not previously considered in a grievance hearing where such information is relied on by the Selection Board in rating such officer; provided, however, that no hearing shall be required unless the officer shall request such a hearing, in writing, within two weeks from the date of this Order, and it is further

Ordered that judgment shall be entered in favor of the defendants with respect to all other issues raised in this proceeding; provided, however, that nothing herein shall affect the right of plaintiff Cole to challenge, by a separate action, his classification following the decision to retain him in the Foreign Service.

GERHARD A. GESELL,
U.S. District Judge.

DECEMBER 12, 1973.

[U.S. District Court for the District of Columbia, Civil Action No. 1312–73]

PHILIP LINDSAY, ET AL., PLAINTIFFS, *v.* HENRY A. KISSINGER, ET AL., DEFENDANTS

MEMORANDUM OPINION

When officers appointed to the Foreign Service or to the United States Information Agency are found to have failed to meet minimum standards of performance they may be involuntarily retired for the good of the Service pursuant to the Foreign Service Act of 1946. Plaintiffs in this class action sue on behalf of approximately ten such officers still scheduled to be so "selected out" at the end of this year. It is claimed that the procedures and regulations of the Department of State under which such officers are chosen for separation are unduly vague and violate due process. This constitutional claim comes before the Court on the merits following extensive pretrial proceedings.[1] The controlling facts are not disputed and the decision hinges on essentially legal considerations.

The principal claim advanced centers around plaintiffs' contention that officers facing separation under the selection out procedures are denied adequate notice and adequate opportunity to be heard in that they do not always receive adequate notice and may not call favorable witnesses, confront adverse witnesses or employ counsel.

Defendants have consented to the certification of plaintiffs' class for the purpose of challenging the current selection out regula-

Footnotes at end of article.

tions. Since the Court finds that plaintiffs can adequately represent the suggested class in an action for injunctive relief and that the other requirements of Rule 23(b)(2) of the Federal Rules of Civil Procedure are satisfied, certification will be granted.

Congress, by appropriate legislation, determined some time ago that officers, once appointed, should not have permanent tenure but rather should be competitively ranked to the end that those officers failing to maintain minimum standards might be weeded out to promote the overall efficiency of the services in which they serve. Selection out procedures responsive to this legislation have been in effect for more than twenty years and have been constantly refined and improved. There is every indication that the Department has been sensitive to its obligations and has sought to proceed with care. The plaintiffs do not object to a selection out system as such, but they vigorously assert that it is administered unfairly because an officer facing separation is denied those rights to adequate notice and hearing that are guaranteed by the United States Constitution and are essential to a fair and equitable determination of his ultimate status.

A brief review of the selection out procedures currently followed in the Foreign Service will delineate the setting in which these claims are asserted. These procedures are set forth in written precepts widely publicized throughout the Service and are virtually identical to those followed for officers appointed to the United States Information Agency (USIA).[1a]

A Selection Board appointed each year annually reviews the performance of all Foreign Service Officers and ranks them. This is done to identify officers in the very bottom percentile of their classes and hence likely to be separated, as well as those in the top ranks of their grades to be considered eligible for promotion. These rankings are made on the basis of each officer's personnel file, which contains detailed periodic appraisals of his work by superiors. The Selection Board is specifically directed to designate for selection out those officers who fall within a specified low percentile in the rankings. The critical percentile varies from year-to-year, but is never greater than ten percent.

Those officers so designated are advised in writing that they are subject to forced "involuntary retirement" before the calendar year ends. This notice includes a statement of the deficiencies in performance relied on by the Selection Board as the basis for its decision. The notices vary somewhat in form and content, some being more factual and some more impressionistic than others.

An officer has complete access to his personnel file that was before the Selection Board. If he wishes to protest the decision, he may appear before a Special Review Panel, composed of a wholly different membership than the Selection Board, and offer mitigating information, including explanations and contravention of the facts specified in the selection out notice. The Special Review Panel may then recommend for or against selection out.[2]

Plaintiffs' constitutional challenge to the adequacy of this procedure revolves around four main contentions:

(1) The officer may not see all materials relating to his case that were considered by the Selection Board.

(2) The Selection Board's statement of reasons, as provided with the selection out notice, is too general and hence uninformative.

(3) The Selection Board's determination is made without adequate standards, complicating the officer's attempt to perform his job in compliance with such standards.

(4) The Special Review Panel does not allow supporting or adverse witnesses to be called and prohibits appearance of counsel.

Footnotes at end of article.

Before discussing these objections in the light of the applicable decisions, it is pertinent to emphasize aspects of the selection out process bearing on the nature of the personnel judgments that must be exercised and the effects of the judgments made on the officers affected.

The Department has made a substantial effort to make known the qualities it desires in officers of different grades. General as these indications must be, considering the difficulty of expressing professional attributes, they are precise and clear. In short, a Foreign Service Officer well knows what is expected of him. Periodic evaluations of an officer's performance are made against these requirements. Superiors record with some considerable candor an officer's strengths and his observed deficiencies at a particular post. An officer may see the evaluation as soon as it is filed, and he may file a grievance with full rights of hearing whenever he believes an injustice has occurred. It is a fair inference from the materials in the record that although a conscientious effort is undoubtedly made to assure uniform and fair evaluations, an officer's evaluation may reflect his inability to function under an assignment inconsistent with his experience and training, or personality conflicts with an unreasonable superior, or the evaluating officer's own lack of experience and understanding of an officer's responsibilities, etc. Moreover, in the nature of things, an officer has no way of knowing or comparing his periodic performance evaluations with that of colleagues in his class functioning under different assignments, at different locations under different supervisors. The Selection Board considers evaluations over a period of years, thus minimizing these differences, but in the nature of things, all unevenness cannot be eliminated and performance ratings are uneven. Thus, an officer may not fully realize his actual circumstances until he receives his notice of selection out from the Selection Board nor can he always know with any certainty what adverse or negative aspects in his many evaluations will be singled out to support the unfavorable ranking decision then made.

Yet to be ranked for selection out is no light matter. It threatens an involuntary separation. It carries a stigma and, to use the words of Justice Frankfurter, causes a "grievous loss" to the officer's professional standing. *Joint Anti-Facist Refugee Com.* v. *McGrath*, 341 U.S. 123, 168 (1951). It is impossible to accept the Department's suggestion that it will not seriously impede transfer to civilian life.

Given these considerations, the Court is compelled to the conclusion that the limited hearing afforded before the Special Review Panel is constitutionally defective in a number of significant respects.

The Federal Courts have sought to avoid becoming involved in governmental personnel actions. The cases have placed primary emphasis upon the process by which personnel decisions are made rather than the result. Experience has shown that the greatest protection against mistake or arbitrary action is found in a hearing process that involves notice, the right to be heard and some form of confrontation with accusers. Such hearings involve time and inconvenience for busy administrators but they have come to be recognized as a constitutional necessity under circumstances such as these presented here.

It would be inappropriate for the Court to order a series of detailed rules for conduct of hearings before the Foreign Service Special Review Panel and the USIA Retirement Board. Rather, the Court will simply undertake to state certain minimum safeguards which the record indicates are essential under the circumstances of this case. It is clear that an officer is entitled to more than a general conclusory form of notice—he must, in addition, be advised of the facts on which the Selection Board's notice is based and he must, before the hearing, have full access to all materials concerning him that were considered by that Board. While no subpoena power is available, he should be given opportunity to present favorable witnesses willing to appear in person or by affidavit. He must be allowed to interrogate adverse witnesses in person or by written interrogatories approved by the Selection Board. If he can retain counsel at his own expense, such counsel must be permitted to represent him at the review hearing. Experience will dictate methods for developing a fair hearing consistent with these rights without turning the process into an unduly formal adversary trial. The Board may, of course, impose strict rules of relevance and materiality and, obviously, any fact that has been the subject of a formal grievance hearing need not be reheard.

The State Department has offered no adequate justification for denying any of these procedural safeguards.[3] It has pointed to the availability of grievance procedures, but the selection out decision itself cannot be grieved, nor are these procedures guaranteed unless a grievance is filed promptly after the submission of a particular performance report. It is also urged that adverse witnesses cannot be called back from overseas duty without disruption of the Service. But not all such witnesses will be stationed abroad at the time of the hearing, and those that are can be required to answer interrogatories. No explanation is offered for the exclusion of counsel and supporting witnesses who are willing and able to appear. The fact of the matter appears to be that the Department is so confident in its own administrative judgments that it wants to discourage any true confrontation on the selection out issue, for it will not even pay an officer's passage back to Washington if he asks for an appearance before the Special Review Panel.[4]

This minimization for forced separation is impermissible, given the standards the Supreme Court has established for discharge from government service.[5] *See Bd. of Regents* v. *Roth*, 408 U.S. 564, 576–77 (1962); *Slochower* v. *Bd. of Education*, 350 U.S. 551 (1956); *Wieman* v. *Updegraff*, 344 U.S. 183, 192 (1952). *Cf. Goldberg* v. *Kelly*, 397 U.S. 254 (1970). Of course, a full adversary hearing is not required if the circumstances of the particular case dictate otherwise, for the Court must determine the appropriate procedural safeguards by balancing inconvenience, expense and proper government objectives against the rights of the individuals affected. *Morrissey* v. *Brewer*, 408 U.S. 471, 481 (1972); *Hannah* v. *Larche*, 363 U.S. 420, 442 (1960). But in the instant case, as discussed above, the Department has failed to offer any substantial reason for refusing to provide the procedures sought by plaintiffs. Given the seriousness of the selection out sanction, the relatively few individuals involved, and the imperfect, somewhat impressionistic data on which the Selection Boards must rely, the objective of the Department in eliminating marginal officers will not be unduly impeded by providing a more adequate hearing. This will assure the essential fairness which the Constitution requires and will perhaps, in the long run, result in better informal judgments in particular cases. At the same time, the laudable and necessary procedure for weeding out marginal officers in the interests of efficient and effective competitive foreign service agencies will be preserved as Congress wisely desired.

On the other hand, the Court finds no ground for plaintiffs' effort to require a greater specificity of standards for determining who will be selected out. These have already been adequately defined. The matter cannot be reduced further to a mathematical precision. Professional competence is not susceptible to such treatment. Moreover, there is nothing in the Foreign Service

Act of 1946 or the Constitution which prevents budgetary considerations from affecting the particular selection out percentiles. Full and fair hearing is all that is required.

As to the individual cases of Lindsay, Starbuck and Foo, the file is voluminous. Each of these officers has been contesting separation out for some time. As a result of discovery in this case, new materials have been made availble to each of them and they, in turn, tendered responses bearing on the data disclosed. At no time has any of them yet had a hearing of the nature the Court has indicated above should be afforded before separation. Accordingly, none of them can be legally separated without another hearing. There is no ground for repeating submissions already made by the officers, but they should be afforded a final hearing before disposition of their cases to cover new data and to present witnesses, where appropriate. This can be accomplished rapidly. If a final administrative determination is made to separate any of them, no further remedy will be afforded them in this proceeding, which will terminate as to their claims by remand for appropriate hearings.

The foregoing shall constitute the Court's findings of fact and conclusions of law, which are set forth formally in the attached Order.

GERHARD A. GESELL,
U.S. District Judge.

December 12, 1973.

FOOTNOTES

[1] Plaintiffs moved for a preliminary injunction. Defendants countered with a motion to dismiss and for partial summary judgment. Essential documents, many of them voluminous, were admitted and the parties filed extensive affidavits and memoranda of law. Following several status conferences, the Court suggested at a full hearing on the motions that Rule 65(a) of the Federal Rules of Civil Procedure appeared to warrant a joint submission on the merits by both parties without further testimony or hearing. The parties shortly thereafter filed additional materials and advised on the record that neither side desired to submit further proofs. Thus the case was finally submitted on December 10, 1973. The Department of State has agreed to defer separation of any member of the class until December 31, 1973, on the Court's assurance that the issue will be resolved by the Court before that date.

[1a] Although Congress has provided that "Foreign Service Information Officers shall be separated and retired in accordance with [the Foreign Service Act of 1946]," 22 U.S.C. § 1228 (1970), the implementing regulations of the two agencies reveal minor differences in their selection out procedures. *See, e.g.*, notes 2 and 4 *infra*.

[2] In the USIA, this review procedure is performed by that agency's Retirement Board.

[3] Instead, it has consistently maintained that it is not constitutionally required to offer plaintiffs *any* form of hearing, citing Bd. of Regents v. Roth, 408 U.S. 564 (1972). This reliance on *Roth* is misplaced, for nonprobationary Foreign Service and USIA officers have a clear expectation of continued employment absent an official finding of inadequate performance, and would, in addition be significantly harmed by the stigma of involuntary retirement. *Compare Roth* at 573, 578.

[4] Such compensation is, however, offered to USIA officers desiring to appear before the Retirement Board. No explanation whatever is given for this distinction.

[5] This conclusion is strongly supported by a decision of the United States Court of Appeals for the District of Columbia Circuit, released shortly after the preparation of this Memorandum Opinion, in which that Court stressed the importance of an adequate hearing prior to separation from Government service. Thompson v. Washington, No. 71-2049 (D.C. Cir. Dec. 10, 1973).

AN APPEAL TO THE SENATE CONFEREES ON THE DEPARTMENT OF DEFENSE APPROPRIATIONS

Mr. HUMPHREY. Mr. President, yesterday the Senate passed H.R. 11575, a $73.2 billion appropriation for the Department of Defense for fiscal 1974.

During the Senate's consideration of the Defense Procurement Authorization Act the distinguished chairman of the Appropriations Committee, Mr. MCCLELLAN, gave me his personal assurance that his committee would cut at least $3 billion from the appropriation.

Chairman MCCLELLAN did, indeed, keep his promise and the Appropriations Committee reported a bill to the Senate which was $865 million under the sum approved by the other body and nearly $4 billion under the President's original request.

In the debate yesterday I abstained from offering a ceiling amendment to obtain further reductions in this appropriation because I was generally satisfied with the reduction efforts made by the committee. Although I felt that a greater amount could have been safely cut from the bill without endangering our national security, I recognized that the committee had done a satisfactory job in this regard.

However, I want to raise a note of caution. After consideration of the Defense Procurement Authorization Act, members of the Armed Services Committee from both bodies went to conference on the legislation. The Senate had passed a bill with funding at $20.9 billion. The House passed bill had a ceiling of $20.4 billion. The conferees then agreed on a "compromise" which raised the total funding level in the legislation to $21.3 billion.

Mr. President, I firmly believe that this so-called compromise of several weeks ago on the procurement authorization bill essentially violated the wishes of both bodies.

It will be extremely unfortunate if once again this experience is repeated in conference on the Appropriation bill for the Department of Defense.

In addition to the $73.2 billion appropriation measure approved yesterday, the Senate will soon be faced by two additional supplemental appropriations—a $2.5 billion pay supplemental and a $3 billion "readiness supplemental." Thus, an additional $5.5 billion could be added shortly to the total to be appropriated by the Congress for the Department of Defense for fiscal 1974. It is my fervent hope that the Senate members of the appropriations conference committee will not repeat the performance of the members of the Armed Services conferees and "compromise" on a spending level which will completely wipe out the savings made through the very hard work done by the chairman and members of the Senate Appropriations Committee.

I see no reason that Members of Congress should invoke "fiscal responsibility" when we consider vital domestic programs and completely forget this credo when Department of Defense authorizations and appropriations are in question.

The Congress is on a collision course with not only our own budget ceiling, but even the administration's revised ceiling of $270 billion. Thus far, we have exceeded 1974 budget requests by $3.6 billion, and several major requests are still pending. The Department of Defense revised request for funding in this bill alone—$77.25 billion—constituted 59 percent of all appropriations controllable by Congress.

From the original budget ceiling of $268.7 billion, only $75.2 billion is classified as controllable in the short run. Seventy percent of this $75 billion is national defense money. The 30 percent spent on civilian programs is composed of such items as Public Law 480, child nutrition programs, Corps of Engineers, elementary and secondary education programs, health services delivery, manpower programs, FAA operations, IRS operations, NASA, Veterans medical benefits, and highway trust fund outlays.

When we consider budget priorities, we must take into account other military spending requirements as well. Because military requests come to us in several parcels, we should guard against the impression that the present bill represents the entire military budget. This bill is only one of six military appropriations measures. We have already enacted a $2.7 billion military construction appropriation (H.R. 11459) and a $1.2 billion appropriation (H.R. 8947/Public Law 93-97) to the Atomic Energy Commission for nuclear weapons. As I noted earlier, the Department of Defense will request a $2.5 billion pay supplemental. Since these pay increases are being disbursed at the present time, the supplemental pay request should have been part of the bill now before us.

We have been informed that we must add about $3 billion to the military budget this year to meet supposed deficiencies in our military readiness demonstrated by the Middle East war. This "readiness supplemental" would be used largely to buy additional transport planes and increase stockpiles of sophisticated missiles. When this supplemental is brought to the Senate floor, we will be faced with considering a further increase in our military capability. The need for such a supplemental would indicate that the Pentagon planners in designing the request passed yesterday have not correctly judged our present military priorities.

I expected that the military budget requested for this fiscal year would have been less than the amount Congress granted last year. Our withdrawal from Vietnam hostilities has relieved the burden of approximately $25 billion we were spending annually in that tragic conflict. Our relations with the Soviet Union and the People's Republic of China have improved significantly in recent years. We have entered into an agreement with the Soviets to limit defensive and offensive weapons, and we are now negotiating with them to achieve more significant control of arms. We are participating in negotiations to withdraw forces from central Europe. Our active duty forces have been reduced. Despite all of these hopeful signs, the total military budget was increased to a level higher than any military budget during the Vietnam war. This is the first time that military spending would increase after a war.

It is apparent to me that several bil-

lions sought in military appropriations this year will be squandered on wasteful and redundant activities that do nothing to improve our security. The most flagrant abuses are well known and have been recited many times since the budget request was submitted early this year. Despite the recent Middle East war and any implications it holds for U.S. posture or preparedness, these criticisms are still valid.

EXCESS CIVILIANS

President Nixon stated a year ago that the DOD civilian work force needed a "thinning down." But this has not happened. There are now 1,000,000 civilians employed by the Department of Defense, nearly one for every two people in uniform. The DOD currently has roughtly as many civilians as the combined rolls of the Departments of Agriculture, Treasury, Health, Education, and Welfare and the Postal Service. The administration has portrayed HEW as a bloated bureaucracy, yet DOD has eight times as many civilians. At an average cost of $13,500 per bureaucrat per year, a modest force reduction could yield substantial budgetary savings.

EXCESS HIGH RANKING OFFICERS

There are now more field grade and flag officers—lieutenant colonel or commander and above—for a force of 2.2 million than there were in 1945 when the military numbered 12.1 million.

A major budget cut could be achieved if the grade distribution were to be restored to the pattern of fiscal 1964—the last "peacetime year."

EXCESS SUPPORT FORCES

The efficiency of our armed forces can be increased by improving the ratio of support to combat troops. This all important "tail to teeth" ratio has doubled since 1945. It has now reached the point where nearly 85 percent of all military personnel serve in a support capacity, rather than a combat capacity. This does not connote a lean and mean force structure. Major efforts should be undertaken to reduce manpower costs by utilizing a lower support-combat troop ratio.

Cuts in combat troop levels resulting from the Vietnam withdrawals have not been carried out proportionately among support personnel. It is time to strike a better balance.

COST OVERRUNS

The General Accounting Office has reported that 45 major weapons systems have experienced cost overruns totaling $33 billion, an increase of 42 percent over original estimates. By comparison, the Labor-HEW bill amounts to only $32.9 billion.

OVERSEAS COMMITMENTS

The U.S. military role planned for Asia simply does not conform to reality. Since the termination of the U.S. combat role in Indochina on August 15, 1973, only token troop withdrawals have been announced. The significant improvement in our relations with the People's Republic of China has not been reflected in a change in U.S. forces assigned to Asian combat contingencies.

There are now about 200,000 military personnel stationed in Asia. I believe that at least 100,000 U.S. troops can be returned and deactivated with no harm either to our national security or our important interests in the area.

REDUNDANCY IN WEAPONS

Expensive and complicated new weapons are being brought into the inventory as premature replacements or as an unwarranted duplication of present systems or as far too expensive replacement systems. In many instances present systems can be improved at far less cost.

The Trident nuclear submarine is the most expensive system yet proposed to Congress. DOD estimates that the cost will be about $1.3 billion to develop and produce each Trident submarine. The Pentagon is still building nuclear aircraft carriers at $1 billion each which are very vulnerable to attack. The F–14 Navy fighter plane has become so expensive that at $25 million per copy it costs as much per ounce as pure gold.

Rather than discuss prudent military expenditures appropriate for the present day realities of national defense, the Department of Defense attempts to justify its budget in terms of percentage share of gross national product or total Federal spending. I have yet to perceive any causal connection between GNP and the needs for national security. If we accept the Pentagon's logic, we in the Congress ought to be able to determine the appropriate military budget to meet our security needs each year simply by consulting with the Department of Commerce to ascertain the forecasted GNP. If the Pentagon cannot justify its request strictly on the merits of military need, then the criticisms of waste and redundancy must have validity.

America is the No. 1 military power in the world. But we sometimes forget that military power alone cannot make our country strong or secure. The best argument for reducing the military budget in a sensible way is that these resources are needed to provide for the other true security needs of our country—to cure the sick, to house the homeless, to educate the young, to employ the jobless, to protect the environment, and to improve our lives in a hundred other ways.

But this administration has slashed or terminated many vital domestic programs. Funds have been impounded, important bills have been vetoed, and chaos reigns in many of the Federal agencies. On the other hand, the military budget is spiraling ever upward in peace as well as in war. These are not the peacetime priorities we have long expected.

Mr. President, Congress must be the final arbiter of national priorities. If we are going to play this role, the conference committee procedure which was established to insure the smooth and equitable operation of the Congress must reflect the priorities established by each body. Where there are differences there must be compromise. But the compromise must attempt to be equitable and reflect the actions of both bodies.

Although the rules of the Congress may allow a conference committee to raise the total amount of spending in a conference report above the amounts passed by each body, this is a clear violation of the coequal powers of each House.

It vitiates the principle of the legislative process in which the will of the majority should prevail.

I appeal to the Senate members of the conference committee which will soon meet on the H.R. 11575 to make every effort to maintain the cuts enacted by their distinguished committee. If there are to be compromises, let them be true compromises which reflect the will of both Houses of Congress that the regular appropriation for the Department of Defense be reduced substantially.

FUNDING FOR COMMUNITY SERVICE EMPLOYMENT FOR OLDER AMERICANS

Mr. CHILES. Mr. President, as a member of the Appropriations Committee and the Special Committee on Aging, I am very pleased that the supplemental appropriations bill, H.R. 11576, as passed by the Senate, include $40 million for the Older American Community Service Employment Act.

This program is designed to provide useful, part-time work opportunities for low-income persons who are 55 years of age and older. A major purpose is to build on and continue the work of the enormously successful Mainstream program which has already employed thousands of older Americans in community projects throughout the country.

Mainstream participants have proven themselves again and again in useful and needed public service work. In my own State of Florida, the Green Thumb pilot project of the Mainstream program has been a success not only for the participants but for the communities which have benefited from their beautification efforts. Parks and public grounds have never been so zealously tended as by the Green Thumbers.

The community service employment program is particularly needed now because inflation is eroding the limited purchasing power of retired people. In addition, the energy crisis is likely to increase unemployment markedly. Jobs for older people will become even harder to obtain as the labor market tightens.

The $40 million approved by the Senate for this program will provide 18,000 job opportunities for older Americans in social service agencies, hospitals, parks, and elsewhere. They include opportunities to work with the aged, children and people of all ages who need help—in jobs that provide not only income but self-esteem and a sense of accomplishment. And these part-time jobs are often avenues to full-time and better paying jobs as the participants learn new skills, acquire new self-confidence and become known to employers as the good workers they are.

Mr. President, I strongly urge the House conferees to accept the funding provision for the older Americans community service employment program. This measure was approved by the Senate as a part of H.R. 11576 by a vote of 90 to 0. This is a proven and essential program for thousands of older Amer-

icans and the communities which they will serve. And it deserves to be continued and expanded.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is now closed.

LEGAL SERVICES CORPORATION ACT

The PRESIDING OFFICER. The hour of 10:30 a.m. having arrived, under the previous order the Senate will proceed to the consideration of S. 2686, which the clerk will state by title.

The second assistant legislative clerk read as follows:

A 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.

The ACTING PRESIDENT pro tempore. The Chair will advise the Senate that the time for debate will be 1 hour, to be divided between and controlled by the Senator from North Carolina (Mr. HELMS) and the Senator from Wisconsin (Mr. NELSON).

Who yields time?

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

The ACTING PRESIDENT pro tempore. On whose time?

Mr. HELMS. Charged equally against both sides.

The ACTING PRESIDENT pro tempore. Is there objection? Without objection, it is ordered. The clerk will call the roll.

The second assistant legislative clerk called the roll.

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

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

Mr. HELMS. Mr. President, as we consider the Legal Services Corporation issue now before us, I am deeply disturbed by the misrepresentation of the subject which has characterized most press reports of our deliberations, and I note, Mr. President, that only two members of the Fourth Estate are here this morning. How can those not here report intelligently and objectively, the opposing points of view on this legislation? The truth is, they cannot.

There has been talk of filibuster, but little talk of the fact that this bill has been little debated in the Senate, or that there have been no hearings, or that there has been no consideration of it by the Judiciary Committee.

There has been talk of filibuster, but who has done the compromising? Not Senator MONDALE, my distinguished friend. Not Senator JAVITS, who is not here this morning, also my distinguished friend. Nor Senator CRANSTON. No, sir. They have been uncompromising absolutely.

The bill some are hoping to ram through this body is full of loopholes, exceptions which negate rules, and statutory approval of the most questionable kind of activity. It is far weaker than the bill introduced by the administration last spring—it is far different from the bill passed by the House of Representatives on June 21.

Even our friends in the White House who favor its passage without debate admit it is a terrible bill, but say they hope to change it in conference. Why leave it to conference? Why do we not earn our pay in this Senate of the United States? Were we not elected to help establish national policy? If we're going to let White House staffers and Senate staffers solve our problems for us and just let us ratify their deals, we should go home now.

I have said several times on the floor that there is no urgency to pass this bill now. There are those who say the President should sign it before Christmas—but the law will be with us forever; and we should be sure we have a good bill. Legal services will continue at OEO.

There is no question about that. It is not a matter of providing legal services for the poor. The press that indicates otherwise knows better than that, and so do the Senators who are proposing this.

Legal services for the poor should be reformed, but it is in no jeopardy of discontinuation. If we shift it to the corporation intact, sanctioning and locking in all that has gone before, it will never be reformed.

Mr. President, my position is very simple. It is perfectly clear, to use the popular expression.

Let us clean up abuses in the program first, then consider a corporation. Let's have the Judiciary Committee take a look at it, then consider a corporation. Let us have time for us to look at it, then consider a corporation.

I would inquire, What do my colleagues find wrong with the Judiciary Committee? Why do others apparently not have the trust in the Judiciary Committee that the Senator from North Carolina has? Let there be time for us to look at it and then consider a worthy corporation, one that will do the job right.

Let us not simply defer to some future board of directors, however well qualified they may or may not be, the obligation to set policies which are a senatorial prerogative and a senatorial duty. Let us decide whether we want them launching massive busing suits. Let us decide whether we want them filing amicus curiae and every kind of briefs on every issue under the Sun. Let us decide whether they should be allowed to aid political groups like the National Lawyers Guild and the National Welfare Rights Organization.

That is the issue. That is the point that has been ignored in the media—and I remind this body that I come from the media. I talked to a distinguished member of the press just before I came into this Chamber and I mentioned the limited coverage, and he said he did not have space. Well, I may have used that excuse myself, Mr. President, but this is one of those times when the media ought to find some space, even if it means taking it away from the Watergate coverage, and explain this vital issue to the American people. Let us decide whether we want local grantees controlled by the ACLU and Common Cause, rather than by elected officials. Let us decide whether we want them to draft model abortion statutes or organize prisoners rights groups. Let us decide whether they should represent children without parental consent on issues like abortion and school discipline.

This is a very important bill. It is not a compromise—not a bit. It is not simply a legal services bill. It is a political action bill. But, unlike the public financing proposals, this one funds just one side—those committed to an ideological program.

Now, let me make one thing perfectly clear, again as the popular expression goes, Mr. President: We are not against legal aid to the poor—those of us who seek to have some sort of public hearings on this matter, who seek to have the Senate Judiciary Committee take a look at it. We are not against legal aid to the poor. And if I have to say it a thousand times to get that point across, I am perfectly willing to do so.

We are against public subsidy of groups and causes who are not accountable either to the Senate or to the executive branch or even to the Board of Directors of the Corporation.

There is no reason, Mr. President, why this bill must be passed today. There is great reason to prevent it.

I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. NELSON. Mr. President, I do not have anything to add to what has been said repetitiously here for the past week or to what has been said on the floor of the Senate on the many previous occasions the legal services concept has been considered.

However, since the distinguished Senator from North Carolina again repeats the charges that there have not been hearings this year, or that there has not been adequate discussion of this measure, I find it necessary to repeat what I have said previously as well. I would hope this time the Senator would look at it more closely and read the debates to which I refer, so that he might finally come to appreciate that the matters of concern to him have been continuously discussed, debated, and considered by this body in every congressional session since 1966.

The first legal services provisions were discussed and debated, and ultimately included in the Economic Opportunity Act amendments of 1966.

Then, the Economic Opportunity Act amendments of 1967 contained the legal services proposal, including the broad legislative mandate: . . . to further the cause of justice among persons living in poverty by mobilizing the assistance of lawyers and legal institutions. Those amendments were discussed and debated and dealt with by the appropriate House committee, by the House of Representatives, dealt with by the appropriate Senate committee, and by the U.S. Senate. The vagaries of such a broad, sweeping mandate were thoroughly considered, and Congress even added the re-

quirement that legal representation be provided "in a way that assures maintenance of a lawyer-client relationship with the best standards of the legal profession."

Then again in 1969, in the Economic Opportunity Act Amendments, the matter was dealt with by the House of Representatives in the appropriate committee and was dealt with by the House of Representatives. It was dealt with by the United States committee of which I am a member, and it was dealt with on the floor of the Senate. Opportunity for further debate was provided, and further debate occurred.

Then, again—and all of this was prior to the arrival of the distinguished Senator from North Carolina in the Senate—in 1971, an independent legal services corporation was first proposed by the President's Commission on Executive Organization. And would the Chair believe it, we had hearings before the appropriate House committees. We had debate on the floor of the House. We had hearings in the appropriate committee of the Senate, the Labor and Public Welfare Committee. We had debate on the floor of the U.S. Senate. And then we passed an independent Legal Services Corporation Act which the President vetoed because of some specific provisions he was not satisfied with.

We went back again in 1972. Further discussions and markups and proposals occurred in the appropriate committee of the House of Representatives and in the House of Representatives itself. We then discussed and debated the matter in the Labor and Public Welfare Committee and on the floor of the U.S. Senate. By this time we thought we had solved everyone's problems, but we could not reach agreement on all points in conference, and the current provision remained in effect.

Finally, in 1973, we went through arduous extended negotiations with the administration. We did not have hearings because there was nothing much to have hearings about, unless someone wanted to waste the time of the Members of the Senate and the money of the people of this country. Indeed, the Members of this Senate, including the gentleman from North Carolina, were aware that the Committee on Labor and Public Welfare had jurisdiction over legal services for the poor—and yet we heard not one senatorial request for hearings, and not one administration request for hearings. We knew what all of the issues were. They had all been debated. Their details had all been discussed. A compromise with all principal participants had been reached. There were no more hearings to be had.

Very few pieces of legislation that come before the Congress have been discussed in such depth and debated before the appropriate committees and on the floor of the House of Representatives and on the floor of the U.S. Senate in such depth. Very few pieces of legislation that I have seen in my 11 years in the Senate have had the consideration that this compromise has had.

Despite what the Senator from North Carolina said, I want the record to be perfectly clear that this proposal has been amply debated and discussed on both sides of the House of Representatives and the Senate, with the administration, in the newspapers, by the bar association, and by people all over this country. How much more clear can we be? It is time that we vote on this compromise measure. If any Senators are concerned with provisions of this bill, let them in good faith offer amendments and we will vote. If they are unsatisfied, well, that is the nature of compromise. I know some liberal Senators who are also unsatisfied—but they are accepting this compromise to get a workable corporation enacted into law.

I have one more correction to make at this time. The distinguished Senator from North Carolina says that the administration "admits" this compromise is a bad bill. Let the Senator from North Carolina tell us who in the administration admits it is a bad bill.

I am told by the counsel to the President for domestic affairs, Melvin Laird, that it is a good bill, and I am told that we should get it passed in the Congress.

The President has asked for a Legal Services Corporation.

On every single major point the President and our committee are now in agreement. There are some minor points that we would like to see negotiated in the conference, points on which the Senate and House bills differ. However, there is not a single major point on which they differ.

Again I will put in the RECORD the letter written to me, signed by Melvin Laird, Counselor to the President for Domestic Affairs. Everyone in the Chamber has seen this letter and has heard it read before. However, there are some who still do not believe it.

The letter merely states that the administration wants this compromise bill passed by the U.S. Senate.

Mr. President, I ask unanimous consent to have this letter printed in the RECORD at this point.

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

THE WHITE HOUSE,
Washington, D.C., October 4, 1973.

Hon. GAYLORD NELSON,
U.S. Senate,
Washington, D.C.

DEAR GAYLORD: We are pleased that the Subcommittee on Employment, Poverty and Migratory Labor has completed action on legislation to create an independent National Legal Services Corporation.

While we differ with some of the specific provisions of the bill as reported, we believe it does include essential principles proposed in the Administration's bill such as independence and accountability of the Corporation, freedom of the attorney to represent his client, and maintenance of a vital program.

Therefore, we urge that final action be taken on the bill in this general form by the full Committee and by the Senate followed by an expeditious reconciliation of issues with the House passed bill so that the best possible measure may result and a National Legal Services Corporation may be implemented at the earliest opportunity.

Sincerely,

MELVIN R. LAIRD,
Counselor to the President for Domestic Affairs.

Mr. NELSON. Mr. President, I hope that the Senator from North Carolina will read this letter again and will then stand up on the floor and tell us who in the administration thinks this compromise is a bad bill. Everyone I talked with in the administration agrees it is the best compromise obtainable.

And just 35 minutes ago the counselor to the President, Melvin Laird, called me and said: "I hope you have the votes to invoke cloture." That was 35 minutes ago, at around 10 am.. on Friday, December 14, 1973. How current is the Senator's information about administration opposition to this compromise? My information is just 35 minutes old.

I hope that the Senator will stand up and tell me who in the administration is saying behind the President's back that this is a bad compromise. Let us clarify the record here or let us not make such statements.

Mr. President, I do not have anything additional to add here. I would like to note that yesterday the distinguished Senator from Arizona (Mr. GOLDWATER) was once again complaining about voter registration activities and various activities that he says went on in the past and that he says continue to go on at present. Now, we have in the past shown those charges to be baseless. The OEO itself went to considerable effort to investigate them earlier this year.

But I want the record to be perfectly clear on this point, because even if a few abuses have occurred in the past, they have occurred under legislation that is not before the Senate on this occasion.

The law we are operating under today is a 1966 law. We passed legislation in 1971 and in 1972 that was increasingly clear on the questions raised by the Senator from Arizona. And we have included even stronger provisions in the 1973 compromise that meet, to the best of our competence, the problems he has raised about political activity.

I would say that each of the provisions of this compromise, involving political activities like voter registration or what have you, have been gone over very carefully by the Republicans and by the Democrats on the Labor and Public Welfare Committee. They were drafted, redrafted, and were discussed at great length among the 16 members of the committee.

Mr. President, I think that we and representatives of the administration have reached agreement on all of these provisions. And the agreement is without dissent. I remind the Senate that the bill that came out of the Labor and Public Welfare Committee came out pursuant to a bipartisan vote of 16 to 0. And that vote included the vote of every single member of the committee.

We have had agreement. We have had plenty of discussions. We ought to vote cloture and pass this bill and get it to the President so he can sign it, as he wishes to do.

Mr. President, how much time do I have remaining?

The ACTING PRESIDENT pro tempore. The Senator from Wisconsin has 18 minutes remaining.

Mr. HELMS. Mr. President, how much time do I have remaining?

The ACTING PRESIDENT pro tempore. The Senator from North Carolina has 22 minutes remaining.

Mr. HELMS. Mr. President, I would simply say to my distinguished colleague that I have made no charges; I have simply stated the facts, and he knows they are facts. He knows there have been no hearings this year on this bill. He knows it is new legislation. He knows that it was marked up in a closed session. He knows that short shrift was given to the Brock-Helms bill, which I submit, Mr. President, was a reasonable compromise, and certainly would provide——

Mr. NELSON. Mr. President, will the Senator yield on that one point?

Mr. HELMS. I did not interrupt the Senator while he was speaking, but I am glad to yield on his time.

Mr. NELSON. I understood the Senator to say short shrift was given to the Brock-Helms bill. Legal services has always been under the jurisdiction of the Committee on Labor and Public Welfare. The Brock-Helms bill was never before the Committee on Labor and Public Welfare.

Mr. HELMS. The Senator from North Carolina did not say it was.

Mr. NELSON. If the Brock-Helms bill was not given short shrift by the Committee on Labor and Public Welfare, who was it given short shrift by? By the Committee on the Judiciary?

Mr. HELMS. By Senator TUNNEY, who is my good friend.

Mr. NELSON. He is not the chairman of the Committee on the Judiciary. Senator EASTLAND is.

Mr. HELMS. He is chairman of the subcommittee, as the Senator well knows. Senator TUNNEY placed in the RECORD yesterday some comment relating to this matter, which is perfectly clear, in which he said he was not interested in the Brock-Helms bill. I would call that short shrift.

He is one of the Senator from Wisconsin's supporters in this matter, he is not one of mine.

But let me say again, Mr. President, that the Senator from North Carolina makes no charges. I am simply stating what are facts, demonstrable facts, indisputable facts, that there were no hearings on this bill this year; there were no opportunities for us to express ourselves until the latter inning of this ball game which we call this session of the Congress.

I know the Senators who proposed this legislation are competent, that their work is so worthy that the rest of us ought not to bother to question their judgment. I just do not happen to feel that any Senator ought to take that attitude. And I cannot understand, Mr. President, why there is such objection to recommitting this bill to the Committee on the Judiciary for just a few weeks at most, at which time I would have nothing to say if the Committee on the Judiciary reports out the bill in its present form. I would vote against it. But I do not understand the reluctance to place the matter in the hands and under the purview of the Judiciary Committee, where, after all, Mr. President, it belonged in the first place.

Mr. President, the Legal Service Corporation bill raises some fundamental issues about the nature of government, the viability of governmental institutions, the rights of the individual citizen, and the concept of liberty.

Let us dispose of the notion right away that we are talking simply about the access of poor citizens to the judicial system. That would be mere demagoguery. We are talking rather about the kinds of access, whether that access should be through governmental funds and channels, and whether the normal constraints of our democratic system of government should apply.

I happen to believe that the present system of delivering legal services to the poor needs reform badly, and I am ready to discuss the kinds of reform that are necessary to protect the poor client from being exploited by the system for ulterior motives. I believe that the abuses and shortcomings in the system ought to be satisfied by restructuring the system, rather than by patchwork.

It is for this reason that I became a cosponsor with the distinguished Senator from Tennessee, Mr. BROCK, of S. 1990, a bill to establish a Federal Legal Aid Corporation through which the Federal Government may render financial assistance to the respective States for the purpose of encouraging the provision of legal assistance to poor citizens.

We believe that this legislation offers a striking reform of the present legal services program—now in OEO—because it will result in greater freedom for the poor client to choose an attorney who will fully represent his needs, and it will make the program more accountable to the American people through the traditional checks and balances of representative government.

In the present unitary program, the Washington bureaucracy contracts with local projects and institutions to provide legal services to the poor. In most cases this has resulted in the hiring of staff attorneys to deal with client problems. The client has little or no control over the handling of the case because he is faced with a monopoly situation. Frequently such attorney dominance has resulted in the exploitation of individual cases for political reasons more related to the attorney's ideological interests than those of the client. The proposals to set up an independent, Washington-centered legal services corporation fail to solve this underlying problem.

In the past, the staff-attorney system has distorted the lawyer-client relationship through monopoly dominance. It allowed many project attorneys to concentrate on political advocacy through the courts, seeking to enlarge the law, or make new law through the judicial system. Legal services attorneys, for example, played the key role in striking down the "man in the house" rule in welfare law, in overturning the use of property taxes in California for financing schools, and in the Detroit/suburban busing cases. We believe that these are political questions which, in the American system of representative government, ought best to be solved in the legislatures.

S. 1990 would set up a small congressionally chartered corporation which acts as a funding and compliance unit. The funding unit is empowered to transfer appropriated moneys to qualified State governments. A State government qualifies by passing enabling legislation setting up at least one of the following three procedures:

First. To empower an existing or new State agency to disburse funds to attorneys representing eligible clients;

Second. To transmit funds to the bar association with overall jurisdiction in the State, if the bar association has established a method to disburse funds to attorneys representing eligible clients; for example, judicare;

Third. To establish a method of direct payment to eligible clients or their attorneys based upon a voucher system of proof.

Within this framework, the States would have full freedom to design their own program to suit local conditions, so long as clients were given the right to retain the individual attorney of their choice. The bill also contains appropriate restrictions on lobbying and political activity by attorneys while engaged in activities funded by the program.

Another significant reform proposed by the bill—and of course I am referring to the Brock-Helms bill, which never saw the light of day once it was presented in this chamber—would be the equitable geographic distribution of appropriated funds based upon the proportion of eligible clients in each State. At present there is a serious imbalance in the distribution of funds for the delivery of legal services to the poor, with certain favored projects in selected areas receiving disproportionate amounts. This means that needy people in many parts of the country are unjustly denied the legal services intended by Congress. The standard of eligibility in S. 1990 is the standard of the Medicaid formula, a standard already endorsed by Congress, State legislatures, and welfare groups.

We believe that the proposal in S. 1990 is client-oriented, restoring freedom of choice to poor people. It provides for greater and more active participation by local bar associations, involving local attorneys more intimately in the problems of the poor community. It sets up a sound basis for a stable, ethical lawyer-client relationship. Finally, it allows the people's representatives in the State legislatures to play a proper role in designing the program in each State.

I mention these facts briefly because S. 1990 contrasts so starkly with the bill now under discussion. They present a case that goes to the heart of the debate over legal services, and I want to make sure that this debate is aired fully on the Senate floor. I also want to make sure that the other side in this debate is treated fairly, and that their motives are not impugned. I will try to characterize the arguments which I have heard in the past in such a way so as to state them as objectively as possible. In this way, I think that the differences will be pointed up clearly, and we will know just exactly what our choices are.

The debate is complicated by the fact that while both sides claim to be supporting the notion of governmentally financed legal services for the poor, they

adhere to different definitions of "independence," "politicization," "accountability," and even "the poor." When the rhetoric of the debate is swept to one side, the issue seems to be whether the resources of Government should be used to set up paragovernmental institutions to effectuate social change without the usual checks and balances of representative Government. On one side it is argued that the poor are underrepresented despite their numbers because of their inability and lack of training to take advantage of the system; therefore, the contention is that this weakness must be compensated by a program of zealous advocacy to circumvent "the oppression and injustice by the democratic majority." Those who do not agree with this thesis argue that social change should come about through the willing consent of the public at large and their representatives; they argue that it is dangerous in a free society to put public funds at the disposal of any self-governing elite, no matter how altruistic the purpose.

Both sides seem to agree to the principle that there should be legal representation of the poor in civil matters of personal interest. There also appears to be a large area of agreement that the poor should be represented in individual cases of injustice suffered at the hands of an unresponsive governmental bureaucracy.

However, there is a philosophical difference over the role of law and the role of the courts in interpreting the law that is at the heart of the controversy. The two-decade-old debate over whether the courts are an appropriate instrument of social change is involved in the question of whether it is appropriate for tax funds to be used to provide access to the courts. Those who have weak faith in the legislative process and strong admiration for the activist role of the judiciary in recent years are likewise strong advocates of providing maximum access to the courts for those seeking social change.

Those who conceive the trend of the judiciary in recent years as reflecting an imbalance in constitutional cases are likewise loath to cultivate access to the courts by providing tax funds with no strings attached. They perceive it as financing and thus encouraging pressures on the courts to legislate rather than adjudicate.

The "independence" sought by the advocates of social change, according to some analysts, is really independence from the restraints of the political process; any check upon the freedom of action of the legal services attorneys is felt to be "politicization," that is to say, the state of being swept into the maelstrom of ordinary political life. These analysts conclude that the "politicization" comes about not in the usual partisan sense, but because the actual work of the legal services program, especially in the class action suits, is politics in the highest sense, that is, the process of distributing the benefits and power in the polis or State. The normal level of political activity is the process of electing representatives; those representatives then agree upon the necessary distributions. The argument is that by acting independently, thus circumventing the representative system, the legal services lawyers are eroding the true political system.

The question, then, as perceived by many on both sides, is whether or not it is desirable to support efforts to legislate outside of the legislative system. Sargent Shriver, the first director of OEO, declared in 1967 that OEO "is in the process of making new laws through test cases and legislative activity." This view is consistent with a declaration by the House Committee on Education and Labor in 1972 that one of the purposes of the program was "indirect improvement of the legal system—presumably through litigation rather than legislation—so as to make it more responsive to the needs of the poor." One of the reasons for development of the program, the committee said, was "the failure of our legal and judicial system to provide adequate legal remedies to meet the special needs of the poor."

Similarly, the distinguished senior Senator from Minnesota in introducing his version of Independent Legal Services Corporation legislation in 1971 said:

> Our goal is to insure that progressive change can be accomplished in courts and Government agencies, rather than on the streets. . . . It was not just the poor who suffered from this absence of legal representation. With the doors of the legal system closed to a broad segment of our population, many great reform measures remained an empty promise.

The Senator continued:

> This program has done more than cope with the individual problems of individual clients. Recurring patterns of problems—affecting large numbers of the poor—have been discovered and effectively addressed.
>
> Broad social reform has resulted from legal services cases which:
>
> Eliminated welfares [sic] "man-in-the-house" rule and residency requirement;
>
> Granted tenants in public and private housing substantial new rights in dealing with their housing problems;
>
> Obtained minimum justice for migrants and farmworkers by reducing illegal border crossings and requiring enforcement of minimum wage legislation;
>
> Forced the Department of Agriculture to feed hungry people as the law requires.

What the distinguished Senator from Minnesota doubtless regarded as great accomplishments, others regarded as a distortion of the democratic process. It is one thing to have a modern federally funded legal aid program to help individuals with individual programs; it is another to seek broad social reforms through court action. Instead of creating legal remedies for specific cases of injustice, we are dealing with a systematic effort to redistribute the benefits and rewards of society, the advantages and disadvantages of the social structure.

Now I accept the fact that good men can disagree on how the rewards and punishments of the social system ought to be distributed. But I submit that this distribution should take place through the efforts citizens make in the economic system, and not through political means. If we are going to redistribute the mechanisms of power, then it should be settled by democratic means under our constitutional mechanisms. Our system provides the Congress and State legislatures with their mechanisms of checks and balances to decide questions of power redistribution. These are essentially political questions, in the very deepest sense. And in a free country, politics must remain responsible to the Constitution.

The critical question is whether efforts for social action and social change ought to be financed with Government funds. By using money taken from the taxpayers to advance the cause of one section of the population over another, you are creating a system of new injustice. If, for example, a social action movement financed by taxpayers funds should through litigation win changes in the law costing the taxpayers millions of dollars additionally, then those taxpayers would be in the position of financing their own destruction. The proper forum for political questions, the proper forum for reforming the law is through the political process, that is, through the State legislatures and the Federal Government. Only the legislative bodies have the built-in checks and balances that are the very heart of our political system.

By using the judicial system and the administrative process to effect social reform, you are making an end run around the constitutional system of our country, and you destroy the popular consensus that is necessary for long-term reform. Yet this is exactly what some men, even some lawyers, seek to do. An article in the ABA Journal by William R. Klaus, boasted of this tactic. The article said:

> One would think that the evidence of its value to the poor community for the last seven years has been so overwhelming as to command complete acceptance for its continuation under its original mandate: "The use of the judicial system and the administrative process to effect changes in laws and institutions which unfairly and adversely affect the poor."

It is exactly this mandate which is suspect. For we are not dealing with an independent lawyer trying to achieve justice in an individual case. We are dealing with a group of lawyers supported by taxpayer expense who are not responsible to the normal checks and balances of the political process. Any federally funded social program must be responsible and accountable to the public. Once a lawyer goes on the public payroll, he necessarily accepts different standards of independence than if he were economically independent of Government money. Without the normal economic restraints, the federally funded poverty lawyer faces enormous temptations to raid the Federal Treasury to support the causes which he espouses.

Although the rationale of the bill which is being presented to us from the Labor and Public Welfare Committee is that the proposed Corporation must be free from political pressure, a calm analysis of the situation must necessarily call for restrictions and accountability. What the advocates of this bill presumably think of as nonpolitical activity based upon the freedom of a lawyer to perform his professional duties, its opponents view as highly political activity carried on at the taxpayers' expense.

The intrusion of public funds into the issue of representing indigent clients substantially changes the nature of the transaction.

Thus, for example, when my good friend Gov. Ronald Reagan of California exercised his prerogative under law to veto a Legal Services project in his State, it was attacked as a blatant example of political interference. I presume that the Governor considered it not interference, but an exercise of his legal right and even duty as the Governor of the State. It is indeed ominous that we are being presented with a proposal which, once established, would be beyond the reach of any elected official who has responsibility to the people.

I believe that a lawyer for the truly indigent should be well aware of the political consequences of any contemplated legal action, and he should take pains that his action is motivated only by the immediate interests of his clients, rather than by broad social considerations to which he may be sympathetic.

Legal Services attorneys should be well aware that their program can be vetoed at the next go-around by the Governor; they should be aware that if they do not voluntarily adopt a high code of ethics, that proper restrictions will be imposed upon them by the representatives of those who pay the bill; they should be very close to local officials who will monitor their activities. Only under such a system will the Legal Services program maintain its viability and integrity and conserve its resources and energy for helping the poor.

Proponents of the present legislation cannot escape from the essential political question of whether or not public resources and power should be put in the hands of any group, professional or otherwise, to make what many perceive as political decisions about social order. I know that some members of the legal profession, and I do not doubt their integrity, resent the suggestion that when the opportunity for great political power is offered to the profession they should be accountable to the representatives of the people.

It is so easy for any group, politicians included, to feel that their integrity is attacked when it is suggested that no human association should be given absolute power to do as they will even in a certain field. But anyone who has had any experience with human affairs knows that no man, or group of men, can be depended upon to be self-limiting in the use of power. It is no slur upon the dignity of the legal profession to refuse to give enormous political power restrained only by their own high code of ethics. Rather, the American political tradition has taught us that we must make sure that a countervailing force is established at the same time that political power is distributed.

Much has been said about the need for independence for the legal services program and maintaining the sanctity of the lawyer-client relationship. But we do not have a normal lawyer-client relationship proposed in this bill. Even in its present form, the program has over two thousand lawyers in 850 locations, linked together by scores of newsletters, subsidized professional associations, and project-subsidized travel. In addition, they have had over 13 so-called "backup" centers, many of them attached to universities and law schools, which provide legal research, programs, and strategies available to the lawyers in the field. Thus there is tremendous potential for an ideological attuned group to work together on social reform projects on a nationwide basis. A former high official has referred to this as "a national law firm with a national agenda for reform." Thus the legal services attorneys have developed into a powerful political force both within the law profession, and within the professional associations. Thus it is not surprising that some legal professional groups have actively supported the legislation before us on the national level, but on the State level they have been just as vociferously opposed.

The clash between the activist lawyer's concept of himself as responsible only to the ethics of his profession, and the public's view that public moneys should be publicly accounted for under political safeguards may be irresolvable in the present context. The program today—and the approach in the bill before us—relies almost exclusively on a staff-attorney-group practice approach. Yet this approach is deeply flawed:

First, the poor person seeking free legal aid is not subsidized directly; he is not permitted to choose his own attorney, but must accept whatever attorney is provided by the Legal Services program.

Second, the attorney tends to gain dominance in his relationship with the potential client, since both understand that the client does not control his fee, and has nowhere else to go for help.

Third, the staff group has in effect a monopoly status. The client is easily discarded if his problem does not fit in with what the lawyer wants to become involved with. The work priorities become oriented toward lawyer preferences, rather than client needs. Thus the client's problem may become a vehicle for advancing the national agenda.

Finally, subsidized lawyers, with a federally assured income, yet not accountable to the public, are free to spend their time on appeals which have a high potential for achieving the national goals of the legal services group and which serve as test cases, rather than on efficient representation of individual poor clients.

We can see therefore that the relationship between the legal services attorney and a poor client is significantly different from a private lawyer-client relationship.

It is for these reasons that the Brock-Helms bill would downgrade the staff-attorney approach, and pave the way for State-based systems which would allow the client to choose his own lawyer—and to choose a lawyer who is concerned with real legal practice, rather than a cause-oriented ideologue.

The Brock-Helms bill would introduce the normal political restraints of State legislatures and political processes to bring the legal aid system nearer to the people represented by our normal constitutional system.

The Brock-Helms bill would introduce self-limiting safeguards which would make it impossible for the abuses which have crept into the program in its present form from arising anew.

The Brock-Helms bill would insure that the legal aid program was morally responsible to the people and to the constitutional system.

Mr. President, let me summarize my understanding of what the proponents and opponents of the bill before us are saying.

I think both sides agree that the legal services program offers expanded opportunities for bringing about social change through the judicial process. The debate is whether this mechanism for social change ought to be subject to the normal checks and balances of representative government.

The proponents of rapid social change hold that representative government has been unresponsive to the needs of the weak and the poor, and that the accountability of this special mechanism, the legal services program, ought to be minimized in order to hasten new social developments. They seem to doubt that the ordinary legislative process with its dependence upon the will of the people at large, will never deliver the expansion of benefits to the poor that they envision, perhaps because these benefits will come at the expense of those who, rightly or wrongly, think of themselves as having earned the rewards they presently enjoy. For this reason, they believe that efforts for the expansion of legislative concepts must be pursued in the judiciary, which is less dependent upon the popular will.

The Legal Services program, with its national network of lawyers attuned to law reform and its wide opportunities for the selection of individual cases to make new law, provides an unprecedented mechanism for the systematic prosecution of the reform agenda. Proponents of this approach are convinced that the standards of the legal profession, and the oversight of the bar associations, provide sufficient restraints upon abuses, and that the influence of duly elected popular representation, whether at the Federal or State level, ought to be minimized.

On the other hand, I believe that the legislative arena is the proper forum for debating social change. I am highly suspicious of delegating this authority to a private group to pursue social change in the guise of dealing with specific problems of individuals. I believe that this is a bad precedent to set in a Government which by theory limits the power role assigned to any individual or group. The appropriation process, which appears to be the only congressional control contemplated under some plans, is too unwieldy to deal with a unitary bureaucracy which is insulated from political responsibility. I sometimes think that the resort to ethical considerations in the lawyer-client relationship, portrayed as a shield from political interference, is in reality an attempt by some elements of the bar to exert unprecedented influence on the mechanisms of social change. Indeed, political accountability is interference, but a necessary compo-

nent in the resolution of what are, in essence, political questions. I believe that any plan for democracy, if it is to achieve the assent and approbation of the majority of the people, must actively involve their representatives and officials in a vigorous debate with contributions from all segments of the community. I look upon the use of public monies and institutions for the prosecution of a partial vision of justice as a short-circuit in democracy and a threat to orderly constitutional practices.

These distinctions go to the heart of the current debate and are reflected in attitudes toward the structural variations for the legal services programs offered.

This is what the Brock-Helms bill is all about, and why it contrasts so vividly with the proposal which has come from the Labor and Public Welfare Committee.

Mr. President, I reserve the remainder of my time.

Mr. MONDALE. Mr. President, how much time remains?

The ACTING PRESIDENT pro tempore. The Senator from Minnesota has 17 minutes remaining and the Senator from North Carolina has 13 minutes remaining.

Mr. MONDALE. I thank the Presiding Officer for his generous assistance.

The ACTING PRESIDENT pro tempore. The Senator from Minnesota is most welcome.

Mr. HELMS. Mr. President, will the Senator from Minnesota yield?

Mr. MONDALE. I yield.

Mr. HELMS. Mr. President, I ask unanimous consent that a letter I received this morning from the Honorable Thomas J. Meskill, Governor of Connecticut, be printed in the RECORD.

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

STATE OF CONNECTICUT,
Hartford, Conn., December 11, 1973.

Hon. JESSE HELMS,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR HELMS: The Senate Labor and Public Welfare Committee has just reported out legislation establishing a legal services corporation. The Committee bill is lacking in adequate safeguards to prevent flagrant abuses that have plagued this program since its inception. It contains only weak provisions on law reform activities, political advocacy and associated political activities.

I am firmly convinced that in order to preserve the necessary function of providing legal services to indigent clients, we must have a bill containing strong and effective bans on lobbying, political activities and law reform.

I urge you to support amendments which would place strong bans on lobbying and political activities as well as law reform efforts. If initial efforts to amend the bill are unsuccessful, I urge you to support the Brock-Helms bill, S. 1990, which I expect may be offered as a substitute for the Committee bill. This bill is a constructive approach to the legal services program consistent with the needs of our citizens. It is a bill that permits flexibility from state to state, assures proper monitoring and control, and provides for public accountability.

I expect that legal services bill to be taken up soon. I hope you will vote for a strong legal services bill. Anything you can do on this issue will be greatly appreciated.

Sincerely,

TOM MESKILL,
Governor.

THE LEGAL SERVICES CORPORATION—THE CASE FOR SOCIAL JUSTICE

Mr. SYMINGTON. Mr. President, for the third successive session, this Congress has before it the opportunity to voice its support for one of the most effective programs for social justice in the Nation—the Neighborhood Legal Services program. With a current budget of $71.5 million, 2,500 Neighborhood Legal Services program lawyers in 900 offices throughout our 50 States devote their energies to provide quality legal representation of the poor.

So many Americans eligible to receive these legal services live from day to day in an economic and social situation fraught with frustration and despair and have found help for their problems in the legal advice and counsel offered in this program.

The Legal Services Corporation Act, S. 2686, provides for a private nonprofit legal services corporation to administer the program on an independent basis. This bill is the result of the deliberative, concerned efforts of the Employment, Poverty and Migratory Labor Subcommittee, its chairman, Senator NELSON, and is a product as well of the advice and attention of the full Labor and Public Welfare Committee. This legislation evidences our strong conviction that "equal justice under the law" shall not be taken lightly. While containing the necessary safeguards to prevent potential abuses, including accountability to the public and its elected representatives, this bill provides the structural foundation for effective client representation. The 11-member board will be appointed by the President with the advice and consent of the Senate.

The Neighborhood Legal Services program in Kansas City, Mo., is but one example of the effective representation of the poor which would be continued under S. 2686. With 26 attorneys, 18 law students, and 8 "paralegals," the Kansas City program services a 3-county area—Jackson, Clay, and Platte—where approximately 90,000 persons are eligible for their services under OEO income guidelines.

The program in Kansas City has designated specialty units that focus on: First, housing problems, second, representation of indigents before the city's municipal court, third, domestic relations problems, fourth, the rehabilitation of young adult first offenders—financed by a Law Enforcement Assistance Administration grant, fifth, representation of indigent juveniles by court appointed counsel, and sixth, the special needs of the elderly, most specifically involving consumer complaints and social security matters.

While many unique problems and cases are handled by Kansas City's NLSP, I am advised that the backbone of their program is individual service on a day-to-day basis. Cases such as those for adoption, guardianship, eviction, unemployment compensation, welfare cases, nonsupport of children, social security disputes and divorce occupy the bulk of their caseload.

Legal Services attorneys and their supportive staff evidence their commitment to the elimination of poverty and to assure each person an opportunity to share in the country's benefits. In recognition of their past performance, and with a continuing belief that adequate legal representation of the poor is essential, I support S. 2686, the Legal Services Corporation Act.

Mr. TAFT. Mr. President, I will vote for cloture today as I believe the Senate must proceed in the expeditious consideration of the Legal Services Corporation bill S. 2686.

Opponents of invoking cloture on this measure essentially make three points:

First, that no hearings have been held by the Labor and Public Welfare Committee on this issue or S. 2686.

Second, that the Judiciary Committee has not reviewed the bill.

Third, that extensive debate has not yet been undertaken on the floor regarding this issue.

With respect to point No. 1, I am not aware of any request submitted by opponents of this bill for hearings by the Labor and Public Welfare Committee. As the ranking minority member of the subcommittee that considered this legislation, the Employment, Poverty, and Migratory Labor Subcommittee, I am not aware of any request for hearings on this legislation. If any of my colleagues had desired such hearings, I would have done everything possible to accommodate their desires, as I am sure the chairman of the subcommittee, Mr. NELSON, would. If the opponents of S. 2686 feel so strongly about hearings, let them make the motion to recommit the bill. I would oppose such a motion as I do not believe hearings are necessary at this point—but let us not hold up the business of the Senate on this point. Further, it must be emphasized that this is not a new issue before the Senate or the Congress. It has been considered at length in past Congresses. If Senators oppose sections of the bill, or the concept of a Legal Services Corporation itself, let them proceed by offering their amendments.

Second, opponents of S. 2686 argue that the Judiciary Committee has not reviewed the bill. Members of the Judiciary Committee have been briefed on this legislation and for sometime have been aware of the work of the Labor and Public Welfare Committee regarding Legal Services. It is my understanding that the chairman (Mr. TUNNEY) and ranking minority member (Mr. COOK) of the Subcommittee on the Judiciary that would consider this legislation, the Subcommittee on Representation of Citizen Interest, support S. 2686. My staff has been in constant contact with Senator COOK's staff on this legislation and have asked for any input or suggestions that minority members of the Judiciary Committee might have. Again, if opponents of S. 2686 wish the Judiciary Committee to review this legislation, let them make a formal motion to do so, so the Senate can expeditiously proceed on this matter.

Third, opponents of the cloture peti-

tion state that extensive debate has not yet been undertaken on the floor regarding this legislation. This is not correct, however, in that the bill has been laid before the Senate and to my knowledge no Senator has been refused an opportunity to state his views on this legislation. Further, there have been at last count, 95 to 100 amendments offered to this bill by those opposing it, including a number of nongermane amendments. The opponents of the bill have made it quite clear that it is their intent to block Senate consideration of this matter during this session. I see no other constructive alternative than a motion for cloture followed by expeditious consideration of the amendments that have been offered.

I realize that legal services legislation has been a highly controversial and emotional issue over the years. I do not disagree for a moment that there have been abuses of the legal services program under the Office of Economic Opportunity. Those past abuses, however, should not prevent Senate consideration of improvements for a delivery system for legal services for the economically disadvantaged. S. 2686 I believe represents a great improvement and refinement of past legal services programs. It has the backing of the administration, the American Bar Association, State bar associations, and was reported by the Labor and Public Welfare Committee without dissent.

James J. Kilpatrick, in his column of October 26 of this year stated as follows with regard to the compromise that the Labor and Public Welfare Committee had reached:

> The reported agreement offers less than liberals had hoped to get, but contains more than conservatives had been prepared to yield. For the foreseeable future, it is this or nothing. Those who want to see a permanent program of legal services for the poor had better settle for this.

I urge my colleagues to vote for the motion to invoke cloture.

QUORUM CALL

Mr. HELMS. Mr. President, I observe the absence of a quorum and ask unanimous consent that the time be taken out of both sides.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered, and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. NUNN). Is there objection?

Mr. NELSON. Mr. President, I object——

Mr. MONDALE. Mr President, reserving the right to object——

The PRESIDING OFFICER. Is there objection?

Mr. MONDALE. Mr. President, I am reserving the right to object.

The PRESIDING OFFICER. A Senator cannot reserve the right to object. He either has to object or not object.

Mr. MONDALE. Mr. President, reserving the right to object, if I may, may I ask the Senator from North Carolina——

The PRESIDING OFFICER. Debate is not in order. Is there objection?

Mr. MONDALE. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. HELMS. Mr. President, I ask for the regular order.

The PRESIDING OFFICER. The Senator from North Carolina asks for regular order.

The clerk will call the roll.

Mr. HELMS. I hope there will be no dilatory tactics.

The legislative clerk resumed the call of the roll.

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

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

CLOTURE MOTION

The PRESIDING OFFICER. The time for debate having expired, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The 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. 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.

Robert Taft	Vance Hartke
Gaylord Nelson	William Proxmire
Alan Cranston	J. Glenn Beall
Mike Mansfield	Robert T. Stafford
Bob Packwood	Claiborne Pell
William D. Hathaway	Jacob K. Javits
Birch Bayh	Thomas J. McIntyre
Hugh Scott	Hubert H. Humphrey
Mike Gravel	Walter F. Mondale
George McGovern	Edward M. Kennedy

CALL OF THE ROLL

The PRESIDING OFFICER. Pursuant to rule XXII, the Chair now directs the clerk to call the roll to ascertain the presence of a quorum.

The legislative clerk called the roll, and the following Senators answered to their names:

[No. 582 Leg.]

Abourezk	Cook	Hruska
Aiken	Cranston	Huddleston
Allen	Curtis	Hughes
Baker	Dole	Humphrey
Bartlett	Domenici	Jackson
Bayh	Dominick	Javits
Beall	Eagleton	Kennedy
Bennett	Eastland	Long
Bentsen	Ervin	Magnuson
Bible	Fannin	Mansfield
Biden	Fong	McClellan
Brock	Fulbright	McGee
Brooke	Goldwater	McGovern
Buckley	Griffin	McIntyre
Burdick	Gurney	Metcalf
Byrd, Harry F., Jr.	Hansen	Mondale
	Hart	Montoya
Byrd, Robert C.	Haskell	Moss
Cannon	Hatfield	Muskie
Case	Hathaway	Nelson
Chiles	Helms	Nunn
Clark	Hollings	Packwood
Pastore	Scott, Hugh	Taft
Pearson	Scott, William L.	Talmadge
Pell		Thurmond
Percy	Sparkman	Tunney
Proxmire	Stafford	Weicker
Randolph	Stennis	Williams
Ribicoff	Stevens	Young
Roth	Stevenson	
Schweiker	Symington	

Mr. ROBERT C. BYRD. I announce that the Senator from Alaska (Mr. GRAVEL), the Senator from Indiana (Mr. HARTKE), the Senator from Hawaii (Mr. INOUYE), and the Senator from Louisiana (Mr. JOHNSTON) are necessarily absent.

I further announce that the Senator from Idaho (Mr. CHURCH) is absent on official business.

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from Maryland (Mr. MATHIAS), the Senator from Ohio (Mr. SAXBE), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from New Hampshire (Mr. COTTON) is absent because of illness in his family.

The Senator from Idaho (Mr. MCCLURE) is absent on official business.

The PRESIDING OFFICER (Mr. NUNN). A quorum is present.

VOTE

The PRESIDING OFFICER. The question before the Senate is, Is it the sense of the Senate that debate on 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, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. GRIFFIN (when his name was called). The Senator from Maryland (Mr. BEALL) and I have a live pair with the Senator from Texas (Mr. TOWER), who is absent. If Senator BEALL comes to the Chamber he will announce that if he were permitted to vote, he would vote "yea"; if I were permitted to vote, I would vote "yea"; Senator TOWER, if present, would vote "nay." I withhold my vote.

Mr. BEALL (when his name was called). The Senator from Michigan (Mr. GRIFFIN) and I have a live pair with the Senator from Texas (Mr. TOWER). If the Senator from Texas were here, he would vote "nay"; if I were permitted to vote, I would vote "yea." I withhold my vote.

Mr. CANNON (when his name was called). On this vote I have a live pair with Senators INOUYE of Hawaii and GRAVEL of Alaska. If they could vote, they would each vote "yea"; if I were permitted to vote, I would vote "nay." I withhold my vote.

Mr. FULBRIGHT (when his name was called). On this vote I have a live pair with the Senator from Maryland (Mr. MATHIAS) and the Senator from Ohio (Mr. SAXBE), who, if present and voting, would each vote "yea." If I were permitted to vote, I would vote "nay." I therefore withhold my vote.

Mr. ROBERT C. BYRD. I announce that the Senator from Alaska (Mr. GRAVEL), the Senator from Indiana (Mr. HARTKE), the Senator from Hawaii (Mr. INOUYE), and the Senator from Louisiana (Mr. JOHNSTON) are necessarily absent.

I further announce that the Senator from Idaho (Mr. CHURCH) is absent on official business.

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from Maryland (Mr. MATHIAS), the Senator from Ohio (Mr. SAXBE), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from New Hampshire (Mr. COTTON) is absent because of illness in his family.

The Senator from Idaho (Mr. MCCLURE) is absent on official business.

If present and voting, the Senator from Idaho (Mr. MCCLURE) would vote "nay."

The pair of the Senator from Texas (Mr. TOWER) has been previously announced.

The pair of the Senator from Maryland (Mr. MATHIAS) and that of the Senator from Ohio (Mr. SAXBE) has been previously announced.

The yeas and nays resulted, yeas 56, nays 29, as follows:

[No. 583 Leg.]

YEAS—56

Abourezk	Hollings	Pastore
Aiken	Huddleston	Pearson
Bayh	Hughes	Pell
Bentsen	Humphrey	Percy
Biden	Jackson	Proxmire
Brooke	Javits	Randolph
Burdick	Kennedy	Ribicoff
Case	Magnuson	Roth
Chiles	Mansfield	Schweiker
Clark	McGee	Scott, Hugh
Cook	McGovern	Stafford
Cranston	McIntyre	Stevens
Domenici	Metcalf	Stevenson
Eagleton	Mondale	Symington
Fong	Montoya	Taft
Hart	Moss	Tunney
Haskell	Muskie	Weicker
Hatfield	Nelson	Williams
Hathaway	Packwood	

NAYS—29

Allen	Dole	McClellan
Baker	Dominick	Nunn
Bartlett	Eastland	Scott, William L.
Bennett	Ervin	Sparkman
Bible	Fannin	Stennis
Brock	Goldwater	Talmadge
Buckley	Gurney	Thurmond
Byrd, Harry F., Jr.	Hansen	Young
Byrd, Robert C.	Helms	
Curtis	Hruska	
	Long	

PRESENT AND GIVING LIVE PAIRS, AS PREVIOUSLY PAIRED—4

Griffin, for
Beall, for
Cannon, against
Fulbright, against

NOT VOTING—11

Bellmon	Hartke	McClure
Church	Inouye	Saxbe
Cotton	Johnston	Tower
Gravel	Mathias	

The PRESIDING OFFICER. On this vote there are 56 yeas and 29 nays. Two-thirds of the Senators present and voting not having voted in the affirmative, the motion is rejected.

PROHIBITION ON THE IMPORTATION OF RHODESIAN CHROME

The PRESIDING OFFICER (Mr. NUNN). The Chair lays before the Senate the unfinished business, which will be stated by title.

The second assistant legislative clerk read as follows:

A bill (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.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. 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.

EMERGENCY HIGHWAY ENERGY CONSERVATION ACT

Mr. MANSFIELD. Mr. President, for the information of the Senate, at approximately 1:30 p.m. the Senate will turn to the consideration of Calendar No. 598, H.R. 11372, an act to conserve energy on the Nation's highways, which has to do with the speed limit for trucks and cars.

WASTE FUND TREATMENT FUND ALLOCATIONS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the pending business be laid aside temporarily and that the Senate turn to the consideration of Calendar No. 604, S. 2812; but before the Chair rules, I wish to say that this is one of the bills which, in response to a question raised by the distinguished acting Republican leader yesterday, I stated we would try to bring up today.

The PRESIDING OFFICER. Senators will please be seated so that the Senator can be heard.

The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 2812) to authorize a formula for the allocation of funds authorized for fiscal year 1975 for treatment construction grants, and for other purposes.

The Senate proceeded to consider the bill.

Mr. MUSKIE. Mr. President, I ask unanimous consent that during consideration of and voting on H.R. 11372 and S. 2812 the following staff members of the Committee on Public Works be granted the privilege of access to the floor:

Mr. Barry Meyer, John W. Yago, Philip T. Cummings, Ron Katz, Bailey Guard, Kathy Cudlipp, Harold Brayman, Rick Herod, Leon G. Billings, Sally W. Walker, James Readle, and Jacqueline Schafer.

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

Mr. MUSKIE. Mr. President, one of the innovative and controversial features of the 1972 clean water law was the provision for determining distribution of construction grant funds among the States.

Prior to 1972, water pollution construction funds were distributed among the States on the basis of population. Under the new law, allocation of funds was to be based on needs. Construction grant funds for 1973 and 1974 were distributed on the basis of a "needs" survey which EPA had submitted to the Congress in early 1972. Next year's funds—fiscal year 1975—were to be allocated on January 1, 1974, on the basis of a new "needs" survey which was conducted by the Environmental Protection Agency and submitted to Congress in October of this year.

The committee, after holding hearings and reviewing the "needs" survey, recognized two major problems with the recommended formula. First, as the Environmental Protection Agency recognized in their report to Congress, the survey of the States had major limitations, including the survey methodology and the types of costs which States could expect.

Second, the recommended formula, if adopted as the basis for allocation, would limit the amount of grants to several States substantially below their estimated needs—needs which EPA omitted in their survey.

While the committee believes that the "needs" approach is preferable, the limitations of the current survey required consideration of other factors in developing an allocation formula that would: First, estimate needs not covered by the "needs" survey; and second, reduce the inequities to several States created by the transition to allocation based entirely on needs. The legislation reported by the committee meets these criteria.

Mr. President, section 205(a) of the Federal Water Pollution Control Act directs the Administrator of the Environmental Protection Agency to allocate 1975 grants for construction of wastewater treatment facilities among the States. Section 207 of that act has authorized $7 billion for fiscal year 1975.

The Environmental Protection Agency, pursuant to section 516, in its "needs" survey recommended that Congress base its allocation of 1975 grant funds to the States in the same ratio that their costs in three categories bear to the total costs of these categories to all the States. The costs covered in these categories included: First, providing the facilities to meet secondary treatment required by the 1972 act; second, providing facilities for meeting State or local requirements more stringent than secondary treatment; and third, providing eligible new interceptors, force mains, and pumping stations.

The bill reported today requires the Administrator to allocate the authorized funds on a ratio developed on the following basis: 75 percent of the total funds according to the Environmental Protection Agency's recommended formula described in the 1973 "needs" survey; 25 percent in the ratio that the population of each State bears to the population of all the States.

The committee, however, has agreed to limit the use of this allocation formula to fiscal year 1975.

Because of the limitations on the survey, the legislation requires the Administrator of the Environmental Protection Agency to make another "needs" survey in 1974, which is to be initiated within 30 days, utilizing the forms approved last year. This survey is to provide Congress

with new data no later than June 30, 1974, and is to serve as the basis for allocating grant funds for 1976. Unlike the 1973 survey, the new survey shall include all costs which States expect to incur to comply with the 1972 act.

The committee expects the Administrator to insist that the States submit a complete form for the entire State rather than multiple forms for communities in the State. And the committee expects the States to submit estimates of needs for all "treatment works" as defined in section 212(2) (A) and (B) and the estimate of costs for best practicable waste treatment technology defined in section 201 and required by section 301.

On a related matter, the committee bill addresses the issue of "phased funding" of needed treatment works.

Section 3 rectifies the Environmental Protection Agency's misinterpretation of section 203 of the Water Pollution Control Act. Under its present regulations, that Agency restricts complete operable works from receiving funding for separate construction segments. Furthermore, that Agency's misinterpretation of section 203 prohibits financial phasing of construction works over more than 1 fiscal year.

This section imposes no additional costs to the Federal Government nor would commitment to one phase of a project constitute an obligation on the part of the Federal Government to fund the remainder of the project. Conversely, the committee would expect EPA to obtain a commitment from any community or State utilizing phased funding, to complete the project even if future Federal funding is not assured.

Mr. President, this legislation represents a compromise—a compromise which reflects the needs for an equitable distribution of available construction grant funds and the limitations of the EPA needs survey. I think it is fair and equitable to all States. It represents the best judgment and unanimous recommendation of the Committee on Public Works.

I urge the Senate to pass the bill.

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

Mr. MUSKIE. Yes, I yield to the Senator from New York.

Mr. BUCKLEY. Mr. President, I would like to begin by thanking the Senator from Maine for his full and active cooperation and work in resolving the difficulties that were met in applying the needs formula.

Mr. President, I agree with the distinguished Senator from Maine (Mr. MUSKIE) that S. 2812 represents a workable compromise considering the committee's declared intent to use State needs as the basis for allocating waste treatment funds, the admitted shortcomings of the EPA's recent needs survey, and the fact that many States were unable, on short notice, to adequately document their needs.

I supported the adoption of a needs based formula in Public Law 92–500, the 1972 amendments to the Federal Water Pollution Control Act. I had hoped that EPA, in cooperation with the States, would have been able to identify with precision the expected cost of construction for all municipal treatment works on a State-by-State basis. Our hearings this fall, however, pointed out a number of shortcomings on the part of EPA and the States. EPA, largely as a result of the OMB forms clearance process consumed more than 5 months of the time available for completion of the survey, leaving only 6 weeks for the States and cities to complete and forward the forms to Washington. Some States without staffing and funding adequate to the task, failed to fully identify eligible needs; other States merely bundled up the numerous municipal forms and sent them to EPA without even preparing a State total. These difficulties are typical of the results of instituting a new Federal-State process.

In view of these difficulties the committee adopted in S. 2812 a two-part formula for allocation of funds: 25 percent based on the ratio of each State's population to the population of all the States and 75 percent based on EPA's suggested formula. EPA in its report to the Congress, based on section 516 of the act, suggested that we base the allocation of fiscal 1975 grant funds on the ratio of a States needs in three categories to the total costs in these categories for all States. These three categories which EPA believed were most fully documented include, first, the cost of secondary treatment as a uniform base line for municipalities under the act; second, the need to meet requirements more stringent than secondary treatment in some areas; and third, the need for new interceptor sewers, force mains and pumping stations. We should make clear that, as EPA testified, to base all or part of the allocation formula on these three categories does not prejudice the funding of other types of treatment works which are eligible under the act—for example, collector sewers and combined storm sewers. One very beneficial aspect of this bill is the provision sponsored by Senator BAKER which reaffirms the intention expressed in the act that EPA shall fund as a project any financial or physical phase of construction which is otherwise eligible. This rectifies an error in legal interpretation by EPA, provides needed flexibility for States and municipalities to begin construction of as many needed projects as possible, and prevents the situation in which approval of a large project will prevent other projects on a States priority list from being funded.

Mr. President, I would like, if I may, to be parochial for a moment. During the hearing of the committee on the issue of an allocation formula, a very fine statement was presented to us by Mr. Dwight Metzler, deputy commissioner of the New York State Department of Environmental Conservation.

The following is his summary of the position of New York State on the application of the needs survey to the allocation of the fiscal year 1975 authorization for title II construction grants:

(a) The authorization of seven billion dollars in Section 207 of the Act should be allocated in its entirety.

(b) The allocations should be based on the unadjusted total estimates of the States as determined by the 1973 Needs Survey.

(c) If it appears that inequities result from allocations made in accordance with (b) above, adjustments can be made in the allocations for fiscal year 1976, by implementing Section 206(f) of the Act which permits advanced construction funding.

(d) Congress should make it clear that the program of Federal construction grant assistance will continue beyond June 30, 1975. Authorizations for subsequent years should be seven billion dollars per year or greater.

(e) Congress should reiterate its intent for funding of projects on a phased approach to the construction of treatment works as urged on Page 111 of the Conference Report No. 92–1465. Although this procedure was approved for the District of Columbia's "Blue Plains" project, it has been denied elsewhere.

(f) Allocation is only a part of the picture. Definite steps should be taken so allocated funding authority is obligated by prompt approval of projects.

There may be some feeling that New York supports the allocation on the basis of the total costs of 65.604 billion dollars rather than the EPA proposed figure of 36.6 billion dollars because it gets the larger share that way. It is the converse that is true.

New York's needs are large, and it should have a large allocation. New York is the only State in the Union that has both a Great Lakes and an ocean coastline. In the Great Lakes, New York has the responsibility for the implementation of the Nixon-Trudeau agreement on boundary waters. This is exercised through New York's membership on the International Joint Commission—United States and Canada.

New York is a member of seven interstate pollution control compacts, viz:

The New England Interstate Water Pollution Control Compact.

The Ohio River Valley Water Sanitation Compact.

The Tri-state Compact and Interstate Sanitation Commission.

The Delaware River Basin Compact.

The Great Lakes Basin Compact.

The Champlain Basin Compact.

The Susquehanna River Basin Compact.

In all of these compacts, New York is the upstream member and we will not discharge polluted water to our downstream neighbors.

The ocean shore of New York provides recreation facilities for the greatest concentration of population anywhere in the country and handles more shipping and receives more passengers in its port than almost anywhere else in the world.

Lastly, New York is one of those several states that have advanced farthest in planning for abatement of pollution. We are seeking only our due.

I supported this position during the discussion of the appropriate formula in the Public Works Committee and I continue to endorse it. I have the assurance of my colleagues on the committee that the adoption of a formula based in part on population in no way signals a retreat from our commitment to a "needs" approach. Clearly, we must know the full costs of meeting the high water quality standards mandated by the Federal Water Pollution Control Act and we can learn this only by ascertaining actual needs, State by State.

I am hopeful that another provision of the bill, which calls for EPA and the States to begin a new needs survey within 30 days and to complete it by June 30, 1974, will mean that a year from now, we will be able to return to our first choice—an allocation formula based solely on needs which will distribute funds for fiscal year 1976 in a manner that is equitable to all the States.

I compliment the chairman of the committee, Mr. RANDOLPH; the chairman of the subcommittee, Mr. MUSKIE; the ranking minority member of the committee, Mr. BAKER; and the other Senators who participated in this decision for dealing with this very knotty problem in their typically thorough and fair manner.

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

Mr. BUCKLEY. I yield.

Mr. JAVITS. I wish to associate myself with the remarks of my colleague from New York. I think he has put the situation exactly right, and I wish to express my appreciation to him for contending for principles and policies with respect to this legislation which would be equitable to the Nation and equitable to our State.

We of New York have constantly taken the position that water is a national resource and have shown it in many policies we have adopted. The Senator has referred to the policy of the State. We would certainly hope that States which are not riparian States would take the same position that the needs standard is the basis for the country.

We realize that political problems occasionally arise which may make it necessary to do less than the optimum, but I think the decision of the Senator from Maine (Mr. MUSKIE) and the Senator from West Virginia (Mr. RANDOLPH) to put it on a 1-year basis in respect of so vital a matter as the national resource of the water table is a very desirable and wise one.

One other thing which is very important to me: Often we almost see an attitude of being contrary simply because it is the major industrial States that are involved. Yet, they are the most productive in terms of population to service the Nation in war or peace, in terms of goods produced, and facilities providing a tax income raised for the benefit of all of us.

All too often there is a tendency here to look at the chart and determine the number of States that do best in the chart and they prevail, whatever may be the total national interest.

Mr. President, it is therefore refreshing to me—and I have been here a long time—when statesmanship rears its noble head and some effort is made to rearrange these aid programs in the basic need of the country.

Mr. President, I would have been deeply disappointed if the committee had gone to the 50-percent figure which was originally discussed. I think it is encouraging that it has gone to the 75-percent figure.

We in New York have been just as vigorous in spending money for others when it will do us no good but will do the Nation good, as we have done in irrigation matters, dams, flood control, to take some of the more bread-and-butter aspects of the matter here.

We have a natural resource—water. And when a conservation measure is made to apply the test to that, it is very refreshing to my mind and to the country as a whole.

Mr. BUCKLEY. Mr. President, I thank my distinguished colleague for pointing out the equities involved in the measure.

Mr. MUSKIE. Mr. President, I express my appreciation to the two Senators from New York and to the Senator from West Virginia (Mr. RANDOLPH), the chairman of the committee, and to all members of the committee.

As has been customary and traditional in the committee, the issues are discussed rather fully and with a rather full attendance. Votes tend to cross party lines.

It is encouraging that once again a matter has come from the committee in this fashion. Although we did not all agree, we will made an effort to adhere to this formula. It was worked out in that spirit.

I am most grateful for the continuing cooperation of the Senator from New York (Mr. BUCKLEY) in urging approval of the bill.

Mr. BAKER. Mr. President, I wish to state my strong support for S. 2812. This bill incorporates two essential elements to the operation of our future water pollution control grant program.

First, the bill establishes an allocation formula for the distribution of fiscal year 1975 sewage grants. While there was substantial discussion in committee over what would be the most equitable formula, I believe we reached a compromise that is fair. The formula is grounded in the demonstrated needs for pollution control funds. I anticipate that a new needs study, mandated by this bill, should enable the Congress to support fully the needs concept next year.

The bill also contains a restatement of the intent of the Congress on "phased funding" of projects, as expressed in the conference report on Public Law 92–500. In that document, the Congress said that the Environmental Protection Agency should allow any State that so wishes to apply and receive grants for portions of treatment facilities.

EPA, unfortunately, did not allow such an approach. That decision hampered the ability of many State water pollution control agencies to develop the most effective and logical control program. Often funding of a large project prevented the start of construction of other needed projects on a State's priority list.

To rectify this EPA error, I introduced S. 1594 earlier this year. I am pleased that the committee bill contains the language of S. 1594 in section 3.

While the committee report explains the phased funding intent quite clearly, I would just add this word of explanation: This section will give to the States the right and ability to seek approval—and for EPA to grant such approval—for 75 percent grants toward a portion of a treatment works, whether that portion is selected in a financial or physical basis. A community might, for example, seek initially a grant for one-fifth of the total cost of construction of a plant. It might seek funds for the primary phase of a treatment plant, or it might seek funds for the first 1,000 feet of an interceptor sewer. In future years, the applicant would come back for further grants to finish each project.

EPA must not discriminate against such applications. Rather, EPA should view them as an opportunity for flexibility quickly and thus to achieve our national goal of clean water more expeditiously.

I wish to pay my respects, as always, to the chairman of the full committee, Mr. RANDOLPH; the chairman of the Subcommittee on Air and Water Pollution, Mr. MUSKIE; and the ranking minority member of the subcommittee, Mr. BUCKLEY, for their leadership in reaching the compromise on this legislation.

Further, I would like to express my thanks to the junior Senator from Delaware (Mr. BIDEN) for his strong support for the phased-funding language. I know that phased-funding is an issue that has as great interest for the people of Delaware as it does for Tennessee. And I commend him on his leadership on this point.

WASTE TREATMENT CONSTRUCTION SHOULD PROCEED—EQUITY NEEDED

Mr. RANDOLPH. Mr. President, when the Committee on Public Works began to consider the question of how to allocate waste treatment construction grant funds for the 1975 fiscal year, we knew that it would be difficult to develop an equitable formula fair to the large majority of the States, and impossible to find an allocation formula which pleased every one.

When the Congress enacted the Federal Water Pollution Control Act Amendments of 1972, Public Law 92–500, we expected that a formula for allocation in accordance with the need in each of the States for construction of publicly owned sewage treatment works would flow naturally from the "needs" survey the Environmental Protection Agency was required to conduct under section 516(b)(2). After the publication of that survey in October of this year, however, it became apparent that the limitations of that survey required action by the Congress to produce a measure of equity in the distribution of sewage treatment funds. Those limitations are detailed in the report of the committee on S. 2812.

The committee approached its deliberations on the fund allocation in an extremely statesman-like manner. Though cognizant of the effect on their own States, the members of the committee were not bound in their consideration or in their final position by the narrow parochial view of what would be best for the States they represented. I believe that as a result of the work of the committee a formula for allocation has been developed which is fair. It improves the position of those States which would have been most severely inhibited in their water pollution abatement programs by the formula recommended by the Environmental Protection Agency, and it maintains the commitment of the Congress to allocate waste treatment funds on the basis of need for such facilities.

The committee remains firm in its desire to allocate funds for the construction of waste treatment works solely on the basis of the need. The limitations of the 1973 needs survey prevented that desire from being realized with respect to fiscal year 1975 funds.

In order to return to that approach at the earliest possible moment in the allocation of fiscal year 1976 waste treatment funds, the bill would require the

Environmental Protection Agency to conduct another needs survey assessing the complete needs for all types of treatment works mandated by the act and to submit that survey by June 30, 1974. The report of the committee provides a clear direction to the Environmental Protection Agency as to the expanded basis of this resurvey requiring the reporting of data on all eligible treatment works including the provision of the best practicable treatment technology as required for fiscal year 1975 grants under section 201(g)(2) of the act.

Mr. President, I urge the passage of this bill.

The PRESIDING OFFICER. The bill is open to amendment. If there be no 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.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

The bill (S. 2812) was passed, as follows:

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

SECTION 1. Section (a) of section 205 of the Federal Water Pollution Control Act as amended (86 Stat. 837), is amended by inserting "(1)" after "(a)" and by adding the following new paragraph:

"(2) Sums authorized to be appropriated for the fiscal year ending June 30, 1975, shall be allotted by the Administrator among the States in the following ratio:

State	Percentage
"Alabama	1.064
Alaska	.358
Arizona	.550
Arkansas	.705
California	12.320
Colorado	.927
Connecticut	1.262
Delaware	.487
District of Columbia	.198
Florida	4.190
Georgia	2.183
Hawaii	1.013
Idaho	.248
Illinois	5.856
Indiana	1.757
Iowa	1.221
Kansas	.962
Kentucky	1.588
Louisiana	.966
Maine	.644
Maryland	1.696
Massachusetts	2.275
Michigan	4.115
Minnesota	1.582
Mississippi	.733
Missouri	2.191
Montana	.208
Nebraska	.475
Nevada	.491
New Hampshire	.800
New Jersey	6.362
New Mexico	.265
New York	10.872
North Carolina	2.182
North Dakota	.138
Ohio	5.113
Oklahoma	1.324
Oregon	.856
Pennsylvania	4.656
Rhode Island	.453
South Carolina	1.506
South Dakota	.164
Tennessee	1.457
Texas	2.748
Utah	.488
Vermont	.295
Virginia	2.648
Washington	1.524
West Virginia	.887
Wisconsin	1.550
Wyoming	.104
Guam	.053
Puerto Rico	1.157
Virgin Islands	.075
America Samoa	.018
Pacific Island Territory	.024"

SEC. 2. Subsection (b) of section 516 of the Federal Water Pollution Control Act, as amended (86 Stat. 895), is amended by inserting "(1)" after "(b)"; by striking "(1)", "(2)", "(3)", and "(4)" and inserting in lieu thereof "(A)", "(B)", "(C)", and "(D)", respectively; and by adding the following new paragraph:

"(2) Notwithstanding the second sentence of paragraph (1) of this subsection, the Administrator shall make a detailed estimate called for by subparagraph (B) of such paragraph and shall submit such detailed estimate to the Congress no later than June 30, 1974. The Administrator shall require each State to prepare an estimate of cost for such State, and shall utilize the survey form EPA–1, O.M.B. No. 158–R0017, prepared for the 1973 detailed estimate, except that such estimate shall include all costs of compliance with section 201(g)(2)(A) of this Act or water quality standards established pursuant to section 303 of this Act, and all costs of treatment works as defined in section 212(2), including all eligible costs of constructing sewage collection systems and correcting excessive infiltration or inflow and all eligible costs of correcting combined storm and sanitary sewer problems and treating storm water flows. The survey form shall be distributed by the Administrator to each State no later than January 31, 1974.".

SEC. 3. Subsection (a) of section 203 of the Federal Water Pollution Control Act, as amended (86 Stat. 935), is amended to add at the end thereof the following sentence: "The Administrator shall approve as a project each physical or financial phase of a treatment works which otherwise meets the requirements of this Act.".

AMENDMENT OF FEDERAL WATER POLLUTION CONTROL ACT

Mr. MUSKIE. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 1776.

The PRESIDING OFFICER (Mr. NUNN) laid before the Senate the amendment of the House of Representatives to the bill (S. 1776), to amend the Federal Water Pollution Control Act, as amended, which was to strike out all after the enacting clause, and insert:

That the Federal Water Pollution Control Act (86 Stat. 816; 33 U.S.C. 1251 et seq.) is amended—

(1) in section 104(u)(2), by striking out "fiscal year 1973" and inserting in lieu thereof "fiscal years 1973 and 1974";

(2) in section 206(e), by striking out "$2,000,000,000" and inserting in lieu thereof "$2,600,000,000";

(3) in section 207, by inserting "206(e)," after "sections";

(4) in section 311—

(A) by striking out "(b)(2)" wherever it appears in paragraphs (1), (2), and (3), of subsection (f), and inserting in lieu thereof "(b)(3)";

(B) by striking out "Secretary" in the last sentence of paragraph (2) of subsection (f), and inserting in lieu thereof "Administrator"; and

(C) by striking out "(b)(2)" wherever it appears in subsections (g) and (l), and inserting in lieu thereof "(b)(3)";

(5) in section 315, by redesignating subsection (g) as subsection (h), and by adding a new subsection (g) to read as follows:

"(g) In addition to authority to appoint personnel subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and to pay such personnel in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, the Commission shall have authority to enter into contracts with private or public organizations who shall furnish the Commission with such administrative and technical personnel as may be necessary to carry out the purpose of this section. Personnel furnished by such organizations under this subsection are not, and shall not be considered to be, Federal employees for any purposes, but in the performance of their duties shall be guided by the standards which apply to employees of the legislative branches under rules 41 and 43 of the Senate and House of Representatives, respectively."; and

(6) in section 509(b)(1)(C), by striking out "treatment" and inserting in lieu thereof "pretreatment".

SEC. 2. Notwithstanding the requirements of subsection (c) of section 206 of the Federal Water Pollution Control Act (86 Stat. 838), applications for assistance under section 206 may be filed with the Administrator of the Environmental Protection Agency until January 31, 1974.

SEC. 3. Funds available for reimbursement under Public Law 92–399 shall be allocated in accordance with subsection (d) of section 206 of the Federal Water Pollution Control Act (86 Stat. 838), pro rata among all projects eligible under subsection (a) of such section 206 for which applications have been submitted and approved by the Administrator pursuant to such Act. Notwithstanding the provisions of subsection (d) of such section 206, (1) the Administrator is authorized to make interim payments to each such project for which an application has been approved on the basis of estimates of maximum pro rata entitlement of all applicants under section 206(a) and (2) for the purpose of determining allocation of sums available under Public Law 92–399, the unpaid balance of reimbursement due such projects shall be computed as of January 31, 1974. Upon completion by the Administrator of his audit and approval of all projects for which an application has been filed under subsection (a) of such section 206, the Administrator shall, within the limits of appropriated funds, allocate to each such qualified project the amount remaining, if any, of its total entitlement. Amounts allocated to projects which are later determined to be in excess of entitlement shall be available for reallocation, until expended, to other qualified projects under subsection (a) of such section 206. In no event, however, shall any payments exceed the Federal share of the cost of construction incurred to the date of the voucher covering such payment plus the Federal share of the value of the materials which have been stockpiled in the vicinity of such construction in conformity to plans and specifications for the project.

Mr. MUSKIE. Mr. President, on May 10, 1973, Senator CLARK introduced S. 1776 to amend the Federal Water Pollution Control Act, as amended, to authorize a 1-year extension of the pilot operator training program for waste water treatment plants under section 104(g)(1) of Public Law 92–500. The act has authorized funds for this program only through fiscal year 1973. On June 18, the Senate passed S. 1776. Section 1 of the bill before us incorporates the origi-

nal provisions of S. 1776 as passed by the Senate.

Also incorporated in this bill is the language of Senate Joint Resolution 158, as passed by the Senate on October 11, 1973. This resolution would have amended section 206 of the Federal Water Pollution Control Act, which provides for reimbursement to those agencies that initiated construction on waste treatment plants between June 30, 1966, and July 1, 1972, but did not receive the maximum authorized Federal grant. Reimbursement would be for the difference between the amount of Federal funds received, if any, and 50 percent of total cost, or 55 percent if the project was constructed in conformity with a comprehensive metropolitan plan.

Senate Joint Resolution 158 would have raised the authorization for reimbursement for the 1966 to 1972 period from $2 billion to $2.6 billion as a result of revised EPA estimates. The House-passed version of S. 1776 incorporates this provision.

Because of the delay in promulgation of final regulations and confusion among States and local governments about eligibility under this program, the Senate resolution extended the deadline for filing applications for reimbursement from October 18, 1973, to December 31, 1973. The House-passed version moves that extension to January 31, 1974.

The Senate resolution provided for preliminary disbursement of funds to projects which could be quickly approved for reimbursement on the basis of available documentation, without waiting for final processing of all projects. These advance payments would prevent disruption in community plans and facilitate an orderly cash flow in the U.S. Government. The House-passed version retains this provision.

The House, in its consideration of this legislation, added new language amending section 315 of the Federal Water Pollution Control Act. That section created the National Commission on Water Quality, composed of five Members of the Senate, five Members of the House, and five presidentially appointed members, to review and independently evaluate for Congress the economic, social and environmental implications of the regulatory aspects of that act. The Commission report must be submitted to the Congress no later than October 18, 1975.

The five Senate Members were designated on January 29, 1973; the House Members on February 5, 1973; and the public members on March 15, 1973. At the Commission's initial meeting on May 15, Governor Rockefeller was elected Chairman and Congressman JONES and myself were elected Vice Chairmen.

From the initial meeting until the present, the Commission, in response to the conference committee charge that the study must be funded, staffed, and initiated with expedition, has been searching for competent staff to expedite the necessary studies. A concerted effort was made by all members of the Commission to identify candidates for the top staff positions. Part of those efforts culminated in a determination that Lt. Gen. Frederick J. Clarke, retired, former Chief of the Corps of Engineers, was the most qualified person presently available for the position of Executive Director. Because of the 2-year life of the Commission, General Clarke was reluctant to accept employment without proper permanent arrangements. His services were then made available to the Commission under terms of a contract with the engineering firm of Tippetts-Abbett-McCarthy-Stratton.

The committee is pleased that the National Commission on Water Quality was able to obtain General Clarke's services. He has dealt with this committee many times on many issues and his record is exemplary. He has a long and distinguished record in solving complex water problems and brings this expertise to the vitally important work of the Commission. He is—by any standards—the best available person for this job. The General Accounting Office, however, advised that the contractual arrangement presents legal difficulties because it results in a non-Federal employee supervising Federal employees. The GAO then advised Governor Rockefeller—the Chairman of the National Commission on Water Quality—that an amendment to section 315 would alleviate this problem. The legislative change was recommended to the Committee on Public Works by the Chairman of the Commission.

Our intention is that the exemption provided in this legislation is to be used exclusively for the services of General Clarke as Executive Director of that Commission. General Clarke will do no work for his engineering firm for compensation. He will receive no compensation from the engineering firm other than that stipulated in the contract between the National Commission on Water Quality and Tippetts-Abbett-McCarthy-Stratton. Finally, that firm will do no work for the National Commission on Water Quality other than as provided under the current contract.

S. 1776, as amended, also includes several technical amendments to correct oversights and incorrect references and are not substantive in nature.

Mr. BENTSEN. Mr. President, I believe the compromise reached by the committee was the most equitable solution to a very complex and difficult problem. I had originally proposed, and the committee accepted, an allocation formula based 50 percent on population and 50 percent on table 1 of the "needs study" EPA submitted to the Congress in October. However, a review of the impact of this adjustment in the formula revealed that several States would be severely affected by the proposed change. The formula finally approved, which contains a 25-percent allocation based on population and 75 percent on table 1, is a temporary measure, designed to correct some of the imbalances in the straight EPA needs allocation, in the form it was submitted to the Congress.

I should stress that I do not oppose a needs formula as the basis for allocating funds for wastewater treatment facilities; however, the needs test conducted by the EPA was incomplete and created distortions in the allocations of funds among the States.

I was particularly concerned that the needs study did not place a proper emphasis on the need for advanced waste treatment. My own State, Texas, has required secondary treatment for some 40 years, because it is a water-poor State. Some of our rivers are composed in the summertime of a high percentage of return flows, or effluents. With ever-increasing population growth, secondary treatment is no longer sufficient in all cases, and my State must now turn to advanced waste treatment to keep our rivers in acceptable condition.

The EPA needs study excluded the cost of advanced waste treatment in determining a State's need unless such treatment was required by legally binding Federal, State, or local actions taken prior to the conduct of the survey. In actual practice, this required a State permit reflecting advanced treatment, a court order, or an EPA-approved water quality management plan. At the time of the survey, only a small percentage of State permits required advanced waste treatment, and no EPA-approved water quality management plans existed.

I strongly support committee actions requiring EPA to produce more acceptable criteria for determining actual State needs. This bill only changes the formula for 1 year; in the intervening year, we should have more adequate data upon which to base our judgments.

I realize that the formula gives my State approximately $35 million less than the originally approved 50–50 split between population and the EPA recommendation; however, in view of the dislocations that would occur in other States from correcting entirely the obviously unfair Texas situation, I support this compromise solution.

Mr. MUSKIE. Mr. President, I move that the Senate concur in the House amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion to concur in the House amendment. Without objection, the motion is agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

The VICE PRESIDENT. Without objection, it is so ordered.

DATE OF MEETING OF 2D SESSION OF THE 93D CONGRESS

Mr. MANSFIELD. Mr. President, on behalf of the joint leadership, I send to the desk a joint resolution and ask for its immediate consideration.

The VICE PRESIDENT. The joint resolution will be stated, with the names of the sponsors.

The joint resolution (S.J. Res. 180) was read the first time by title and the second time at length, as follows:

On behalf of Senators MANSFIELD, HUGH SCOTT, ROBERT C. BYRD, and GRIFFIN, a joint resolution:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the second regular session of the Ninety-third Congress shall begin at noon on Monday, January 21, 1974, or at noon on the second day after their respective Members are notified to reassemble in accordance with section 2 of this resolution, whichever event first occurs.

SEC. 2. The Speaker of the House of Representatives and the President pro tempore of the Senate, or the Majority Leader of the Senate and the Majority Leader of the House of Representatives, or the Minority Leader of the Senate and the Minority Leader of the House of Representatives, shall notify the Members of the Senate and the House of Representatives, respectively, to reassemble whenever in their opinion the public interest shall warrant it.

The VICE PRESIDENT. Without objection, the Senate will proceed to the consideration of the joint resolution.

The joint resolution is open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed for a third reading, and was read the third time.

The VICE PRESIDENT. The joint resolution having been read the third time, the question is, Shall it pass?

The joint resolution (S.J. Res. 180) was passed.

QUORUM CALL

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

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The gentleman will state it—the Senator will state it. [Laughter.]

Mr. MANSFIELD. What is the pending business? You know, Mr. President, we are only "scoundrels" over here.

The VICE PRESIDENT. The Chair apologizes.

The pending business is 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.

Mr. MANSFIELD. I thank the Chair.

UNITED NATIONS PARTICIPATION ACT OF 1945 CLOTURE MOTION

Mr. MANSFIELD. Mr. President, I send to the desk a cloture motion and ask that it be stated.

The VICE PRESIDENT. The motion will be stated.

The 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 on S. 1868, an act 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.

SIGNED BY 18 SENATORS

Mr. ROBERT C. BYRD. Mr. President, may we hear the reading of the names of the 18 Senators.

The VICE PRESIDENT. The clerk will read the names.

The legislative clerk read as follows:

Hubert H. Humphrey	James B. Pearson
Gale W. McGee	John V. Tunney
Alan Cranston	Ted Stevens
Tom Eagleton	Harrison Williams
Edward Kennedy	Walter F. Mondale
Harold E. Hughes	William D. Hathaway
Jennings Randolph	Frank E. Moss
Gaylord Nelson	Quentin Burdick
Clifford P. Case	Mike Mansfield

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

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

DAYLIGHT SAVING TIME—CONFERENCE REPORT

Mr. STEVENSON. Mr. President, I submit a report of the committee of conference on H.R. 11324, and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. BIDEN). 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 amendment of the Senate to the bill (H.R. 11324) to provide for daylight saving time on a year-round basis for a two-year trial period, and to require the Federal Communications Commission to permit certain daytime broadcast stations to operate before local sunrise, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all the conferees.

The PRESIDING OFFICER. Is there objection to the consideration of the conference report?

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

(The conference report is printed in the House proceedings of the CONGRESSIONAL RECORD of December 10, 1973, at p. 40576.)

Mr. STEVENSON. Mr. President, the proposed legislation is a direct result of efforts by the Senate to solve the energy crisis facing the United States. The Senate Commerce Committee anticipated the need for year-round daylight saving time last summer. In October, I introduced S. 2602 to put the Nation on temporary year-round daylight saving time. Chairman MAGNUSON called immediate hearings by the Senate Commerce Committee and was instrumental in insuring quick action by the committee. November 14, 1973, the Commerce Committee reported S. 2702 to the floor of the Senate and recommended its passage. S. 2702 was a composite bill written by the entire Commerce Committee to incorporate the recommendations of my bill, S. 2602, and improvements suggested by witnesses at the Commerce Committee hearings.

The conference report on the daylight saving time proposal is commendable and fully acceptable. It allows States that will have peculiar problems due to daylight saving time the opportunity to get a Presidential exemption. And it guarantees maximum uniformity for the convenience of commerce in observance of daylight saving time across the Nation. It allows States that are split by a time zone line to exempt the eastern portion of the State, thus putting the entire State on one time. And it accepts the Senate's approach requiring thorough and complete study of all of the effects of temporary daylight saving time.

The Nation will advance its clocks the fourth Sunday after the date that the President signs the bill. The Nation will remain on advanced time until the last Sunday in April 1975. The study to be conducted during this period will give Congress adequate information to decide whether permanent winter daylight saving time is in the national interest. It will also provide the specific data required to calculate conclusively the amount of energy saving that will result from year-round daylight saving time. It is probable that daylight saving time observed year-round will reduce energy consumption by more than 1 percent and also reduce crime rates and traffic accidents and add additional daylight for the convenience of most citizens.

Mr. President, I commend all of my colleagues in the Senate for the high priority this legislation has received. This bill represents an extremely useful and constructive step toward energy conservation in the United States this winter.

Mr. DOLE. Mr. President, I am not a member of the committee that has jurisdiction of this proposal but I understand from checking with my distinguished senior colleague from Kansas that there is no objection to the conference report. I understand the matter was checked out with the staff and others.

Mr. President, during Senate floor debate on the daylight savings time bill, I offered an amendment which would guarantee that any fuel allocation program would be implemented in a manner which was fair and equitable to all users and classes of users of fuel that are covered by the allocation program.

The impetus for the amendment was provided by an administrative proposal which if implemented would have imposed an inequitable reduction in general aviation fuel allocations and resulted in undue hardship for the general aviation industry. But the amendment as drafted would have had an application far beyond the general aviation problem and established generally the requirement that reductions imposed by any fuel allocation program be absorbed equally by users having the same priority.

The general aviation problem which spurred my interest in the issue has since been solved administratively, but the con-

cept incorporated in the amendment is still sound and should be included within any legislation which authorizes a fuel allocation program.

I appreciate the support given this amendment by the chairman of the Commerce Committee (Mr. MAGNUSON) and by Senator COTTON and BEALL who served on the conference committee. I feel that the action taken by the conferees, though they did not include the amendment in the conference report, will assure that the amendment or language of similar impact will be included in the final version of the Energy Emergency Act.

Since I first introduced the amendment I have been contacted by representatives of numerous sectors of the economy in support of the proposal. I am impressed with the general attitude expressed by these people which has been one of willingness to accept the burden of the energy shortage so long as that burden is distributed equitably. I feel this attitude is representative of the feeling held by the majority of Americans I commend those who are accepting the responsibilities and inconveniences of the energy shortage in this fashion and feel it speaks well of this country and its people.

I might also add that I am impressed with the efforts on the part of the administration in dealing with the fuel allocation problems. I have found them receptive and reasonable. They responded not only to the initial problems raised by the proposed fuel allocation for general aviation, but also to later problems which arose with regard to the regulations that were printed in the Federal Register. I feel their effort in dealing with the problem reflects a sincere interest to devise an equitable program, and this administrative approach is most important in dealing with a program in which administrative discretion, of necessity, will play a major role.

I wish to thank my colleagues for their support of the equity amendment and trust a similar provision will be included in the final version of the Energy Emergency Act which is now in the final stages of congressional consideration.

With respect to section 5 of the Senate bill, I note that it was not adopted in conference. That section pertained to equitable fuel allocations. I do believe the language and the fact that we will have a similar amendment in a bill to be passed by the House, hopefully sometime this week, and go to conference next week with the Senate, will assure that there will be fair distribution of supplies.

As far as I know there is no objection to the adoption of the conference report.

Mr. STEVENSON. As the conference report indicates, section 5 was dropped, but only after the Senate conferees were assured by the House conferees that the provision would be included in the Emergency Energy Act. Also the provision would encounter parliamentary objections in the House if retained in the daylight saving bill.

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

Mr. STEVENSON. I yield.

Mr. FANNIN. As I understand it, under the language in section 3(b) a State can by proclamation of its Governor make a finding that an exemption from the operation of the act would work an undue hardship, which is in accordance with the provision that was in the Senate bill. Is that correct?

Mr. STEVENSON. That provision in the bill as reported by the conference is identical to the language that was adopted on the Senate floor.

Mr. FANNIN. That is my understanding, but has there been a change in that respect? As I recall, the Senator from Kentucky (Mr. COOK) had an amendment and at the time he discussed that amendment he mentioned that several States were involved. One of the States mentioned was Arizona.

As I read this language, it states:

> Any State that lies entirely within one time zone and is not contiguous to another State, may by law exempt the entire area of the State.

Has there been any change in that language?

Mr. STEVENSON. There was no change. The amendment offered by the Senator from Kentucky and accepted on the Senate floor was retained and accepted in its entirety in conference. It permits States which are divided by time zone line to exempt part of the State or the entire State can be on the same time. In addition, as the Senator mentioned, any State can petition the President through its Governor and seek relief.

Mr. FANNIN. What puzzles me is that I thought in the language mentioned by the Senator from Kentucky he inferred that someone other than the Governor could petition; that it could be a Senator from a State, or two Senators, or a Representative.

Mr. STEVENSON. No, I do not believe that was provided in the amendment offered by the Senator from Kentucky. The provision providing for petition by the Governor was adopted in committee and was in the bill as it passed the Senate.

I might add that the conference was assured by Representative RHODES of Arizona that the provisions in the bill now before us should protect the people of Arizona.

Mr. FANNIN. I agree. I think it would be proper that the petitions should come from the Governor, but I recall some of the discussion we had on the floor and I was not sure what was decided upon.

I thank the Senator for his explanation.

Mr. STEVENSON. I thank the Senator.

Mr. President, I move that the conference report be agreed to.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. CURTIS. No.

QUORUM CALL

The PRESIDING OFFICER. What is the will of the Senate?

Mr. BEALL. 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. 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.

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 President pro tempore (Mr. ABOUREZK) laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AUTHORIZATION TO FILE REPORT ON S. 2776 BY MIDNIGHT, SATURDAY, DECEMBER 15, 1973

Mr. RIBICOFF. Mr. President, I ask unanimous consent that I may have until midnight Saturday, December 15, 1973, to file the Government Operations Committee report on S. 2776, a bill to establish the Federal Energy Emergency Administration, and for other purposes.

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

EMERGENCY HIGHWAY ENERGY CONSERVATION ACT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 11372.

The PRESIDING OFFICER. The clerk will read the bill by title.

The legislative clerk read the bill by title, as follows:

> A bill (H.R. 11372) to conserve energy on the Nation's highways.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Public Works with amendments, on page 1, in line 3, strike out "National Maximum".

On page 1, in line 4, strike out "Speed Limit" and insert in lieu thereof "Energy Conservation Act".

On page 1, in line 5, after "Sec. 2." insert "(a)".

On page 1, in line 5, strike out "Act" and insert in lieu thereof "section".

On page 1, at the beginning of line 9, strike out "Sec. 3." and insert in lieu thereof "(b)".

On page 2, in line 2, after the word "hour" insert a period and strike out "and (2) a speed limit other than 55 miles per hour on any portion of any public highway within its jurisdiction which had a speed limit of 55 miles, or more, per hour on November 1, 1973, and (3) maximum speed limits which are not uniformly applicable to all types of motor vehicles using a highway, except that a different speed limit may be established for any vehicle operating under a special permit because of any weight or dimension of such vehicle, including any load thereon. Clauses (2) and (3) of this section shall not apply to any portion of a highway during such time that the condition of the highway, weather, an accident, or other condition creates a temporary hazard to the safety of traffic on such portion of a highway."

On page 2, at the beginning of line 16, strike out "Sec. 4. (a)" and insert in lieu thereof "(c)(1)".

On page 2, at the end of line 16, strike out "the Act" and insert in lieu thereof "this section".

On page 2, at the beginning of line 20, strike out "(b)" and insert in lieu thereof "(2)".

On page 2, beginning with line 24, insert:

(d) Notwithstanding the provisions of section 120 of title 23, United States Code, sums apportioned to any State under paragraph (1) of subsection (b) of section 104 of title 23, United States Code, shall be available to pay the entire cost of any modification of the signing of any Federal-aid highway within such State due to a reduction in speed limits to conserve fuel if such change in signing occurs or has occurred after November 7, 1973.

On page 3, at the beginning of line 7, strike out "SEC. 5." and insert in lieu thereof "(e)".

On page 3, in line 7, strike out "Act" and insert in lieu thereof "section".

On page 3, beginning with line 12, insert:

SEC. 3. Chapter 1 of title 23 of the United States Code is amended by adding the following new section 154:

"CARPOOL INCENTIVE PROJECTS

"SEC. 154. (a)(1) To conserve fuel, decrease traffic congestion during rush hours, improve air quality, and enhance the use of existing highways and parking facilities, the Secretary shall approve projects designed to encourage the use of carpools in urban areas throughout the country while not adversely affecting bus and other mass transportation ridership in such areas.

"(2) Proposals shall be originated by local officials and submitted by the State in accordance with the provisions of subsection (d) of section 105 of this title. The Secretary shall approve for funding those projects which offer reasonable prospects of achieving the objectives stated in subsection (a)(1).

"(3) The Secretary shall take appropriate measures to assure adequate personnel and resources assigned to carry out this section within the Department of Transportation and shall provide technical assistance to States and local governments in the development of carpool incentive projects.

"(4) A project may include, but not be limited to, such measures as systems for locating potential riders and informing them of convenient carpool opportunities; preferential carpool highway lanes or shared bus and carpool lanes; and preferential parking for carpools.

"(5) A project under this section shall be carried out in accordance with procedures of law and regulations applicable to urban area traffic operations improvement projects pursuant to section 135 of this title, except that the Federal share of the cost of such work shall be 90 per centum, and that the Federal share shall not exceed $1,000,000 for any single project.

"(b) The Secretary shall conduct a full investigation of the effectiveness of measures employed in the demonstration projects authorized by subsection (a) of this section. In addition, he shall, in cooperation with the Internal Revenue Service, the Environmental Protection Agency, and other appropriate Federal and State agencies, study other measures, including but not limited to tax and other economic incentives, which might lead to significant increases in carpool ridership in urban areas throughout the country, and shall identify any institutional or legal barriers to such measures and the costs and benefits of such measures. He shall report to the Congress not later than December 31, 1974, his findings, conclusions, and recommendations resulting from such investigation and study. Funds authorized to carry out section 307 of this title are authorized to be used to carry out the investigation and study authorized by this subsection."

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the unfinished business be temporarily laid aside and remain temporarily laid aside until the pending measure is disposed of.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. RIBICOFF. 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. RANDOLPH. Mr. President, the measure now before the Senate, the Emergency Highway Energy Conservation Act, deals with a subject that can simultaneously reduce motor fuel consumption significantly and at the same time alter the habits of millions of Americans.

This bill establishes a maximum speed limit on our country's highways that is lower than that now in effect, particularly on rural highways. It is, however, an action I believe to be essential as we move to devise a variety of reasonable responses to the energy shortage.

The reduction of speed limits is a particularly useful tool in the battle against shortage because it can be quickly implemented—as has already been demonstrated—and because the fuel savings are substantial.

The Subcommittee on Transportation of the Public Works Committee, chaired by Senator LLOYD BENTSEN, received testimony from 15 witnesses on this subject during a hearing held on December 11. The following morning, the full committee met for a wide-ranging discussion concerning the benefits and disadvantages of the various proposals advanced during the hearing. On December 13, the full committee once again considered the problem at length before reporting this measure to the Senate by a vote of 14 to 0.

I believe the unanimous vote on this bill is particularly significant. Several witnesses and some committee members expressed serious concern about the economic consequences of setting speed limits at levels which could jeopardize the flow of goods, services, and people in our economy. In addition, we received many suggestions on what approach we should adopt—from those advocating a 50-mile-per-hour speed limit nationwide to those insisting on a speed limit of 65 miles per hour. I believe the unanimous vote signifies that committee members are convinced that the solution we reached was fairest to all concerned.

Our decision was to establish a maximum nationwide speed limit of 55 miles per hour, but provide flexibility for those States which have already set lower limits in response to the President's November 7 message to retain those lower speed limits. In addition, the bill does not preclude other States from setting lower speed limits if they wish to do so. They are only restrained from setting speed limits in excess of 55 miles per hour.

Mr. President, this was not an easy decision. The committee chose a speed limit which it believes represents a proper balance of fuel conservation and economic reality. A uniform speed limit of 55 miles per hour, according to the Secretary of Transportation, would save between 130,000 and 165,000 barrels of gasoline a day. It would also allow some of our larger vehicles, such as intercity trucks and buses, to operate with greater fuel efficiency than they would at lower speeds.

The committee considered and rejected proposals that different speed limits be set for automobiles, trucks and buses. A substantial majority of our witnesses, including representatives of the Teamsters union and the American Trucking Associations, believed that such proposals would not gain public acceptance and, more importantly, would result in serious consequences for highway safety.

The committee was impressed by evidence presented by the American Association of State Highway and Transportation Officials that large trucks operating at speed 5 miles per hour faster than automobiles would require nearly 25 seconds to pass the automobiles traveling at the lower speed. That involves a distance of some 1,800 feet. In bad weather, splash and spray from wet pavements would be thrown against the driver's side of passenger car windshields, obscuring the driver's vision and causing a considerable safety hazard.

The committee took particular note of the owner-operators of large trucks and the peculiar problems they face with lower speed limits. We are sympathetic to their plight, as, indeed, we

are to all of those who face adverse economic consequences as a result of the fuel shortage.

We considered the 65-mile-per-hour speed limit request of the owner-operators, just as we reviewed the implications of authorizing a higher speed limit only at night. The evidence was strongly against either approach because of highway safety factors.

There is also the very significant question of public acceptance of conditions in which large trucks and buses use the passing lanes to move past vehicles of smaller size. To make this measure work, public acceptance is essential. The committee concluded that lower speed limits, by themselves, are difficult enough to enforce without adding the extra measure of public resistance that would result from differential speeds.

The success of our total effort to reduce consumption of fuels of all kinds relies strongly on equity. The American people have demonstrated in the past that they are willing to make adjustments in their lives for the national good, but only if all citizens are called on to make the same sacrifices. The private automobile is so widespread in this country that any action that even gives the appearance of preferential treatment could undermine all energy conservation programs.

The 55 miles per hour limit, then, was chosen because we insisted on a uniform speed limit and because we wanted to choose one which would not force severe economic disruptions on truckers and other large vehicle operators. We believe we have made the fair and equitable choice.

Mr. President, the idea of lower speed limits as an energy conservation measure is not one that was hastily devised in the last few days or even the last few weeks. More than 6 months ago I proposed that speed limits on Federal-aid highways be reduced by 10 miles per hour or to 55 miles per hour, whichever was the greater. This proposal was made at a time when we had just learned of an impending gasoline shortage during the summer months.

I offered a speed limit reduction amendment to the Federal-Aid Highway Act of 1973 which was then being considered by a Senate-House conference. This proposal was not acceptable to the conference so I subsequently proposed it as a "Sense of Congress" amendment to the fuel allocations bill (S. 1570). As a nonmandatory measure, it was made a part of this legislation on June 4. It was, however, deleted in the conference report on that measure.

Had a lower speed limit been imposed several months ago, the present fuel crisis would be less severe and the Congress would not be in the position of having to develop speed limit legislation on a crash basis.

Another provision in the bill allows States to use highway trust funds to pay the cost of changing highway speed limit signs. The committee included this provision in view of the fact that these emergency conditions may well be temporary, and we do not want the States to be forced into a position of expending their own funds in response to repeated changes in Federal policy.

The cost of changing signs should not be great. One survey reported that the State of Florida changed all of its speed limit signs for $75,000. The cost to Vermont was only $50,000, as Senator STAFFORD knows.

The committee also amended the bill by the addition of provisions to facilitate the organization and operation of car pools. These provisions are similar to those contained in S. 2589, which was introduced on October 18 by Senator DOMENICI with the cosponsorship of myself and 12 other Senators. It authorizes the expenditure of up to $1 million in Federal funds on any individual project to facilitate and encourage the use of car pools.

In addition to lower speed limits, increased use of car pools offers another readily available opportunity to reduce gasoline consumption. The Treasury Department estimates we could save 200,000 barrels of fuel daily merely by increasing from 1.4 to 2.3 the average number of persons occupying each car carrying people to work.

The car pooling section of this bill is intended to help us not only achieve but exceed such a goal. The United States has a heavy investment in highways. The expanded use of car pools, particularly during this time of fuel shortage, will permit us to increase our return from this investment.

As on past occasions, I am gratified by the attention devoted by members of the committee to this measure. Their consideration of the problems and all of its ramifications was once more reflective of the seriousness with which Senators view their membership on the Committee on Public Works.

All committee members participated in the 2 days of executive sessions. As chairman of our Subcommittee on Transportation, Senator BENTSEN occupied an important leadership position in helping us to understand the scope of the problem and the alternatives to its solution. We relied heavily on the experience of Senators MUSKIE and STAFFORD who, as former Governors, can recognize the situation from the viewpoint of the States. This legislation, dealing with a matter of almost universal public concern, has also benefited from the involvement and input of other committee members, Senators MONTOYA, GRAVEL, BURDICK, CLARK, BIDEN, BAKER, BUCKLEY, WILLIAM L. SCOTT, MCCLURE, and DOMENICI. I appreciate, particularly at this busy time of the congressional year, their efforts.

This is a busy time of the year, and we are approaching that period when we hope to leave this Chamber for a reasonable number of days. We bring this matter here believing that the Senate will give it attention, for we must consider the subject expeditiously today, including amendments; but I would certainly want to encourage a thorough discussion.

Mr. BENTSEN. Mr. President, I want to lend my support to the statement made by the distinguished chairman of the Public Works Committee concerning this national speed limit bill.

My Subcommittee on Transportation listened to a variety of witnesses on this issue—from individual truckers to the Secretary of Transportation. Some, such as the commissioner of highways for Vermont, argued that a 50-mile-per-hour speed limit was acceptable. Others, including the American Trucking Association, indicated that their members would be irreparably harmed by speed limits that low and suggested a 60-mile-per-hour speed limit.

The committee was aware that no one group would be completely satisfied, regardless of the solution we reached. The 55-mile-per-hour maximum national speed limit was chosen, because the difference in fuel economy between 50 and 55 miles per hour was not as significant as the economic dislocations which would have resulted from the adoption of the 50-mile-per-hour limit nationwide.

In addition, I cannot stress too strongly that it was necessary for us to encourage a uniform national maximum speed. Administration witnesses were virtually the only witnesses to urge two-tiered, differential speed limits with trucks and buses going more rapidly than automobiles.

The committee heard enough evidence concerning safety hazards to judge that no group—automobile users, truckers, bus owners—believed that the two-tiered system was safe. And no group believed that it would gain the kind of public acceptance necessary to make this program work as it should.

In view of this, we believe we have reached the best solution to save fuel and to avoid dislocations in the economy. Moreover, we have not completely preempted those States which believe it is in their interests to set lower speed limits. In fact, speed limits have traditionally been the province of the States, and we want to allow them to have flexibility, within established national standards, to police their own highways insofar as possible.

In view of the controversy surrounding this problem, the 13 to 0 committee vote should be weighed very seriously. I support the committee version of H.R. 11372.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

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

Mr. STAFFORD. Mr. President, I ask unanimous consent that I may yield to the Senator from Nevada without losing my right to the floor at the conclusion of his remarks.

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

Mr. CANNON. Mr. President, I thank the Senator for yielding. I have another problem, in that I must serve as chairman of the Committee on Armed Services very shortly.

I send an amendment to the desk and ask that it be reported.

The PRESIDING OFFICER. The committee amendment has not been agreed to.

Mr. CANNON. I ask unanimous consent that it be in order to offer this amendment at this time, despite the fact that the committee amendments have not been agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. CANNON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with, and I shall explain it very briefly.

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

Mr. CANNON's amendment is as follows:

At page 5 after line 10 add a new section as follows:

SEC. 4. Section 601(d) of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1421) is amended by striking subsection (d) and in place thereof inserting the following:

"EMERGENCY LOCATOR TRANSMITTERS

"(d) (1) Except with respect to aircraft described in paragraph (2) of this subsection, minimum standards pursuant to this section shall include a requirement that emergency locator transmitters shall be installed—

"'(A) on any fixed-wing, powered civil aircraft for use in air commerce the manufacture of which is completed, or which is imported into the United States, after one year following the date of enactment of this subsection;' and

"'(B) on any fixed-wing, powered civil aircraft used in air commerce after four years following such date.'

"'(2) The provisions of this subsection shall not apply to:

"'(A) Turbojet-powered aircraft';

"'(B) Aircraft while engaged in scheduled flights by scheduled air carriers certificated by the Board';

"'(C) Aircraft while engaged in local flight operations conducted entirely within a fifty-mile radius of the airport from which such local flight operations began';

"'(D) Aircraft while engaged in flight operations incident to design and testing';

"'(E) New aircraft while engaged in flight operations incident to their manufacture, preparation and delivery';

"'(F) Aircraft while engaged in flight operations incident to the aerial application of chemicals and other substances for agricultural purposes';

"'(G) Aircraft certificated by the Administrator for research and development purposes';

"'(H) Aircraft while used for showing compliance with regulations, crew training, exhibition, air racing, or market surveys'; and

"'(I) Aircraft equipped to carry not more than one person.'"

Mr. CANNON. Mr. President, I have discussed this amendment with the floor manager of the bill and with the manager on behalf of the minority as well as with other interested parties.

My amendment is not germane to the bill which we are now debating and I offer it only with great reluctance and with the sufferance, I hope, of the distinguished chairman of the Public Works Committee, the senior Senator from West Virginia.

Mr. President, the amendment will serve to rectify a serious, unfortunate, and inadvertent burden on the more than 120,000 private airplane owners in the United States who on December 29 of this year will be required by law to install on their aircraft "emergency locator transmitters."

This requirement was imposed by Public Law 91–596 passed on December 29, 1970, in the form of a rider to an unrelated bill. Unfortunately, the provision was never studied or considered by the Aviation Subcommittee of the Senate Commerce Committee and for that reason the law contains provisions of dubious or impractical value.

But the reason for my amendment is that on December 29 it will be physically impossible for many of the Nation's private aircraft owners to comply with the law simply because there are not and will not be adequate supplies of emergency locator transmitters so as to equip every plane in the Nation's general aviation fleet. If the law is not changed, perhaps more than 50,000 individual airplane owners will be in violation of the law through no fault of their own. In many parts of the country, there is simply not an adequate supply of ELT's, as they are called, to meet the demand created by imposition of Federal law.

Therefore, many private aircraft operators will be faced with receiving citations and fines from inspectors of the Federal Aviation Administration for noncompliance, because the FAA has advised its inspectors in the field that the law does not provide for exemptions or delays.

This is truly an unfair situation brought on by legislation which was hastily conceived and passed without proper consideration.

This amendment would delay for 1 year the effective date of present law and provide adequate time for the electronics industry to manufacture sufficient ELT's so as to equip the private aircraft fleet.

A word about ELT's for my colleagues who may not be familiar with the devices and their purpose. An ELT is a small, battery operated radio transmitter which, when activated, emits a radio signal on the international Mayday or distress frequency indicating that an aircraft has crashed or crash-landed. The ELT, activated on impact, provides a signal which can guide searchers quickly to the scene of the crash in hopes that speedy location of the accident can save lives.

In addition to allowing for a 1-year delay in implementing the provisions of the 1970 law, my amendment also corrects other technical problems created by present law. The existing law remains impractical and unduly burdensome for many areas of general aviation. My amendment retains the existing exemptions for jet-powered aircraft, aircraft used in air transportation—other than air taxis and charter aircraft—and agricultural aircraft, which have been rephrased to remove inherent ambiguities.

The existing exemption for military aircraft has been expanded to exempt all public aircraft as defined in section 101(30) of the Federal Aviation Act because I believe that aircraft used exclusively in the service—whether military or nonmilitary—of a government or political subdivision thereof, which do not carry persons or property for commercial purposes, should be exempt from ELT requirements. Moreover, a 50-nautical mile general purpose limitation would replace the existing 20-mile, training-only limitation, reflecting an awareness that many general aviation flights are conducted locally for all purposes, including training.

Additionally, the amendment creates the following new exemptions for, first, aircraft involved in flight operations incident to design and testing; second, new aircraft operated incident to their manufacture, preparation, and delivery; third, aircraft certified for research and development purposes; fourth, aircraft used for showing compliance with regulations, crew training, exhibition, closed-course air racing, or market surveys; and fifth, all single-place aircraft.

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

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

Mr. RANDOLPH. Mr. President, I ask unanimous consent that the Senate temporarily lay aside the pending amendment. We are waiting for someone to come to the floor and the problem of time is very important here.

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

Mr. BIBLE. Mr. President, will the Senator from West Virginia yield to me, with the understanding that the Senator from Vermont (Mr. STAFFORD) will not lose his right to the floor?

Mr. RANDOLPH. I yield.

Mr. BIBLE. I have discussed the amendment I am about to propose with both managers of the bill——

The PRESIDING OFFICER. The Chair would advise that the committee amendments have not been agreed to as yet.

Mr. BIBLE. Mr. President, I ask unanimous consent that the committee amendments be temporarily laid aside.

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

Mr. BIBLE. As I have said, Mr. President, I have discussed this amendment with both the manager of the bill and the Senator from Vermont (Mr. STAFFORD). It goes to the item on page 3 of the report which I should like to read into the RECORD, as follows:

The bill, as reported, conditions continued approval of Federal-aid highway projects upon the establishment by a State within 60 days of its enactment of a maximum speed limit not in excess of 55 miles per hour on all public roads within such State. It is the Committee's view that action by Governors or State Transportation or Highway Departments to set a 55 mile per hour maximum speed limit is authorized by existing State laws accepting Federal highway aid. Administrative action carrying out the purposes of this measure will be accepted as compliance.

The problem this amendment addresses was called to my attention by the Governor of our State. I might say that our State legislature does not meet next year. I am advised that there are some 14, 15, possibly 16 States that likewise do not meet next year. If the pending legislation were to require a special session of the Nevada State Legislature, it would cause considerable expense. I do not know the exact amount it costs to have a special session, but it is sizable.

I believe that the report language I have read into the RECORD is designed to take care of that problem. It is my understanding that for purposes of this legislation administrative action by a Governor or appropriate State highway, transportation or other agency to comply with the proposed speed limit will suffice. I would ask the manager of the bill if that is true.

Mr. RANDOLPH. Yes, I say to the able Senator from Nevada (Mr. BIBLE), that was the intent of the report language.

During the consideration of this legislation, the committee discussed the problem of States whose legislature meet only every other year and how those States could avoid the cutoff of highway project approvals which this bill uses as an incentive for States to adopt maximum 55-mile-per-hour speed limits. Many such States, of course, may choose to call special sessions within the 60 days allowed by this bill for action on lowering speed limits. The committee recognized, however, that special sessions are expensive to the States and are often difficult to schedule.

The committee concluded that since each State has enacted legislation providing whatever authority is necessary to comply with the conditions of participation in the Federal-aid highway program, the Governor or the Department of Transportation of a similar body in each State would be able to adopt speed limits as called for by this bill without further action by the legislation. I would expect that the attorney general in each State could certify that such administrative action was legal, as necessary to comply with a condition of Federal aid. To clarify the intention of the Congress with respect to the potential cutoff of approval of highway projects under this bill, the committee report states that administrative action by the Governor or other appropriate official to reduce speed limits in accordance with this bill is sufficient and that project approvals may continue whether or not the legislature of the State has had an opportunity to act within the 60-day period.

The Senator from Vermont (Mr. STAFFORD) and I have discussed with the Senator from Nevada his proposed amendment, which will, in a sense, nail it down beyond the report language.

Mr. BIBLE. Yes. It is the purpose of this amendment to clarify and strengthen the bill on the point involved—to nail it down, as the Senator from West Virginia says.

Mr. President, I send the amendment to the desk and ask that it be stated. It is very brief and I will read it into the RECORD:

On page 3, line 11, insert the following:

"(f) Administrative action taken by the Governor or other appropriate State official or agency to comply with this section shall be deemed compliance with the requirements of this section."

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk proceeded to read the amendment.

Mr. BIBLE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with since I have just read it into the RECORD. I move adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Nevada (Mr. BIBLE).

The amendment was agreed to.

Mr. BIBLE. I thank my colleagues for their attention and consideration.

Mr. STAFFORD. Mr. President, this legislation represents our best efforts to balance three major considerations.

First, to conserve gasoline and other fuels in this time of national shortages.

Second, to be as fair as possible in distributing this shortage among all Americans while still considering various personal and economic factors involved.

Third, the matter of safety on our highways during a period in our history when more than 50,000 persons die each year as a result of highway accidents under normal conditions.

To those ends, the Committee on Public Works agreed unanimously that the maximum speed limit should be set at 55 miles an hour for all vehicles at all times throughout our Nation.

Setting the speed limit at 55 for automobiles will cost us a small degree of fuel economy for those 5 miles an hour above a speed limit of 50, but that slight loss is our best effort to balance the economic loss that truckers and other commercial vehicles suffer when their speed is held below 60 or 65—and it also gives us what some witnesses have suggested will be slight fuel economy from the operations of trucks and buses.

Our committee is also concerned with the matter of fairness and nondiscrimination. As in all legislative efforts to regulate normal human behavior, we must depend primarily on voluntary cooperation on the part of the American public. We do not have enough police to do otherwise.

It is our view that the motorists who drive the 100 million automobiles in this Nation will be more willing to cooperate on a voluntary basis if trucks and buses have to obey the same speed limit of 55. Conversely, it is our view that the average automobile driver will be less likely to hold down his speed to a lower limit if his auto is passed by trucks and buses traveling at a legally higher speed.

On the final point, all witnesses that appeared before our committee—with only one or two exceptions—agreed that it would be unsafe to permit big trucks and buses to travel at higher speeds than the great mass of automobiles using the same highways. There is little dispute on that point. And, although the truckers would like a higher speed limit for all vehicles, the weight of the evidence suggested they will be able to live with the 55-miles-an-hour limit.

This bill will lead to a significant fuel savings. It will treat all Americans equally on our highways. And, it will improve highway safety.

I urge its passage.

Thank you, Mr. President.

Mr. BAKER. Mr. President, I support the speed limit bill, H.R. 11372, reported yesterday by the chairman of the Public Works Committee (Mr. RANDOLPH). It is a necessary measure to conserve the limited supplies of gasoline. Although public response to the call for voluntary observance of lower speeds has been encouraging, it is only natural that those complying with the President's requests want to know that the inconvenience is being shared generally and that the benefits—significant only if there is general compliance—justify their sacrifice.

For safety reasons, also, it is important to have a fixed standard so that traffic moves smoothly and evenly without the hazards created by vehicles moving at widely disparate speeds.

We have engineered interstate highways to accommodate 70-miles-per-hour traffic. Many vehicles have been designed to take advantage of speeds near that limit. As the Transportation Subcommittee learned in hearings on Tuesday, there is no way to lower speed limits on these arteries without inconveniencing some travelers and creating serious problems for others—in particular, the long-haul trucking industry. The committee has attempted to balance the need to conserve fuel against action which would disrupt an important sector of the economy.

The Department estimates that there is an 11-percent fuel economy for cars traveling 50 miles per hour, compared with travel at 60 miles per hour—which indicates a saving of about 4 percent at 55 miles per hour. This is not insignificant. There is much data, however, to indicate that large trucks operate more efficiently at higher speeds, in some cases between 60 and 65 miles per hour. Also, the economic consequences to the country of holding long-haul trucking operations to a 50-miles-per-hour limit could be severe.

With these facts before us, the Public Works Committee concurred with the judgment of the House that a 55-miles-per-hour maximum is the best choice for a national standard. We did not agree with the House, however, that States should retain no discretion in the setting of limits below the national standard. And although questions of safety and public acceptanee seem to militate against a lower limit for automobiles than for trucks, the committee did not wish to foreclose this possibility where a State finds it to be workable. Two States have already enacted a so-called "two-tier" system. Thus, we dropped House provisions making 55 miles per hour mandatory and prohibiting dual speed limits.

We hope that many motorists will recognize the fuel economy advantages of 50 miles per hour and that they will drive at the lower speed when it is safe to do so.

We also believed that it is desirable that the Federal Government assist the States in implementing these changes, which will require increased expenditures. Our bill provides that 100 percent of the cost of sign changes—posting new speed-limit markers—may be paid from a State's Federal-aid primary highway apportionments, if the State so chooses.

Finally, the committee believed that this bill afforded us the most expeditious vehicle through which to enact another

highway-related, fuel economy measure. This is the carpool incentive program, which the Senate passed last Monday as part of S. 2176, the fuels and energy conservation bill.

Mr. President, H.R. 11372, as reported by the Public Works Committee, is needed to cope with the energy situation we are facing. It will require all of us to share the effort to conserve fuel, without requiring undue sacrifice by any single group.

The PRESIDING OFFICER. The question is on agreeing to the committee amendments.

The committee amendments were agreed to.

Mr. CURTIS. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

At the end of the bill insert the following:

"SEC. 301. Notwithstanding any other provision of any law, rule, or regulation, any common carrier by motor vehicle, as defined in part II of the Interstate Commerce Act, authorized pursuant to such part to provide property transportation service between particular points may use a shorter route between any such points if such use does not reduce any required service to intermediate points.

"TERMINATION DATE

"SEC. 302. The provisions of this section shall remain effective until such date as the President declares the current energy emergency to be terminated."

Mr. CURTIS. Mr. President, this is a very simple amendment. If someone is granted a franchise to serve a number of cities and he happens to have a load of commodities that is going from one point to another or to two points, he is not required to make the additional point, but may go by the shortest route.

It would be my hope that the committee might accept this amendment. If so, I have no desire to consume any great amount of time.

Mr. RANDOLPH. Mr. President, it has been the privilege of the Senator from West Virginia and the Senator from Vermont to discuss the pending amendment. We feel that it will strengthen the provisions of the bill, and we are glad to accept it.

Mr. STAFFORD. That is correct.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Nebraska.

The amendment was agreed to.

Mr. CURTIS. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

At the end of the bill insert the following:

"RETURN TRIP AUTHORIZATION

"SEC. 301. Notwithstanding any other provision of any law, rule, or regulation, any common carrier by motor vehicle, as defined in part II of the Interstate Commerce Act, authorized to transport property from one point to another pursuant to such part may transport any property on the return trip between such points.

"TERMINATION DATE

"SEC. 302. The provisions of this section shall remain effective until such date as the President declares the current energy emergency to be terminated."

Mr. CURTIS. Mr. President, we are in a serious fuel crisis. Our entire economy is involved. It is far different from the situation when we were rationing gasoline and fuel in World War II. Seventy percent of our energy requirements are for industry, transportation, and agriculture. In the use of our cars, if we can cut down 10 or 15 percent, it is a saving. If we cut down on the productive uses of fuel, we cut down production, we close plants, we create unemployment, we create scarcities. There are many new industries that did not exist 2 years ago—for example, the petrochemical industry. More fertilizer is being used. Our needs are going to be very great.

Mr. President, we have to save everywhere we can. This is what my amendment would do. At the present time, for example, newsprint is trucked into my State for the various newspapers. The truck goes back empty. Are we going to close businesses? Are we going to cause homes to be on the chilly side? Are we going to create all sorts of hardship and still condone the traveling across the country of empty trucks?

I can cite another illustration: Meat is transported from the packing plants in the State of Nebraska to the east coast. For the most part, those trucks travel back empty—one-half efficiency. As an emergency measure, this amendment says that they may transport any property on the return trip.

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

Mr. CURTIS. I yield.

Mr. PASTORE. Mr. President, at first blush, there is no question in my mind that it might appear that the Senator's amendment has tremendous merit; but this matter has many ramifications. I am afraid that we are getting into the area of collective bargaining, that we are getting into the area of contractual obligations. I think this is an amendment that should go to the Committee on Commerce and should be given very serious consideration, because, in my humble opinion, this could raise some very serious questions.

I realize what the Senator is saying: That these trucks could be filled up once they got to their destination and could be transported loaded back to their original point. There might be an argument in that. But I think there would be a repercussion from the local truckers who have contracts with the various firms.

I do not want to say at this point that I disagree with the Senator's position, but I do think this matter is complex enough that it should be given very serious study. I hope the Senator would propose it as a bill and send it to our committee, and we ought to hold hearings on it in the early part of January. It does make sense to me, but if it is put on this bill, it might wreck the whole bill and kill off the regulation of the speed.

Mr. CURTIS. Mr. President, I appreciate what the able Senator has said. I have a very high regard for the Committee on Commerce, but I have only 5 years remaining to serve in this term; and if the Committee on Commerce waits for a favorable report from the Interstate Commerce Commission, I will not be able to finish this task. That is one of the things that worries me. That is the one agency of the Government that has not come out of the 17th century yet.

Mr. PASTORE. We are not subservient to the ICC. The Senator knows that. We have enough strength and individuality in the Committee on Commerce to do almost anything the Senator would want us to do, if he is on the right side of a subject. We can do it very quickly.

Mr. CURTIS. Mr. President, everything we do here affects contracts, affects collective bargaining agreements. There are farmers who have contracts for the delivery of certain qualities of fertilizer. It will not be delivered, because it is not available. The labor that expected to perform on that, of course, will not be performing.

A great many hardships are imposed by reducing the speed limit. When we reduce the speed limit from 75 or 70 miles an hour to 55, it takes a great many more trucks to transport the same amount of freight than would be required at the higher speed. That, too, has something to do with collective bargaining, because they will have to have additional crews if they go on. For that reason, I shall insist on a vote on my amendment.

Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. CURTIS. Mr. President, I reserve the remainder of my time.

Mr. HUGHES. Mr. President, if I understand this amendment correctly—and I should like the Senator from Nebraska to respond—the amendment would allow any trucker transporting a load one way to a point of destination to haul any commodity from that point of destination back to his original point of origin. Is that correct?

Mr. CURTIS. Not quite. It must be a common carrier. It will not permit private parties, it will not permit unlicensed carriers, it will not permit company-owned trucks to go in and take somebody else's business. Only a common carrier.

Mr. HUGHES. But a regular route common carrier or a regular contract carrier could pick up any commodity, whether or not he had been granted Interstate Commerce Commission authority to haul that commodity, and under any circumstances. Is that correct?

Mr. CURTIS. That is correct.

Mr. HUGHES. I thank the Senator from Nebraska.

Mr. President, I wish to speak to this point because this very amendment would wreck the entire motor carrier laws that have been governing the whole structure of hauling in this country on point-to-point deliveries since I have been an adult. I agree the ICC is ages late in delivering opinions.

I was in the Chamber to hear this amendment presented but I am a little amazed at it because it will not help at all to relieve the load. As a matter of fact, it will reduce the income of the contract carrier. The whole basis is that they must serve distant points that do not pay enough revenue to merit the

trucks doing it. If we are to depend on trucks just happening to be at a place to get the loads to be hauled by a carrier from point to point, it is going to disrupt the whole motor carrier industry in this country.

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

Mr. HUGHES. I yield.

Mr. RANDOLPH. We have to realize that that so-called back-haul would cut out the beginning of a haul for another contractor.

Mr. HUGHES. That is correct.

Mr. RANDOLPH. The amendment involves complex issues of economic regulation of truck transportation issues on which the Committee on Public Works has no expertise. I must ask, therefore, that this amendment be rejected.

Mr. HUGHES. We can all agree, and I agree with the Senator from Nebraska that every truck that runs empty on the road that could have a load in it is using fuel we would hope would not have to be used unless it was in a productive way. But it also means that trucks running productively will be reduced in their ability to participate unless they have those loads. In order to stay on the roads and serve those communities, they have to have those loads and they must have that service maintained.

The amendment should be studied carefully because the ramifications are extensive. Speaking from experience, I feel in my heart it would be quite destructive overall in our ability to get commodities, produce, and everything we need properly and without disruption.

I agree with the Senator from Rhode Island that we are going to be faced with massive labor difficulties as a result of the amendment if it should pass and come out of conference and be ratified.

All of this is an opinion that comes from a long background in the motor industry, without studying the hearings, but I do think it is an educated opinion and probably correct.

The Senator from Nebraska is entitled to his opinion but I strenuously disagree with it and I strongly urge the defeat of the amendment.

Mr. CURTIS. Mr. President, I think there is undue alarm and excitement by those opposed to the amendment. After all, if we are going to ask all citizens to turn down the heat to a chilly point in the house in order to save petroleum products, what is wrong with saying that a truck that starts in the South and brings newsprint to my State of Nebraska is permitted to haul something back. If they have a contract giving it to somebody else this does not give them authority to do that. It merely states that from the standpoint of law and regulation they may haul something back.

If we are going to close some industries, if we are going to cut down the production of food because there is not enough petroleum to produce the nitrogen and fertilizer that is necessary, what is wrong with permitting a truck that hauls a load from the east coast to the west coast to bring something back.

With respect to the argument about upsetting contracts, it does not say they have to do it; it says they may do it. There is nothing here that forces anyone to violate a contract to give their hauling to a certain carrier if they have a contract to do it. It is very simple.

Are we going to remove the legal barriers to permit people, if they want to, to drive on the highways and have something in the truck, rather than to have it empty?

Mr. PASTORE. Mr. President, I move to lay the amendment on the table.

Mr. CURTIS. I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the amendment of the Senator from Nebraska. 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 Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from Indiana (Mr. HARTKE), the Senator from Hawaii (Mr. INOUYE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Washington (Mr. MAGNUSON), and the Senator from Illinois (Mr. STEVENSON) are necessarily absent.

I further announce that the Senator from Idaho (Mr. CHURCH) is absent on official business.

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 Washington (Mr. MAGNUSON) and the Senator from Illinois (Mr. STEVENSON) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from New York (Mr. BUCKLEY), the Senator from Ohio (Mr. SAXBE) and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from New Hampshire (Mr. COTTON) is absent because of illness in his family.

The Senator from Idaho (Mr. MCCLURE) is absent on official business.

The result was announced—yeas 63, nays 22, as follows:

[No. 584 Leg.]

YEAS—63

Abourezk	Hart	Nunn
Aiken	Haskell	Pastore
Allen	Hathaway	Pearson
Baker	Hollings	Pell
Bayh	Huddleston	Percy
Beall	Hughes	Proxmire
Bentsen	Humphrey	Randolph
Bible	Jackson	Ribicoff
Biden	Javits	Schweiker
Brooke	Johnston	Scott, William L.
Burdick	Long	Sparkman
Byrd, Robert C.	Mansfield	Stafford
Cannon	Mathias	Stennis
Case	McClellan	Stevens
Chiles	McGee	Talmadge
Clark	McGovern	Tunney
Cook	McIntyre	Weicker
Cranston	Mondale	Williams
Domenici	Montoya	Young
Eagleton	Moss	
Eastland	Muskie	
Ervin	Nelson	

NAYS—22

Bartlett	Fannin	Hruska
Bennett	Fong	Metcalf
Brock	Goldwater	Packwood
Byrd, Harry F., Jr.	Griffin	Roth
Curtis	Gurney	Scott, Hugh
Dole	Hansen	Taft
Dominick	Hatfield	Thurmond
	Helms	

NOT VOTING—15

Bellmon	Gravel	McClure
Buckley	Hartke	Saxbe
Church	Inouye	Stevenson
Cotton	Kennedy	Symington
Fulbright	Magnuson	Tower

So Mr. PASTORE's motion to lay the Curtis amendment on the table was agreed to.

Mr. RANDOLPH. Mr. President, I move to reconsider the vote by which the amendment was tabled.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question recurs on the amendment of the Senator from Nevada.

Mr. CANNON. Mr. President, I modify my amendment by adding in lieu of the words "four years", "three years and six months"; and in lieu of the words "local flight" by inserting the word "training."

The PRESIDING OFFICER. The amendment is so modified.

The amendment, as modified, is as follows:

At page 5 after line 10 add a new section as follows:

"SEC. 4. Section 601(d) of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1421) is amended by striking subsection (d) and in place thereof inserting the following:

"'EMERGENCY LOCATOR TRANSMITTERS

"'(d)(1) Except with respect to aircraft described in paragraph (2) of this subsection, minimum standards pursuant to this section shall include a requirement that emergency locator transmitters shall be installed—

"'(A) on any fixed-wing, powered civil aircraft for use in air commerce the manufacture of which is completed, or which is imported into the United States, after one year following the date of enactment of this subsection; and

"'(B) on any fixed-wing, powered civil aircraft used in air commerce after three years and six months following such date.

"'(2) The provisions of this subsection shall not apply to:

"'(A) Turbojet-powered aircraft;

"'(B) Aircraft while engaged in scheduled flights by scheduled air carriers certificated by the Board;

"'(C) Aircraft while engaged in training operations conducted entirely within a fifty-mile radius of the airport from which such local flight operations began;

"'(D) Aircraft while engaged in flight operations incident to design and testing;

"'(E) New aircraft while engaged in flight operations incident to their manufacture, preparation and delivery;

"'(F) Aircraft while engaged in flight operations incident to the aerial application of chemicals and other substances for agricultural purposes;

"'(G) Aircraft certificated by the Administrator for research and development purposes;

"'(H) Aircraft while used for showing compliance with regulations, crew training, exhibition, air racing, or market surveys; and

"'(I) Aircraft equipped to carry not more than one person.'"

Mr. DOMINICK. Mr. President, will the Senator from Nevada yield?

Mr. CANNON. I yield.

Mr. DOMINICK. Mr. President, I appreciate this. One of the things I noticed however, is that we have a 1-year deal in subsection (a). Doesn't the Senator want to change that to 6 months?

Mr. CANNON. That part does not need to be modified. That relates to aircraft

manufacturers, and it is already a moot question.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. DOMINICK. 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. DOMINICK. Mr. President, I shall take only a few minutes to discuss the amendment. I have been working on it with the Senator from Nevada.

In 1970, as a part of the Occupational Safety and Health Act, I included a requirement that emergency locator transmitters would have to be installed in aircraft within 3 years from the date of enactment, which would mean that all privately owned aircraft with exceptions made for jet and commercial aircraft would have to have installations done by January 1, 1974.

Apparently the problem is that manufacturers of emergency locators have now found out or discovered that this is more or less a one-shot deal, so they did not go into any large production. Consequently, pilots, being the optimists they are, have postponed until the last minute trying to get equipment to put in their aircraft. For example, I did not put any in my own plane until July of this year. But I did put it in.

I have just talked with Mr. Walker, the head of the General Aviation Division in the FAA, and he tells me that they have discovered a short time ago that even now, there are a good many pilots of private aircraft who are unable to comply with the law before January 1, 1974.

All aircraft manufacturers are in good shape, because they have made their contracts—Beech, Cessna, and the rest—and as far as new aircraft are concerned, they are doing fine.

The problem is with aircraft which are already out and in the hands of individual owners. Many of these owners will not find it possible to install the equipment prior to January 1. The FAA tells us that 120 days is the minimum time in which to catch up with back orders to fulfill the 45,000 gap which exists at the present time.

I have talked with the Senator from Nevada (Mr. CANNON), who is prepared to deal with this matter, and we have changed that period to 6 months. That gives a little more time than 120 days, but still does not give an optimist the right to be a total optimist. He must do something before 6 months.

The other change that was made was to exempt aircraft while engaged in operations conducted entirely within a 50-mile radius of the area from which the flight began. Each location is different from another. Consequently, we have changed that from what the FAA was trying to do. We have changed the scope from the existing 20 miles to 50 miles, so that flight training which is being carried out more and more from the basic field wolud be taken care of. This would be done by striking out "local flights" and inserting "training operations," so that that would not make any trouble.

The other changes are perfectly legitimate, in my opinion. They clarify what had been intended from the very beginning, with the exception, possibly, of acrobatic aircraft.

So the changes that have been made—and I thank the Senator from Nevada (Mr. CANNON) and the Senator from Kansas (Mr. DOLE) for agreeing to them—are good ones, and I want to go along with the amendment. I am delighted to have it agreed to.

Mr. RANDOLPH. Mr. President, the Senator from Vermont (Mr. STAFFORD) and I had an opportunity to consider the amendment earlier offered by the Senator from Nevada (Mr. CANNON) and now modified with the agreement of the Senator from Colorado (Mr. DOMINICK).

I want the record to reflect the knowledge of both of these gentlemen on this subject. They are pilots in their own right, and they speak with a knowledge of this particular problem. We are glad to accept the amendment and take it, even though it is not germane, to the conference.

Mr. DOMINICK. I thank the Senator from West Virginia.

I might point out that just the other day I had a call from a very good friend of mine in Colorado who was flying back from California with another good friend, a good pilot. They had two transceivers in their aircraft. One of them they kept tuned in at 225, and received an ELT signal all of a sudden. They did a reverse procedure, located where they thought the signal was coming from, radioed down to a flight service station, and a search party picked up two men in Yosemite Park who were very badly injured in a crash that had just occurred. With a cold front coming in, there is little doubt that they would have been dead by the next day if they had not been picked up.

We are going to get, I think, an increasing number of lives saved and misery avoided by the use of this device, and I just did not want it to go too long without the requirement that they be installed.

I thank the Senator from Vermont and the Senator from West Virginia.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Nevada, as modified.

Mr. DOMINICK. Mr. President, I ask unanimous consent that the staff may make a technical change in the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered. The question is on agreeing to the amendment of the Senator from Nevada (Mr. CANNON), as modified.

The amendment, as modified, was agreed to.

Mr. STAFFORD. Mr. President, we are about to come, I hope, to a third reading of the bill, but before we do, I just want to take a minute to say that I get a good deal of satisfaction from working on the Public Works Committee and on its Transportation Subcommittee, mostly because of the forceful and dynamic leadership of its chairman, the Senator from West Virginia (Mr. RANDOLPH), and the chairman of the subcommittee, the Senator from Texas (Mr. BENTSEN), as well as the ranking Republican member (Mr. BAKER).

I think an indication of how promptly and effectively the leaders of this committee can move is the fact that we held hearings only yesterday on this very important matter of the speed limit, and here we are today getting a bill through the Senate. I think it is a tribute to the leadership of the Senator from West Virginia.

Mr. RANDOLPH. I thank the Senator.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. MUSKIE. Mr. President, I would just like to join in support of this legislation. The Senator from West Virginia (Mr. RANDOLPH) has already, I think, adequately covered its provisions. I think he has also adequately described the discussions in the full committee and the compromises that were made. I think this is a sensible compromise, and I urge the Senate to support the legislation.

Mr. BAKER. Mr. President, may I just say briefly that I want to commend the distinguished chairman of our committee and the distinguished Senator from Maine (Mr. MUSKIE), and most particularly the distinguished minority manager of the bill today, the distinguished Senator from Vermont (Mr. STAFFORD), for their handling of this matter. It was handled very quickly and efficiently, and I believe it has been handled very well.

There are no good answers to the problems that confront us in the energy crisis in this or any other fuel, but I think the committee in this instance has approached the matter in a spirit of bipartisanship, and has reached a sensible solution from several points of view. So I commend all those who have participated in it, and I urge its adoption.

NEED FOR CONTINUED STUDY ON THE EFFECTS OF SPEED LIMITS

Mr. DOMENICI. Mr. President, I reluctantly joined the majority of the Public Works Committee in reporting this bill with its main provision of a nationwide 55-mile-per-hour speed limit for all vehicles with State option to lower but not to increase that speed limit.

I am not satisfied with this bill, but I agreed because I am convinced that the urgency for resolution of the speed limit dilemma demands immediate action. Users of our highways need to know what the rules are and they need to know now. Unfortunately, we have had to take action before we have had sufficient time to obtain and evaluate all relevant information or thoroughly analyze the potential effects of various alternatives.

At best, Mr. President, the solution we have reached is a compromise with which no one will be completely happy. While it will undoubtedly save fuel compared to present conditions, it will not save as much as various other solutions. While it will be less of an imposition on some highway users than other solutions would have been, it will require more sacrifice

by some users than others. That is the source, basically, of my dissatisfaction.

As I have mentioned, our information is entirely insufficient for me to comfortably arrive at any conclusion, to reach any decision on a question which has such far-reaching effects. We do know several things about the fuel economy of various classes of vehicles. For instance, evidence presented at our hearings indicates that trucks and other large vehicles utilized by the transportation industry are more efficient at speeds higher than 55 and it is for this reason that 55 was chosen rather than 50, which would have been more economical for automobiles. I hope that officials at all levels of Government will help make the public aware of that fact and that automobile drivers will voluntarily maintain the lower more efficient speed of 50 miles per hour when it is reasonable and safe to do so.

I am convinced that 60 or 65 miles per hour would be more economical for trucks and larger vehicles, and I am aware that there are many areas in the United States with wide open spaces and long stretches of interstate highways where exceptions to the 55 miles per hour speed limit could be made for those vehicles which would be more economical at higher speeds.

I hope that the executive branch will thoroughly study the benefits and problems associated with the imposition of this speed limit and will report to the Public Works Committee with recommendations on how best to increase benefits and reduce problems. I know that the committee will continue to follow this situation and will act as expeditiously as it has in this case to insure that the benefits realized are not achieved at a disproportionate cost to any class of users of the Nation's highways. That will continue to be my main focus.

I concur wholeheartedly with the Senators who have spoken regarding this matter. I would add only one thought: It would be a lot easier, in this controversial matter, to do nothing, and to sit around and say, "Someone else will make this decision for us, perhaps the President of the United States, the Commissioner of Highways of the United States of America, or perhaps individual State Governors."

But in passing this bill, we are saying we are willing to face up to the tough decisions involved in the energy crisis. This one is tough because many people will be unhappy, many administrators will be unhappy, the trucking industry may be unhappy, and the people driving their cars on the highways will probably be unhappy. But we had to decide, in the interest of the whole country, what is best.

The evidence before the committee, I think, clearly indicates that as we proceed down the line enforcing this 55 miles per hour, with Governors having authority to vary from it downward, we will have to face several changes, perhaps, required by the truckers, and we will have to consider the Western States and deal with their problems. But, as all the members of the committee have indicated, we are going to keep an open mind as to all factors, especially the wide open spaces in the West, that may require changes to be made in the future.

I commend those who say we are going to pass it, even though we know its consequences may be better for some than for others.

Mr. RANDOLPH. Mr. President, in the colloquy earlier today, several Senators have spoken of this as a committee of spirit and responsibility, which I would like to repeat in expressing my genuine appreciation to the members of the Committee on Public Works. I think it has been said many times that we have within that committee a bipartisan approach. That is certainly true, as witnessed by our ability to come here, on a crucial energy decision, in the time allotted today. The approval by 14 members of this measure is a tribute to the process by which, even though there are differences. we recognize that by discussion those differences can become our strength.

We keep in mind, as the Senator from New Mexico has well said, our responsibility to come to grips with the issue. The American people expect us to do that, and we should give them nothing less than our promise that in attempting to cope with this problem, we have presented a measure which has the solid support of the committee, which I interpret may mean solid support from the Senate itself.

Mr. President, I would remind all who are in the Chamber and Americans everywhere that there are approximately 125 million motor vehicles operating on the highways, the roads, and the city streets throughout America every 24 hours. No one can calculate the number of persons who use this form of transportation, either by passenger car, by bus, or by truck. Trucks, of course, are utilized to move the products of the farm, the factory, and the field to meet consumers' demands.

So we make today, I hope, a joint commitment as Senators to solve in part the energy crisis through the conservation of energy.

Mr. President, I ask for third reading.

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

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill (H.R. 11372) was ordered to a third reading, read the third time, and passed.

Mr. RANDOLPH. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. RANDOLPH. Mr. President, recent weeks have seen considerable legislative activity in the Senate. The end of a congressional session is traditionally a busy time as we complete the year's work. The level of activities this year has been increased by the need for urgent legislation to enable us to cope with the energy crisis.

The fact that we were able to bring these measures to the Senate is indicative of the strong and loyal support that Members receive from their staffs. The bill which has just been passed by the Senate is a case in point. The staff of the Committee on Public Works and the staffs of the Members were diligent in helping to accumulate the information we needed to understand the speed limit problem and to make the proper decisions. Without their assistance we could not have given proper attention to this important matter while at the same time carrying out our other responsibilities as Senators.

For their contributions to this legislation I express my personal thanks and that of the other Members to the following committee staff: M. Barry Meyer, John W. Yago, Philip T. Cummings, Ronald L. Katz, Paul Chimes, Bailey Guard, Harold H. Brayman, Jackie Schafer, Katherine Y. Cudlipp, Randolph G. Flood, Pauline B. Medlin, Patty Jacobs May, Jan L. Fox, and Veronica A. Holland. Also Mike Mueller and John Harman from Senator BENTSEN'S staff, and Victor Maerki from Senator STAFFORD'S staff.

PROHIBITION ON THE IMPORTATION OF RHODESIAN CHROME

The PRESIDING OFFICER. The Chair lays before the Senate the unfinished business, which the clerk will state.

The legislative clerk read as follows:

A bill (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.

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

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

LEAVES OF ABSENCE

Mr. HUGHES. Mr. President, I ask unanimous consent that I may be excused from attendance in the Senate on Moday next, as I will be necessarily absent in the Midwest on official business.

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

Mr. HOLLINGS. Mr. President, I ask unanimous consent that I may be granted leave of absence from the Senate next week due to a little operation I am going to have on my eye and I shall necessarily have to be taking it easy for a short time.

The PRESIDING OFFICER (Mr. HELMS). Without objection, it is so ordered—and good luck.

Mr. HOLLINGS. I thank the Chair very much.

QUORUM CALL

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

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

RETIREMENT CREDIT FOR FOREIGN SERVICE INSTITUTE LANGUAGE INSTRUCTORS

Mr. McGEE. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 603, S. 2264.

The PRESIDING OFFICER (Mr. HELMS). The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 2264) to provide civil service retirement credit for certain language instructors of the Foreign Service Institute.

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. McGEE. Mr. President, this bill, simply put, was introduced jointly by the majority leader and the minority leader, Senators MANSFIELD and SCOTT of Pennsylvania.

It applies to 28 foreign language teachers who were hired by the State Department in 1948 as consultants, with no Federal benefits.

In 1960, the State Department and the Civil Service Commission agreed that they had erred and that the employees should have been allowed their full fledged employee benefits rights. So the thrust of this bill is to give those 28 Federal employees their Federal rights to retirement benefits from that interval. These 28 employees would be required to pay up the equivalent differences as though they had been allowed. It was an error. This is an effort, in the judgment of the Committee on Post Office and Civil Service, on both sides of the aisle, unanimously, to correct the error in this way. That is all this bill would do.

Mr. FONG. Mr. President, I concur fully with the remarks of the distinguished Senator from Wyoming, and I ask that the bill be passed.

Mr. HOLLINGS. Mr. President, I have an amendment at the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

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

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment is as follows:

At the end of the bill insert the following:

SEC. 3. (a) Subchapter VI of chapter 53 of title 5, United States Code, is amended by adding at the end thereof the following new section:

"§ 5366. Police forces of Washington National Airport and Dulles International Airport

"The Secretary of Transportation shall fix the per annum rates of basic pay of positions on the police force of Washington National Airport and the police force of Dulles International Airport in accordance with the rates of basic compensation, including longevity increases, provided in section 101 and sections 201 through 506, as appropriate, of the District of Columbia Police and Firemen's Salary Act of 1958, as amended (D.C. Code, section 4–823 and sections 4–824 through 4–837), for officers and members of the Metropolitan Police force in corresponding or similar classes or subclasses.".

(b) The analysis of subchapter VI of chapter 53 of title 5, United States Code, is amended by adding at the end thereof—

"5366. Police forces of Washington National Airport and Dulles International Airport."

SEC. 4. Section 5102(c) of title 5, United States Code, is amended—

(1) by striking out the word "or" at the end of paragraph (26);

(2) by striking out the period at the end of paragraph (27) and inserting in lieu of the period a semicolon and the word "or"; and

(3) by adding immediately below paragraph (27) the following new paragraph:

"(28) officers and members of the police force of Washington National Airport and the police force of Dulles International Airport.".

SEC. 5. The amendments made by sections 3 and 4 of this Act become effective at the beginning of the first pay period which commences on or after the date of enactment of this Act.

SEC. 6. No rate of basic pay shall be reduced by reason of the amendments made by sections 3 and 4 of this Act.

Mr. HOLLINGS. Mr. President, the sum and substance of this amendment is to equalize the pay for the police force of the Federal Aviation Administration at National Capital Airport, and Dulles Airport, with the pay of police officers in the District of Columbia.

I have discussed this matter at length with both the Civil Service Commission, which puts out general objection to all these bills in variations from the basic law, and the dstinguished Senator from Hawaii, the ranking minority member on the Committee on Post Office and Civil Service.

This is what occurred: Working with the Senator from West Virginia (Mr. ROBERT C. BYRD), chairman of the Appropriations Subcommittee of FAA, we began almost a year ago to try to straighten out the chaos.

We have had a bad traffic situation; we have had some security problems; we have had police problems, and we have had parking problems. As we began to work under the distinguished leadership of the Senator from West Virginia (Mr. ROBERT C. BYRD), we began to really get some order out of chaos except for one thing. In the beginning the head of the police force there said, "Senator, like Pogo, you have met the enemy and it is you. It is the Senate itself."

At National Airport there are authorized under law some 120 positions; we presently have 52. At Dulles there are authorized 81 positions and we presently have 58.

The fundamental reason we cannot fill those positions or keep good men in those positions, and many of the good men leave, is that they have a starting GS rating of grade 5 which, at the present time, with increases in pay, comes to $8,055. In comparison to pay schedules of the other law-enforcement officials in the District of Columbia area their pay is considerably lower.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point a schedule showing area police salaries, and also a table showing the pay status comparison of other major U.S. airports.

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

Area police salaries

[Beginning]

Federal airport police salary (only)	$7,951
Area non-Federal police salary data:	
Arlington County*	10,605
Fairfax County*	10,000
Montgomery County	10,104
Prince Georges County*	10,275
Alexandria City*	10,081
Vienna City	10,100
Virginia State*	9,168
Maryland State*	8,980
Area Federal police salary data:	
Metropolitan Police—D.C.	10,000
U.S. Park	10,000
Executive Protective Service	10,000
U.S. Capitol (after 8 weeks training)	10,300
Supreme Court (after 8 weeks)	10,300

*NOTE.—Use of car, gas, oil and maintenance valued at another $2,000 per year.

PAY STATUS COMPARISON OF OTHER MAJOR U.S. AIRPORTS SHOWS NATIONAL AND DULLES WAY UNDER NORMAL; ALSO MAJOR U.S. AIRPORT POLICE RECEIVE EQUAL OR BETTER PAY THAN METROPOLITAN POLICE OF JURISDICTION

City airport(s)	Federal police	Wage beginning	Metro police of jurisdiction	Airport police wage (approximate) Begin	Equivalent
Washington, National and Dulles	Federal Airport	7,951	Washington	10,000	Below.
San Francisco	San Mateo County	10,800	County	10,800	Same.
Seattle	Port Authority	10,800	Seattle	10,800	Do.
Detroit	Wayne County	10,000	Detroit	10,000	Do.
Kansas City	Special Police	9,156	Kansas City	8,566	Above.
St. Paul/Minneapolis	Metro Commission	10,836	St. Paul/Minneapolis	10,836	Same.
San Diego	Port Authority	10,600	San Diego	10,800	Do.
Miami	Dade County	9,600	Miami	10,400	Below.

Footnotes at end of table.

PAY STATUS COMPARISON OF OTHER MAJOR U.S. AIRPORTS SHOWS NATIONAL AND DULLES WAY UNDER NORMAL; ALSO MAJOR U.S. AIRPORT POLICE RECEIVE EQUAL OR BETTER PAY THAN METROPOLITAN POLICE OF JURISDICTION—Continued

City airport(s)	Federal police	Wage beginning	Metro police of jurisdiction	Airport police wage (approximate) Begin	Equivalent
Los Angeles	Special Police	10,700	Los Angeles	10,800	Same.
New York, Kennedy and LaGuardia	Port Authority	10,200	New York	10,300	Do.
Newark	do	10,000	Newark	10,000	Do.
Baltimore, Friendship	State Port Authority	8,400	Baltimore	8,600	Do.
Boston, Logan	State Troopers	10,500	Boston	11,600	Below.
Cleveland	City Police	10,742	Cleveland	10,742	Same.
Pittsburgh	do	10,800	Pittsburgh	10,800	Do.
Atlanta	do	8,400	Atlanta	8,400	Do.
Chicago	do	10,800	Chicago	10,800	Do.

Note: Congressional policy, as stated in the National Airport Act and successive legislation, makes the National Capital Airports U.S. models. Dated: July 1, 1973.

Mr. HOLLINGS. Mr. President, when one looks at those pay schedules, it will be seen that nearly all the salaries start at $10,000 and up. Commencing with the $10,000 competitive pay structure, it is quite obvious that after a fellow interested in police work has applied in the District, with the Capitol Police, down at the White House, perhaps the Secret Service, the Park Service, and elsewhere, if he cannot get a position in those areas and he is still interested in police work, and willing to take a job at lesser pay, he comes over to the FAA.

At National and Dulles, they do not have adequate pay to keep an adequate force, so there is a large turnover. The police force is substantially under what has been authorized for National and Dulles airports, so the trouble lies in the fundamental law.

My friend, the Senator from Hawaii (Mr. FONG), said he cannot go along with this exception because he has been fighting exceptions for years. I have been on his side within the committee to try to resist efforts to have a change in the Capitol force, but he and I have not been too successful.

If Senators will look at section 5101, there is a general provision about classifications so that they can be further classified to be used in all phases of personnel administration, but when one turns over it will be seen that the chapter does not apply to 27 exceptions. It will be seen that it does not apply to the Metropolitan Police, the Fire Department, the U.S. Park Police, the National Zoological Park, and finally the 27th exception is members of the Special Police Force of the Library of Congress. So, this general law has been honored in the breach, and really, the law itself made us the exception.

Mr. President, rather than asking for an exception to the general law, my amendment asks that we come into conformance with the general law under those 27 exceptions.

I would like to hear my distinguished friend with respect to this matter. I am not going to press it and perhaps ruin the bill of the Senator from Montana (Mr. MANSFIELD), because his bill is needed. I support his bill and I am afraid if we get the votes this afternoon to pass the amendment next week it would get us caught up in a snarl and cause the bill not to be agreed to on the House side because the administration has moved strongly there, and the bill could be killed there for want of an agreement.

There is a letter from Robert E. Hampton, Chairman of the U.S. Civil Service Commission to the effect that he will study the problem and report back by February. Perhaps under these circumstances we can come to some agreement and perhaps I would be disposed to withdraw the amendment.

Mr. McGEE. Mr. President, I wish to say to the Senator from South Carolina, who is a member of the committee, that he has discussed the many ramifications of his proposal very carefully with the Senator from Hawaii (Mr. FONG) and me. The problem is very real. The Senator from South Carolina is to be applauded for going directly to the point of this problem, and that is if we are serious about the security of our airport facilities in the light of the problem we are addressing ourselves to, we have to face up to the consequence that this is the Nation's Capital, that these airports are on the fringe, and we are suffering the consequences of the level of pay accorded men in similar positions in areas of security in the Capital area. This is causing a deterioration of the service and availability of personnel in the security force at the airport.

I would personally guarantee to the Senator, as we have discussed, action on this matter through the committee hearing process, and onto the floor with the committee recommendation for action, in light of what the Senator has just said.

Mr. HOLLINGS. I thank the distinguished chairman. He has been very considerate. We discussed hearings, but we really allude to the 1971 hearings on the House side. The facts have not changed. We had a hard, tough police problem in 1971, in 1972, in 1973, and we will have one in 1974. Competitively speaking, we cannot have adequate law enforcement without adequate pay to bring in an adequate force at National and Dulles Airports.

I appreciate the assurance of the cooperation of our distinguished chairman, the Senator from Wyoming, and particularly, the Senator from West Virginia, who really brought this matter to our attention as he proceeded in the past year to innovate many things that have brought more orderly arrangements to parking, security, facilitating traffic at the main building and North Terminal.

Mr. President, we have to have top personnel and we cannot attract top personnel with the pay schedule we have at present.

Mr. FONG. Mr. President, the distinguished Senator has seen the letter from Mr. Robert E. Hampton, the Chairman of the U.S. Civil Service Commission saying he has directed a review of this situation and he hopes to have that review completed by the middle of February for our perusal.

I wish to advise the distinguished Senator from South Carolina that I will be very happy to study this problem in committee and I will join the distinguished chairman to see that there is a hearing and that this matter will be brought before us early next year.

I wish to refer to my prepared remarks.

Mr. President, I strongly oppose the amendment of the Senator from South Carolina. The amendment would raise the starting rate of pay of the 80 Federal Airport Police at Washington National Airport and at Dulles International Airport by 25 percent.

It would raise the starting rate from $8,055 to $10,000 per annum, an increase of $1,945 per annum.

You may recall that it was only 2 months ago that these Federal Airport Police, along with other Federal white collar employees, received a pay increase of 4.7 percent.

If this amendment is passed, the airport police at these two Federal airports would have received within 2 months an increase in their salary of 29.7 percent.

It may be possible this increase is justified. However, not being an expert in personnel classification, I have no way of knowing except to consult those experienced in this line of work. The experts say that this is not the way to proceed.

Nothing in this amendment provides for any pay increase for the almost 5,920 other policemen currently employed by the Federal Government.

They say that this amendment would emasculate and throw in disorder the whole job classification system. It would threaten the very existence of orderly Federal job reclassification procedures.

The experts say that it would start the Congress on an endless round of Federal job reclassifications by legislation, completely destroying fair and impartial consideration of job reclassification requests in the Federal service.

The U.S. Civil Service Commission by law, is charged with the responsibility of reviewing position classifications in the Federal service. Such reviews are made to determine whether the employing agencies have placed Federal occupations at grades in conformance with the standards set by the Civil Service Commission.

When the Commission finds that a position is not placed at the proper grade level as required by the standards, the Commission has authority to direct a change in the classification of the particular job.

There are approximately 2,000 different occupations in the Federal service. The Civil Service Commission receives approximately 150 requests each year for review and reclassification of specific occupations. Each request is given thorough consideration before action is taken. This detailed study before reclassifying positions is critical to proper personnel management everywhere. To do otherwise would destroy proper job relationships and employee morale.

It is essential that experts in the field of personnel management and job classification study in detail the problem we face here. The problem is very complex and goes far beyond merely moving an occupation from one pay grade to another.

The Senate Post Office and Civil Service Committee has never held hearings on this subject. No experts have ever appeared before the committee to testify on the classification problems which will ensue if we upgrade the Federal airport police, as the amendment proposes.

We do not know how many other types of Federal police and guard positions are classified at the same level as the airport police. We do not know the relationship between the airport police positions and other similar occupations in the Federal service.

If we act on upgrading the airport police now, will we have to come back next year and upgrade other occupations, say the other 5,920 Federal policemen? Will we have to raise the starting pay of the Border Patrol, or the Immigration inspectors, or the GSA building police next year?

What does this apparently simple procedure we approve today do to the higher positions in all of the Federal police occupations? How badly do we compound the problems of pay compression that is faced by the Federal Government right now.

What do these increases in Federal service pay do to the pay rates of State and local governments?

We just do not have all of the facts before us. It is critical that we have the full picture in front of us and know what we are doing.

As I stated earlier, there are over 2,000 occupations in the Federal service now. The Civil Service Commission receives approximately 150 requests each year for upgrading of Federal positions. If we adopt this amendment now, the Congress will probably be deluged in years to come with requests from other Federal employee groups to upgrade their jobs. This will be particularly true with regard to reclassification requests which are initially turned down by the Civil Service Commission.

If we approve this amendment, how can we deny similar requests from other groups in the future? If we adopt this amendment we might just as well repeal the entire reclassification authority the Congress gave to the Civil Service Commission years ago.

The Civil Service Commission has the expertise to consider reclassification moves of Federal occupations. The Commission staff has the experience, the knowledge and the essential objectivity to deal with the problems of job reclassification. They should be allowed to continue their work without uninformed and haphazard interference from the Congress.

I have 2 letters dated November 28, 1973 and December 14, 1973 respectively from Chairman Robert E. Hampton on the subject of job reclassification for Federal airport police. I ask unanimous consent that Chairman Hampton's letters be included in the RECORD at this point.

Chairman Hampton advises in one letter, that he has ordered an immediate review of this problem by the Civil Service Commission and the Department of Transportation. The review will consider the question of whether the positions of the Federal airport police are properly classified under the standards for police positions generally and whether there is a need to modify or revise those standards in order to properly reflect any occupational changes that may have occurred since the standards were last prepared.

Chairman Hampton advises that the review will hopefully be completed by mid-February 1974.

In the second letter Chairman Hampton gives his reasons why this amendment should not be passed.

In view of the Commission's action and the very critical need to continue the orderly process of Federal occupation classification by the Civil Service Commission, I most strongly urge defeat of the amendment.

Mr. President, I ask unanimous consent to have printed in the RECORD two letters from Mr. Hampton, one dated November 28, 1973, and the letter of December 14, 1973.

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

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., December 14, 1973.

Hon. HIRAM L. FONG,
Committee on Post Office and Civil Service, Washington, D.C.

DEAR SENATOR FONG: In response to an inquiry from Senator Hollings regarding the classification of the jobs of the FAA policemen at the Dulles and National Airports in the Washington, D.C., metropolitan area, I have today provided him with the following information.

As you know, the Civil Service Commission position on S. 610 is to oppose this legislation for the reasons expressed in our report to the Senate Post Office and Civil Service Committee of November 28, 1973. However, in order to be certain that all of the current duties and responsibilities of these positions have been given full consideration in classifying them to the appropriate grades under the Classification Act, we are undertaking an immediate review of the factual situation. This review will be made jointly with the appropriate staff of the Department of Transportation. It will give consideration to both the question of whether the positions as currently constituted are properly classified under the existing classification standards for police positions generally, and the question of whether there is a need to modify or revise those standards themselves in order to properly reflect any occupational changes that may have occurred since the standards were last prepared.

I wish to assure you that this review will be undertaken promptly and we hope to be able to complete it by mid-February 1974. I will be glad to inform you at that time of the results of this review.

Sincerely yours,

ROBERT E. HAMPTON,
Chairman.

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., November 28, 1973.

Hon. GALE W. MCGEE,
Chairman, Committee on Post Office and Civil Service, Washington, D.C.

DEAR MR. CHAIRMAN: This is in further response to your request for the views of the Civil Service Commission on S. 610, a bill "To revise the pay structure of the police forces of the Washington National Airport and Dulles International Airport, and for other purposes."

This bill would exempt those Federal police officers who are assigned to National and Dulles airports from the classification provisions of chapter 51 of title 5, United States Code (and consequently from the General Schedule pay structure provisions of section 5332 of title 5). It would direct the Secretary of Transportation to fix their rates of basic pay in accordance with the rates of basic pay established for the Metropolitan Police Force of the District of Columbia.

The Civil Service Commission is strongly opposed to the enactment of these provisions, and urges that they not be approved.

We have consistently opposed legislation which would establish the classification or pay of Federal employees by statute. We believe such attempts are contrary to the clear intent of Congress when it established the classification and compensation systems for general application, and delegated to the Executive Branch the authority to apply them to particular groups of employees. We believe that such attempts can undermine the Congressional mandate that there shall be "equal pay for substantially equal work," because we are convinced that that principle is best served by adherence to the position classification system embodied in title 5 rather than by attempts to depart from it.

In our view, the only justification for S. 610 would be a conviction that the duties and responsibilities of the Federal airport police are at the same level as those of the D.C. metropolitan police. Otherwise it would be impossible to propose identical pay systems without openly abandoning the statutory principle of equal pay for substantially equal work. Therefore we at the Commission must assume that the sponsors and supporters of S. 610 are convinced that the work of a policeman at National or Dulles airport is essentially the same as that of a policeman in the city of Washington.

It is this with which we must take sharp issue: we firmly believe that there are important differences in the two jobs, and that these differences are readily perceptible by the application of systematic classification techniques.

Commission staff has carefully compared the duties and responsibilities of the airport police with those of the metropolitan police private. On the basis of this occupational analysis we are convinced that there are distinct differences between the positions which warrant necessarily different pay treatment. Clearly the airport police position involves duties and responsibilities of a considerably lesser magnitude than those of the metropolitan policeman. Rather than being like the D.C. position, the airport policeman is more nearly akin to the many other police positions in the Federal service that are, and should continue to be, paid under the General Schedule.

The salary rates provided by the General Schedule are entirely adequate for compen-

sating these positions. Further, to the extent that there are differences among police positions paid under the General Schedule, the classification system is flexible enough to provide grade and pay distinctions commensurate with the job differences. Thus, for example, if a particular airport police function, now paid at GS–5, were determined to involve higher level duties, it could be placed in a higher grade even if it meant exceeding the highest level for which a published grade level standard exists. This could happen either by an agency classification determination, or as a result of a classification appeal by any one of our airport policemen.

The Federal government currently employs almost 6,000 policemen, all of whom have been classified by reference to the same standard. There is no justification whatever for removing 80 of them from a consistent compensation system in order to pay them according to a system designed for a city police force, the duties and responsibilities of which are so clearly different.

In closing, I would point out that S. 610 would affect only about 80 employees and therefore its cost, in terms of the total Federal payroll, would be negligible. Under the circumstances, one might wonder why we feel so strongly about it. The reason is that a most important principle is involved here: the maintenance of the integrity and equity of the position classification system. Passage of S. 610 could become the "thin edge of the wedge," leading to an ever-increasing number of preferential departures from the General Schedule system for more and more special interest groups of Federal employees.

The Civil Service Commission must remain opposed to any such erosion of the system which Congress has charged us to maintain.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

By direction of the Commission:

Sincerely yours,

ROBERT HAMPTON,
Chairman.

Mr. HOLLINGS. Mr. President, in the letter from Mr. Hampton, it is stated that his study is to reflect any occupational changes. As a result of the record here I would admonish him to look at the law and determine what is the general law.

I do not think he is going to find any occupational changes, but, in essence, he is going to find that exceptions have become the general law, and it is the general law that is confining us to those restrictions in the pay scale that is making us the exception.

With that, Mr. President, unless there is further comment, I ask that the amendment be withdrawn.

The PRESIDING OFFICER. Without objection, the amendment is withdrawn.

Mr. McGEE. Mr. President, I ask for a third reading of the bill.

The bill (S. 2264) was ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 8332(b) of title 5, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (8);

(2) by striking out the period at the end of paragraph (9) and inserting in lieu thereof a semicolon and the word "and";

(3) by inserting immediately below paragraph (9) the following new paragraph:

"(10) subject to making a deposit provided for under section 8334(c) of this title, service performed after June 30, 1948, but prior to July 1, 1960, as a language instructor in the Foreign Service Institute, Department of State, under a non-personal-service contract, only if he later becomes subject to this subchapter."; and

(4) by inserting immediately after the fifth sentence thereof the following new sentence: "The Commission shall accept the certification of the Secretary of State concerning service for the purpose of this subchapter of the type described in paragraph (10) of this subsection and performed by an employee."

SEC. 2. The amendments made by the first section of this Act shall apply to individuals separated from Government service prior to, on, or after the date of enactment of this Act, and their survivors; but no annuity or survivor annuity, or increase in any such annuity shall be payable by reason of such amendments for any period prior to the first day of the first month which begins after the date of the enactment of this Act.

ORDER OF BUSINESS

The PRESIDING OFFICER. What is the will of the Senate?

Mr. McGEE. 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. McGEE. 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. McGEE. Mr. President, I move that the vote by which S. 2264 was passed be reconsidered.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. What is the will of the Senate?

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

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

LEGAL SERVICES CORPORATION ACT—AMENDMENT

Mr. LONG. Mr. President, like the great majority of the Members of this body, I am very much in favor of the Federal Government's providing services to the poor who are in need of a lawyer to defend themselves or to institute litigation because they are being victimized in one respect or another. But I am against legislation under which the Federal Government pays lawyers to sit around in ivory towers dreaming up ways to foment judicial legislation against State and local governments, to prevent the dedicated people working for those governments from fulfilling their responsibilities that the law expects of them.

In some instances, this legal service program has involved a lawyer seeking clients in order to institute suits against the State and local governments, and in some cases has involved a nationwide search for clients on whose behalf litigation could be filed, to make it difficult, if not impossible, for State, and Federal officials to do what the law expected of them.

The amendment that I am submitting today is designed to prevent the Legal Services Corporation from misusing its authority in the manner that the legal services program of the Office of Economic Opportunity has been misused in the past.

OEO, in appropriation hearings, has justified the legal services program by stating its aim to be "the use of the judicial system and the administrative process to effect changes in laws and institutions which unfairly and adversely affect the poor."

In carrying out this broad, highly subjective, and basically legislative function, certain legal services activities have been aimed directly at undermining welfare and other programs which are, of course, established by duly enacted Federal laws.

In many cases the courts ruling in suits brought by legal services lawyers have misused the purposeful broadness of the Federal statutes as an avenue for imposing by judicial action Federal requirements which, if imposed at all, should more properly be determined legislatively. I recognize, however, that a statute which is intentionally phrased so as to leave considerable discretion to those who administer it may give rise to some questions of interpretations. Accordingly, my amendment provides a mechanism whereby it would be possible to avoid the necessity of litigation which is likely to result in the courts feeling constrained to assume legislative responsibilities. The amendment would establish a prohibition against the use of Federal funds to pay directly or indirectly, the compensation or expenses of any individual who in any way participates in action relating to litigation which is designed to nullify congressional statutes or policy—or State statutes enacted pursuant thereto. However, the amendment would permit the Attorney General to waive this prohibition 60 days after he has provided the appropriate legislative committees of Congress with notice of his intent to make such a waiver.

This will give the committees time to consider the issues being raised in the proposed litigation. If the committees determine that the intent of the statute is, in fact, open to question, they would be able to put this properly legislative question before the Congress with their recommendations for its solution and thus avoid the need for further litigation. On the other hand, if the committees determine that the suit does not involve a question of legislative intent or that the statute already clearly expresses that intent, the matter could be left to the courts.

My amendment is in no way intended to affect the duties of legal services corporation lawyers in connection with legal representation that involves assisting poor individuals with day-to-day problems in such areas as support payments

or arbitrary actions of local welfare departments.

Mr. President, my amendment provides for something that no one has to go to law school to understand. No one but an idiot would hire a lawyer to sue himself. Yet this is what the legal services lawyers have been doing, and this is what my amendment will prohibit the attorneys and legal services corporation from doing.

Because of various court decisions which have come about through OEO lawyers, a person by mere delay, and to no inconvenience to himself, can stay on the welfare rolls for as long as 5 months, although he was never eligible the first day to draw all of those payments. Then, if it is found he was eligible, how much money can one get back? Not a cent.

It makes no sense for Congress to fund money for attorneys who will go out and seek litigants in order to compel judicial interpretation of acts of Congress which run counter to the intent of Congress.

The California rural legal aid assistants in January of 1972 sent a memorandum to attorneys and community workers and a copy of this was sent to the Finance Committee. One of the items in this memorandum concerns child care. The memorandum states a writ has been filed to compel the States to provide new regulations to actually provide for certain child care.

It goes on to say—

We may need plaintiffs on this. The ideal plaintiff would be a mother who has a job but cannot get anyone to take care of her kids but needs to have someone to take care of her kids. Or, we could get someone who is not on welfare but who may have to quit because there is no one to take care of her kids and she has a job or needs a job or something like that.

Imagine that. Here are these lawyers paid by the Federal Government, scanning the country to find someone to sue the State and Federal governments, and not waiting for someone to come in and complain. They are looking for a person to sue the Government. The briefs and petitions are drafted, and they are looking for some poor State to sue and for some litigant to sue it.

Another item concerns poor property regulations in the State of California. The memorandum states that two people "are going to bring a lawsuit against these regulations."

To continue, the memorandum mentions that two people—

Are going to bring a lawsuit against these regulations and even if they lose we should be finding out how the county is valuing property and making arguments that they are doing it wrong. Again, even if this suit is not won there are a million games that can be played with regulations like these.

Imagine that. The Federal Government has been in the business of hiring these young lawyers to go play these games of suing State employees doing their best to serve the public.

All of this adds to the cost of lawyers, both the lawyers for the litigants and the lawyers for the Government plus the cost of judges, bailiffs, clerks, reporters, and jurors to the cost of keeping someone on welfare who is not entitled to be there in the first place.

It causes people to think of the welfare syndrome as something by which people can get on welfare, even though they are not eligible to be on welfare, and stay on it indefinitely without any money being paid back to the Government for the fraudulent claims that have been made.

Mr. President, I have with me a copy of a memorandum to which I have made reference. I notice that on page 1 of this memorandum there is the symbol of the Minute Man with a rifle and the lines:

Buy United States savings bonds regularly on payroll savings plan.

That obviously indicates that this is Government stationery, involving Government-paid lawyers.

I would submit to any Senator, particularly to one who has ever had responsibility in State government, that he should picture himself in a position of responsibility while these lawyers are laying their plans to sue him on first one basis and then on the next one. They will make him spend his life in court in litigation dreamed up in legal centers at Columbia University and other universities. Those centers consist of people sitting around dreaming up how they may sue the Federal Government or sue the local government or someone else and thereby get people on the welfare rolls who do not belong there. They impede the hospitals and various other State institutions that are trying to do their job, while these imaginative young lawyers dream up even more ways to sue them on first one basis and then another.

The memorandum says they are playing games, dragging State and local officials and other dedicated Federal public employees into court on litigation that is a figment of the imagination of the lawyers who are trying to find litigants to file lawsuits against dedicated people doing their job as best they can for the Government.

Again, let me say that I am strongly in favor of the legal service program for the poor insofar as it is what it is supposed to be. Unfortunately, it is very difficut to get those involved in such a program to do what we hope to have done.

For example, one thing I would like to see them do would be to get a habeas corpus petition for some poor soul languishing in jail somewhere so that he can be a free man until he is tried.

I notice that this bill does not provide for that. That is left out. They have not found that to be so important. But they do fund lawyers to sit up in the Columbia University legal center and find ways to dream up lawsuits against any dedicated Federal official or any of the officials of the 50 States of the Union.

This is referred to as the backup center. It should be called the front-up center, because they dream up the cases before they find the litigants. Then they have to go out to find a litigant or to create a dispute where one does not exist.

That is the kind of activity they have put into this program. They think they are doing a service for the poor by loading the welfare rolls down with people who should not be on the rolls at the expense of those deserving people who ought to be getting the welfare money.

The experience in California indicates that a great deal more can be done for the deserving cases and that they can be paid far more money and be taken care of more efficiently if we are able to prevent these people who have no right to have a claim for welfare from the Government, by any stretch of the imagination, from being on the welfare rolls.

If we can prevent the people from getting welfare who do not need it and put the people on the rolls who belong there, we can move on down the road toward providing for and assuring that those who are in poverty through no fault of their own will be assured of the kind of help they deserve.

Mr. President, we are not going to achieve that so long as we have a program that makes it far more desirable to impose billions of dollars of needless costs on the local government in order to encourage and support the imaginations of some of the poverty lawyers who want to rewrite our laws through the courts.

I will urge that this matter be considered when S. 2686 is again before the Senate.

Mr. President, I ask unanimous consent that excerpts from the memorandum to which I have made reference be printed at this point in the RECORD.

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

RECENT WELFARE LITIGATION

Three or four months ago I put out a memo to the attorneys and community workers on recent litigation concerning the Welfare Reform Act. About a week ago Mark and I met with a group of Legal Services attorneys in San Francisco, and discussed the most recent developments in the area of welfare litigation. The purpose of this memo is to bring you up to date on these matters.

1. *Yee Litt*—aid pending a fair hearing.

In this case, Chris May, of SFNLAF, has obtained a restraining order from the Federal District Court, ordering the State Department of Welfare to grant aid pending the fair hearing in all cases where a person has made a "timely" request for fair hearing, since September, 1971, and into the future. The theory of the case is that a person should be given aid pending the fair hearing decision when his determination in his case involves issues of fact. The argument is that just about every question which a recipient can raise involves *some* issues of fact, and for the Department to deny some people aid pending, puts a burden on the welfare recipient to simply use the proper language when he requests his fair hearing—a burden that the recipient is really not able to meet. In addition, the standards by which the Department determines when a factual issue is involved are so vague that they simply cannot be fairly applied, and violate due process of law. The court has bought these arguments and has ordered that any person who does make a timely request for a fair hearing must be given aid pending the hearing decision. There will continue to be questions, I suppose, regarding what is a timely request. So far the rules say that this must be done within 15 days of the time in which a person is notified of an adverse decision. The

request for a fair hearing, by the way, may be oral as well as in writing. It also may be made directly to the local Welfare Department, as well as to the State Department in Sacramento. To be safe, however, we should always submit a written request that is correctly dated, even when the client makes an oral request.

Chris wants to know whether the counties and the State are abiding by the court's decision. Could you all try to determine what is happening in these kinds of cases.

There is also the problem of the "eclipsed" fair hearing request. Sometimes a person is notified of a change in his grant and he immediately requests a fair hearing. After the request, the Department may do something new to his grant and he may not request a fair hearing a second time. This particular issue has not been decided, but we should be prepared to argue that the situation is exactly like the situation when a person makes a premature appeal in a court of law. In those cases, even though the person appeals prematurely, his appeal is deemed to take effect at the proper time.

Fred Hiestand also has a case pending on a similar matter. His involves the requirement that fair hearings be granted within 60 days of the time they are requested. What the State seems to be doing is scheduling all fair hearings where there would be aid pending for the immediate future and delaying fair hearings in cases where a person is not getting aid pending—that is, cases where a person has applied for welfare and has been denied, and then requests a fair hearing, where he gets no aid pending because he was not receiving aid prior to his request. Fred is arguing that for the State to put all the aid pending cases first is a denial of equal protection of the laws. If you get a case where the fair hearing is not granted within the 60-day period, let me know or call Fred Hiestand.

Another issue involves the provisions in the new regulations which threaten the client with a lawsuit to recover the aid which he is given pending a fair hearing if the fair hearing decision goes against him. This is another area where the law is not settled. In one case where the County sued a client who had gotten aid pending the fair hearing, Marty Kresse, of the CRLA Santa Maria office, raised a defense saying that the recapture provisions were illegal. The State had demurred to his defense, and the court has not yet ruled on the matter. If we get a case like this, again let me know or call Marty Kresse.

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5. *Conover v. Hall.*—$50.00 work-related expenses.

In this case the court knocked out, on December 21st, the $50.00 work-related expense business. Under the old system, a person could get his actual work-related expenses, whereas under the Welfare Reform Act it was limited to a flat $50.00 for such expenses. The court said that that was no good. The new regulations, however, make some changes in calculating work-related expenses, and we really should find out exactly how the County is interpreting the regulations, however, make some changes in calculating work-related expenses, and we really should find out exactly how the County is interpreting the regulations and what the regulations are doing to our clients—that is, if they are helping them or hurting them. For example, under the old system a person might get up to $75.00 a month for car repairs, insurance, etc., and 4c a mile for travel; under new regulations, it is just 12c a mile. There seems to be a loophole in the regulations, though, since they say 12c a mile whether or not a person has a car. Therefore, even if someone else takes him to work he should be eligible for this 12c a mile. I doubt if the Department is giving people this, but the regulations clearly say so, and we should try and get people this kind of money. What I don't know is whether the 12c a mile works out better for people than the old system. In addition, the County is allowing expenses for day care and "incidentals", up to a certain maximum. We may be able to say that all of these regulations are no good under the court ruling, and that what the court really has to do is to go back to all of the old ones. But before we bring this kind of case we need to know, first of all, whether it would help our clients to go back to the old regulations; and secondly, even if we decide that, we have to know what the County is actually doing, so we can put it in before the court. This is something that Dearl and Don, especially, should look into. Other things that seem to be eliminated by the new regulations are education, phone, some actual transportation costs, etc.

Related to this is the whole problem of the child care regulations, which say when a person can get child care expenses, according to the County's determination that the parents can't provide adequate care for the kids while working. We have to see what the County is doing on this—whether they are saying that there is no need for child care, when, for example, a 12-year-old kid takes care of a 6-year-old kid, or something like that. There are a lot of arguments we can use to knock out bad County practices, but we have to know what the County is actually doing in these cases. They may also be saying, for example, that there is no need for child care if there is a grandparent in the house, or some other non-working adult relative. Again, we have to find out what the County is doing in this whole area, and then let me know or get in touch with Ed Schaffer on this particular matter.

6. Stepfathers.

Under the Welfare Reform Act, there were new regulations saying that half of a stepfather's income would be counted against the grant. The judge ruled that this was illegal and said that you have to count what was "actually available", not a flat determination of half of what the stepfather makes. The case was then appealed, and is in the District Court of Appeals. The appeal is going to be dismissed, so that the judge can rewrite his order and make it more explicit. What the County should do is to reinstate everyone who was cut off as of October 1st under these regulations; they should issue supplements for the interim time; and they should send out questionnaires to people, to try and determine how much of this income is "actually available to the children". Again, if you have a problem in this area, let us know or contact Peter Reed.

On a related point, Mike Woods, of the Hunter's Point SFNLAF office, got a writ of mandate in the San Francisco Superior Court by suing on Carleson's letter. The case is *Maguire* v. *Borne*. What the case stands for is the proposition that when Carleson issues a letter to the Departments they have to enforce it, and if you find that they are not doing so you can go into Superior Court and get a writ of mandate from your local court, without going up to Sacramento and suing Carleson. As to what makes the letter "official", all you have to do is cite the new statute, Welfare & Institutions Code, Section 11050. Another way of handling this is to get a certified copy of the order and go in re contempt against your local director.

7. *Villa v. Carleson*—Unemployment Benefits and 30-day Work Rule.

This is the case that I joined Moe Jourdane and Dave Kirkpatrick of the Salinas office on. We argued that two new regulations—the 30-day waiting rule after a person lost his job, and the rule that a person could not be eligible for unemployment benefits and also receive welfare—were contrary to the legislative definition of "unemployed". After a good deal of hassle in the courts, we finally got a permanent injunction and declaratory judgment stating that the regulations were illegal and could not be enforced. The problem is that although the court ruled that way, it has not yet written its order. There is a hearing scheduled for Friday, January 21, at which time the court's opinion and order should be worked out. We should know by the beginning of next week how the order actually reads, and then it should be an easy matter to get the County to start enforcing it. They are already regarding the unemployment benefit regulation as illegal, since they got a letter from Carleson on this subject. The only thing that we are waiting for is the 30-day rule.

8. $1500.00 Car.

There was a new regulation issued that said that a person would be ineligible for welfare if he had a car worth $1500 or more, regardless of encumbrances. In other words, if a person's car was valued to $1600, even if he owed $1000 on the car, he wouldn't be eligible for welfare. Joel Gomberg, of the CRLA Gilroy office, got a temporary restraining order against this new regulation in the end of November. Nothing has happened since, except that Carleson has sent out a letter to the County directors saying that the regulation is not going to go into effect.

9. Providing Child Care.

Section 18.3 of the new Act provides for child care set-ups for people who need it. A writ has been filed to compel the State to adopt new regulations to actually provide for such child care. The State says that no new regulations are needed. We may need plaintiffs on this. The ideal plaintiff would be a mother who has a job, but can't get anyone to take care of her kids and needs to have a day care provision. Or we could get someone who is not on welfare, but who may have to quit because there is no one to take care of her kids, and she has a job, or needs a job, or something like that. The Counties are supposed to be drawing up their plans for providing day care under the new Act, and I am not sure whether this County has submitted a proposal or a plan to the state. We should really try and find out what is happening in the whole area of day care being provided for working mothers.

10. District Attorney Referrals.

Taylor v. *Martin* has been decided by the Supreme Court, outlawing the section of the Welfare & Institutions Code which said that a person had to see the District Attorney and file a criminal complaint against her husband in order to be eligible for welfare. That was followed by the case of *Doe* v. *Carleson*, in which the court said that you don't even have to answer questions the D.A. asks, other than the name and address of the father. If we find a person who is being asked to give the name and address, it would be an easy matter to bring the law suit which knocks out that final requirement. I don't think we are going to have any trouble on this, though, at least in Stanislaus County. I have talked to the County officials, including Quisenberry and Ben Kelley, and to County Counsel, and I think I have convinced them that it is illegal to make a woman cooperate with the District Attorney in any way, or talk to them at all about the absent father of her children as a condition of eligibility. I would like to know if the matter has not been resolved in the County, though.

11. New Property Regulations.

There is a whole new form that welfare recipients will have to fill out as of March 1, 1972. It is called the WR–2 form, and it is to determine whether a person has too much income or property, etc. The new form runs 19 pages, and I have a copy of it in case

anyone wants to see it and blow his mind. There are new regulations that involve how much property a person can have as a reserve and still be eligible for welfare. It seems to say that you can have liquid assets up to $600.00, and in addition, another $1,000.00 worth of tangible property. In addition, there are new regulations that talk about a maximum of $300.00 on any single piece of equipment, like a refrigerator or color T.V., etc. There are so many questions about this that I don't know where to start. One initial question is whether the new regulations will be enforced.

So far they are not being enforced. If the Department starts to enforce them, there will be further questions on how they value these items. For example, do they go by the value when new, or the quick-sale value, or the value when the item was bought, or the value minus the encumbrances that the person has on the property. Valerie and Dan Bruener, of Long Beach, are going to bring a law suit against these new regulations, but even if they lose we should be finding out how the county is valuing property, and making arguments that they are doing it wrong. Again, even if this suit is not won, there are a million games that can be played with regulations like these. When the form asks for purchase price, the recipient can cross it out and write in "fair market value". You can have an "appraiser", who could be someone like Dearl or Don Alafa, or even Jess Willett, appraise the refrigerator for, say, $200.00; or you could splash some paint on the refrigerator and then get it appraised. Or you could send the client down to Household Finance and ask him to make an application for a $1,000.00 loan. When he applies for the loan, Household Finance will ask him to list his personal property and will place a value on it. They will probably say that all of his furniture and household goods are worth a total of fifty bucks. This can then be taken to the Welfare Department as evidence of the value of the goods.

Finally, if worse comes to worst, and you can't get the value down under any of these kinds of regulations, the recipient can always transfer all of his property to one child, have that child ineligible for welfare, and have the rest of the family still be eligible. As soon as we get some idea of what the County is going to do on these new property regulations, we should all sit down with them and try and figure out how we're going to argue cases like this, either with the workers or on fair hearings. By the way, the Welfare Department has usually used a rule of thumb in calculating the value of an automobile, which is 50 times the license fee. The statute clearly says that the value of the car is equal to the fair market value, and this 50 times the license fee is garbage. Other attorneys say that these cases have been won at fair hearings, just using the new regulations.

12. *Waites vs. Carleson*—Non-needy Caretaker Relative.

44–115.6 of the new regulations says that the AFDC family gets an 'in-kind" contribution to their housing costs when there is a non-needy relative living with the family, unless the relative can prove that there is an increase in rent due to the presence of these other people. The Alameda County Legal Aid has filed the law suit attacking this kind of thing.

A related matter is the regulation 44–115.8, which is the situation where one person is on one of the adult aid programs like Old Age or ATD, and the rest of the family is on AFDC. What happens here, too, is that the AFDC family is said to get an "in-kind" contribution on their housing. This case has not been brought yet, or at least it was not brought as of last week, but Ed Schaffer of SFNLAF is eager to bring it.

He needs plaintiffs. At one point we had one, but we lost him, and we should look for other ones. Both of these new provisions really go back to the old "as paid to a maximum" housing allowance, under which a person got a certain allowance in his grant for housing up to a maximum, but only received what was actually spent for housing up to that maximum. This is expressly prohibited by statute, and the new regulations simply do the same thing all over again.

13. Medi-Cal Co-payments.

Under the new Medi-Cal regulations, the recipient must make a co-payment along with his benefits. A suit to knock this out has been filed in the Distric Court in Washington, D.C. The government has moved for the case to be transferred to California, a motion which the District Court granted. That motion was stayed, though, by the District of Columbia Court of Appeals. The fight now is an attempt to keep the case back in Washington, D.C., on the theory that the District Court of Appeals in D.C. is better than the one out here. Anyway the case is in the courts and no one knows what is actually happening with, it.

14. Slave Labor Programs.

Under the Welfare Reform Act there are provisions for making people work and get no pay as a condition of eligibility. The State has applied for a waiver, and plans to operate the program experimentally in about 35 counties in the State. No money is allocated in the Welfare Reform Act for the supervision and "shovels" that would be needed to let people actually do this kind of work. The Department of Labor has agreed to try and make some money available for that sort of thing, possibly through the PEP Program. The people in Washington feel that this kind of thing could be stopped in Washington. Anyway, a case is going to be filed against this waiver.

15. Earnings Clearing System.

Circular Letter No. 2567 from Carleson initiates a method for validating the earnings of welfare recipients through their Social Security numbers, by sending the Social Security numbers to HRD, who would then send it back to the counties, along with people's quarterly earnings reports. People may start to get affected by this in the next month or so. Legally, there are certain easy ways of attacking this kind of thing, since HEW has always said that people can't give blanket prior consent to this kind of earnings clearance. In other words, if someone in the Department is going to release information on a welfare recipient or is going to inquire from a collateral source as to the person's earnings, the recipient must give specific consent to that particular inquiry, not some kind of blanket signature of consort which he signs when he applies for welfare. The trouble is that this is a very difficult case to bring politically. California Welfare Rights doesn't want to bring the case because the case looks like you're trying to keep a bunch of cheaters on welfare. A strategy is being worked out by California Welfare Rights people and some of the attorneys in San Francisco. What they may do is to work on the package on how to attack these kinds of income reporting provisions and try and organize some kind of a mass fair hearing campaign, where everybody would raise the issues in fair hearings rather than attacking the case in the courts. The other possibility would be that in any case where persons prosecuted for welfare fraud to use the provisions that say that this kind of information can't be traded around like this, as a kind of exclusionary rule to keep out the evidence. The relevant Federal Handbook Sections are Sections 2000, 2300, 2400, etc.

16. Social Security Cards.

Someone said that in their county welfare recipients were being told to fill out Social Security cards for all of their children and themselves if they didn't have them already, when they applied for welfare. Some people began to notice that these cards were different from the ordinary Social Security applications, and were being specially marked. I don't know if this is happening here, but it might be a good idea to have welfare recipients go down to the Social Security Office themselves and get cards for their children, rather than doing it at the Welfare Department if it is being done that way here.

17. *Vincent vs. California*—Attendant Care for ATD Recipient.

This is an extremely good decision coming out of the Second District Court of Appeals from Los Angeles. The court held that it was denial of equal protection not to provide an attendant care allowance to an ATD recipient when the person's caretaker was the spouse. This kind of caretaker allowance is allowed in the Aid to the Blind Program, and the court thought that that denied equal protection to limit it in the ATD area. Obviously, this case can be used in a whole range of other areas where special funds are given to people in one program and not in others. The reason this is important is that a whole range of cases have held that there was no denial of equal protection when the different aid programs were treated differently. We should use this case, for example, where special needs for diets are allowed in the Old-Age program but not in ATD, and that sort of thing. If you get any case at all like this, let me know.

18. *Golden Gate Welfare Rights Organization vs. Schweiger*—Food Stamp Delay.

This is another one of those cases where the government delays in giving people food stamp benefits beyond the required 30-day period. What the case says, though, is that if the government delays too long in giving you the food stamps, what they have to do is to take the bonus value of the stamps which you missed out on getting because they delayed, and knock that off of the purchase price when you start to buy the stamps the next month. Obviously, that's an excellent decision.

19. Section 11351.5 W & I C—Son of MARS.

This is the same crap as the old MARS regulations. If there is a man living in the house with an AFDC family and he is not working, the problem is this: The Department says that he is required to contribute to the family as much as it would cost him to live independently outside of that house. One set of regulations presumes that he is contributing that much money, and they knock down the welfare grant accordingly. Therefore, even if the guy isn't contributing a cent to the household, they knock down the welfare grant by $110 or so.

Obviously, this is bad, and it would be a very simple matter to knock this out, given the numerous regulations and cases which say that you only count what is actually available, not what is theoretically available to a welfare family. The problem with this, though, is that even if we won this case they would turn around and prosecute the mother for welfare fraud—or, to be more exact, misuse of welfare funds. The theory of their doing so would be that if this guy is living in the house and not contributing a cent, then some of that welfare grant must be going towards his own expenses for food and rent, etc. This would be considered a misuse of welfare funds.

So the recipient is really in a dilemma to either get the grant knocked down or face prosecution. The only possible way out of the whole situation is some kind of constitutional right that a person might have to live with someone he or she chooses to live with, but that is pretty far out since the government would simply say "Of course you can live with anyone you want, but you can't use Welfare funds to support that person." We've had a case like this in the office for quite some time, and have not really known what to do with it. Don Cates and Dave

Schwartz are working on the regulation, but even they don't have a way of solving the over-all problem, which is caused by Section 11351.5, read in conjunction with Section 11480 (living off the welfare grant).

Mr. PELL. Mr. President, the need for continuation of a strong and independent Legal Services Corporation has been the subject of much discussion in Rhode Island. I ask unanimous consent that there be printed in the RECORD, in support of a strong Legal Services Corporation, an editorial from the Providence Journal of June 24, 1973; a resolution adopted by both the Rhode Island Bar Association and the Board of Directors of Rhode Island Legal Services; and a letter to me from the Most Reverend Louis E. Gelineau, bishop of Providence, with an accompanying resolution passed by the Community Affairs Commission of the Diocese of Providence.

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

Chiseled into the frieze of the United States Supreme Court building is the motto "Equal Justice Under Law." It is the most noble of ideals, but for a great many of America's poor, caught up in legal complexities with scanty understanding of their rights or avenues of recourse, equal justice has long remained only a misty ideal.

Eight years ago, in a move to help the poor gain legal assistance they needed and patently could not afford, the Johnson administration won enactment of a Legal Services program to provide lawyers for the poor. It was a conscientious attempt to help secure a full measure of legal rights for the nation's disadvantaged. Since it began, Legal Services has devoted most of its effort to helping poor people wend their way through the common legal complexities of landlord-tenant relations, credit problems, and marital difficulties. Its lawyers, also, have been instrumental in several law reform efforts of which the poor, again, have been the prime benefactors.

Legal Services had managed in recent years to win acceptance from the American Bar Association and even the Nixon administration as a needed agent for promoting equal justice and for peaceful change. But last month, in acting on a bill to restructure Legal Services' ruling body, the House of Representatives sought to strip its lawyers of much scope that they now have. In a series of amendments tacked on during floor debate out of apparent spite for various local Legal Services efforts that had irked one member or another, the House crippled the bill and left it a shambles.

For example, the bill as amended by the House would bar Legal Services lawyers from seeking to influence any legislation, referendum questions, governmental orders or regulations. It would bar these lawyers from counseling the poor on elementary (and constitutional) rights such as picketing and registering to vote. It would bar them from aiding the poor in any legal proceeding involving school desegregation, abortion or the military draft.

The amended bill, moreover, would end federal support for Legal Services' "back-up centers," usually operated in conjunction with universities, that have become of incalculable worth in providing expertise and in expanding the frontiers of what is known as poverty law. The bill also would force Legal Services to pay court costs in cases that it lost. The costs of such a requirement easily could put the program out of business.

In short, the House of Representatives has punched the Legal Services bill so full of holes that it cannot stay afloat except as a hollow mockery of the original purpose: to promote an equality of justice. The head of the New York City bar association calls the House version "constitutionally suspect and morally wrong," and Robert W. Meserve, the ABA president, has also assailed the House bill and said it would be a "great catastrophe" if the Legal Services program were to die.

The Senate, in whose labor and public welfare committee the hacked-up bill now resides, has a chance to remove the harm done by backward-looking politicians in the House. The Senate must make good on this chance. Only the law, equitably applied, can help insure to America's poor the full measure of justice that is rightfully theirs. The Legal Services program is of critical importance in seeking this goal, and it must not be stifled.

JULY 16, 1973.

The Honorable CLAIBORNE PELL,
U.S. Senator from Rhode Island, Old Senate Office Building, Washington, D.C.

DEAR SENATOR PELL: A number of requests have reached me through my Vicar for Community Affairs with reference to the bill, HR–7824, which proposes to establish a Legal Services Corporation.

My information is that the legal services rendered to low income and poor persons in this area has been of a relevant and consistently high quality. A number of substantially beneficial results for poor people have been effected by Rhode Island Legal Services attorneys in the area of legislative and administrative changes in federal and state laws and regulations. It is my understanding that this and similar types of advocate activity would be restricted in this new bill.

I should like to appeal to you to actively promote the changes in this bill as indicated in the resolution passed by our Diocesan Community Affairs Commission (cf: Attachment).

With the hope that we may count on your leadership in the Committee handling this matter, I am

Sincerely yours,

BISHOP OF PROVIDENCE.

COMMUNITY AFFAIRS COMMISSION,
DIOCESE OF PROVIDENCE,
PROVIDENCE, R.I.

RESOLUTION

Resolved: That the Community Affairs Commission of the Diocese of Providence, in cooperation with the Vicar for Community Affairs, hereby urge members of the Rhode Island Congressional delegation to work vigorously to seek changes in HR 7824, the Legal Services Corporation Bill, which will (1) permit legal services attorneys to engage in supporting legislative and administrative changes in federal and state laws and regulations in connection with their representation of eligible clients; (2) permit Legal Services attorneys to advise clients to engage in any constitutionally protected conduct, including picketing, strikes and boycotts; (3) permit Legal Services organizations to conduct educational programs designed to advocate that the poor take advantage of their legal rights; (4) enable the proposed Legal Services Corporation to continue to fund independent groups for the purpose of providing research, technical assistance, and information dissemination and (5) require that each local Legal Services Organization be governed by a Board of Directors which is controlled by the poor and persons representing the poor.

Resolved further: That the staff of the Community Affairs Commission and the Office of the Vicar for Community Affairs take whatever steps they deem necessary to make the foregoing position known to the Rhode Island Congressional Delegation and to urge other groups to advocate a similar position.

Action taken at Community Affairs Commission meeting July 10, 1973.

RESOLUTION

AMERICAN BAR ASSOCIATION,
Cleveland, Ohio, Febraury 16, 1973.

Whereas: There is a continuing need for legal services for the poor.

Whereas: There are federally funded Legal Services Programs to meet this need in each of the states.

Whereas: These programs are facing an expanding demand for legal services and increased operating expenses.

Whereas: The funding for these programs has not increased since 1970 in spite of the increase in demand and operating expenses.

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, it is 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 lawyers 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.

QUORUM CALL

Mr. HARRY F. BYRD, JR. 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. HARRY F. BYRD, JR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider a nomination at the desk which was reported by the Committee on the Judiciary early in the day.

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

THE JUDICIARY

The legislative clerk read the nomination of Walter Jay Skinner, of Massachusetts, to be a U.S. district judge for the district of Massachusetts.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the nomination.

The PRESIDING OFFICER. Without objection, it is so ordered. Without objection, the nomination is confirmed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of the nomination.

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

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. I ask unanimous consent that the Senate return to the consideration of legislative business.

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

QUORUM CALL

Mr. MANSFIELD. 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. 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.

AUTHORIZATION FOR THE SECRETARY OF THE SENATE TO RECEIVE MESSAGES FROM THE HOUSE OF REPRESENTATIVES DURING THE ADJOURNMENT OF THE SENATE

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to receive messages from the House of Representatives during the adjournment of the Senate until Monday morning next.

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

AUTHORITY FOR THE VICE PRESIDENT, THE PRESIDENT PRO TEMPORE, AND THE ACTING PRESIDENT PRO TEMPORE TO SIGN DULY ENROLLED BILLS AND JOINT RESOLUTIONS DURING THE ADJOURNMENT OF THE SENATE

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Vice President, the President pro tempore, and the Acting President pro tempore be authorized to sign duly enrolled bills and joint resolutions during the adjournment of the Senate until Monday morning next.

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

PROHIBITION ON THE IMPORTATION OF RHODESIAN CHROME

The Senate resumed the consideration of the bill (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.

Mr. HARRY F. BYRD, JR. Mr. President, metallurgical chromite is a vital strategic material. I believe that perhaps the foremost expert in the Senate on the stockpiling of strategic materials is the distinguished chairman of the Stockpiling Subcommittee of the Committee on Armed Services, the Senator from Nevada (Mr. CANNON).

In a Senate speech on December 10, 1973, this past Monday, the Senator from Nevada brought out this important point:

> When the United States began to designate strategic materials for stockpiling and defense purposes in 1939, chromium was one of the first four commodities to be listed. The stockpile consists of metallurgical grade chromite and of several types of ferrochromium.

The able Senator from Nevada, in the same speech, brought out that in testimony before the House Armed Services Committee in June of 1972—that is, June of last year—officials of the Office of Emergency Preparedness declared that the U.S. requirements for metallurgical chrome for a 3-year wartime national emergency would total 4,315,000 tons—or 1,438,000 tons per year.

That, of course, is greater than the current peacetime usage, but we are talking about an emergency, a war, and that, of course, is the purpose of the stockpile.

Senator CANNON also brought out in the same speech that in March of 1970, the Office of Emergency Preparedness reduced the stockpile objective for metallurgical chrome to 3,100,000 tons.

Senator CANNON added:

> In trying to explain how the United States could meet its wartime needs for 4,315,000 tons of chrome from a stockpile of only 3,100,000 tons, the OEP witness told the House Armed Services Committee—
>
> "We estimate we can obtain from sources such as Rhodesia and the Republic of South Africa 923,000 tons during the next 3 years."

The Senator from Nevada then pointed out, in his address, that the members of his committee were unable to get satisfactory answers to their questions as to what would happen if Rhodesian ore were fully committed to customers elsewhere in the world or unavailable because of United Nations sanctions, and that the committee—namely, Senator CANNON'S committee—did not approve the request to reduce the stockpile.

Mr. President, this points up the fact that the chief sources of chrome are Rhodesia, South Africa, and Russia. A few other countries have small quantities—Turkey, Iran, and India—but the chief sources of chrome are the three countries, Rhodesia, South Africa, and Russia.

The United Nations, 7 years ago on December 16, voted a resolution placing an embargo on all trade with Rhodesia. President Johnson unilaterally put that embargo into effect for the United States. Congress had nothing to do with it; the matter was not referred to Congress. Congress had no say. The embargo against Rhodesia was put into effect unilaterally by our President.

The situation we found ourselves in then was that for this vitally important and strategic material, we were dependent upon Soviet Russia. That condition existed until 2 years ago, when Congress enacted legislation which says that the President may not prohibit the importation of a strategic material from a free world country if such a material is being imported from a Communist-dominated country.

That means that it is now possible to import chrome from Rhodesia. The pending business, S. 1868, is to repeal that present law which permits the importation of chrome from Rhodesia.

I want to point this out, Mr. President, and to emphasize that the only three countries which have any large deposits of chrome are Rhodesia, South Africa and Russia. If the pending legislation prevails, if we are cut off from Rhodesian chrome, then if the United Nations subsequently puts an embargo on trade with South Africa, which has been proposed, if that should be approved, then we would be cut off from trade with that country, the second largest chrome-producing country in the world.

That would leave us completely at the mercy of Russia. That is the only place where any large quantities of chrome could be obtained if the other two sources were cut off.

The United Nations declared an embargo on trade with Rhodesia because it did not like her racial policies. Well, South Africa has very similar racial policies. So if it is logical to cut off trade with Rhodesia, certainly for that same reason it is logical to extend that embargo to South Africa.

I just want to suggest that the Senate yesterday passed an appropriation bill for the Department of Defense of approximately $75 billion. Were it not for the potential threat from Communist Russia, the American taxpayers would not be called upon to appropriate such a large sum as $75 billion for defense purposes.

Yet if the views of some Senators prevail and S. 1868 prevails, the United States would be cut off from its largest source of chrome and would become even more dependent than it is now on chrome from the Soviet Union. So I think it is a very dangerous position in which the United States may find itself. But since this is almost the anniversary of the United Nations sanctions which declared an embargo on Rhodesia, I thought I might mention a few facts in that regard.

In arguing the case in favor of sanctions against Rhodesia, the Ambassador to the United Nations, Arthur Goldberg, said this:

> What is happening in Rhodesia now is an effort to perpetuate control by 6 percent of the population over the other 94 percent.

I do not dispute the facts at all, but is it not a fact, I ask the Senate, that the Soviet Union, members of the Communist Party comprise about 1 percent of the population or less and, acting through a few leaders, control the other 99 percent of the people of that nation of nearly 200 million people?

Yet no effort is made to embargo trade with Russia. As a matter of fact, just the opposite. The American taxpayers have financed the disastrous wheat deal with Russia—subsidized trade with Russia, and which has proved very costly to the American taxpayer.

Is it not a fact that a handful of men control the destinies of all the people of Albania, to take another example?

Is it not a fact that Fidel Castro, almost single-handedly, operates through a small Communist cadre and controls the lives and fortunes of 7 million Cubans?

Is it not a fact also that in the world's largest nation, China, the lives of 700

million persons are controlled by a small dictatorship?

So when we say we want to embargo trade with a particular country because we do not like its government or we do not like the policies of a particular government, then it seems to me we are getting onto very dangerous ground. I would suspect that in most countries of the world there are some governmental policies with which, in one respect or another, the American people would disagree.

So if we are going to set that as criteria, where we attempt to interfere in the internal affairs of other nations, then it seems to me we are getting onto very dangerous ground.

I happen to think it was an unprincipled act on the part of our Government to have participated in the embargo on trade with Rhodesia. Rhodesia is a peaceful country. By no stretch of the imagination can it be called a threat to world peace. But the legislation which Congress enacted does not repeal the trade embargo except it does permit the United States to import a strategic material if that same strategic material is being imported from a Communist-dominated country.

To my way of thinking that is an important, sound, and necessary thing to do, unless we want to put ourselves pretty much at the mercy of a nation against which we are spending $75 billion annually to arm ourselves.

What about the legality of what the United Nations Security Council did on December 16, 1966?

One of the foremost authorities on international law in recent years was the late Dean Acheson, former Secretary of State. I think that he would be generally recognized as a foremost expert on this subject. Mr. Acheson was emphatic in his view that the only violation of law involved in the Rhodesian situation was the act of imposing sanctions in the first place.

In testimony before the Subcommittee on African Affairs of the Committee on Foreign Relations, July 7, 1971, Mr. Acheson had this to say:

> 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 5 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 50 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.

That is the view of Mr. Acheson, who certainly was as well qualified as is any of the proponents of the repeal of the Byrd amendment to pass judgment on questions of international law. I do not pretend to be an expert on international law. I am not a lawyer by profession. But Secretary Acheson was such an expert.

Even those who disagree with Mr. Acheson's interpretation—and I recognize that interpretations of international law may vary—should acknowledge that his view cannot be dismissed lightly. More important, it would seem to me that, in view of the varying ideas about international law, those who have the interests of this country at heart, especially those designated to represent this country in an international body, would have some hesitation about branding their own Government a law-breaker.

I point out, Mr. President, that the proposed legislation, S. 1868, which is now before the Senate, states in its preamble that its purpose is to make the United States a law-abiding Nation. I should think that any Member of Congress would find it very difficult to vote for a measure which brands the United States as having acted illegally. Why has it acted illegally? It has acted illegally, according to the proposed legislation, because the Senate passed legislation, the House passed legislation, the President signed legislation, and the courts upheld the legislation permitting our country to import a strategic commodity from another country. Of course, the United States did not act illegally; and, as I have said, that matter has been carried to the courts. A large group from the House of Representatives took this matter to the Federal courts, and the Federal courts decided the issue in favor of the action taken by Congress.

I wish to read one additional comment from the speech by Senator CANNON, the chairman of the Stockpile Subcommittee of the Committee on Armed Services. He 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 it from the Soviets, in spite of their harassment of the Jews in Russia.

It seems to me that those who are so concerned about the policies of some African countries should exhibit equal concern about the persecution of the Jews in Russia. I have seen no evidence whereby any of the proponents of the pending measure have urged an embargo on all trade with Russia because of the Soviet persecution of the Jews.

Mr. McGEE. Mr. President, throughout the course of debate on the Rhodesian chrome issue, I have continually warned of the potential disastrous consequences for this nation in black Africa should the United States continue its violation of United Nations sanctions against Southern Rhodesia.

I have warned that the future economic viability of this country is inextricably tied to what our relations with black Africa and the rest of the developing world will be. I have suggested that U.S. businesses would be well-advised to assist the U.S. Congress in efforts to place us back in compliance with U.N. sanctions, because their stakes in Africa are as great as our national stakes.

I have warned that the United States needs access to the vast, rich, unexploited natural resources of black Africa and to potential export markets on that continent if we are to maintain our position as a major economic power in the world. However, I have also warned that this Nation's foreign policy has to become more sensitive to the needs and aspirations of the developing world if our own well-being is to be maintaind.

Therefore, it was with considerable interest that I read an article which appeared in the September 1973 publication of The World Today magazine. The article, entitled "Britain and Rhodesia: The Economic Background to Sanctions," pointed out how much more farsighted both the British Government and British business interests are in their approach to the question of Rhodesia. However, it is not without solid foundation.

For example, the authors of the article, two postgraduate students at Oxford University, made the following observations of British business attitudes on the Rhodesian sanctions question:

> It must be emphasized that Rhodesia is only one of a number of underdeveloped countries in the area and, with few exceptions, British companies would be willing to lose their interests there to safeguard the lusher pastures to the north. For it is in black Africa that the future must lie. Reserves of labour and resources have hardly been touched, and the larger population concentrations provide ample opportunity for local market expansion on the basis of the surplus from the mineral and agricultural sectors. In addition, the strategic importance of many of Africa's commodities and the likelihood of new large mineral deposits make it essential to maintain British interests in the area. The growing Nigerian oil industry, which now provides 10 percent of the UK's consumption (together with the possibility of large reserves elsewhere) adds a sense of urgency to this conclusion.
>
> This argument now seems to be widely accepted by British industry, at least for the long run.

The authors in their conclusion also noted the following.

> Both sections of this article have led to the same conclusion; there is no economic case for the removal of sanctions in advance of a settlement that is acceptable to African opinion. At first sight the maintenance of sanctions appears an unattractive option, but to lift them would produce few gains. British

companies would regain contact with their subsidiaries, but this is unlikely to affect the overall profitability, and the trade links lost to the sanctions-breakers will be hard to re-establish. Besides, Rhodesia's elaborate system of capital and trade controls could not be dismantled overnight. Rapid trade liberalization would damage the manufacturing sector and allow the excess liquidity in the economy to spill over into inflation. The country has a considerable outstanding debt commitment—estimated at R$221 m., plus R$99 m. interest and debt arrears—to which must be added the profits of UK firms awaiting to be remitted. Rhodesian funds in London are less than a tenth of this sum.

On the other hand, a solution labelled as a 'sell-out' by black Africa would inevitably have harmful consequences. The goodwill generated by the Pearce Report and the Government's careful overtures to Nigeria would be thrown away. It is impossible to cost the resulting retaliation, but British investors are well aware of the possibilities. There may be some nationalization, although inroads have already been made into British capital by the more radical governments and dependence on foreign skills and technology is likely to remain. More important perhaps will be the effect on new investment and trade. As a member of the EEC, Britain is now in a good position to establish an economic presence in the Associate States (of black Africa).

Crucial contacts could be denied to her at little cost to the country concerned. Trade flows could be diverted, particularly when governments are a major buyer. The stake in Rhodesia is simply not worth a loss of this order, and there would be no compensation gains elsewhere south of the Zambezi. Britain cannot afford to be squeezed out of profitable new markets.

This is a particularly important aspect of the Rhodesian sanctions question. Right now, U.S. private investment in Southern Rhodesia is estimated to be $57 million. In black Africa our private investment is estimated to be over $3 billion. The British business community readily recognizes the disparity of this economic relationship and have adjusted in order to avoid long-range disastrous consequences. This is something the U.S. business community has not recognized and, as a consequence, seriously jeopardizes both their interest and our own broader and much more vital national interests.

The authors of the article recognize that the sanctions program has had substantial leaks since its inception. I do not think that the supporters of S. 1868 will deny that. The authors demonstrate that Southern Rhodesian exports are now at nearly the same level they were prior to the unilateral Declaration of Independence some 8 years ago. However, they recognize that sanctions have had a considerable impact as evidenced by the tremendous external debt the Smith regime has incurred during the sanctions period.

There are many lessons we can learn from the manner in which both the British Government and British business community have approached the Rhodesian question. They have recognized the shifting political and economic forces in the international community today. They realize the balance of economic power is increasingly shifting to the developing world. They have adjusted to this reality, an adjustment that some of our own business leaders have not made and which many in this body have not recognized as having to be made.

As I have pointed out in previous statements, while the maintenance of the balance of military power in the world today is still an important ingredient in international stability, we are fast approaching the day where the balance will shift from military to economic power. If we do not recognize this fact of life before it is too late, it will matter little how militarily powerful we are. For as history demonstrates, military power is commensurate with economic power. If we deteriorate economically, we become a second-rate nation both militarily and industrially.

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:

BRITAIN AND RHODESIA: THE ECONOMIC BACKGROUND TO SANCTIONS

(By Michael Williams and Michael Parsonage)

(NOTE.—The authors of this article are postgraduate students at Nuffield College, Oxford.)

As the eighth anniversary of Rhodesia's UDI approaches, the UK Parliament will soon be discussing yet again the value of sanctions and their imposition for another year. Over the last eighteen months, there seems to have been a growing appreciation both in Whitehall and in British industry that there is a very real economic case for the maintenance of sanctions, quite apart from the political and ethical ones that have had to take the burden of the argument in the past. In this article, we reinforce this reasoning by outlining the extent of Britain's economic interests north and south of the Zambezi. We concentrate primarily on trade and direct investment and, while this means ignoring some of the interactions with other money flows such as portfolio investment or aid, it is possible to give an idea of the balance of interests.

TRADE

Britain's trading interests in sub-Saharan Africa are heavily concentrated, both geographically (on the Commonwealth countries and South Africa) and in terms of commodity composition (with the UK exporting manufactures in exchange for foodstuffs and raw materials). This concentration reflects the legacy of an imperial past. At the beginning of the 1950s, UK trade with the former colonial territories and Dominions displayed an artificially high degree of integration and interdependence, a situation developed during the period of imperial expansion, consolidated by the elaborate apparatus of preferential trading arrangements set up at Ottawa in 1932, and further strengthened by the bulk-purchasing agreements of the war years and restrictions on trade with the dollar area. Political disengagement has been paralleled by changes in the economic environment, and intensity of trade relations with South Africa and the Commonwealth States has declined steadily, particularly in the face of growing competition from the EEC, the U.S., and Japan. But even if falling in relative terms, Britain's trade links with Africa as a whole, and with South Africa and the Commonwealth countries in particular, are much closer than those of her main trading competitors (see Table I).

TABLE 1.—AFRICAN IMPORTS FROM LEADING SUPPLIERS 1962-63 AND 1969-70

	1962-63 (percent)					1969-70				
	Total imports, £m	United Kingdom	European Economic Community	United States	Japan	Total imports, £m	United Kingdom	European Economic Community	United States	Japan
Commonwealth	596	32.1	18.5	6.6	9.4	1,078	28.4	20.5	11.1	7.4
Southern Africa	769	27.5	18.0	14.1	4.0	1,646	20.4	24.4	15.7	4.3
European Economic Community Associates	409	3.4	64.1	10.4	1.4	925	4.1	63.1	8.2	4.3
Other African States	94	8.8	32.4	22.3	7.3	135	8.5	35.6	19.3	9.9
Total	1,868	22.7	29.0	11.3	5.3	3,784	18.3	33.1	12.7	5.4

Source: IMF, Direction of Trade, 1970 and earlier issues.

Nor is there any reason to expect this situation to change dramatically in the foreseeable future. As a new member of the EEC, it is possible that the UK will be affected in her relations with the developing world by the bias of the Community towards Africa. At the least, she should enter into closer relations with the eighteen States currently associated with the Community under the Yaounde Convention. But it is unlikely that this will be at the expense of existing links with other African countries, though the outcome here may be affected by the relations formed between the enlarged EEC and the Commonwealth "associables".

On a broader front, some have talked of Britain being faced with a choice of interests in Africa but, except perhaps in the event of a major confrontation between north and south, there is no reason why she should be forced to choose among her trade partners. As a general proposition, trade flows are less sensitive than foreign investment to political change. Though it has been argued that trade between developed and developing countries under present arrangements involves a degree of exploitation, the issue does not obtrude nearly so much as with the foreign ownership of domestic resources. Political developments can have a major impact on foreign investment—witness the decline in flows to South Africa after Sharpeville—but trade patterns are normally less volatile. Where major changes do arise, these can usually be attributed to economic rather than primarily political factors and, so far

as economic change can be predicted, there seems no overwhelming reason to expect any major shifts in the pattern of Anglo-African trade.

Having said that economic factors are the main determinants of trade patterns, it is ironic that we should now examine a situation where political considerations have been paramount—Britain's trade relations with Rhodesia and the effects of sanctions. We shall concentrate mainly on the trade effects of sanctions, rather than on their repercussions on the internal Rhodesian economy. Comprehensive mandatory international sanctions against Rhodesia were not introduced immediately after UDI in November 1964, but were phased in over the period up to May 1968. The consequent time lags involved played an important part in allowing Rhodesia to devise means of minimizing the full effects, as did the decision of South Africa and Portugal to continue trading with the outlawed State.

So far as their purpose was to eliminate trade between Rhodesia and the rest of the world, sanctions have largely been a failure. Rhodesia has had little difficulty in evading sanctions and, after falling quite sharply in 1966, her trade has risen consistently to the point where it is now above pre-UDI levels. Exports have been disguised as goods originating in South Africa, Mozambique, and Malawi; these goods are recorded by a recipient country as imports from the intermediary, but are not correspondingly recorded as exports by the latter, and the resultant discrepancy gives some indication of the amount of Rhodesian trade reaching the world in this indirect way—see Table 2.

TABLE 2.—RHODESIAN EXPORTS 1967–71

[In millions of U.S. dollars]

	1967	1968	1969	1970	1971
1. Rhodesian exports	238	234	297	346	379
2. To reporting countries	96	68	48	50	48
3. To South Africa	80	80	85	95	90
4. Unaccounted for (1−(2+3))	62	86	164	201	241
5. Reexports	17	12	10	8	9
6. 4 plus 5	79	98	174	209	250
7. Reported exports by South Africa, Mozambique, and Malawi	1, 419	1, 568	1, 558	1, 549	1, 824
8. Reporting countries' imports from above countries	1, 555	1, 766	1, 826	1, 859	1, 824
9. Difference (8−7)	136	198	268	310	250

Source: U.N. Security Council, 5th Report of the Security Council Committee Established in Pursuance of Resolution 253 (1968) Concerning the Question of Southern Rhodesia, Annex V (February 1973).

Note: Reexports included as importing countries identify imports without distinction between national exports and reexports. Rows 7 and 8 refer to trade between 23 major importing countries (listed in original source) and South Africa, etc. Imports adjusted for c.i.f. costs to allow comparability with exports, but some error may remain.

TABLE 3.—COMBINED ZAMBIAN AND MALAWIAN IMPORTS 1965 AND 1969

[In thousands of pounds]

Source	1965	1969	Change	Trend change	Sanctions gain/loss
World	125, 774	210, 872	+85, 098	+85, 098	
United Kingdom	26, 213	50, 728	+24, 515	+17, 746	+6, 749
South Africa	22, 084	48, 121	+26, 037	+14, 951	+11, 086
Rhodesia	42, 969	17, 923	−25, 046	+29, 090	−54, 136
EEC	9, 010	26, 368	+17, 538	+6, 100	+11, 258
United States	7, 056	18, 726	+11, 670	+4, 777	+6, 893
Japan	5, 156	14, 782	+9, 626	+3, 491	+6, 135

Note.—Trend change equals actual change in imports from a particular source that would have occurred between 1965 and 1969 if imports from that source had increased at the same rate as total imports. Sanctions gain/loss equals actual change minus trend change.

Source: Derived from figures in U.N. "Yearbook of International Trade Statistics," 1965 and 1969 editions.

Of Rhodesia's main exports, tobacco has caused the greatest difficulties in disposal. Production and trade of the main mineral products have been maintained without undue difficulty; this applies even to chrome and asbestos, whose origin is readily identifiable, suggesting that connivance at sanctions-breaking is being practised by importing countries on a fairly wide scale. Official action, however, is rarely taken. Between 1968 and 1972, 138 breaches of sanctions were reported to the UN (127 detailed by Britain) but few of these were pursued beyond the investigatory stage.

On the import side, greater commodity diversification has made it more difficult to analyse the precise effects of sanctions, but in general it seems clear that Rhodesia has had little difficulty in obtaining most goods. The major problem has not been finding sources for imports (again the main channel has been South Africa) but in finding the foreign exchange to pay for them. While not greatly reducing the volume of Rhodesia's trade, sanctions have caused a fairly sharp adverse movement in her terms of trade, which has been reflected in a shortage of foreign exchange. Policies of import substitution have been pursued from an early stage, but shortages have still been felt, especially in heavy machinery and railway supplies.

Looking now at Britain's trade interests, sanctions do not appear to have had any profound adverse effects. The main direct impact has probably been on the terms of trade. The great bulk—over 80 per cent—of imports received from Rhodesia before UDI consisted of foodstuffs and tobacco and, though there will have been some cost associated with finding new sources, especially for tobacco[1]), this will not have been very great. As regards UK exports, while sanctions largely eliminated trade between Rhodesia and the UK (though some goods have continued to get through via South Africa), there is little reason to suppose that alternative markets have not been found, with only a marginal deterioration in the terms of trade. To some extent, these alternative markets were provided for the UK, as sanctions forced countries like Zambia and Malawi to reorient their import trade away from Rhodesia (though other countries have benefited as well, especially South Africa). A crude attempt to show this is given in Table 3, where we estimate that UK exports to Zambia and Malawi increased as a result of sanctions by about £7m. between 1965 and 1969 (compared with pre-UDI UK exports to Rhodesia of over £30m.).

To be set against these trade-deflecting effects is the less quantifiable gain in goodwill enjoyed by Britain with black African countries, especially Nigeria. Among Western countries, Britain has been the most scrupulous observer of sanctions and apparently a number of black African countries have actively encouraged a "buy British" policy in recognition of her stand, though the quantitative importance of this is not easily ascertainable. Moreover, goodwill may be reflected not only in increased trade, but in other ways as well, for example, greater readiness to accept investment ventures by British firms.

The future of Anglo-Rhodesian trade will obviously depend largely on developments in the political situation. But whatever the past effects of sanctions, it is unlikely that their removal would lead to any great gain. Certainly, one would not expect a simple reversion to the status quo ante. At the general level, the main effect of sanctions has been to place Rhodesia firmly within South Africa's economic orbit. South Africa has increasingly taken over Britain's trade links with Rhodesia and, except perhaps in the event of a major political shift in Salisbury, this is probably irreversible. Furthermore, to the extent that Rhodesia's trade with the world outside southern Africa might increase if sanctions were lifted, the major beneficiaries would probably be those countries that have hitherto played a part in evading sanctions; in other words, their removal would simply legalize existing trade links and, given that Britain has been the least offending country in this respect, this could only be to the advantage of others.

While there seems little to be gained by Britain from the removal of sanctions, there could be a great deal to be lost if this were achieved through a political settlement considered unacceptable by black Africa. How far this might affect UK trade is debatable, though conceivably some form of embargo could be imposed on UK goods; the effects would probably be felt more on investment. Nevertheless, the general point should be taken that British trade interests will not be served unambiguously by the removal of sanctions. If a settlement is to be achieved, much may depend on the nature of that settlement. At the least, the UK must accept that a sizeable part of the old trade connection with Rhodesia has been lost permanently.

INVESTMENT

Britain accounts for 38 per cent of all foreign investment in sub-Saharan Africa. South Africa (with British-owned assets amounting to £647m. in 1971) and Nigeria (£141m.) are particularly important to her, the other major concentrations being in Rhodesia (£99m.), Ghana (£63m.), and Kenya (£62m.)—see Table 4. If investments abroad by South African companies with British shareholdings were included, the totals would be increased—especially in Zambia where British investors hold shares in the copper mines worth over £50m. The British data also exclude investment in the petroleum sector; the book-value of Shell-BP's investment in Nigeria alone is estimated at £210–250m.

[1] The Imperial Tobacco Group, in a private note, estimate that by the time Rhodesian stocks were liquidated, the cost to their company of finding new import sources was around £10m. in a full year, though this was not a continuing cost.

TABLE 4.—UNITED KINGDOM DIRECT INVESTMENT IN AFRICA

	Book value			Rate of return average 1969–71, percent	Net annual investment	
	1962 £m	1971 £m	Growth, p.a. percent		Average 1969–71, £m	From unremitted profits, percent
South Africa	290.0	647.1	9.3	13.3	48.4	80
Rhodesia	59.2	98.9	5.9	8.3	8.8	82
Nigeria	92.8	140.8	4.7	12.0	22.3	54
Other Commonwealth	173.3	202.9	1.7	13.7	12.8	56
Other Africa	83.1	101.7	2.3	8.9	3.6	----------
Total	698.4	1,191.4	6.1	12.2	95.9	70

Notes.—Investment by oil companies, and banking and insurance companies, is excluded. Rate of return equals annual earnings book value at the end of the same period. For other definitions see original source.

Source: Derived from Board of Trade Journal, Sept. 23, 1970 and earlier editions, and Department of Trade and Industry, Business Monitor, M4: Overseas Transactions: April 1973 and earlier editions.

New investment flows show the same pattern and although South Africa is still very important, the inclusion of the oil sector underlines the significance of Nigeria as the greatest magnet for British capital at the moment. In other developing countries the manufacturing sector is becoming increasingly important, compared with the earlier emphasis on mining and distribution.

There seems every reason to expect this general pattern to continue; investment in South Africa is expanding rapidly, but Commonwealth Africa, led by Nigeria, is more than keeping up. In spite of sanctions British-owned subsidiaries in Rhodesia also seem to have prospered on the basis of reinvested earnings. It is clearly in Britain's interests to maintain her investment in all these areas, but future political developments may not permit this simple solution, and it is worth assessing the balance of interests.

First, the often-misunderstood role of South Africa must be clarified. Britain will certainly want to safeguard her important investment there; over 500 British companies have subsidiaries in South Africa, twenty-five of them being among the top 100 in the economy. But a confrontation over Rhodesia would in no way require British investors to make the difficult choice between their investments in South Africa and those north of the Zambezi.

UDI was a political embarrassment to South Africa, as well as an economic windfall. The Government in Pretoria may have helped the regime to consolidate, but ultimately its own interest will be best served by a stable and widely acceptable government in Rhodesia—of whatever colour. South Africa is beginning to dominate the economic life of her neighbours. An expansion of the customs union with South-West Africa, Botswana, Lesotho, and Swaziland into other countries is a long-run possibility, but even without formal links, South African trade and investment are important in Angola, Mozambique, Rhodesia, Zambia, and Malawi. Indeed, sanctions have given a fillip to trade with all these countries. Those British investors with holdings in the more dynamic South African corporations clearly benefit from this expansion, although others may sense the increased competition for markets and profitable investment outlets to the north. South Africa is now a developed country and no longer part of the British imperial periphery. Indeed, South Africa herself is taking over as the metropolitan power from Britain.[2] She would clearly be unwilling to jeopardize this shift in the balance of economic power by any overt action aimed at protecting Rhodesia against political change, if this further weakened her own international position by drawing the attention of hostile outsiders. The UK's position in the South African economy is unlikely to be affected whatever the action—and reaction—over sanctions in other parts of the continent.

The relevant comparison is between British investment in Rhodesia and the countries to the north, because it is here that the clash of interests would arise. Over 150 British companies have subsidiaries in Rhodesia; the figure is probably greater if investments by banks and other financial interests are included. It has been estimated that more than one-third of the fifty largest British manufacturers have a direct interest in Rhodesia and that in 1960 two-thirds of the country's net profits accrued to foreign companies.[3] The value of Rhodesia's mineral production is now over R$100m., most of which is exported in spite of sanctions. Major British interests in the sector are held via Lonrho (copper and gold), the Anglo-American Corporation of South Africa (nickel, coal, and iron ore), the Rio Tinto-Zinc Corporation (nickel and gold), and Turner and Newall (asbestos). In the rest of the economy important foreign companies include Anglo-American, Forestal Timber and Railways, Lonrho, which has a 62.5 per cent share in the pipeline from Beira and variety of other investments, and Shell. Among the companies most affected by sanctions have been Ford and British Leyland, whose plants are now assembling French, Italian, and West German vehicles.

In spite of sanctions, most British companies have been able to continue in operation; indeed, the importance of Rhodesian minerals, coupled with the highly protected market, has kept up profitability and allowed considerable expansion on the basis of reinvested earnings. Yet it should be noted that Rhodesian operations are crucial to very few British companies and, where they are, head offices have learned to diversify and suffer the loss of direct control and remittances. Besides, most companies have investments north of the Zambezi and would be unlikely to risk their more important operations there in the event of a radical Commonwealth reaction to an 'unacceptable' settlement. Among the big three who stand to gain the most from the lifting of sanctions—Lonrho, RTZ, and Turner and Newall—Lonrho is now more committed to black Africa. Rhodesia is still important to the group's overall profitability but it has growing and important interests in no less than thirteen independent developing African States.

It must be emphasized that Rhodesia is only one of a number of underdeveloped countries in the area and, with few exceptions, British companies would be willing to lose their interests there to safeguard the lusher pastures to the north. For it is in black Africa that the future must lie. Reserves of labour and resources have hardly been touched, and the larger population concentrations provide ample opportunity for local market expansion on the basis of the surplus from the mineral and agricultural sectors. In addition, the strategic importance of many of Africa's commodities and the likelihood of large new mineral deposits make it essential to maintain British interests in the area. The growing Nigerian oil industry, which now provides 10 per cent of the UK's consumption (together with the possibility of large reserves elsewhere) adds a sense fo urgency to this conclusion.

This argument now seems to be widely accepted by British industry, at least for the long run.[4] Nevertheless it is true that new foreign investment in black Africa has been modest in recent years, except in Nigeria. Parallel to this there has been some divestment associated with nationalization by African governments. Naturally enough it is the mineral sector with its overtones of "exploitation" that has attracted the most attention. The chain that started with Union Minière in 1966 has led to participation agreements in Zambia, Sierra Leone, and recently Nigeria. Mineral assets have also been affected in Ghana, and manufacturing companies and banks in Tanzania, Uganda, and Zambia. Coupled with these developments is the general pressure for the renegotiation of contracts and the imposition of localization requirements.

Increasingly, however, British investors have accepted the principle of participation. They realize that not only is the actual proportion of total assets involved really rather small but also the great majority of nationalizations (and certainly all the large ones) have been fully compensated. The take-over is frequently only partial, typically leaving the investor with a 49 per cent shareholding, and management and sales contracts which allow him considerable leverage and the means to guard against the disruption of global operations. The fact remains that Africa is extremely short of management and technical skills and will inevitably rely on foreign expertise to develop its resources. Companies have begun to recognize the advantages of working close to government; it is often the largest customer in the economy, and not only will it shoulder some of the risk of an enterprise, but it will also be less inclined to put other obstacles in its way. As some countries (for example, Italy) and companies (for example Shell and perhaps Lonrho) have proved, the advantage lies with those that are prepared to be flexible.

SANCTIONS AND THE FUTURE

Both sections of this article have led to the same conclusions; there is no economic case for the removal of sanctions in advance of a settlement that is acceptable to African opinion. At first sight the maintenance of sanctions appears an unattractive option, but to lift them would produce few gains. British companies would regain contact with their subsidiaries, but this is unlikely to affect overall profitability, and the trade links lost to the sanctions-breakers will be hard to re-establish. Besides, Rhodesia's elaborate system of capital and trade controls could not be dismantled overnight. Rapid trade liberalization would damage the manufacturing sector and allow the excess liquidity in the economy to spill over into inflation. The country has a considerable outstanding debt commitment—estimated at R$221m., plus R$99m. interest and debt arrears[5]—to

[2] For example, British-owned subsidiaries have considerable autonomy, and new investment is largely on the basis of reinvested profits—80 per cent over the period 1969–71 (see Table 4), compared with 55 per cent in the Commonwealth countries.

[3] G. Arrighi, *The Political Economy of Rhodesia* (The Hague: Mouton, 1967), p. 49.

[4] Particularly in view of the likely falls in the rate of profit in South Africa as a result of political and economic pressure for improvement of labour conditions.

[5] Colin Legum, *Africa Contemporary Record, 1971–2* (London: Rex Collins, 1972), p. 435.

which must be added the profits of UK firms waiting to be remitted. Rhodesian funds in London are less than a tenth of this sum.

On the other hand, a solution as a 'sell-out' by black Africa would inevitably have harmful consequences. The goodwill generated by the Pearce Report and the Government's careful overtures to Nigeria would be thrown away. It is impossible to cost the resulting retaliation, but British investors are well aware of the possibilities. There may be some nationalization, although inroads have already been made into British capital by the more radical governments and dependence on foreign skills and technology is likely to remain. More important perhaps will be the effect on new investment and trade. As a member of the EEC, Britain is now in a good position to establish an economic presence in the Associate States. Crucial contracts could be denied to her at little cost to the country concerned. Trade flows could be diverted, particularly when governments are a major buyer. The stake in Rhodesia is simply not worth a loss of this order, and there would be no compensating gains elsewhere south of the Zambezi. Britain cannot afford to be squeezed out of profitable new markets, and competition from continental Europe, the US, and Japan is severe enough without additional constraints. This position is not inconsistent with the maintenance of close links with South Africa, Angola, and Mozambique, although British firms there must not appear to be helping the Rhodesian regime to consolidate.

The political wisdom and moral propriety of the argument against sanctions has always been in doubt. In the present article we have tried to strengthen the new realization that there is also no economic case for their removal. Indeed, it is being argued in some circles that sanctions should be reimposed indefinitely. This would go a long way towards establishing Britain's commitment to black Africa and to avoiding the embarrassing international consequences of the annual policy debate. Pressure for a settlement can now only come from within Rhodesia and there is some evidence to suggest that continuing economic and psychological isolation will bring a political change. In the long run, Rhodesia will be recognized for the small country she is.

AUTOMOBILE EMISSIONS STANDARDS — UNANIMOUS - CONSENT AGREEMENTS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent—and I have cleared this with the Republican leadership and Mr. MUSKIE; and I understand, through Mr. MUSKIE, that it has been cleared with other Senators on this side of the aisle—that at such time as S. 2772, a bill to amend the Clean Air Act, as amended, is called up and made the pending question before the Senate, there be a time limitation on the bill of 30 minutes, to be equally divided between Mr. MUSKIE and the Republican leader or his designee; that time on any amendment be limited to 30 minutes; that time on an amendment by the Senator from Virginia (Mr. WILLIAM L. SCOTT) be limited to 1 hour; that time on any debatable motion or appeal be limited to 20 minutes; and that the agreement be in the usual form.

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

ORDER FOR ADJOURNMENT TO 10 A.M., MONDAY, DECEMBER 17

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 10 a.m. on Monday next.

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

ORDER FOR RECOGNITION ON MONDAY OF SENATORS MANSFIELD AND GRIFFIN, AND FOR CONSIDERATION OF S. 2772, THE CLEAN AIR ACT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Monday, after the two leaders or their designees have been recognized under the standing order, the distinguished majority leader, the Senator from Montana (Mr. MANSFIELD), be recognized for not to exceed 10 minutes; that he be followed by the distinguished Republican whip, the Senator from Michigan (Mr. GRIFFIN), for not to exceed 10 minutes, at the conclusion of which the Senate proceed to the consideration of S. 2772, a bill to amend the Clean Air Act.

The PRESIDING OFFICER. Without objection, it is so ordered

ORDER FOR CONSIDERATION OF THE FOREIGN AID APPROPRIATION BILL ON MONDAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Monday, upon the disposition of the Clean Air Act, the Senate proceed to the consideration of the foreign aid appropriation bill.

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

ORDER FOR CONSIDERATION ON MONDAY OF THE NOMINATION OF SENATOR WILLIAM B. SAXBE TO BE ATTORNEY GENERAL OF THE UNITED STATES

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that upon the disposition of the foreign aid appropriation bill, H.R. 11771, on Monday, the Senate go into executive session to consider the nomination of Mr. WILLIAM B. SAXBE to be Attorney General of the United States.

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

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

SOCIAL SECURITY AMENDMENTS

Mr. LONG. Mr. President, the Senator from Louisiana has been privileged to see a news release by the Representative from the Second District of Oregon, Mr. ULLMAN, who has been acting as chairman of the House Ways and Means Committee in the absence of the Honorable WILBUR MILLS, who had had some difficulty with his back which entailed a rather painful operation keeping him away from sessions of the House for much of this session of Congress.

The Representative from Oregon (Mr. ULLMAN) would seek to blame the Senate, in that it has not seen fit to pass the House-passed social security amendments without Senate amendments.

Now, Mr. President, it has usually been the case that the House has given the chairman or acting chairman of the Ways and Means Committee a closed rule which precludes other Members of the House from offering amendments which, if supported by a majority of the House, would represent the will of the House.

There is no rule in the Senate which could give the chairman of the Committee on Finance any such power to limit what the Senate is to consider to those matters recommended by the Finance Committee, or to prevent the Senate from considering anything it wishes in addition to what the House sent us. I do not think the Senate favors doing business under these kinds of limitations. The other body can do business as they think they should. But I have yet to have the first Member of the Senate ask me to do business on such a basis, that the Senate would simply pass a House bill exactly as it was passed by the House, without any Senator in this body being privileged to offer an amendment.

I think it is inappropriate for a Member of the House to tell any Senator or the Senate what amendment can be placed on a bill, just as it would be inappropriate for any of us in the Senate to tell the House what bill they can or cannot pass.

So I will have to take the view, Mr. President, that the Senate made clear to the Senate managers of the bill what the Senate thought should be legislated in the area of social security with the amendments that the Senate voted; and I deem it my duty to uphold the position of the Senate.

I hope this does not result in the kind of fiasco we have seen on occasion where members of the Appropriations Committees could not agree on the room in which they were to meet and the Government was faced with the prospect of the Government coming to an end because they could not agree on what room they would meet in.

I want to make clear that I will meet with House Members at any place. I am accustomed to going to them at any place where they want to hold meetings. I will sit on the low chair and let them sit on the high chair.

All those sorts of indignities do not concern the Senator from Louisiana. But the one thing I would have to insist on is that the Senate be privileged to express its views on legislation, and that the House at least show the consideration of considering our amendments, if only long enough to say no.

There are many meritorious amendments that the Senate added to the social security bill when we legislated in that area. Some of them would cost a great amount of money. The House could say no to any one of them. But there is no doubt in my mind that, if permitted to vote, the House would agree to a considerable number of those Senate amendments, because they contain such compelling logic.

I would only urge that the acting chairman of the Ways and Means Committee in the House give House Members a chance to vote on them. I do not mean a vote on a shucking operation by saying, "All right, I agree that all Senate amendments be shucked from the bill and that the House bill go back to the Senate just the way we voted before." I mean a real vote, on the basis that each amendment be given consideration, such as it is given in the Senate, where a Senator offers an amendment, it is briefly explained, and then is voted on by Senators.

There is nothing I would like to do more than move forward on the 11-percent increase in social security voted by the House Ways and Means Committee. I will point out that the Senate voted more than that, and a great deal more for the benefit of the aged, the poor, the disabled, and the blind in this country. It would be a great injustice to the poor, the aged, the disabled, the blind, the retired people of America for the House to decline to even consider measures for which the Senate voted by an overwhelming majority.

The respect that each House has for the other, of course, is important. But far more important is the question, What is for the good of the people and in the national interest?

These matters should not be decided on the basis of who is right; they should be decided on the basis of what is right. Regardless of whether an amendment was initiated by the Senate or the House, or whether the proposal was initiated by a Republican or a Democrat, if it is right, we should do it; if it is wrong, we should decline to do it.

It is for that concept that I will contend as long as I am in this body.

This matter of letting pride of authorship cause us to do something other than what logic and conscience would dictate is something the public cannot understand, and it is something which we would all do well to cast aside.

One of our most distinguished public servants in the State government of Louisiana had a sign in his office which said:

> You can achieve almost anything provided you can avoid quarreling about who gets the credit for it.

Sometimes that base and improper consideration—who gets the credit—keeps people from doing what should be done in the national interest. Often it is a good idea that was not even generated by a Senator or a Member of the House, but was generated by some conscientious person who never has and probably never will serve here; but if the idea is good, it ought to be considered, and if it is worth appearing on the statute books somewhere, it should find its way there, regardless of whether any Member of the House or any Senator or any President offered that particular proposal.

PERSONAL STATEMENT

Mr. ERVIN. Mr. President, ever since the select committee was created to investigate the Watergate affair, those who are opposed to discovery of the truth relating to the Watergate affair have been striving to drag red herrings across the trail of those who are entrusted by the Senate with the duty of investigating that affair.

The latest, which has come to my attention as a result of many phone calls I have received from the news media, was a statement allegedly attributed to some unidentified White House aide that some questions ought to be asked about my income tax returns.

Now, in view of the fact that I have never made any statement whatsoever relating to the controversy raging about the President's income tax returns, I am somewhat surprised to hear this statement made. I have been preparing my own Federal and State tax returns for about 50 years now. When I practiced law, I did not prepare income tax returns for clients, but I did prepare many inheritance tax returns which were filed both with State and Federal taxing authorities. And it is my proud boast that every tax return I have ever filed, either on my own personal income tax or every inheritance tax return I have ever filed, has been accepted by the Federal and State taxing authorities just as I wrote them.

When they started the prepayment of income taxes on estimated income a few years ago, I adopted a policy of overpaying my taxes both to the State of North Carolina and to the Federal Government, in order that I might claim a refund and thereby get an audit made of my tax return.

I have all of my tax returns. I only have those for 1972 in Washington; the rest are in North Carolina.

I do not know who this unidentified party was who tried to do character assassination by insinuation without any basis in fact, but if he will identify himself and come down to North Carolina, I will let him memorize all of my tax returns for the last 50 years.

I am right proud of my income tax returns that have been prepared by me. They are very voluminous. I tell the Government about every penny of money I receive and every penny of money I disburse, which has any effect whatsoever upon my liability for income taxes. And when they get my income tax returns, they weigh so much that I am certain the IRS officials say, "Well, this ought to bring enough to liquidate the national debt." But when they examine those returns they find in every case I have overpaid my taxes and they have to give me a refund.

Last year, 1972, I owed $15,483.55 in Federal income taxes. However, I overpaid them, because I paid $17,735 as income tax on estimated income. So I claimed and got a refund from the Federal Government for the 1972 taxes of $2,251.45.

I also paid State and local taxes, and I paid State income taxes where my principal residence is and always has been. I paid State income taxes and local taxes aggregating $4,748.16. That is, I paid that much justly. Of that, $3,280.00 was State income tax, but I actually paid them $303.62 more than that, so I got a refund from the State of North Carolina of $303.62.

Normally, I have opposed compulsory disclosure bills because I think they erect the wrong standard for judging the actions of public officials.

I think that every public official should be judged on the basis of the wisdom or the unwisdom of his official actions. And when we pass a compulsory disclosure law, there is a tendency to erect a wrong standard of judgment and try to find some hidden motives for the action of a legislator, whether his action is wise or foolish.

Mr. President, in view of the concern expressed by this unidentified man and his suggestion that there should be some questions asked about my income tax return, I ask unanimous consent that the joint income tax return filed with the Internal Revenue Service by my wife and me for the year 1972 be printed in the RECORD.

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

U.S. INDIVIDUAL INCOME TAX RETURN

S J JR & MARGARET BELL ERVIN

Occupation: yours—U.S. Senator; Wife's—housewife.

FILING STATUS

2. Married filing joint return (even if only one had income).

EXEMPTIONS

6. Yourself, regular/65 or over.
7. Wife (husband), regular/65 or over.
10. Total exemptions claimed, 4.

INCOME

11. Wages, salaries, tips, and other employee compensation, $46,169.16.
(See Exhibit "Income as a United States Senator).
12a. Dividends: $7,777.70; 12b. Less exclusion, $200; balance, $7,577.70.
13. Interest income: $1,639.37.
14. Income other than wages, dividends, and interest (from line 45): $8,054.27.
15. Total (add lines 11, 12c, 13 and 14): $63,440.50.
17. Subtract line 16 from line 15 (adjusted gross income), $63,440.50.

TAX, PAYMENTS AND CREDITS

18. Tax, check if from: Tax Rate Schedule X, Y, or Z, $15,020.63.
20. Income tax (subtract line 19 from line 18): $15,020.63.
21. Other taxes (from line 67): $462.92.
22. Total (add lines 20 and 21): $15,483.55.
23. Total Federal income tax withheld (at-

tach Forms W-2 or W-2P to front): $14,149.20.

24. 1972 Estimated tax payments (include amount allowed as credit from 1971 return): $3,585.80.

27. Total (add lines 23, 24): $17,735.00.

BALANCE DUE OR REFUND

29. If line 27 is larger than line 22, enter amount overpaid: $2,251.45.

30. Line 29 to be refunded to you: $2,251.45.

FOREIGN ACCOUNTS

Did you, at any time during the taxable year, have any interest in or signature or other authority over a bank, securities, or other financial account in a foreign country (except in a U.S. military banking facility operated by a U.S. financial institution)? No.

U.S. SENATE,
Washington, D.C., January 23, 1973.

In re Joint Federal Income Tax Return for 1972 of S. J. Ervin, Jr. (XXXXXXXXXXX) and wife, Margaret Bell Ervin (IRS XXXX XXXX), 515 Lenoir Street, Morganton, N.C. 28655.

INTERNAL REVENUE SERVICE CENTER,
Roosevelt Boulevard,
Philadelphia, Pa.

Although we are residents of North Carolina and have our permanent home at Morganton in that state as set forth above, we are sending our joint federal income tax return for 1972 to you because the tax forms supplied to us by the IRS, in substance, directed us to do so. We assume that the IRS directed us to do this because we reside in Washington, D.C., during the sessions of Congress, and receive our mail at 337 Senate Office Building, Washington, D.C. 20510.

This tax return shows a total federal income and self-employment tax for 1972 of $15,483.55.

We have made payments totaling $17,735.00 on these taxes in the following ways: (a) by withholding from the salary of S. J. Ervin, Jr., as a United States Senator, $14,149.20; (b) by an overpayment of our federal income and self-employment taxes for 1971, $2,095.40; and (c) by a check dated January 29, 1972, $1,490.40. We filed our tax return for 1971 with the Internal Revenue Service Center at Chamblee, Georgia, and made the cash payment mentioned above to the IRS at that point.

These things being true, we have overpaid our income and self-employment taxes by $2,251.45. Check for the refund of this overpayment should be forwarded to us at 337 Senate Office Building, Washington, D.C. 20510.

The information tax returns of the partnerships mentioned in this tax return are being filed with the IRS Center at Memphis, Tennessee, the Center serving the area where the partnerships are operated.

Sincerely yours,

S. J. ERVIN, Jr.

WAGE AND TAX STATEMENT

Employer's identification number, name and address above: Hon. Sam J. Ervin, Jr., U.S. Senate.

FEDERAL INCOME TAX INFORMATION

Federal income tax withheld: $14,149.20.

Wages paid subject to withholding in 1972: $42,500.00.

Employee's social security number: 578-52-3300.

PRESIDENTIAL ELECTION CAMPAIGN FUND STATEMENT

Name(s) as shown on your return: S. J., Jr. and Margaret Bell Ervin.

Your social security number XXXXXXXXXXX.

This form may be used to designate that $1 of your income tax be paid over to the 1976 Presidential Election Campaign Fund. Your wife (husband) may designate an additional $1 if you are filing a joint return. Participation will not result in any cost to you, but you may not participate unless the amount on line 21 of Form 1040A or line 20 of Form 1040 is at least as great as the $1 (or $2) designated.

If you wish $1 to be paid over to the candidates of a specific political party, check the first box and fill in the name of the political party. If you wish $1 to be paid over to a non-partisan general account for all eligible candidates, check the second box.

Your choice: Democratic Party.

Wife's choice: Democratic Party.

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35. Business income (or loss) (attach Schedule C): $6,172.20.

36. Net gain (or loss) from sale or exchange of capital assets (attach Schedule D): $1,464.25.

38. Pensions and annuities, rents and royalties, partnerships, estates or trusts, etc. (attach Schedule E): $41.29.

42. State income tax refunds (caution—see instructions on page 8) See exhibit "Miscellaneous Income"): $376.53.

45. Total (add lines 35 through 44). Enter here and on line 14: $8,054.27.

TAX COMPUTATION

51. Adjusted gross income (from line 17): $61,440.50.

52. (a) If you itemize deductions, enter total from Schedule A, line 40 and attach Schedule A: (b) If you do not itemize deductions, enter 15% of line 51, but do not enter more than $2,000. ($1,000 if line 3 is checked): $14,519.25.

53. Subtract line 52 from line 51: $48,921.25.

54. Multiply total number of exemptions claimed on line 10, by $750: $3,000.00.

55. Taxable income. Subtract line 54 from line 53: $45,921.25.

OTHER TAXES

62. Self-employment tax (attach Schedule SE): $462.92.

67. Total (add lines 62, 63, 64, 65, and 66). Enter here and on line 21: $462.92.

INCOME AS A U.S. SENATOR

The taxpayer, S. J. Ervin, Jr., received the following income as a United States Senator during 1972:

1. Salary as a United States Senator (2 U.S.C. 31) $42,500.00.

2. Mileage allowance as a United States Senator (2 U.S.C. 43) $168.00.

3. Transportation expenses as a United States Senator (2 U.S.C. 43b) $863.60.

4. Reimbursement of official expenses incurred in maintaining an office in home State (2 U.S.C. 53). Note: See Item 7 of the part of an attached statement entitled "Deductible Expenses as a United States Senator) $1,537.03.

5. Reimbursement of rent paid by taxpayer, S. J. Ervin, Jr., for office in his home State as set out in Item 6 of the part of the attached exhibit "Deductible Expenses as a United States Senator." $1,092.00.

6. Reimbursement of out of pocket expenses listed in items 4b and 4c of the Exhibit entitled "Deductible Expenses as a United States Senator", which were incurred and paid as counsel for the Senate in connection with the printing and distribution of the Senator's *amicus curiae* brief in the Mike Gravel Case in the Supreme Court, $8.53.

Total income as a United States Senator during 1972, $46,169.16.

Explanation of Item 5—From June 14, 1956, until December 1, 1972, the taxpayer, S. J. Ervin, Jr., and his brothers and sisters, Mrs. Laura Ervin Hall, Hugh T. Ervin, Miss Eunice W. Ervin, Dr. John W. Ervin and Miss Jean C. Ervin, owned the Ervin Building, a brick office building on South Sterling Street, Morganton, N.C., in equal shares as tenants in common. During this time, the taxpayer, S. J. Ervin, Jr., occupied a suite of offices in this building as his home State office. As he did not wish to receive any direct or indirect financial benefit from his Senatorial allowance for home office rent, the taxpayer, S. J. Ervin, Jr., did not charge anything whatever for the use of his one-sixth undivided interest in his home State office in the Ervin Building. He paid five-sixths of the normal and established rent of this office directly to the other five tenants in common rather than to the manager of the Ervin Building, and received reimbursement of such five-sixths of the normal and established rent directly from the Sergeant at Arms of the Senate, thereby making it certain that no part of the rent received by the other tenants in common was used to defray any of the expense of maintaining or operating the Ervin Building.

ITEMIZED DEDUCTIONS AND DIVIDEND AND INTEREST INCOME

Name(s) as shown on Form 1040: S. J., Jr. and Margaret Bell Ervin.

Your social security number: XXXXXXXXXXX.

See Exhibit entitled "Medical and Dental Expenses."

10. Total deductible medical and dental expenses (Add lines 1 and 9. Enter here and on line 33, below.): $150.

See Exhibit entitled "Taxes."

17. Total taxes (Add lines 11 through and 20. Enter here and on line 35, below: $4,748.16.

See Exhibit entitled "Contributions."

21. Total contributions (Add lines 18, 19, and 20. Enter here and on line 35, below: $1,812.50.

28. $100 limitation: $100.

See Exhibit entitled "Miscellaneous Deductions."

32. Total miscellaneous deductions (Enter here and on line 39, below.): $7,808.59.

SUMMARY OF ITEMIZED DEDUCTIONS

33. Total deductible medical and dental expenses (from line 10): $150.

34. Total taxes (from line 17): $4,748.16.

35. Total contributions (from line 21): $1,812.50.

39. Total miscellaneous deductions (from line 32): $7,808.59.

40. Total itemized deductions. (Add lines 33 through 39. Enter here and on Form 1040, line 52.): $14,519.25.

MEDICAL AND DENTAL EXPENSES

The taxpayer, S. J. Ervin, Jr., and his wife, Mrs. Margaret Bell Ervin, are entitled to deduct $150.00 for medical and dental expenses incurred and paid in 1972. This deduction is computed as follows:

1. Premiums upon medical care insurance (Government-Wide Indemnity Benefit Plan) covering both taxpayer: $388.80

2. Premiums deducted by the Social Security Administration from Social Security benefits to cover Social Security Medical Insurance under Part B of Title 18 of the Social Security Act as amended covering both taxpayers: $136.80

3. Premiums on medical care insurance (Bankers Life and Casualty Co., 4444 Lawrence Avenue, Chicago, Illinois, 60630) covering Margaret Bell Ervin only: $48.

Total premiums paid by taxpayers upon medical care insurance: $573.60

Maximum portion of medical care insurance premiums deductible by taxpayers: $150.00

TAXES

The taxpayers, S. J. Ervin, Jr., and his wife, Margaret Bell Ervin, paid the following deductible taxes during 1972:

1. Burke County, N.C., county taxes on real and personal property: $596.42.

2. North Carolina Department of Revenue, Raleigh, N.C.: State income taxes of S. J. Ervin, Jr. ($3,280.00); and State income taxes

of Mrs. Margaret Bell Ervin ($45.00): $3,325.00.

3. North Carolina Department of Revenue, Raleigh, N.C.: State tax on intangible personal property of S. J. Ervin, Jr. ($159.65); and state tax on intangible personal property of Mrs. Margaret Bell Ervin ($187.78): $347.43.

4. North Carolina and District of Columbia sales taxes (estimated): $150.00.

5. Town of Morganton, N.C., municipal and school taxes on real and personal property: $329.31.

Total deductible taxes: $4,748.16.

CONTRIBUTIONS

The taxpayers, S. J. Ervin, Jr., and Margaret Bell Ervin, made the following deductible contributions during 1972:

1. Alumni Annual Giving, University of North Carolina at Chapel Hill, N.C.	$25.00
2. Americans United for Separation of Church and State, 8120 Fenton Street, Silver Spring, Maryland 20910	25.00
3. Barium Springs Orphanage, Barium Springs, N.C., Orphanage affiliation with Southern Presbyterian Church	100.00
4. Burke County United Fund, Morganton, N.C.	100.00
5. Carson House, Marion, North Carolina, historic shrine	10.00
6. Children of the American Revolution, Winston-Salem, N.C.	5.00
7. Davidson College, Davidson, N.C., institution of higher learning	25.00
8. Disabled American Veterans, national organization	10.00
9. Disabled American Veterans, Department of North Carolina, 470 Harris Street, N.W., Concord, N.C.	10.00
10. Eastern Paralyzed Veterans Association	1.50
11. Ella Cobb Christmas Cheer Fund, c/o Morganton News Herald, Morganton, N.C.	50.00
12. Faith Baptist Tabernacle, RFD 1, Box 282, Andrews, N.C., a religious organization	10.00
13. First Citizens Bank and Trust Co., P.O. Box 1951, Raleigh, N.C., 27602, Christmas Seals for Tuberculosis Association	15.00
14. First United Methodist Church, Morganton, N.C.	25.00
15. First Presbyterian Church, Morganton, N.C.	935.00
16. Freedoms Foundation, Valley Forge, Pa., for Medal of Honor Memorial, through the National Sojourners, Inc.	25.00
17. Gallaudet College, Washington, D.C.	25.00
18. Grace Hospital, Morganton, N.C., a charitable hospital	25.00
19. Greenville Unit, Shriners Hospital for Crippled Children, Greenville, S.C.	25.00
20. Hartland Church of God, Hartland, Caswell County, N.C.	10.00
21. Hawfields Presbyterian Church, Haw River, N.C., RFD	25.00
22. Friendship House, Washington, D.C.	10.00
23. Masonic and Eastern Star Home, Greensboro, N.C., nursing home for Masons, and Eastern Star members (through Catawba Valley Lodge No. 217, A.F. & A.M., Morganton, N.C.)	25.00
24. Mine Fork Free Will Baptist Church, Yancey County, N.C.	10.00
25. North Carolina Association for the Blind, Raleigh, N.C.	15.00
26. North Carolina State Moose Association, for support of Mooseheart and Moosehaven	10.00
27. Oxford Orphanage, College Street, Oxford, N.C., orphange operated by the North Carolina Grand Lodge of Masons	
28. Shaw University, Raleigh, N.C.	25.00
29. Johnson C. Smith University, Charlotte, N.C.	25.00
30. Society of the Cincinnati in the State of South Carolina, Charleston, S.C.	50.00
31. South Mountain Institute, Nebo, N.C., Route 2, Box 326, an orphanage	50.00
32. Western Piedmont Community College, Morganton, N.C.	25.00
33. Women of the Church, First Presbyterian Church, Morganton N.C.	36.00
Total deductible contributions in 1972	1,812.50

MISCELLANEOUS DEDUCTIONS

The taxpayers, S. J. Ervin, Jr., and his wife, Margaret Bell Ervin, are entitled to these miscellaneous deductions for 1972:

1. Deductions of S. J. Ervin, Jr. and his wife, Margaret Bell Ervin, on account of political contributions set forth in attached paper writing entitled "Political Contributions": $100.00.

2. Deductions of S. J. Ervin, Jr. as a United States Senator as set forth in the attached paper writing entitled "Deductions as a United States Senator" and as supported in the accompanying documents entitled as follows: (a) "Deductible Expenses as a United States Senator"; (b) "Explanation of Depreciation of Household Furnishings in Washington, D.C., claimed by the taxpayer, S. J. Ervin, Jr., during 1972"; (c) "Explanation of Deductions for Living Expenses Under Section 162(a) of Title 16 of the United States Code"; (d) "Depreciation of Law Books Constituting a Part of the Law Library of S. J. Ervin, Jr., on December 31, 1972"; (e) "Law Books added to the Law Library of S. J. Ervin, Jr., during 1972"; (f) Depreciation of Non-Legal Library Used by the Taxpayer, S. J. Ervin, Jr., for Business and Official Purposes During 1972"; and (g) "Non-Legal Books Acquired in 1972": $7,708.59.

Total Miscellaneous Deductions: $7,808.59.

POLITICAL CONTRIBUTIONS

The taxpayer, S. J. Ervin, Jr. and his wife, Margaret Bell Ervin, are entitled to deduct $100.00 as a deductible campaign contribution during 1972 on account of these political contributions made by them during the year:

1. S. J. Ervin, Jr. (a) $500.00 contributed to the North Carolina State Democratic Committee, Sir Walter Hotel, Raleigh, N.C.; (b) $250.00 contributed to the Burke County Democratic Committee, Powe Street, Morganton, N.C.; (c) $100.00 contributed to the Jefferson-Jackson Day Committee, Raleigh, N.C., which was raising campaign funds for the North Carolina State Democratic Committee; (d) $100.00 contributed to the Vance-Aycock Day Committee, Asheville, N.C., which was raising campaign funds for the North Carolina State Democratic Committee; (e) $100.00 contributed to Nick Galifianakis in his capacity as the Democratic nominee for the United States Senate from North Carolina in the General Election of 1972; (f) $100.00 contributed to Ike Andrews in his capacity as the Democratic nominee for Congress for the Fourth Congressional District of North Carolina; and (g) $100.00 contributed to Brooks Hays in his capacity as the Democratic nominee for Congress for the Fifth Congressional District of North Carolina.

2. Margaret Bell Ervin: (a) $600.00 contributed to Howell J. Hatcher, of Morganton, N.C., campaign manager in Burke County, N.C., for B. Everett Jordan, who sought renomination as the Democratic nominee for the United States Senate from North Carolina in the Democratic Primary of 1972; and (b) $200.00 contributed to William A. Creech, of Raleigh, N. C., who sought nomination as the Democratic nominee for Congress from the Fourth Congressional District of North Carolina in the Democratic Primary of 1972.

DEDUCTIONS AS A U.S. SENATOR

The taxpayer, S. J. Ervin, Jr., claims deductions as follows as a United States Senator during 1972:

1. Deductible expenses incurred and paid as a United States Senator as set forth in the paper writing hereto attached entitled, "Deductible Expenses as a United States Senator": $6,911.00.

2. Depreciation of law library ($566.014) and non-legal library ($231.578) used for business and official purposes as set forth in the paper writings hereto attached entitled (a) "Depreciation of Law Books Constituting a part of the Law Library of S. J. Ervin, Jr., on December 31, 1972"; and (b) "Depreciation of Non-legal Library used by the taxpayer, S. J. Ervin, Jr., for business and official purposes during 1972": $797.59.

Total deductions as a United States Senator during 1972: $7,708.59.

DEDUCTIBLE EXPENSES AS A U.S. SENATOR

The taxpayer, S. J. Ervin, Jr., incurred and paid these deductible expenses as a United States Senator during 1972:

1. Expenses of traveling between home in Morganton, N. C., and Washington, D. C., in connection with attendance on Second Session of the 92nd Congress: (a) Airplane fare, $45.00; (b) Lodgings, $165.55; (c) Meals, $81.76; (d) Highway tolls, $11.25; (e) Storage of car, $4.00; and (f) Tips, $6.00: $313.56.

2. Expenses incurred and paid in conducting official duties while outside the Washington area and while absent from home in Morganton, N. C.; (a) Airplane fares, $189.00; (b) Lodgings, $12.48; (c) Highway tolls, .95¢; (d) Meals, $2.96; and (e) Tip, $1.00: $206.39.

3. Deductions for living expenses under Section 162(a) of Title 26 of the U. S. Code on account of presence in Washington, D. C. while performing official duties as a United States Senator: (a) Apartment rent, $2,604.00; (b) Care of premises by regular employee, $189.00; (c) Casual labor, $60.00; (d) Depreciation of household furnishings as set out in "Explanation of Depreciation of Household Furnishings claimed by the taxpayer, S. J. Ervin, Jr., during 1972 hereto attached, $29.00; (e) Household laundry, $109.73; (f) Meals, $857.32; and (g) Utilities, $271.59. (Note: See Explanation of Deductions for living expenses under Section 162 (a) of Title 26 of the U. S. Code hereto attached. Further Note: The sum of $4,120.64 constitutes the total of the living expenses of the taxpayer, S. J. Ervin, Jr., in Washington, D. C., during the year with the exception of some items for which no deduction is claimed in this return. The part of these expenses deductible for income tax purposes is limited by the statute cited to $3,000.00: $3,000.00.

4. Expenditures made for official purposes during the year: (a) Copyart Photographers, 165 West 46th Street, New York, N.Y., 10036, for pictures of the taxpayer, S. J. Ervin, Jr., for distribution to the news media and the public, $95.51; (b) Postage, $2.83; and (c) Taxi fares, $5.70. (Note: By resolution, the Senate designated the taxpayer, S. J. Ervin, Jr., and Senator Saxbe, of Ohio, to file an Amicus brief on behalf of the Senate in the Mike Gravel Case in the Supreme Court, and to argue that case on behalf of the Senate. Items 4b and 4c, which have been reimbursed to the taxpayer pursuant to such reso-

lution as set out in Item 6 of the Exhibit entitled 'Income As A United States Senator," were incurred by the taxpayer in connection with the printing and distributing of the Senate brief.) : $104.04.

5. The taxpayer, S. J. Ervin, Jr., spent $1,029.85 for the following purposes in maintaining and operating his Chrysler New Yorker during the year: (a) Gasoline, oil, and servicing, $454.61; (b) Liability, fire, and collision insurance premiums, $159.46; (c) North Carolina State inspection fee, $2.00; (d) North Carolina license fee, $3.25; (e) North Carolina license tag and driver education fee for 1972, $14.00; (f) North Carolina Motor Club dues, $18.00; and (g) Repairs, $387.58. Ninety per cent of the use of the car during the year was for business and official purposes, and ten per cent of the use of the car during the year was for personal and political purposes. Ninety per cent of the $1,038.90 is the portion of these expenses deductible under relevant law: $935.01.

6. Rent incurred and paid by the taxpayer, S. J. Ervin, Jr., for office used by him as a Senator in his home State at Morganton, N.C., for the following periods: (a) July 1, 1971 through June 30, 1972, $720.00; and (b) July 1, 1972, through December 31, 1972, $372.00. (Note: The taxpayer was reimbursed by the Sergeant at Arms of the Senate for the outlay for the first period stated and by his home office expense allowance for the outlay for the second period stated, and returns the total amount of reimbursement for income taxation as Item 5 of the Exhibit entitled "Income As A United States Senator": $1,092.00.

7. Expense of maintaining a home office in Morganton, N.C. and subscribing for newspapers, and other periodicals for office purpose during the year: (a) Telephone service, $180.52; (b) Office lights, $11.38; (c) Office Management fee to rental agency in charge of building in which home office is located, $57.60; (d) Janitorial Service for home office, $14.91; (e) Asheville Citizen, Asheville, N.C., $43.26; (f) Charlotte, Observer, Charlotte, N.C., $52.20; (e) Greensboro Daily News, Greensboro, N.C., $50.40; (h) National Observer, Washington, D.C., $7.00; (i) News-Herald, Morganton, N.C., $21.80; (j) State Magazine, Raleigh, N.C., $6.18; (k) Washington Post, Washington, D.C., $27.30; (l) Washington Star, Washington, D.C., $45.25; (m) Congressional Quarterly Service and binders for it, Washington, D.C., $159.00; (n) National Journal, Washington, D.C., $200.00; (o) Governmental Guide, North Carolina edition, for 1972, Nashville, Tennessee, $5.00; (p) Who's Who in America, Vol. 37, $55.50; (q) Who's Who in the South and South West, Vol. 13, $33.50; (r) Chester J. Antieau, Pocket Parts for Modern Constitutional Law for 1972, $8.16; (s) Internal Revenue Act, Pamphlet for 1971, $3.65; (t) Modern Federal Practice Digest, balance on Pocket Parts for 1971, $4.63; (u) Modern 1972, $62.31; (v) Modern Federal Practice Digest, 8 bound supplements (12 of which were received in Dec. 1971), $69.53; (w) North Carolina Law Review, Chapel Hill, N.C., $8.00; (x) Austin T. Stickell, Legal Control of Business Practices, Pocket Parts for 1971, $9.20; (y) Supreme Court Review for 1971 (edited by Philip B. Kurland), $15.00; (z) United States Code, Annotated, balance on Pocket Parts for 1971, $19.57; (aa) United States Code Congressional and Administrative News for 1972, $56.65; (bb) United States Supreme Court Digest, Annotated, Pocket Parts for 1972, $26.94; and (cc) United States Supreme Court Reports, L. Ed. 2d, Pocket Parts for Later Case Service, $5.56. (Note: The Taxpayer, S. J. Ervin, Jr., was reimbursed by the Sergeant at Arms of the Senate for his outlays for home office expenses and newspapers and periodicals for the last quarter of 1971 and the first, second, and third quarters of 1972 during 1972 and returns the amounts of such reimbursement for income taxation in Item 4 of the Exhibit entitled "Income As a United States Senator." Further Note: The taxpayer, S. J. Ervin, Jr., will receive reimbursement of expense of this nature for the last quarter of 1972 totaling $369.98, from the Sergeant at Arms of the Senate in 1973, and will return the amount of it for income taxation in his return for 1972) : $1,260,00.

Total deductible expenses as a United States Senator during 1972: $6,911.00.

EXPLANATION OF DEPRECIATION OF HOUSEHOLD FURNISHINGS IN WASHINGTON, D.C., CLAIMED BY THE TAXPAYER, S. J. ERVIN, JR., DURING 1972

The taxpayer, S. J. Ervin, Jr., claims a deduction of $29.00 as depreciation on household furnishings owned and used by him in Washington, D.C. during 1972. Such depreciation is computed as follows:

A. (1) Kind of property: Air Conditioning Unit (Fedders)., (2) Date acquired: 1969. (3) Cost or other basis: $290.00., (4) Depreciation allowed or allowable in prior years: $87.00., (5) Method of computing depreciation: Straight line., (6) Rate or life: 10 per cent per year., (7) Depreciation for this year: $29.00., (8) Adjusted basis at end of this year (1972)—$174.00.

EXPLANATION OF DEDUCTIONS FOR LIVING EXPENSES UNDER SECTION 162(a) OF TITLE 26 OF THE UNITED STATES CODE

Item 3 of this Exhibit conforms to the interpretation placed upon Section 162(a) of Title 26 of the United States Code by the Commissioner of Internal Revenue in a letter written to the Honorable Eugene D. Milliken, Chairman of the Senate Committee on Finance on March 20, 1953. These portions of such letter are relevant:

"It is the position of the Bureau that the term *living* expenses comprehends only that portion of traveling expenses which consists of the cost of the member's meal and lodgings, together with items incident thereto, while in the Washington area in the discharge of his official duties. The cost of meals includes the actual cost of food and expenses incident to the preparation and serving thereof. The cost of lodging includes rental, care of premises, household laundry, and utilities, together with interest, taxes, insurance, and depreciation on household furnishings owned by the member."

DEPRECIATION OF LAW BOOKS CONSTITUTING A PART OF THE LAW LIBRARY OF S. J. ERVIN, JR., ON DECEMBER 31, 1972

The taxpayer, S. J. Ervin, Jr., claims a deduction of $566.014 for depreciation during 1972 on law books constituting a part of his law library on December 31, 1972.

The books whereon the depreciation is claimed are listed in the following papers:

1. A 26 page Exhibit attached to the income tax return of the taxpayer, S. J. Ervin, Jr., for 1963.

2. Six 1 page Exhibits attached to the income tax returns of the taxpayer, S. J. Ervin, Jr., for 1964, 1965, 1966, 1967, 1968, 1969, 1970, and 1971, which are entitled "Law Books Added to Law Library" during such years.

3. An Exhibit attached to this return and entitled "Law Books Added to Law Library During 1972."

Such papers describe the books, set out the years of their purchase, and their cost in detail. The taxpayer has never claimed any depreciation on law books in any income return antedating his return for 1943, and does not propose to do so in this or any future return, notwithstanding the fact that the computation of the depreciation claimed in this return sets forth the depreciation which would have been allowable during years antedating 1943 had it been claimed.

All of the law books listed in the aforesaid income tax returns were still included in the law library of the taxpayer on December 31, 1972, except the following:

1. North Eastern Digest, consisting of Volumes 1 to 12, both inclusive, seven supplemental volumes, and an additional volume of citations entitled "North Eastern Blue Book," which were acquired from the West Publishing Company, St. Paul, Minnesota, for prices totalling $190.00 during the period beginning in 1924 and ending in 1936 and which were discarded in 1972 because they had become obsolete and been fully depreciated.

2. Cumulative supplements to the Code of Federal Regulations of the United States of America, consisting of 30 volumes, which were acquired from the Government Printing Office for prices totaling $95.50 during the period beginning in 1943 and ending in 1948 and which were discarded in 1972 because they had become obsolete and been fully depreciated.

In addition to the books whereon a deduction for depreciation is claimed for 1971, the law library of the taxpayer contains many other books owned by him which are not listed in this or any other income tax return made by him and on which he has never claimed any depreciation.

The taxpayer does not set forth in this return any claim for depreciation on temporary advance sheets, temporary pocket parts, temporary supplements, and other temporary legal publications which have to be renewed or replaced either annually or at other short intervals. This course is pursued by the taxpayer because he believes that the cost of such temporary items properly falls within the category of deductible expenses incurred in the usual and ordinary course of his business and official activities.

The taxpayer does not allocate any specific part of the cost of the books listed in this return for depreciation for 1972 to any supposed resale, trade-in, or salvage value. He takes this course because he is of the opinion that the adjusted basis of the part of his law library on which depreciation is claimed and the market value of the part of his law library on which depreciation is not claimed will substantially exceed at all times during the foreseeable future any possible resale, trade-in, or salvage value of the part on which depreciation is claimed.

It is estimated that the law books upon which depreciation is claimed have a useful life of 20 years from the date of acquisition and depreciated at the uniform rate of 5% per annum. For convenience of computation, it is assumed that all such books bought in any given year were purchased on the first day of the year and thus depreciated for one year during the year of acquisition.

The taxpayer has computed the depreciation claimed by him upon a part of his law library for 1972 and such computation immediately follows this statement.

1922–1952	
1. Original Cost	$13,032.27
2. Depreciation allowed or allowable in past years	13,032.27
3. Depreciation for the year	None
1953	
1. Original Cost	367.16
2. Depreciation allowed or allowable in past years	348.802
3. Depreciation for this year	18.358
1954	
1. Original Cost	400.00
2. Depreciation allowed or allowable in past years	360.00
3. Depreciation for this year	20.00
1955	
1. Original Cost	430.13
2. Depreciation allowed or allowable in past years	365.6105
3. Depreciation for this year	21.5065
1956	
1. Original Cost	287.37
2. Depreciation allowed or allowable in past years	229.896
3. Depreciation for this year	14.3685

1957

1. Original Cost	$531.88
2. Depreciation allowed or allowable in past years	398.91
3. Depreciation for this year	26.594

1958

1. Original Cost	388.50
2. Depreciatioh allowed or allowable in past years	271.95
3. Depreciation for this year	19.425

1959

1. Original Cost	380.19
2. Depreciation allowed or allowable in past years	247.1235
3. Depreciation for this year	19.0095

1960

1. Original Cost	814.00
2. Depreciation allowed or allowable in past years	488.40
3. Depreciation for this year	40.70

1961

1. Original Cost	622.16
2. Depreciation allowed or allowable in past years	342.188
3. Depreciation for this year	31.108

1962

1. Original Cost	264.33
2. Depreciation allowed or allowable in past years	132.165
3. Depreciation for this year	13.2165

1963

1. Original Cost	$409.42
2. Depreciation allowed or allowable in past years	184.239
3. Depreciation for this year	20.471

1964

1. Original Cost	484.71
2. Depreciation allowed or allowable in past years	193.8840
3. Depreciation for this year	24.2355

1965

1. Original Cost	800.77
2. Depreciation allowed or allowable in past years	280.2695
3. Depreciation for this year	40.0385

1966

1. Original Cost	672.62
2. Depreciation allowed or allowable in past years	201.786
3. Depreciation for this year	33.631

1967

1. Original Cost	782.46
2. Depreciation allowed or allowable in past years	195.615
3. Depreciation for this year	39.123

1968

1. Original Cost	664.00
2. Depreciation allowed or allowable in past years	132.80
3. Depreciation for this year	33.20

1969

1. Original Cost	820.52
2. Depreciation allowed or allowable in past years	123.078
3. Depreciation for this year	41.026

1970

1. Original Cost	796.42
2. Depreciation allowed or allowable in past years	79.642
3. Depreciation for this year	39.821

1971

1. Original Cost	696.53
2. Depreciation allowed or allowable in past years	34.8265
3. Depreciation for this year	34.8265

1972

1. Original Cost	707.11
2. Depreciation allowed or allowable in past years	None
3. Depreciation for this year	35.35555

SUMMARY

1. Total Cost	24,352.55
2. Depreciation allowed or allowable in past years (1922–1971)	17,643.455
3. Depreciation for this year (1972)	$566.014
4. Adjusted basis at end of this year (1972)	6,143.054

LAW BOOKS ADDED TO LAW LIBRARY OF S. J. ERVIN, JR., DURING 1972

The taxpayer, S. J. Ervin, Jr., purchased the following law books for the following prices and added them to his law library during 1972:

1. American Jurisprudence, Second Series, Vols. 60, 61, 62, 63, 64, 65	$112.32
2. American Jurisprudence, Pleading and Practice, Revised Vols. 17, 18, 19, 20	75.52
3. Federal Reporter, Second Series, Vol. 408	13.50
4. Federal Supplement, Vol. 246	13.50
5. Modern Legal Forms, Vol. 5	20.00
6. North Carolina General Statutes, Replacement Vols. 2A, 2D, 3D, and Index Vols. 4B, 4C, 4D	120.94
7. South Eastern Reporter, Second Series, Vol. 80	12.00
8. United States Code, Annotated, 15 new books	193.13
9. United States Supreme Court Digest, Revised Vols. 13, 14	32.08
10. United States Supreme Court Digest, Index to Annotations	16.28
11. United States Supreme Court Reports, Lawyers' Edition, Second Series, Vols. 27, 28, 29	56.64
12. Words and Phrases, New Vols. 30, 30A	41.20
Total cost of law books added to law library in 1972	707.11

DEPRECIATION OF NONLEGAL LIBRARY USED BY THE TAXPAYER, S. J. ERVIN, JR., FOR BUSINESS AND OFFICIAL PURPOSES DURING 1972

The taxpayer, S. J. Ervin, Jr., bought the non-legal books hereinafter mentioned at the times and for the costs hereafter specified to facilitate his work as a Senator, a Writer, and a Speaker. It is estimated that the useful life of each non-legal book is ten years from the date of purchase, and the same depreciates at the uniform rate of 10% per annum. For convenience of computation, it is assumed that each non-legal book was purchased on the first day of the year of depreciation, and thus depreciated for one year during the year of purchase. A deduction of $231.578 is claimed by the taxpayer, S. J. Ervin, Jr., for depreciation of these non-legal books during 1972. Such depreciation is computed as follows:

1957–1962

1. Original Cost	$1,035.56
2. Depreciation allowed or allowable in past years	1,035.56
3. Depreciation for this year	None

1963

1. Original Cost	241.77
2. Depreciation allowed or allowable in past years	217.593
3. Depreciation for this year	24.177

1964

1. Original Cost	193.39
2. Depreciation allowed or allowable in past years	154.712
3. Depreciation for this year	19.339

1965

1. Original cost	271.19
2. Depreciation allowed or allowable in past years	189.833
3. Depreciation for this year	27.119

1966

1. Original cost	243.63
2. Depreciation allowed or allowable in past years	146.178
3. Depreciation for this year	24.363

1967

1. Original cost	207.27
2. Depreciation allowed or allowable in past years	$104.635
3. Depreciation for this year	20.727

1968

1. Original cost	210.96
2. Depreciation allowed or allowable in past years	84.384
3. Depreciation for this year	21.096

1969

1. Original cost	331.23
2. Depreciation allowed or allowable in past years	99.369
3. Depreciation for this year	33.123

1970

1. Original cost	280.78
2. Depreciation allowed or allowable in past years	56.156
3. Depreciation for this year	28.078

1971

1. Original Cost	$132.59
2. Depreciation allowed or allowable in past years	13.259
3. Depreciation for this year	13.259

1972

1. Original Cost	202.97
2. Depreciation allowed or allowable in past years	None
3. Depreciation	20.297

SUMMARY

1. Total Cost (1957–1972)	3,351.34
2. Depreciation allowed or allowable in past years (1957–1971)	2,101.679
3. Depreciation for this year	231.578
4. Adjusted basis at end of this year (1972)	1,018.083

NOTE—The books on which depreciation is claimed in this return are fully described in the income tax returns of the taxpayer, S. J. Ervin, Jr., for the calendar years 1957 through 1971 and in the Exhibit hereto attached entitled "Non-Legal Books Acquired By the Taxpayer, S. J. Ervin, Jr., during 1972."

NON-LEGAL BOOKS ACQUIRED IN 1972

The taxpayer, S. J. Ervin, Jr., acquired these non-legal books for these prices in 1972:

1. Adam Carlyle Breckenridge: "Congress Against the Court"	$6.20
2. Governor Thomas Burke: "The Poems of Governor Thomas Burke of North Carolina" (Richard Walser, Editor)	3.00
3. Zechariah Chafee, Jr.: "Free Speech in the United States"	15.00
4. Benjamin Franklin, a biography based on his own writings	13.16
5. Joan Haslip: "The Crown of Mexico"	8.52
6. Moffitt Sinclair Henderson: "Long, Long Day for November"	6.95
7. Oliver Wendell Holmes, devise, History of the United States Supreme Court. (The Macmillan Co.) Vol. 1, Vol. 6, Part 1	50.00
8. Lyndon B. Johnson: "Vantage Point"	9.61
9. Walter Lord: "The Dawn's Early Light"	7.52
10. Louis H. Manarim: "North Carolina Troops 1861–1865," Vol. 3	12.50
11. Peter Matthiessen and Eliot Porter: "The Tree Where Man Was Born—The African Experience"	10.41
12. Harold L. Nelson: "Freedom of the Press from Hamilton to Warren"	7.50
13. Mary Bennet Peterson: "The Regulated Consumer," 2 copies	16.42
14. William S. Powell, James K. Huhta, and Thomas J. Farnham: "The Regulation of North Carolina"	12.00

15. Reader's Digest Association: "Best Songs" ---------- 13.54
16. Carl Sandburg: "Abraham Lincoln" (Abridgement by Readers' Digest Association) ---------- 10.64

Total non-legal books acquired in 1972 ---------- 202.97

DIVIDEND AND INTEREST INCOME

Name(s): S. J., Jr. and Margaret Bell Ervin. Your social security number: [redacted].

See Exhibit entitled "Dividends of S. J. Ervin, Jr.": $3,959.72.

See Exhibit entitled "Dividends of Margaret Bell Ervin": $3,817.98.

2. Total of line 1.: $7,777.70.

6. Dividends before exclusion (subtract line 5 from line 2). Enter here and on Form 1040, line 12a: $7,777.70.

See Exhibit entitled "Income From Interest": $1,639.37.

8. Total interest income. Enter here and on Form 1040, line 13: $1,639.37.

DIVIDENDS OF S. J. ERVIN, JR.

The taxpayer, S. J. Ervin, Jr., received the following dividends on stocks in domestic corporations during 1972:

1. Burlington Industries, Inc.---- $22.40
2. Cannon Mills Co. (N.C.) (common $28.84 and Class B $28.84) ---------- 57.68
3. Chase Manhattan Corporation.. 34.00
4. Chesapeake & Ohio Ry. Co. (W. Va. & Va.) ---------- 15.00
5. Consolidated Natural Gas Co.. 11.72
6. Crane Co. (Illinois) ---------- 33.20
7. Exxon Corporation (formerly Standard Oil of New Jersey).. 456.00
8. Falls Mfg. Co. (N.C.) ---------- 35.00
9. General Motors Corporation (Del.) ---------- 1,014.60
10. Marcor, Inc. (Ill.) ---------- 64.00
11. R. J. Reynolds Industries, Inc. (N.J.) ---------- 878.60
12. Richardson-Merrell Co., Inc. (N.J.) ---------- 49.44
13. Safeway Stores, Inc.---------- 40.52
14. Standard Oil Co. of California (Del.) ---------- 162.40
15. Texaco, Inc. (Del.) ---------- 99.60
16. Union Carbide Corporation (N.Y.) ---------- 36.00
17. Wachovia Corporation---------- 949.56

Total dividends received by S. J. Ervin, Jr. on stocks in domestic corporations in 1972 ---------- 3,959.72

DIVIDENDS OF MARGARET BELL ERVIN

The taxpayer, Mrs. Margaret Bell Ervin, received the following dividends on stocks in corporations during 1972:

1. Alba Waldensian Hosiery Mills, Inc., Valdese, N.C---------- $0
2. American Can Company (N.J.).. 7.00
3. American Tel. & Tel. Co., (N.J.) (common, $418.70, and convertible preferred, $32.00) ---- 450.70
4. Beneficial Finance (Del.) (common $10.80 and preferred $15.00) ---------- 25.80
5. Cannon Mills Co. (N.C.) (common $201.88 and Class B $181.28) ---------- 383.16
6. Champion International Corporation (common $181.44, and preferred $115.20) (formerly U.S. Plywood Champion Papers, Inc.) ---------- 296.64
7. Chrysler Corporation (Del.)---- 13.50
8. Dan River Mills (Va.) ---------- 0
9. EXXON Corporation (formerly Standard Oil Co. of New Jersey) ---------- 296.40
10. General Electric Co. (N.Y.)---- 8.40
11. General Motors Corporation (Del.) ---------- 1,201.50
12. International Nickel Co. of Canada, Ltd. (Canada)----- 27.00
13. Lehman Corporation (N.Y.)--- 6.41
14. Lone Star Industries, Inc. (Me.) ---------- 75.00
15. Marcor, Inc---------- 22.40
16. Phillips Petroleum Co. (Del.).. 20.80
17. Public Service Electric & Gas Co. (N.J.)---------- 72.30
18. Putnam Investors Fund, Inc.. 10.64
19. R. J. Reynolds Industries, Inc. (N.J.) ---------- 419.32
20. Sears, Roebuck & Co. (N.Y.)--- 77.50
21. Standard Oil Co. of California.. 162.40
22. Union Carbide Corporation (N.Y.) ---------- 68.00
23. Union Pacific Corporation Co. (Utah) ---------- 4.76
24. United States Steel Corporation (N.J.) ---------- 38.50
25. Wiscasset Mills (N.C.)--------- 129.75

Total ---------- 3,817.98

INCOME FROM INTEREST

The taxpayers, S. J. Ervin, Jr., and his wife, Margaret Bell Ervin, received the following income from interest during 1972:

1. Interest received by S. J. Ervin, Jr., on Savings Account in Wachovia Bank and Trust Co.. $1,245.74
2. Interest received by Margaret Bell Ervin on Savings Account in Wachovia Bank and Trust Co ---------- 349.87
3. Interest received by Margaret Bell Ervin on debentures issued by The American Telephone and Telegraph Co----- 43.37

Total income from interest.. 1,639.37

PROFITS (OR LOSS) FROM BUSINESS OR PROFESSION (SOLE PROPRIETORSHIP) 1972

Name(s) as shown on Form 1040: S. J., Jr. and Margaret Bell Ervin.

Social security number: [redacted]

A. Principal business activity: lawyer, speaker, writer; product: personal services.

B. Business name: S. J. Ervin, Jr.

C. Employer Identification Number: none.

D. Business address (number and street): 515 Lenoir Street.

City, State and ZIP code: Morganton, North Carolina 28655.

E. Indicate method of accounting: (1) cash.

F. Were you required to file Form 1096 for 1972? (See Schedule C Instructions): No.

G. Is this business located within the boundaries of the city, town, etc., indicated? No business in strict sense—only personal services.

2. Less: Cost of goods sold and/or operations (Schedule C–1, line 8). See Exhibit entitled "Income From Personal Services Other Than Those Performed as a United States Senator": $8,035.46.

19. Other business expenses (specify): See Exhibit entitled "Business Expenses Other Than Those Incurred By S. J., Jr. as a United States Senator."

(p) Total other business expenses (add lines 19(a) through 19(o)): $1,863.26.

20. Total deductions (add lines 6 through 19): $1,863.26.

21. Net profit (or loss) (subtract line 20 from line 5). Enter here and on line 35, Form 1040. ALSO enter on Schedule SE, line 1: $6,172.20.

INCOME FROM PERSONAL SERVICES OTHER THAN THOSE PERFORMED AS A UNITED STATES SENATOR

The taxpayer, S. J. Ervin, Jr., received the following income from personal services other than those performed as a United States Senator:

	Amounts
1. Brookings Institution, 1775 Massachusetts Avenue, N.W., Washington, D.C., 20036, honorarium for discussing privacy issue at meeting in Annapolis, Md----------	$200.00
2. Center for the Study of the Presidency, 17 East 80th Street, New York, New York, 10021, honorarium and expense reimbursement for participating in symposium at Montauk, Long Island------	250.00
3. Beatrice Cobb Estate, Morganton, N.C., 28655 fee as testamentary trustee ----------	1,510.26
4. Cornell College, Mount Vernon, Iowa, honorarium ($1,000.00) and expense reimbursement ($175.00) for addressing student body on subject of privacy----------	1,175.00
5. Grolier Incorporated, 575 Lexington Avenue, New York, N.Y., 10022, for article on privacy ----------	500.00
6. MacFadden-Bartell Corporation, 205 E. 42nd Street, New York New York, 10017, honorarium for article on basketball bill ----------	250.00
7. National Basketball Players Association, Special Account, 15 Columbus Circle, New York, New York, 10023, for speaking at half in all-star basketball game in New York (refund of shuttle airplane ticket, Washington to New York) ----------	52.00
8. New York Times, New York, for use of statement concerning Subversive Activities Control Board ($75.00) and for use of statement concerning Army surveillance of civilians ($150.00)----------	225.00
9. Proprietary Association, 1700 Pennsylvania Avenue, N.W., Washington, D.C., for addressing its annual convention at Green Briar, West Virginia, on subject of First Amendment and commercial advertising ----------	1,500.00
10. Radio and Television News Directors Association, Washington, D.C., for application to expenses of traveling to Nassau, Bahamas, to participate in its annual convention and receive its Paul White Award for service to broadcast journalism----------	280.70
11. Thiel College, Greenville, Pennsylvania, 16025, honorarium ($1,000.00) and expense reimbursement ($170.00) for participating in symposium on the costs of the invasion of privacy----------	1,170.00
12. Time, Incorporated, New York, New York, for application to expense of traveling to Atlanta, Georgia, and participating in Panel on How to Improve the Role of Congress ----------	122.50
13. Wachovia Bank & Trust Company, Morganton, N.C., 28655, director's fee----------	50.00
14. West Virginia University Foundation, Inc., Morgantown, West Virginia 26506, for addressing group on The Fear of Freedom----------	750.00
Total Income From Personal Services Other Than Those Performed As A United States Senator----------	8,035.46

BUSINESS EXPENSE OTHER THAN THOSE INCURRED BY S. J. ERVIN, JR., AS A UNITED STATES SENATOR

The taxpayer, S. J. Ervin, Jr., incurred and paid the following business expenses other than those incurred as a United States Senator during 1972:

1. Binding books and magazines in taxpayer's business and law libraries	$7.60
2. Dues to professional societies:	
(a) American Bar Association and Section	45.00
(b) American Judicature Society	20.00
(c) Burke County, N.C. Bar Association	5.00
(d) Federal Bar Association	25.00
(e) Law School Alumni Association of the University of North Carolina	2.00
(f) National Lawyers Club, D.C	12.00
(g) North Carolina Bar Association	25.00
(h) North Carolina State Bar	30.00
	164.00
3. Travel expenses (including travel fares, meals, and lodging) incurred and paid in attending the meeting of the North Carolina Bar Association	588.90
4. Fire insurance on law library	62.00
5. North Carolina Lawyers franchise or occupational tax	25.00
6. Rent of lock box in bank	15.00
7. Rent of Post Office box	14.40
8. Record book for tax records	10.00
9. Traveling expenses additional to those incurred and paid in attending meeting of North Carolina Bar Association as set out in Item 5:	
(a) Airplane fares	829.10
(b) Meals	50.91
(c) Taxi fares	29.00
(d) Transportation of baggage by air	6.30
(e) Tips	61.05
Subtotal	976.36
Total business expenses other than those incurred and paid as a U.S. Senator	1,863.26

CAPITAL GAINS AND LOSSES, 1972

Name(s) as shown on Form 1040: S. J., Jr. and Margaret Bell Ervin; Social security numbers: [redacted] and IRS [redacted].

6. Long term capital gain of S. J. Ervin, Jr. from Sale of real estate—see Exhibit entitled "Sale of Ervin Building," $2,913.92.

Long term capital gain of Margaret Bell Ervin, a stockholder of Lehman Corporation. See Exhibit entitled "Lehman Corporation", $14.58.

11. Net gain (or loss), combine lines 6 through 10, $2,928.50.

13. Net long-term gain (or loss), combine lines 11, 12(a) and 12(b), $2,928.50.

SUMMARY OF PARTS I AND II

14. Combine the amounts shown on lines 5 and 13, and enter the net gain or loss here, $2,928.50.

15. If line 14 shows a gain—(a) Enter 50% of line 13 or 50% of line 14, whichever is smaller (see Part VI for computation of alternative tax). Enter zero if there is a loss or no entry on line 13, $1,464.25.

(b) Subtract line 15(a) from line 14. Enter here and on line 36, Form 1040, $1,464.25.

SALE OF ERVIN BUILDING

On June 14, 1956, Mrs. Laura Powe Ervin, who was domiciled in Burke County, North Carolina, died testate leaving a will whereby she devised a lot on South Sterling Street, and a brick office building known as The Ervin Building standing on it, to her six children, Laura Ervin Hall, S. J. Ervin, Jr., Hugh T. Ervin, Eunice W. Ervin, Dr. John W. Ervin, and Jean Conyers Ervin, in equal shares in fee simple. The lot was then valued for Federal Estate Tax purposes at $9,200.00, and the building was then valued for such purposes at $25,000.00. From June 15, 1956, until November 30, 1972, the six tenants in common formed a partnership and rented offices in The Ervin Building through an agent, who managed it for them. On December 1, 1972, they sold the lot and building to Willie Dale and Hayes Dale for a gross sum of $45,000.00. The cost of the sale totaled $2,045.00, which costs comprised a realtor's fee of $2,000.00 for making the sale and revenue stamps of $45.00 on the deed of conveyance. During the time of the partnership the six tenants in common and partners claimed depreciation amounting to $8,728.54, such depreciation being computed on a straight line method on the theory that the building had a useful life of 50 years as of the date of their acquisition of it. Each of the six tenants in common and partners, who dissolved and terminated their partnership as of the time of sale, had a long term capital gain of $1,456.96 by virtue of the sale. Such gain is computed as follows:

Sales price	$45,000.00
Less: selling price	(2,045.00)
Balance	42,955.00
Less: Cost of property building—basis	25,000.00
Less: Depreciation claimed	8,728.54
Adjusted basis—building	16,271.46
Add: Basis of land	9,200.00
Basis of property sold	25,471.46
Long-term capital gain on property sold	17,483.54
Each person's share of long-term capital gain (1/6 of $17,483.54)	2,913.92
Less: Long-term capital gain deduction (50% of gain)	1,456.96
Long-term capital gain includible in income	1,456.96

LEHMAN CORPORATION

During 1972 the taxpayer, Margaret Bell Ervin, owned shares of stock in the Lehman Corporation, a mutual fund company. The company paid to her as ordinary dividends during 1972 the sum of $6.41 as listed in the paper writing attached to this return entitled "Dividends of Margaret Bell Ervin." In addition to this sum, the Lehman Corporation paid to this taxpayer the further sum of $14.58, and informed this taxpayer that the $14.58 represented her share of long term capital gains from the sale of assets held by the corporation for more than six months.

SCHEDULES E&R — SUPPLEMENTAL INCOME SCHEDULE AND RETIREMENT INCOME CREDIT COMPUTATION, 1972

Name(s) as shown on Form 1040: S. J., Jr. and Margaret Bell Ervin, [redacted]

Income or Losses from Partnerships, Estates or Trusts, Small Business Corporations. See Exhibit entitled "Profits from Partnerships."

Total, $41.29.

Income (or loss) Total of column (d) less total of column (e), $41.29.

PROFITS FROM PARTNERSHIP

The taxpayers, S. J. Ervin, Jr., and his wife, Margaret Bell Ervin, received net profits of $41.24 from the following partnership during 1972:

1. The taxpayer, S. J. Ervin, Jr., received the sum of $246.23 as his share of the profits during 1972 of a partnership known as The Ervin Building, which consisted of Mrs. Laura Ervin Hall, S. J. Ervin, Jr., Hugh T. Ervin, Miss Eunice W. Ervin, Dr. John W. Ervin, and Miss Jean Conyers Ervin, and which engaged solely in the business of renting offices in an office building known as The Ervin Building located on Sterling Street in Morganton, N.C., which is owned by the partners as tenants in common, $246.03.

2. The taxpayer, Margaret Bell Ervin, suffered the following loss as her share of the losses suffered during 1972 by a partnership known as the Ervin Homeplace which consists of the taxpayer, Margaret Bell Ervin, and Miss Jean Conyers Ervin, and which is engaged solely in the business of renting a dwelling house located on Lenoir Street in Morganton, N.C., owned by the partners as tenants in common, $204.74.

Net profits from partnerships in 1972, $41.29.

NOTE.—Information returns are being filed by the partnerships with the Internal Revenue Service at Memphis, Tennessee, and the North Carolina Department of Revenue at Raleigh, North Carolina.

MISCELLANEOUS INCOME

The taxpayers, S. J. Ervin, Jr., and his wife, Margaret Bell Ervin, received the following miscellaneous income during 1972:

1. Refund received by S. J. Ervin, Jr., from North Carolina Department of Revenue because of his overpayment of his 1971 State income tax, $356.80.

2. Refund received by Margaret Bell Ervin from North Carolina Department of Revenue because of her overpayment of her 1971 State income tax, $19.73.

Total miscellaneous income, $376.53.

COMPUTATION OF SOCIAL SECURITY SELF-EMPLOYMENT TAX, 1972

Name of self-employed person (as shown on social security card): Samuel J. Ervin, Jr., [redacted]

Business activities subject to self-employment tax (grocery store, restaurant, farm, etc.): lawyer, speaker, writer.

Net profit (or loss) shown in Schedule C (Form 1040), line 21. (Enter combined amount if more than one business.) $6,172.20.

Net earnings (or loss) from business self-employment (Subtract line 2 from line 1, and enter here and on line 8(a), below.) $6,172.20.

Net earnings (or loss) from self-employment: From business (other than farming) from line 3, above, $6,172.20.

Total net earnings (or loss) from self-employment reported on line 8, $6,172.20.

The largest amount of combined wages and self-employment earnings subject to social security tax for 1972 is, $9,000.

Total "FICA" wages as indicated on Form W–2, $6,172.20.

Balance, $6,172.20.

Self-employment income—line 9 or 12, whichever is smaller, $6,172.20.

If line 13 is $9,000, enter $675.00; if less, multiply the amount on line 13 by .075, $462.92.

Self-employment tax (subtract line 15 from line 14). Enter here and on Form 1040, line 62, $462.92.

Mr. ERVIN. Mr. President, also, if the unidentified person who is interested in my tax return wants to do so, I have available in Washington the State of North Carolina income tax returns filed by my wife and me in 1972.

If he will come to my office and identify himself, I will let him sit there and memorize these income tax returns.

If every person had been as diligent and as truthful about filing his income tax returns as I have been, there would be no tax evasion charges against anyone. And if everyone had been as punctual in paying his income tax as I have been, there would not be a single penny owed to the Federal Government for any Federal income tax from anyone at the present time.

This is the first time in 50 years that anyone has ever questioned the accuracy of my income tax returns. And it is done by a man who does not identify himself. He has not got enough courage to identify himself. It is done in the form of attempting to drag a red herring across the trail—Mr. President, I withdraw the term "red herring," because I think this is a putrefied minnow instead of a red herring.

Mr. WEICKER. Mr. President, if the Senator will yield to me, since I, along with the Senator from North Carolina, was the subject of these unidentified remarks, I would also like to make some remarks at this point.

I would like to join with the Senator from North Carolina in, first, trying to trace the origin of these remarks; and, second, I would like to join with him in presenting my income tax return for 1972.

Mr. President, if I might, I would like to read the UPI report. It is as follows:

WASHINGTON.—Advisers close to President Nixon, both inside and outside of the White House, have been urging Nixon to make a forceful counterattack on critics of his financial record.

"The President is being urged to make a public statement insisting that his political critics make their income tax returns public and that they provide an audit showing their personal cash flow," said one source.

The sources said proponents of the counterattack strategy were suggesting that Nixon single out some members of congress, including Sens. Sam J. Ervin Jr., D-N.C., and Lowell P. Weicker, R-Conn., who have questioned tax deductions Nixon took and the tax rate he has paid while in office.

The sources said Nixon's challenge would ask critics to fully disclose their personal financial records to show "they aren't living in glass houses while they throw their rocks" at him, White House sources said. "The President at present is resisting the advice and I don't know exactly why," said one source, but he said Nixon was weighing the idea carefully and was expected to make a decision shortly.

I would also like to suggest to these sources, the advisers close to President Nixon, that if they want to counterattack, I think that the truth is the best way in which to do that instead of the mud slinging and the slurs that have come forth in rather a voluminous way.

I have asked my office to bring down to the floor the figures as published in the President's statement.

In 1972, the President claimed as wages and income roughly $270,000. In 1972 he paid in taxes $4,298.17.

The junior Senator from Connecticut did not earn $270,000 in 1972. I earned $67,939. And I paid $14,350 in Federal taxes.

In addition, I paid roughly about $2,200 in taxes to the State government, and over $3,000 in local taxes.

Mr. President, I submit my 1972 returns for the RECORD and ask unanimous consent that they be printed in the RECORD.

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

Name, Lowell P. Weicker, Jr., Social Security No., [redacted]
Marie L. Weicker, Jr., [redacted]
Home address, Round Hill Road, Greenwich, Conn. 06830.

1. Net Capital Gains, $27,117.
2. Dividends, $10,016.
3. Total Capital Gains and Dividends, $37,133.
4. Adjusted Gross Income, $67,939.
6. Percentage To Be Applied To Exemption Factor, 54.66 percent.
7. Percentage on Line 6 Multipled by $2,000, $1,093.
9. Larger of Amounts on Lines 7 or 8, $1,093.
a. Amount on Line 9 if single or if married and filing a joint Federal Return, $1,093.
11. Net Taxable Capital Gains and Dividends, $36,040.
12. TAX DUE 6% of amount on Line 11, $2,162.
14. Balance of tax due, $2,162.
17. Amount due, $2,162.

Have you filed or will you file a U.S. Internal Revenue Individual Income Tax Return for a taxable year which includes the period covered in this return? Yes.

DIVIDEND INCOME

1. Gross dividends (including capital gain distributions) and other distributions on stock. (List payers and amounts—write (H), (W), (J), for stock held by husband, wife, or jointly).

Schedule attached, 9926.
W—Garfinckel, Brooks Bros., 55.
W—Garfinckel, Brooks Bros., 11.
H—Merch & Co., 42.
W—Schering-Plough, 9.

2. Total of line, 10,043.
3. Capital gain distributions, 27. (See instructions on page 13. Enter here and on Schedule D, line 7). See note below.
4. Nontaxable distributions (see instructions on page 13).
5. Total, 27.
6. Dividends before exclusion, 10,016. (Subtract line 5 from line 2.) Enter here and on Form 1040, line 12a.

Schedule B and Schedule E,
Part I and Part III

T/U/A Lowell P. Weicker, 12–14–40, F/B/O Mary H. Paulsen, et al., No. 13–6083706, 117, 2.
T/U/A Lowell P. Weicker, 8–3–50, F/B/O Lowell P. Weicker, Jr., No. 13–6067993, 3,385.
T/U/A Lowell P. Weicker, Jr., No. 13–6083709, 2,191, 48.
T/U/A Lowell P. Weicker, T1270, F/B/O Mary H. Paulsen, et al., No. 13–6029250, 2,455, 547.
T/U/A Benjamin Joy, 3–18–54, F/B/O Marie Weicker, No. 04–6007191, 543, 326.
H. Stop-Shop, 62.
H. Florida Gas Co., 16.
H. Hewlett-Packard, 8.
H. Delta Air Lines, 3.
W. United Corp., 30.
W. Laird, Inc., nominee, 13.
H. Laird, Inc., nominee, 5.
H. Scudder Com. Stk. Fund, 73.
H. Scoville Mfg., 145.
W. Scoville Mfg., 9.
H. Century shares, 54.
H. W. Ventures, partnership, 06–6132037, 36.
W. Southland Corp., 63.
W. American Brands, 187.
H. Maryland Cup, 35.
W. American Express, 30.
H. Friendly Ice Cream Corp., 6.
W. Friendly Ice Cream Corp., 8.
W. Maryland Cup, 154.
W. Heublein Cup, 123.
W. General Signal, 100.
W. Skil Corporation, 75.
Totals, 9926 and 923.

2. Enter your share of net short-term gain (or loss) from partnerships and fiduciaries, (14).
3. Enter net gain (or loss), combine lines 1 and 2, 3.
4(a). Short-term capital loss component carryover from years beginning before 1970 (see Instruction H), 4(a).
4(b). Short-term capital loss carryover attributable to years beginning after 1969 (see Instruction H), 4(b).
5. Net short-term gain (or loss), combine lines 3, 4(a) and 4(b), (14).
6. Residence (summer), Marion, Mass., 98,-000; 78,522; 19,478.
7. Capital gain distributions, 27.
8. Enter gain if applicable from line 4(a) (1), Form 4797 (see Instruction A), 34,923.
9. Enter your share of net long-term gain (or loss) from partnerships and fiduciaries, (179).
10. Enter your share of net long-term gain from small business corporations (Subchapter S), 10.
11. Net gain (or loss), combine lines 6 through 10, 54,249.
12(a). Long-term capital loss component carryover from years beginning before 1970 (see Instruction H), 12(a).
12(b). Long-term capital loss carryover attributable to years beginning after 1969 (see Instruction H), 12(b).
13. Net long-term gain (or loss), combine lines 11, 12(a) and 12(b), 54,249.
14. Combine the amounts shown on lines 5 and 13, and enter the net gain or loss here, 54,235.
15. If line 14 shows a gain—(a) Enter 50% of line 13 or 50% of line 14, whichever is smaller (see Part VI for computation of alternative tax). Enter zero if there is a loss or no entry on line 13, 27, 118.
(b) Subtract line 15(a) from line 14. Enter here and on line 36, Form 1040, 27,117.
16. If lines shows a loss—
Section B.—Sales or Exchanges of Property Used in Trade or Business and Certain Involuntary Conversions (Not Reportable in Section A) (See Instruction D).
3. Sherwood Reality Co., care of B. F. Cohen, 46 W. Putnam Ave., Greenwich, Conn., 34,923.
4. Combine the amounts on line 3, enter here and also on the appropriate lines as follows, 34,923.
1. Net Short Term Gain (or Loss), (14).
3. Line 1 Less Line 2, (14).
5. Net Short Term Gain (or Loss) Line 3 Less Line 4, (14).
6. Net Long Term Gain (or Loss), 54,249.
8. Line 6 Less Line 7, 54,249.
10. Net Long Term Gain (or Loss) Line 8 Less Line 9, 54,249.
11. Sum of Lines 5 and 10, 54,235.
12. 50% of the Smaller of Lines 10 or 11, 27,118.
13. Net Capital Gains (Line 11 Less Line 12.) If a Loss Enter Zero, 27,117.
14. Dividends, 10,016.
15. Total Taxable Capital Gains and Dividends (Add Lines 13 and 14), 37,133.
16. Adjusted Gross Income Included In Line 17 Form 1040, 67,939.
18. Line 16 Less Line 17, 67,939.
20. Modified Adjusted Gross Income (Line 18 Less Line 19), 67,939.

Lowell P. and Marie L. Weicker, Jr., [redacted]

[redacted]

Address, Round Hill Road, Greenwich, Conn. 06830.
Occupation, U.S. Senator; wife's, homemaker.
Exemptions, 2.
Dependent children who lived with you Scott, Gray, Brian Bianchi (adopted), 3.
10. Total exemptions claimed, 5.
11. Wages, 42,500.
12a. Dividends, 10,016; less exclusion 200, balance 9,816.
14. Income other than wages, dividends, and interest, 29,340.
15. Total, 81,656.
16. Adjustments, 13,717.
17. Subtract line 16 from line 15 (adjusted gross income), 67,939.
18. Tax, check if from: Schedule G, 14,350.
20. Income tax, 14,350.
22. Total, 14,350.
23. Total Federal income tax withheld, 10,789.
27. Total, 10,789.
28. If line 22 is larger than line 27, enter balance due IRS, 3,561.

INCOME OTHER THAN WAGES, DIVIDENDS, AND INTEREST

36. Net gain (or loss) from sale or exchange of capital assets (attach Schedule D), $27,117.
38. Pensions and annuities, rents and royalties, partnerships, estates or trusts, etc. (attach Schedule E), ($2,377).
44. Other (state nature and source), Honoraria, $4,600.
45. Total (add lines 35 through 44). Enter here and on line 14, $29,340.

ADJUSTMENTS TO INCOME

48. Employee business expense, $13,717.
50. Total adjustments, $13,717.

TAX COMPUTATION

51. Adjusted gross income, $67,939.
52. (a) If you itemize deductions, enter total from Schedule A, line 40 and attach Schedule A, $18,644.
53. Subtract line 52 from line 51, $49,295.
54. Multiply total number of exemptions claimed on line 10, by $750, $3,750.
55. Taxable income. Subtract line 54 from line 53, $45,545.

ITEMIZED DEDUCTIONS

1. One half (but not more than $150) of insurance premiums for medical care. (Be sure to include in line 10 below), $150.
10. Total deductible medical and dental expenses, $150.

TAXES

11. Real estate, $3,010.
12. State and local gasoline, $110.
13. General sales, $547.
14. State and local income, $833.
15. Personal property, $100.
16. Other sales tax—auto, $82.
17. Total taxes, $4,682.
Contributions, schedule attached, $1,150.
18. Total cash contributions, $1,150.
21. Total contributions, $1,150.
Interest expense.
22. Home mortgage, $5,520.
24. Other (Itemize); New Bedford 5c Svg.-Mtge., $588.
State Natl Bk-Loan, $129.
Putnam Tr. Co.-Loan, $140.
25. Total interest expense, $6,377.
28. $100 limitation, $100.
Miscellaneous deductions for alimony, union dues, etc., unreimbursed senatorial expenses—schedule attached, $6,096.
Investment advisory service, $189.
32. Total miscellaneous deductions, $6,285.

SUMMARY OF ITEMIZED DEDUCTIONS

33. Total deductible medical and dental expenses, $150.
34. Total taxes, $4,682.
35. Total contributions, $1,150.
35. Total interest expense, $6,377.
39. Total miscellaneous deductions, $6,285.
40. Total itemized deductions, $18,644.

Schedule of congressional reimbursement and expenses, travel allowance, $1,800.
Home office expense (includes telephone and subscriptions) $4,630.
Total, $6,430.
Less travel expense, $11,855.
Home office expense (includes telephone in connection and subscriptions), $5,292.
Cost of living—Washington, $3,000.
Total, $20,147.
Expenses in excess of reimbursement, $13,717.
Miscellaneous deductions entertainment of constituents, $4,018.
Miscellaneous office expense, $2,078.
Total, $6,096.
I hereby certify that I was in a travel status in the Washington area, away from home, in the performance of my official duties as a Member of Congress, for 230 days during the taxable year, and my deductible living expenses while in such travel status amounted to $3,000.

CONTRIBUTIONS

Mississippi State University Development Fund, 10.
Greenwich Health Assn., 50.
Tobey Hospital Bldg Fd., 300.
Marine Historical Assn., Inc., 25.
Community Chest, 125.
Ducks Unlimited, 30.
Capitol Page School, 5.
Marion Police Assn., 150.
Mass. Eye & Ear Infirmary, 100.
Greenwich Hospital Auxiliary, 30.
American Red Cross, 25.
Round Hill Community, 300.
Total, 1150.
Schedule Attached, 9926.
W. Garfinckel, Brooks Bros., 55.
W. Garfinckel, Brooks Bros., 11.
H. Merch & Co., 42.
W. Schering Plough, 9.
2. Total of line 1, 10043.
3. Capital gain distributions, 27.
5. Total, 27.
6. Dividends before exclusion, 10016.
1. Taxable income, computation year, 1972; 45,545; 1971; 28,846; 1970; 35,573; 1969; 20,936; 1968; 25,838.
5. Adjusted taxable income or base period income, 1972, 45,545; 1971; 28,846; 1970; 35,573; 1969; 20,936; 1968; 25,838.
6. Adjusted taxable income, 45,545.
7. 30% of the sum of line 5, columns (b), (c), (d), and (e), 33,358.
8. Averageable income, 12,187.
9. Amount from line 7, 33,353.
10. 20% of line 8, 2,437.
11. Total, 35,795.
13. Total, 35,795.
14. Tax on amount on line 13, 10,254.
15. Tax on amount on line 11, 10,254.
16. Tax on amount on line 9, 9,230.
17. Difference (line 15 less line 16), 1,024.
18. Multiply the amount on line 17 by 4, 4,096.
19. Total (add lines 14 and 18), 14,350.
22. Tax (add lines 19, 20 and 21), 14,350.
Income or losses from partnerships, estates or trusts, Small Business Corporations:
Sherwood Realty Co.
Greenwich, Conn., 3,300.
Schedule attached, 923.
1. Totals, 2,377.

Mr. WEICKER. Mr. President, I had an adjusted gross income of $67,939, on which I paid $14,350 in Federal income tax. The report of the President shows that he had an income of somewhere around $270,000 and paid Federal taxes of about $4,300.

Mr. President, I am more than delighted to make these records public because of the unidentified attack from the White House. To go further, it is my intention to submit also the 1971, the 1970, and the 1969 returns so that there can be an exact comparison between the taxes paid during that time by me and the taxes paid during that time by the President.

I would like to suggest to the advisers to the President that the best counterattack would be to tell the truth.

I think it is time that the President responded to the request of the distinguished chairman of the Select Committee and the entire committee made by the committee, I think, some 5 or 6 weeks ago. The committee was willing to go to the White House at the President's convenience and not bring him here, but have a face-to-face session with him at the White House. That request was not even given the courtesy of a yes or no. That would make sense, rather than asking for income tax returns.

However, we are glad to supply them because it makes the President's returns all the more ridiculous.

Mr. ERVIN. Mr. President, I would like to say that I own real estate in the town of Morganton. I have stocks which pay dividends in the neighborhood of less than $4,000. I had outside earnings of about $8,000. However, my wife and I paid taxes last year aggregating $20,231.71.

I paid every penny of taxes that I have ever owed. I have never sought to evade any taxes. Every time that I was not sure that I was entitled to a deduction or a credit, I took up the question in writing with the tax authorities before I filed a tax return, and obtained from them a ruling which I followed.

I think it is very unfortunate when anyone, especially an identified man, identified only as a source, tries to insinuate that there is something wrong with the income tax returns of an honest man.

If this gentleman wants, Mr. President, I will take back the word "gentleman"—if this identified source wants to memorize all my income tax returns for the last 50 years, I will make them available to him.

THE TRANSACTION OF ROUTINE MORNING BUSINESS ON MONDAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Monday there be a period for the transaction of routine morning business of not to exceed 15 minutes, with statements therein limited to 3 minutes, and that the bill to amend title 2 of the Clean Air Act be laid before the Senate immediately upon the close of the morning hour.

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

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

WALK A MILE FOR YOUR HEALTH DAY

Mr. ROBERT C. BYRD. Mr. President, it is my understanding that the joint resolution (S.J. Res. 159) has been cleared on both sides on the aisle. I therefore ask unanimous consent that the Senate proceed to the consideration of Senate Joint Resolution 159, with the understanding that there will be a time limitation thereon of not to exceed 5 minutes.

Mr. JAVITS. Mr. President, may we know what that is?

Mr. ROBERT C. BYRD. "Walk a Mile for Your Health Day."

Mr. JAVITS. Very well. I concur.

Mr. PROXMIRE. I am happy to note the presence in the Chamber of Senator JAVITS, together with several other healthy Members of the Senate who happen to be present.

The PRESIDING OFFICER. The joint resolution will be stated.

The second assistant legislative clerk read as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized and requested to issue a proclamation designating the last Sunday of May each year as "Walk a Mile for Your Health Day," and calling upon the people of the United States and interested groups and organizations to rededicate themselves to obtaining physical exercise through walking and, on that day, to abandon other modes of transportation in favor of walking.

The PRESIDING OFFICER. Is there objection to the consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. PROXMIRE. Mr. President, I am delighted by the Judiciary Committee's speedy action on Senate Joint Resolution 159, proclaiming the last Sunday in May as "Walk A Mile for Your Health Day."

This is a particularly appropriate time for the consideration of such a resolution in view of the impetus given by the energy shortage to power cheap modes of transportation. Walking uses quite a few calories—it burns up excess fat. But it is just about the best way to cut down on fuel use, along with bicycling.

Even more important, walking is an extremely healthful exercise. Just about everyone can do it without physical harm. It is often prescribed for heart attack sufferers as a means of building up the heart muscle following an attack. It involves no special equipment or undue expense. It is a marvelous way to become reacquainted with the world around us.

Finally walking is a pollution-free form of transportation. It produces no hydrocarbons—no noxious fumes. And it helps to remind us of both the wonder and the fragility of our natural environment. In today's jargon, it is an "ecological" plus.

We would not be considering this resolution today without the efforts of quite a few people. First and foremost I want to commend the chairman of the Federal Charters, Holidays, and Celebrations Subcommittee, Senator HRUSKA and the ranking member of the subcommittee Senator MCCLELLAN, for acting with such expedition to report this legislation. Although it is not an earth-shaking resolution, early congressional action will add considerably to the chances of making next year's walk a mile day a smashing success, and the degree of success will be a factor in the physical health and well-being of, I hope, hundreds of thousands of Americans.

I also want to congratulate another Ruska—spelled with an R, not an H. I refer to Bruce Ruska of Chatham, Mich. who first suggested such a day in a letter to me last January.

Of course President Nixon, who issued a statement in support of "Walk a Mile Day" last June, gave the concept a major boost as did his Council on Physical Fitness and Sports, which promulgated a "Walk a Mile Day" proclamation.

Among the organizations endorsing "Walk a Mile Day" and helping enormously to make it a success this year were the American Heart Association, the American Medical Association, and the American Athletic Union.

Together with a number of Senators I participated in a symbolic walk this past July which was covered by the media in fine style. Television stations around the country were quite generous in providing free public interest advertising time last summer to promote the first "Walk a Mile Day." Special thanks is due to WRC–TC for providing technical and practical advice on how to go about getting the message out.

Again my thanks to the distinguished Senator from Nebraska (Mr. HRUSKA) as well as to my esteemed colleague from Arkansas (Mr. MCCLELLAN) for making early Senate consideration of this resolution possible. It is a fine Christmas present.

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

Mr. PROXMIRE. I yield to the Senator from Virginia.

Mr. HARRY F. BYRD, JR. Would the distinguished Senator from Wisconsin be inclined to accept an amendment to say "Walk 5 miles for your health"?

Mr. PROXMIRE. I am afraid not. This is a resolution to cover the old, the young, the toddlers, and both ends of the age spectrum.

I thank the Senator for his suggestion. It may be that at some later time we can consider it. Perhaps we can work up to it.

Mr. President, I shall not detain the Senate more than a few minutes on this resolution. Many people are inclined to treat a resolution of this kind lightly, but I do think it can go a long way toward helping with the development of the country.

We spend something like $80 billion a year as a country on health, and of that amount, of course, many billions are spent by the Federal Government, once people are ill, to help them regain their health. We devote very little attention and money to preventing ill health by keeping people in sound health.

That is what this joint resolution is intended to do. There is overwhelming agreement among doctors, scientists, and everyone who has studied the question that the American people simply do not exercise enough or consistently enough. The purpose of this little resolution, which has the support of the American Heart Association, the American Medical Association, and many others, is to persuade people to do just what the title indicates.

Mr. President, I call up an amendment which I have at the desk, and ask for its consideration at this time.

The PRESIDING OFFICER. The amendment would amend the preamble, and would be in order after the passage of the joint resolution.

Mr. PROXMIRE. I thought the amendment was to the body of the resolution. Perhaps I am in error.

I beg the Chair's pardon; the "whereases," I understand, are a part of the preamble.

I would like to thank the Senator from Nebraska (Mr. HRUSKA) and the Senator from Arkansas (Mr. MCCLELLAN) for making the consideration of this joint resolution possible. Senator HRUSKA is the chairman of the Committee on Resolutions, and it was due to his consideration that the joint resolution is being acted on now. I am very grateful to him for making it possible.

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

The joint resolution was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The PRESIDING OFFICER. The preamble will be stated.

The second assistant legislative clerk read as follows:

Whereas regular moderate physical exercise is recognized scientifically as instrumental in promoting good health and in preventing heart disease;

Whereas this Nation's tradition of vigorous physical exertion stands in healthy contrast to the present trend toward the sedentary life;

Whereas walking is a pollution-free, natural, and inexpensive mode of transportation requiring no special skill or ability;

Whereas walking allows individuals to experience the beauty of their surrounding environment; and

Whereas this Nation should make a commitment to persuading all Americans to sample the joys and benefits of walking: Now, therefore, be it

The PRESIDING OFFICER. The question is on agreeing to the preamble.

Mr. PROXMIRE. Mr. President, I call up my amendment at the desk.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

Immediately after the words "in promoting good health and" in the first whereas clause insert the following: "may be of benefit."

The PRESIDING OFFICER. The question is on agreeing to the amendment to the preamble.

Mr. PROXMIRE. Mr. President, this amendment was called to the attention of the Senator from Nebraska (Mr. HRUSKA) after the joint resolution was reported by the committee, and he agrees that it makes a desirable and necessary addition to the preamble.

The PRESIDING OFFICER. Without objection, the amendment is agreed to,

and the preamble, as amended, is agreed to.

The joint resolution (S.J. Res. 159), with its amended preamble, is as follows:

Whereas regular moderate physical exercise is recognized scientifically as instrumental in promoting good health and may be of benefit in preventing heart disease;

Whereas this Nation's tradition of vigorous physical exertion stands in healthy contrast to the present trend toward the sedentary life;

Whereas walking is a pollution-free, natural, and inexpensive mode of transportation requiring no special skill or ability;

Whereas walking allows individuals to experience the beauty of their surrounding environment; and

Whereas this Nation should make a commitment to persuading all Americans to sample the joys and benefits of walking: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized and requested to issue a proclamation designating the last Sunday of May of each year as "Walk a Mile for Your Health Day", and calling upon the people of the United States and interested groups and organizations to rededicate themselves to obtaining physical exercise through walking and, on that day, to abandon other modes of transportation in favor of walking.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

LEGAL SERVICES CORPORATION ACT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the bill S. 2686.

Mr. HELMS. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. JAVITS. Mr. President, I think the situation should be very clear to the Senate. Senators want to go home. We all know that. Senators will be inconvenienced if cloture is voted on this measure. The legal services measure came within one vote of cloture today, which shows that there is a very strong preponderance of Senators who want to consider the bill. All we want to do is to let the record be very clear that this will simply defer the whole question for the weekend and a day. In other words, if a cloture motion is filed tonight, it would be on the calendar for action on Tuesday next. If a cloture motion is filed on Monday, it would be on the calendar for Wednesday next.

I tell the Senate without any question that a cloture motion will be filed, so we want the record to be very clear that a delay, if Senators are unhappy about it, is not attributable to us. We are ready to submit our cloture motion tonight, but that cannot be done unless the bill is the pending business.

By inadvertence, though no one is at fault, inasmuch as it is being temporarily laid aside, so that it would follow on the heels of the last bill, which is before us, it was simply put back on the calendar because nothing was said about it. But that is all right; nobody is complaining. We should have insisted on it, with knowledge that we would be forced back to this bill.

So I think it is only fair to say that whatever delay is entailed in the Senate is not of our doing. What is being done is not because of any doing of ours.

Mr. TAFT. Mr. President, I simply want to back up the statement of the Senator from New York and also to indicate to the Senate that I have here, ready to file, a cloture motion signed by 19 Senators who had hoped it could be filed today, so that it could come up immediately when the Senate convened on Tuesday. Apparently, that has turned out not to be the case. But other steps can be taken. Unfortunately, this will result in a further delay of the Senate next week.

Mr. LONG. Mr. President, I had hoped I could vote for a legal services bill, but I do not want to vote for it when one is under the hammer of cloture, where theoretically the people who are managing the bill have complete control of the situation. I have seen how arrogant those who have that type of legislative power in their hands can be. I see no reason why a legal services bill cannot be considered in the orderly process.

And amendments considered on their merits, such as the one I have, for which the Senate has voted by a majority vote when it was considering H.R. 1; that is, that we are not going to subsidize barratry or champerty with this legal services.

Mr. HELMS. Amen.

Mr. LONG. These people send word around the country trying to find a litigant, to file a lawsuit, where the brief has been prepared. It is drafted, but they do not have any name on it, so that they are scanning the country to find someone to file a lawsuit against in a State or a municipality, or against the Federal Government, or to strike down laws, or acts of Congress, to make them do opposite to what was intended.

It is one thing to talk about today what a lawyer owes his client. I thought it was against the law for a lawyer to instigate litigation. If it is champerty or barratry, then it is condemned by the laws of many States, where one is out looking for someone to come up with some litigation to impede an honorable and dedicated State official and prevent him from doing his job under the law, or to load down the welfare rolls with people who have no right to be there, and keep them on for 5 months after determining that they have no right to be there.

So that if we make this law, it should be such that one is representing poor people and their problems. In that case, I am for it. I am a former poverty lawyer myself dating back to the days before the Government started paying them. But for the Government to start paying lawyers to sue it, so that they can earn more than working for clients, that has no appeal to me. So far as costing this Government tens of billions of dollars, harassing and impeding the dedicated work of Federal and State employees, doing the best they can and conscientiously trying to administer the laws, that also has no appeal to me.

I would like in due course for my amendment to be considered. I have it at the desk right now. It will be printed. I hope that Senators over the weekend will have an opportunity to read my statement today about this matter.

The legal centers are referred to as backup centers. They are not backups, they are frontups—frontup centers to initiate and draft petitions before they even know whether they can find a client, just as in the instance I have put in the RECORD where they said, "We can play a million games on this."

Think of the cost at all levels of government. Think of the cost to the courts. Think of the erroneous decisions that will be arrived at from time to time. After all, with all these people working at it in the backup centers, really the frontup centers, initiating litigation, just pity the poor, dedicated employee of the State or Federal Government trying to do a job in the public interest while he has these hordes of lawyers in the backup centers—I would call them frontup centers—dreaming up things with the words, "a million games to play with," that is, a million lawsuits to file.

Mr. TAFT. Mr. President, will the Senator from Louisiana yield?

Mr. LONG. I yield.

Mr. TAFT. I appreciate what the Senator is saying. I may well want to support the Senator's amendment but the Senator in one respect has got the shoe on the wrong foot. Those who want to bring up the bill, who want the amendments to be considered, are the ones who are filibustering, it is said. The contrary is the case. We are going to be able to get it considered, if we can get cloture voted, because we would like to give the Senator's amendment its consideration which, I might say, did not come to the committee on which I serve, but it would be considered in the conference again, if not considered on the floor; but the fact that this comes under the cloture procedure of rule XXII.1 is not the fault of the sponsors of the bill. The Senator seeks to put the plan for the procedural problem upon us, when he should put it on those why by clear tactics, with multiple amendments already on file at this point in the session, intend to talk the bill to death insofar as this session is concerned.

Mr. LONG. I think that a bill can be passed, and a good one. I, for one, would be willing, when the bill is shaped up in such fashion that it will do more good than harm, to vote for it.

In other words, I can recall the days when I was a poverty lawyer and we needed help along with our clients. I can recall the days when I was trying to help someone whose water had been cut off in his house, or a woman who was suing some errant fellow to make him pay his

support payments for the children, or in defending a person against a landlord because the poor person was being evicted or because the landlord wanted to raise the rent.

I am all for helping the poor in that kind of thing. I should be. That is the background whence I came.

Frankly, it runs in the family. That is how my father got his start, as a poverty lawyer, doing what he could on behalf of poor people. I am thinking of what we call in forma pauperis where you do not advance the court costs because neither you nor the client has the money to do it with. I am for all that.

What I am against is doing the kind of thing I could not have afforded, the kind of thing that does not make much sense; that is, the constant harassment of dedicated men running hospitals, or running various welfare offices or in other areas where they are doing the best they can to serve the poor.

It is the people sitting in their ivory towers who do not understand the problems of the poor or anything about administering to the needs of the poor, who generate lawsuits after lawsuits, trying to harass those who are doing the best job they can. May I say that it is those in the ivory towers who dreamed up the lawsuits, did the research, and the drafting of the petitions and are now scouring the country trying to find clients on behalf of some cause. That is what does not appeal to me.

I feel that a poor soul trying to do a job for poor people, with particular emphasis on the poor, should not have to be confronted by hordes of Government-paid lawyers dreaming up litigation, and to use their language, "playing a million games with them," while he tries to help the poor. I say the same on behalf of the dedicated doctors trying to help people in charity hospitals, and dedicated social workers, and welfare workers who are trying to help the poor, trying to put poor people on the welfare rolls and at the same time to keep the chiselers and the cheaters, the liars off. But sometimes it costs more to keep the cheaters off the rolls than to leave them on there because the welfare agencies are dragged into endless litigation, tying up the judge and jury, the lawyers on both sides, with the Federal Government paying the lawyer for the plaintiff, the lawyer for the defendant, the judge and the jury, and the welfare people who do not belong on the rolls at all the same time—that type of thing can be a complete frustration.

In everything we have tried to do, I am all in favor of providing the lawyers to achieve the legitimate aspirations of the poor; but you are nothing but an idiot to pay money out to hire a lawyer to sue yourself, or to pay to file a lawsuit that you believe is without merit to begin with. That is the kind of thing I would hope we can avoid.

Mr. HELMS. Mr. President, will the Senator from Louisiana yield?

Mr. LONG. I yield..

Mr. HELMS. I want to associate myself with the eloquent remarks of the distinguished Senator from Louisiana. No one could have more succinctly put in perspective what we who oppose this bill are trying to do here.

The Senator from North Carolina wants to be as deferential and as courteous to his colleagues as may be possible in this matter.

But, what do we have here?

The distinguished Senator from New York sincerely proclaimed the virtues of his side of this controversy by trying to pin the tail on the donkey of those who oppose him. It will not work, Mr. President, the proponents have been filibustering their own bill. That is clear from the RECORD. So we have a proposition here where we are down to the last week of the session. I want to reiterate, Mr. President, that if we can get some sort of reasonableness on the part of the proponents of the bill we can resolve this situation that is now headed toward an impasse. Otherwise, this Senator, this freshman Senator from North Carolina, is not going to stand by without exercising every prerogative available to him to prevent this bill from being passed without some public hearings which have not as yet been held this year on this new bill.

The pretense has been made on the floor that this is the same bill that has been passed by the Senate, and so forth, and so on. We have heard that over and over again—a broken record. It is not the same bill. It is a new bill. It is a bill that has been reported by the Labor and Public Welfare Committee, without a hearing, not 1 minute of hearing, and it was marked up in closed session. I would remind the Senate that there were other proposals for legal services for the poor—proposals which have been totally ignored.

I say to the press, which apparently cannot understand it, that those of us who oppose this bill are not opposed to legal services for the poor. If I have to say it a thousand times, I will say it. I want the poor to have representation in court, just like anybody else. But insofar as the legitimate prerogatives available to the Senator from North Carolina will permit, I intend to exercise them. This Senate will stay in session through New Year's Eve, if need be, to implement whatever prerogatives I have available to me to defend what I believe to be right. All we are asking is that this bill be carried over until after the first of the year.

Meanwhile, I say to the distinguished Senator from Louisiana and the distinguished Senator from Ohio that we have a legal services program. Do we not?

Mr. LONG. Of course we do.

Mr. HELMS. It is not a problem of getting legal services for the poor. We have a program that is functioning. What we are talking about is structuring a new program that may be viable and workable, and forbid the outrages which the distinguished Senator from Louisiana has discussed so eloquently.

We are asking that this matter be carried over until after the first of the year; that it be referred to the Committee on the Judiciary. The Judiciary Committee should have received it in the first place but did not; we ask that hearings be held, and then that the bill be reported, consistent with the due processes of the Senate.

If that is doing wrong by my colleagues, I will have to stand by it; but I am saying that we who oppose this bill are going to exercise every prerogative available to us. We have 100 amendments. We will consider them carefully. If we must have a rollcall vote on each amendment, we will have it. We will do whatever else is necessary to get through the point that the Senate is not going to pass this bill, as long as we have anything to do with it, without due process accorded to those of us who wish there had been hearings, who wish it had been referred to the Judiciary Committee.

Mr. LONG. It seems to me that cloture becomes a very dangerous thing.

Mr. HELMS. The Senator is correct.

Mr. LONG. When people ram through a legislative proposal without the consideration that the matter deserves and with Senators not knowing what the arguments are, for and against.

Mr. HELMS. The Senator is eminently correct.

Mr. LONG. On the issue I raised, we had to confront the same matter when we were voting on H.R. 1 in the previous Congress, the so-called welfare reform bill. We saw an amendment brought in by about 25 or 29 cosponsors—I do not recall exactly how many—to try to strike from that bill what the Senate Finance Committee had put in, to say that you will not be suing the State or the Federal Government to strike down their laws or to keep them from implementing those laws, without the consent of the Attorney General; that the Attorney General, before he gives that consent, would at least give the congressional committees notice that he was considering given consent to sue the States and the Federal Government on behalf of these tax-paid poverty lawyers.

They came in with about 25 or more cosponsors. Presumably, those people could persuade some people to vote their way. The Senate had not heard the argument for the other side, but in the brief period of time we had to debate that matter—about a half hour or an hour—we persuaded the majority of the Senate to vote them down, and we beat them by a vote of 38 to 35. If you take the people who had an open mind, we persuaded about 90 percent who had an open mind to see it the way the committee saw it when we studied that issue.

I do not want that matter to be decided without Senators knowing what they are voting on.

When Senator Burton Wheeler, of Montana, served in this body, he used to say that in order to make the Senate understand a problem, you have to make the speech two times; that you will get one group of Senators one time and another group the next time.

All I ask in this area is that this matter be handled in sufficient, orderly process, that Senators understand what they are voting on. If Senators find that they have voted to pay, sight unseen, for a thousand lawsuits to be filed against a dedicated public servant who could be making 10 times as much money in private practice of medicine, for ex-

ample, than in managing a charity hospital, and to harass such a man so much that he cannot operate and administer to the needs of the sick, they would have second thoughts about it. They would have second thoughts about people at Columbia University filing these lawsuits to keep a dedicated doctor out of the hospital and in the courts, especially if you look at what the lawsuits achieved by the time they got through with it. They ought to think about the fact that billions of dollars would be spent in a way nobody would dream the money would be spent, in proselytizing programs that were never intended, with a great deal of money spent to make legislators out of judges, to make them construe the law different from the way the Founding Fathers or Congress intended.

Everybody knows that judges are not very good legislators. Now and then they come up with a good piece of judicial legislation; but, generally speaking, they were not picked for that kind of work. They were not picked for those qualifications. They were picked for an entirely different set of qualifications, and they are supposed to remain consistent. When they make a mistake, they are under no burden to change it. In fact, the burden on a judge, having made a mistake, is to say that if it is to be changed, the legislative branch ought to change it. Theoretically, having decided a point of law, they are supposed to stay with it; whereas, we in the legislative branch, having made a mistake, are under a duty to admit it to ourselves and to change it.

So, not only are judges not picked for those qualifications—if they possess them, it is an accident—but also, having trespassed in the legislative field, they have a duty, having made a mistake, to stay with it. But those in the legislative branch, having made a mistake, have the duty to watch over it carefully, exercise oversight, and correct it.

So that on its face, this effort to subsidize judicial legislation is not a good idea. So long as it can be understood that we are not trying to subsidize and promote legislation by judges, who are not supposed to be legislating; that we are not trying to impede, harass, and prevent dedicated public employees of Federal and State governments from doing their jobs; that we are not trying to reverse the judgment of Congress in passing its laws, or even to reverse the intent of the sponsor of a bill who puts it on the statute books, then I believe we can proceed with a good poverty-lawyer bill. But as long as it is going to be what we have seen it do all too much in the past, those of us who protest and who know about those things have a duty to try to explain it to the Senate and try to see that it is good legislation, not bad legislation.

Mr. HELMS. I commend the Senator, and I associate myself again with his remarks.

Mr. President, an attempt was made here earlier this afternoon to pin the tail on the donkey. Let us pin the tail on the right donkey.

All the proponents of this bill have to do, if they want the Senate to adjourn sine die, is to agree to carry this matter over. We will discuss it after the first of the year. If they want to keep the Senate in session next week, so be it. But let the RECORD be clear that it is they, the proponents of this bill, who will be keeping the Senate in session, not the opponents of this bill. We who oppose the bill are perfectly willing to discuss it. We are perfectly willing to participate in public hearings on it. But the existing situation must not be allowed to prevail.

Let me say again for the RECORD that if the Senate is delayed next week, it will not be because of the Senator from North Carolina and those who with him oppose the proposed legislation and the way it was brought before the Senate. It will be the proponents of the bill, who have not compromised one whit from the very beginning.

Mr. TAFT. Mr. President, certain matters ought to be corrected, very briefly, for the RECORD. I do not intend to get into any great debate.

The distinguished Senator from Louisiana, in his usual eloquent manner, has presented, in far less than the hour he would have under the cloture procedure, such a persuasive argument that, as I indicated earlier, I might be willing to go along with his amendment; but I share with him the regret that the tactics that have been followed with regard to this legislation might put us in this position. Indeed, it is abundantly clear from what the Senator from North Carolina said that we are not going to be able to consider the bill under any circumstances, even after that. The truth is the Senator from North Carolina is against the bill.

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

Mr. TAFT. I yield.

Mr. LONG. I am not against having a bill; I want to correct one very bad feature in it.

Mr. TAFT. I know that is the position of the Senator and I am sure the Senator could handle it easily in far less than the 1 hour he would have.

Mr. President, two-thirds of the Senate, but two of those Senators present, would prefer to go on with the regular procedure and have a discussion on the various amendments but the tactics followed have prevented us from going in that direction.

Extensive hearings were held last year. I attended many of the hearings that were held at great length. Most of these matters were discussed. Unfortunately there were differences between the administration and the proponents of the bill, which kept it from becoming law last year. We hope those differences have been resolved. We had hoped it would not be necessary to go ahead with hearings this year. We have had no request from the Senator from North Carolina or from anyone else to have new or prolonged hearings on this matter.

The Senator is trying to shift the onus on us for holding up the matter. If he wants to pursue that course he has a course open to him which does not involve delaying the Senate. He could move to commit the bill to the Committee on the Judiciary. In fact, that committee was consulted before the matter was brought out and it was found there was no objection and no desire on the part of the committee, the chairman or the ranking minority member, to have hearings on the bill in the Committee on the Judiciary. It is another case of, "Leroy does not want the ball."

The Senator is trying to give it to a committee that is not satisfied with the legislation. Actually, tactics are being followed in an attempt to defeat the legislation and prevent it from coming before the Senate in order to let the Senate express its will.

Mr. HELMS. Mr. President, I express my admiration for the Senator from Ohio, but we see the matter differently. I think his crowd is holding up the bill and he thinks our crowd is holding up the bill. We are both operating in good faith. Apparently we have an impasse, but so be it.

I have heretofore stated how I feel about it. I was not elected by the people of North Carolina to come up here and yield to things I do not think I should yield to, and I shall not. I regret we have this impasse. This bill has never had 1 minute of public hearings this year, regardless of any other hearings held on previous bills. This is a new bill on which no hearings whatever have been held. It was marked up in executive session and the Senate should have a different set of circumstances and a different atmosphere in which to consider this important piece of legislation.

WILLIAM SIMON—A COMMANDER WHO NEEDS AN ARMY

Mr. LONG. Mr. President, during this serious energy crisis, it is essential that our country have the very best leadership available in shaping its energy policies. I was, therefore, greatly pleased when President Nixon selected William E. Simon, presently the Deputy Secretary of the Treasury, to direct the Federal Energy Administration. Mr. Simon is a gifted administrator and an individual of great strength and intelligence. I have great confidence in his ability to manage the energy crisis, both now and in the future. It was the Finance Committee, on which I serve as chairman, which originally confirmed Mr. Simon as Deputy Secretary, and it is our committee which has worked within the many important areas of policy which lie within the jurisdiction of the Department of Treasury and the oversight of the Finance Committee.

Recently, I have heard it suggested that Mr. Simon should be required to resign as Deputy Secretary of Treasury before being confirmed and assuming his new position as Federal Energy Administrator. In my opinion this would be a grave mistake, and I take this opportunity to give my reasons.

During the past year, Mr. Simon has recruited and brought to the Treasury Department a staff of economists and energy specialists which many believe to be the best in the Federal Government. It would be foolish indeed if we were to deprive Mr. Simon of his authority—and more importantly—of his staff at

the Treasury during a time when energy decisions and energy policy require the urgent analysis and support that only a staff of professionals can provide. A czar must have his army, and an energy administrator must have his staff. To deprive Mr. Simon of his staff at this critical time, for no good reason, would be the worst kind of folly. That was one of the reasons why John Love, our first energy czar, found himself swamped with crisis decisions and without a staff to help him organize a cohesive policy. No man could have survived that mess. To take away Bill Simon's Treasury job would put him in the same untenable position John Love was in, and I am afraid he would go back to the greener pastures of investment banking, leaving the country energy leaderless.

There are a number of committees in this body who have some jurisdiction over the energy crisis—Interior, Finance, and Commerce. We in Finance intend to carry out our responsibilities as we see them. Others are doing the same. The Finance Committee also has jurisdiction over all Treasury and we know that Mr. Simon needs the base of support and the staff at Treasury if he is to perform his functions as energy czar. Some of his other responsibilities in running the Department will have to be delegated to the Under Secretaries. But, I repeat, if anybody forces him out of his job as Deputy Secretary, he will be putting Mr. Simon in an untenable position and we will soon be looking for "Energy Czar III."

ENERGY REVENUE AND DEVELOPMENT ACT

Mr. LONG. Mr. President, at the request of Senator GRAVEL, who had to be absent today, I am submitting for the RECORD a section-by-section summary of the Energy Revenue and Development Act which he introduced yesterday, and I ask unanimous consent that it be printed in the RECORD.

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

SECTION-BY-SECTION SUMMARY OF SENATOR MIKE GRAVEL'S "ENERGY REVENUE AND DEVELOPMENT ACT OF 1973"

Title I. Short Title—Statement of Policy and Purposes.

Section 101. Short Title: Section 101 denominates the bill—the Energy Revenue and Development Act of 1973.

Section 102. Statement of Policy and Purposes: This section contains a statement of policy and purposes. The following summarizes the points in the statement:

1. It is the policy of the U.S. to become energy independent by 1985.

2. Achievement of this goal is essential for the nation's economic growth, full employment, balance of payments equilibrium, and national security.

3 Attaining the goal requires a national energy policy, and a central authority to implement such a policy with the advice and assistance of an independent commission of energy experts.

4. The U.S. has enormous fossil fuel reserves; it is imperative that these resources be rapidly developed.

5. The public and private sectors must cooperate to develop alternative energy sources and systems—including solar, geothermal, wind, nuclear fusion and fission, coal gasification and liquefaction, conversion of organic materials and others.

6. Attaining energy self-sufficiency will require a massive investment of capital and technology.

7. Public funding of energy programs requires the imposition of taxes on energy sources with proceeds to be deposited in an energy trust fund.

8. Private funding requires that the private market be permitted to operate freely to attract the capital necessary for research and development of energy. Accordingly, price controls on fossil fuels must be phased out, and immediately terminated on articles needed in energy production. Decontrol of prices on fossil fuels should be carried out subject to safeguards to avoid excessive profits.

9. Foreign energy sources have proved to be an unreliable source of supply. However, because of relatively cheaper extraction costs abroad it will be necessary to impose variable duties on petroleum and petroleum products from all countries and quota limitations on petroleum and petroleum products sought to be imported into the U.S. from countries which have embargoed shipments of petroleum to the United States in order to assure a domestic climate conducive to capital energy investment.

10. Achieving energy self-sufficiency also requires the granting of tax incentives to stimulate domestic fossil fuel production and the removal of tax incentives which encourage foreign fossil fuel production by U.S. companies.

Title II. Energy Trust Fund—Tax on Energy Sources.

Section 201. Establishment of Trust Fund: This section creates an energy trust fund in the U.S. Treasury to be financed by the proceeds of an energy tax on sources. The trust fund would be managed by the Secretary of the Treasury in consultation with the Administrator of the Federal Energy Administration. The trust fund would be administered and invested in interest-bearing obligations of the U.S. or obligations guaranteed by the U.S., as are existing trust funds. Expenditures from the trust fund would be accomplished as provided by legislative appropriation acts.

Section 202. Tax on Energy Sources: This section imposes an excise tax on all energy sources by their British thermal unit (Btu) value including the extraction of fossil fuel within the United States, the production of electricity, using any energy source other than fossil fuels, and upon the importation of fossil fuels and their derivatives. The tax on energy sources would be imposed at rates which would vary for each year between July 1, 1974 and July 1, 1984 in order to raise revenues consistent with projected energy expenditures requirements.

Thus, the bill imposes a tax on energy sources of 4.1 cents per one million Btu for 1974 which ascends in stages to a rate of 6.5 cents by the year 1978 and thereafter declines to a rate of 2.8 cents by 1984, after which time the tax would be terminated. The tax would raise approximately $50 billion over a ten-year period, beginning in 1974 with $3.2 billion, increasing to $5.8 billion in 1978. A 5 cent per million Btu tax, which is slightly higher than the average tax in the bill, would mean an approximate increase of 29 cents for a barrel of crude oil, $1.20 a short ton of coal and 5 cents a thousand cubic feet of natural gas. The tax would be imposed on classes or grades of energy, as certified by the Federal Energy Administration.

Title III. Federal Energy Administration (FEA).

Section 301. Establishment of FEA: This section creates a Federal Energy Administration (FEA) to be directed by an Administrator and a Deputy Administrator to be nominated by the President and confirmed by the Senate.

Section 302. National Energy Program: This section charges the FEA with the responsibility for developing and carrying out a national energy program involving energy research, demonstration, development, utilization and conservation. The FEA would be charged:

1. Developing the information and technology necessary to support development of the widest range of energy policy alternatives necessary to attain energy self-sufficiency.

2. Assessing and directing Federal energy research and development to assure adequate reliable economic and environmentally acceptable energy systems.

3. Encouraging energy conservation and efficient energy production, conversion and consumption.

4. Providing solutions to immediate energy shortages.

5. Formulating and carrying out energy research and development and demonstration programs, with full consideration of the efficiency and environmental effects of conventional energy sources as well as middle and long term alternative energy sources.

Section 303. Authority of Administration: This section authorizes the FEA to promulgate rules and regulations and to fully exercise the powers vested in it by law. These powers include:

1. Entering into contracts and agreements for energy research, development and demonstration;

2. To acquire laboratories, research and testing sites;

3. To enter into contracts, leases, cooperative agreements with, and to make grants to, educational institutions, research firms, corporations, etc., to construct demonstration type or full scale commercial size facilities to produce energy from oil shale, coal gasification, solar power, tidal power or other unconventional sources of energy;

4. To provide loan guarantees to persons engaged in the prospecting, exploration, development or production of oil or natural gas pursuant to contractual agreements; and other authorities.

Section 304. Loan Guarantees: This section specifies the criteria under which loan guarantees may be made in order to raise private capital to produce energy.

Section 305. Patent Policy and Mandatory Licensing: This section provides that the technology arising from all energy projects undertaken by or under the authority of the FEA be made available at the earliest possible date to the general public. The FEA would determine in public proceedings whether patent licenses should be granted on a royalty-free basis or on a basis designed to recover part or all of the cost of federal research. Other provisions of Section 305 contain the rules and guidelines to be followed by the FEA in assuring that the technological fruits of its energy programs are immediately and properly made available to the private sector.

Section 306. Monetary Awards: This section empowers the FEA to make monetary awards, within carefully prescribed limits, to persons deemed to have made significant contributions to energy research and development.

Section 307. Technical Amendments: This section provides statutory titles of Administrator and Deputy Administrator of FEA.

Section 308. Authorization: This section authorizes that funds may be appropriated out of the trust fund to carry out the purposes of this Act.

Section 309. Annual Reports: This section requires that the FEA report to the Congress annually on its activities.

Section 310. Transfer of Functions: This section transfers to the FEA all functions previously carried out by the Atomic Energy Commission which relates to the peaceful uses of atomic energy.

Section 311. Future Transfer of Functions: This section authorizes the President, for a period of 36 months following the date of enactment, to transfer energy functions from other agencies to the FEA.

Title IV. Commission on Energy Technology Assessment (CETA).

Section 401. Establishment of Commission: This section creates an independent Commission on Energy Technology Assessment, consisting of 7 scientists, 7 engineers, and 7 economists. The Commission will be directed by a Commissioner who shall be appointed by the President with the advice and consent of the Senate. The Board members shall be appointed for a ten-year term in office staggered to assure continuity and independence.

The basic functions of the Commission will be to advise and make recommendations to the FEA regarding the qualities of research, development and demonstration undertaken under the FEA sponsorship and generally to critically evaluate national energy policy and its implementation.

Economic Models: The Commission would also construct and maintain economic models of the energy needs of the United States, and the alternative means and costs of satisfying those needs currently and during each subsequent five-year period. The information would be made available to the public.

Adversary Studies: The CETA would also perform "adversary studies", critically evaluating the merits of government-sponsored R & D efforts, and the performance of the private sector in developing energy supplies.

Independent Funds: CETA would be funded by a portion (one percent) of the trust fund monies received during the preceeding fiscal year.

The Commission will have its own staff of experts and will make periodic reports to the Congress and to the public.

Title V. Termination of Price Controls.

Section 501. Petroleum Fossil Fuels and Infrastructure: This section amends the Economic Stabilization Act to phase out price controls on prices (over a one-year period) of petroleum products, including oil, natural gas, and coal. In addition, Section 501 immediately would terminate price controls on steel pipe, drilling equipment, casing, or any other steel products certified in short supply and used in fossil fuel extraction, refining, and transportation.

Section 502. Natural Gas: This section amends the Natural Gas Act to deregulate the prices on new natural gas in interstate commerce and, as contracts expire it would dereregulate natural gas for use in interstate commerce produced in existing wells.

Title VI. Tax Enforcement Provisions (Excess Profits Tax).

Section 601. Excise Tax on Uninvested Profits from Energy Sources: This section would impose an excise tax on excess profits from energy sources to the extent that such profits are not reinvested in qualified energy projects. The tax would be 40 percent of the profits from energy sources. The profit allowance from energy sources for any person is set at 20 percent of his average net investment for the fiscal year or $100,000, whichever is greater. Profits in excess of that amount would have to be reinvested in qualified energy projects, or they would be subject to the tax.

Title VII. Imports of Petroleum, Petroleum Products, Natural Gas and Certain Drilling and Mining Equipment.

Section 701. Variable Import Duties: This section would impose variable import duties on petroleum and petroleum products imported into the U.S. The duty would be equal to the amount by which the domestic price of the commodity exceeds the price of the article sought to be imported into the United States.

Section 702. Imports From Certain Arab Countries: This section would impose a quota limitation not to exceed 5 percent of domestic consumption on petroleum and petroleum products imported into the U.S. from the Arab countries which have embargoed exports to the U.S.

Section 703. Relaxation of Import Controls on Certain Steel Drilling and Mining Equipment: This section would request the President to enter into negotiations with countries which have voluntarily limited their exports of steel products to the United States for the purpose of importing increased quantities of steel articles certified in short supply and used in fossil fuel extraction.

Section 704. Negotiations by Oil Importing Countries With Oil Exporting Countries: This section would request the President to enter into negotiations with other oil consuming nations to form a "consumers union" organization which would bargain collectively with the foreign producing nations. The Federal Energy Administrator would be the chief representative for the United States in negotiating on price and quantities of imports, and would represent the United States in all negotiations with major oil exporting nations prior and subsequent to the formation of a consuming nation organization. Consuming countries which refuse to enter into such an organization with the United States shall not be accorded most-favored-nation treatment by the United States.

Title VIII. Export Controls on Fossil Fuels, Drilling and Mining Equipment.

Sections 801–807.—These sections would impose export controls on petroleum, petroleum products, fossil fuels and certain drilling and mining equipment. The Secretary of Commerce would be directed to determine quarterly the quantities of such articles that would be available for export and would issue export licenses according to historical patterns of such exports. There is built-in flexibility in the administration of this provision.

Title IX. Tax Incentives for Increased Production of Energy Sources.

Section 901. Tax Credit, Exploratory Drilling, Secondary and Tertiary Recovery Costs: This section amends the Internal Revenue Code to create a double investment tax credit (14 percent) for domestic exploratory drilling expenses and secondary and tertiary recovery costs.

Section 902. Tax Credit, Depreciable Property Used in Extraction, etc. of Energy Sources: This section provides an additional tax credit (14 percent) for depreciable property placed in service for the exploration for, or the development, extraction, refining, storage or transportation of domestic fossil fuels, or any other energy source.

Section 903. Technical and Clerical Amendments.

Title X. Miscellaneous Tax Provisions.

Section 1001. Foreign Percentage Depletion and Intangible Drilling Expenses: This section would repeal prospectively the percentage depletion allowance and intangible drilling and development costs provisions for oil and gas wells located outside the United States.

Section 1002. Credit or Deduction for Residential Energy Conservation Expenditures: This section would permit individual taxpayers to credit against their income taxes an amount equal to 50 percent of their expenditures for residential energy conservation, such as storm windows costs, but not to exceed $1,000. In lieu of the tax credit the individual taxpayer could deduct up to $1,000 for such expenditures from their taxable income.

Title XI. Naval Petroleum Reserves: Increased Production on Federal Lands.

Section 1101. Transfer of Jurisdiction: Under this section, all jurisdiction of the Secretary of the Navy over U.S. naval petroleum and oil shale reserves would be transferred to the Secretary of the Interior, ninety days following the date of enactment.

Section. 1102. Comprehensive Plans for Land Use or Disposition: This section directs the Secretary of the Interior to report to the Congress, within 12 months, exploration, development and production of fossil fuels from the Naval petroleum and oil shale reserves by the private sector under U.S. mineral leasing laws.

Section 1103. Claims of Alaskan Natives: This section protects all rights and claims by Alaskan natives to lands comprising naval petroleum reserves in the State of Alaska.

Section 1104. Increased Production of Oil and Gas on Federal Lands: This section authorizes and directs the Secretary of the Interior to require that oil and gas fields in lands owned by the United States, including the outer Continental Shelf, be fully developed and produced at a "maximum efficiency rate," i.e. a rate that could be sustained without damage or loss to the oil and gas reservoir or the ultimate recovery of crude oil under sound conservation, economic and engineering principles.

ORDER FOR UNFINISHED BUSINESS TO BE LAID ASIDE TEMPORARILY ON MONDAY UNTIL DISPOSITION OF THE CLEAN AIR ACT AND THE FOREIGN AID APPROPRIATION BILL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Monday the unfinished business be laid aside temporarily and remain in a temporarily laid aside status until the disposition of the Clean Air Act and the disposition of the foreign aid appropriation bill or until the close of business on Monday, whichever is earlier.

The PRESIDING OFFICER. Is there objection?

Mr. GRIFFIN. Mr. President, reserving the right to object, I did not hear the request.

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The 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 withdraw my reservation to the request of the distinguished majority whip.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia? Without objection, it is so ordered.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for Monday is as follows:

The Senate will convene at the hour of 10 a.m. After the two leaders or their designees have been recognized under the standing order, the distinguished majority leader will be recognized for not to exceed 10 minutes, after which the distinguished Republican whip will be recognized for not to exceed 15 minutes, after which there will be a period

for the transaction of routine morning business of not to exceed 15 minutes.

Under the order, at the close of the morning hour, the Senate will proceed to the consideration of the Clean Air Act under a time limitation. There will be yea-and-nay votes, presumably, on amendments thereto and on passage of the bill.

On disposition of the Clean Air Act, the Senate will proceed to the consideration of the foreign aid appropriation bill. There is no time limitation thereon. Yea-and-nay votes will occur on amendments thereto and on final passage on the bill.

On disposition of the foreign aid appropriation bill, the Senate will go into executive session to consider the nomination of WILLIAM B. SAXBE to be Attorney General of the United States. There will be a yea-and-nay vote on the confirmation of that nomination.

Are there any questions?

Mr. GRIFFIN. I wonder if the distinguished majority whip would include that the leadership very likely would move in the morning hour to take up the legal services bill.

Mr. ROBERT C. BYRD. I am glad the Senator mentioned that.

I have been in touch with Senator MANSFIELD, after having assured Mr. JAVITS and Mr. TAFT that the leader would move on Monday, during the morning hour, to proceed to the consideration of the legal services bill. The leader understands this commitment and is fully in accord with it.

Consequently, following the transaction of routine morning business Monday, the leader will presumably first ask unanimous consent to proceed to the consideration of the legal services bill. If that consent is not granted, then the leader will move to proceed to the consideration of the legal services bill. That motion will not be debatable, it having been made following the close of routine morning business and prior to the close of the morning hour which will end at 12 o'clock noon.

Of course, a yea-and-nay vote can be demanded on the motion to take up, and a quorum call would be in order prior to the vote.

All Senators ought to be alerted, therefore, not only to the possibility but also to the likelihood of a yea-and-nay vote on the motion to proceed to the consideration of the legal services bill on Monday, which vote could occur—depending upon whether or not the two special orders run their course and whether or not the routine morning business runs its course—as early as 10:30 a.m., unless a live quorum is first demanded.

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ADJOURNMENT TO MONDAY, DECEMBER 17, 1973, AT 10 A.M.

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move in accordance with the previous order that the Senate stand in adjournment until the hour of 10 a.m. on Monday.

The motion was agreed to; and at 5:44 p.m., the Senate adjourned until Monday, December 17, 1973, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate December 14, 1973:

DEPARTMENT OF JUSTICE

William W. Milligan, of Ohio, to be U.S. attorney for the southern district of Ohio for the term of 4 years. (Reappointment.)

U.S. PATENT OFFICE

Curtis Marshall Dann, of Delaware, to be Commissioner of Patents, vice Robert Gottschalk, resigned.

DEPARTMENT OF STATE

Thomas O. Enders, of Connecticut, a Foreign Service officer of Class 1, to be an Assistant Secretary of State.

DEPARTMENT OF DEFENSE

James R. Cowan, of New Jersey, to be an Assistant Secretary of Defense, vice Richard S. Wilbur, resigned.

CONFIRMATIONS

Executive nominations confirmed by the Senate December 14, 1973:

DEPARTMENT OF DEFENSE

James W. Plummer, of California, to be Under Secretary of the Air Force.

SECURITIES INVESTOR PROTECTION CORPORATION

Ralph Dwight DeNunzio, of Connecticut, to be a Director of the Securities Investor Protection Corporation for a term expiring December 31, 1976.

(The above nominations were approved subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

THE JUDICIARY

Walter Jay Skinner, of Massachusetts, to be a U.S. district judge for the district of Massachusetts.

HOUSE OF REPRESENTATIVES—*Friday, December 14, 1973*

The House met at 10 o'clock a.m.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

Lift up your heads, O ye gates; even lift them up, ye everlasting doors; and the King of Glory shall come in.—Psalms 24:9.

As we lift up our heads, our Father, may we also lift up our hearts, opening all the doors of our being that Thy spirit may come and dwell in us making us equal to every experience and ready for every responsibility.

Led by Thy spirit may we lead our people beyond the boundaries of the mind which divide us and upward to the higher plane of unity and peace holding above us the banners of truth and justice and love.

"Create in us the splendor that dawns
when hearts are kind,
That knows not race nor stations as
boundaries of the mind;
That learns to value beauty, in heart,
or brain, or soul,
And longs to bind God's children into
one perfect whole."

Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate agrees to the amendment of the House to a bill of the Senate of the following title:

S. 2178. An act to name the U.S. courthouse and Federal office building under construction in New Orleans, La., as the "Hale Boggs Federal Building," and for other purposes.

The message also announced that the Senate had passed, with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 9142. An act 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, and

H.R. 11575. An act making appropriations for the Department of Defense for the fiscal year ending June 30, 1974, and for other purposes.

The message also announced that the Senate insists upon its amendments to the bill (H.R. 9142) entitled "An act 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," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. MAGNUSON, Mr. PASTORE, Mr. HARTKE, Mr. LONG, Mr. GRIFFIN, Mr. COOK, and Mr. BEALL to be the conferees on the part of the Senate.

The message also announced that the Senate insists upon its amendments to the bill (H.R. 11575) entitled "An act making appropriations for the Department of Defense for the fiscal year ending June 30, 1974, and for other pur-