SENATE—*Tuesday, February 20, 1973*

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

PRAYER

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

O Thou Creator Spirit, who brought light out of darkness, shed Thy holy light upon our pathway this day. Illuminate our judgments, shine through our deliberations and make our lives incandescent with Thy Spirit. Inflame our hearts with a passion for justice and righteousness. Dispose us ever to kindness and compassion for all who suffer. Grant us wisdom to affirm what is right to reject what is wrong and so to order all our endeavors that the Nation may be well served and Thy kingdom advanced on earth.

We pray in the name of Him who is the Light of the World. Amen.

MESSAGES FROM THE PRESIDENT—APPROVAL OF JOINT RESOLUTION

Messages in writing from the President of the United States were communicated to the Senate by Mr. Marks, one of his secretaries, and he announced that on February 17, 1973, the President had approved and signed the joint resolution (S.J. Res. 37) to designate the Manned Spacecraft Center in Houston, Tex., as the "Lyndon B. Johnson Space Center" in honor of the late President.

EXECUTIVE MESSAGE REFERRED

As in executive session, the President pro tempore laid before the Senate a message from the President of the United States submitting the nomination of Robert W. Long of California, to be an Assistant Secretary of Agriculture, which was referred to the Committee on Agriculture and Forestry.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Monday, February 19, 1973, be dispensed with.

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

COMMITTEE MEETING DURING SENATE SESSION

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

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

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the recognition of the distinguished Senator from Missouri (Mr. EAGLETON) be changed to appear at the conclusion of the various orders; and that the order for the recognition of the distinguished Senator from Michigan (Mr. HART) be vacated, as well as the order for recognition of the distinguished Senator from Maine (Mr. MUSKIE).

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

Under the previous order the distinguished Senator from Texas (Mr. BENTSEN) is now recognized for not to exceed 15 minutes.

CONGRESSIONAL SPENDING

Mr. BENTSEN. Mr. President, the debate over congressional control of spending began last October during consideration of the fiscal 1973 expenditure ceiling. Since that time, thousands of words have been spoken on the floor of both Houses of Congress on the subject. Now the daily media are sprinkled with the terms "impoundment," "budget authority," "uncontrollables," and even "constitutional crisis" and "separation of powers." Some in the most impressive of legal terms are arguing our right to be wrong.

I am not sure that the average American understands all of this verbiage, and I doubt that he is impressed by it. But I have no doubt that he does understand and he is impressed when he hears the President say:

> It is time to get big government off your back and out of your pocket.

I am equally certain that he understands the President's pledge to oppose any increase in taxes.

We may charge the President with simple overstatement, but he is making his case with the American people.

Unless we in the Congress can make our case in terms just that direct and just that relevant to the average American, we are going to lose the powers of the purse.

The President has used the mechanism of impoundment to a degree never approached by any previous President. He is using it on a massive scale to kill entire programs, to item veto, to change the whole course of Government, and to nullify the acts of Congress without resort to accepted constitutional practices.

The President obviously has seized the initiative in this struggle. He has the issue, and we have the principle. The issue is whether or not inflation will be curbed, whether we will continue deficit financing, or whether taxes will be raised. The principle is the survival of representative government.

We need to ask ourselves the question: Is there still a place in this modern, complex society for a people's branch of government? Is it still possible to have government by consensus?

We are reminded of the words of Justice Brandeis, who said:

> The doctrine of the separation of powers was adopted by the convention of 1787, not to promote efficiency, but to preclude the exercise of arbitrary power. The purpose was, not to avoid friction, but by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy.

In this distribution of governmental powers, the power to determine expenditures was properly assigned to the Congress, and the Founding Fathers understood the importance of that. Now we are in danger of losing that power because we have never developed the mechanics for controlling the budget. Only because we have been an incredibly rich Nation have we been able to survive a situation in which our income legislation had little correlation with our expenditure legislation.

I think that day has passed. We have reached the limits of our resources. Our allocation of resources must now zero in on only those programs that show a high return in the development of our human and natural resources.

Just recently, Mr. President, we voted 65 to 15 to approve the Airport and Airways Development Act of 1970 which increases the Federal participation in many development projects from 50 to 75 percent. It doubles contract expenditures from $840 million to $1.68 billion over a 5-year period, and increases airport development grants from $280 million to $420 million during each of the next 2 years.

I voted against this bill—not because we have all the airports we need in Texas, and throughout the country—we probably need more than any other State because of the vast expanse of our State—and not because we have completed modernization of all the airports in Texas or across the Nation—and certainly not because I am opposed to air travel. I voted against airport funds so that I can vote for education funds when a vocational rehabilitation bill comes to the floor shortly. I have to set my priorities according to my own sense of what we can and cannot afford.

We talk continuously about reordering the President's priorities. Apparently many believe we can approve measures such as this one and still have enough left over for everything we want to do in education, health, pollution control, and other fields which we complain the President has shortchanged in his budget.

Mr. President, I urge every Senator—and particularly those who are currently engaged in preparing or holding hearings on spending measures—to look at every dollar he proposes to spend as if it has to come out of another program which he supports. Because that is exactly where it must come from.

If consensus is to work, then it means that each of us must forego some of those priorities we deem supreme, or at least moderate them. It means we will

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have to vote for some cuts and accept some limitations on favorite programs.

When I introduced the Federal Aid Highway Act this year, I included almost $1 billion less in funding than the Senate approved last year; and we may well reduce even that figure in committee after we conclude our hearings. Anyone who has driven across my State knows how important highways are to my constituents. It is not a pleasant task to make reductions, but it is a necessary task, and one that takes the measure of our responsibility.

But piecemeal reductions in Federal programs provide no permanent solution to the problem of regaining and retaining Congressional control over Federal spending. We must provide Congress with the means of making an independent judgment concerning the amount of Government money which should be spent each year. We need the machinery to insure coordination among the various committees which incur obligations and make outlays.

And this coordination must be achieved without diminishing the benefits we now derive from the expertise of these committees.

This is not a simple problem. If it were, it would have been solved long ago. Members of the Joint Study Committee on Budget Control and those of us who are studying the problem know very well the difficulties in finding a workable solution.

But we must have a system to insure that when we vote additional funds for any one program, we will know exactly where we are getting those funds. Then when we walk away from here at adjournment, we will all know what we did to the total Federal budget, and why.

It is safe to say that no permanent machinery will be in operation in time to help us assert rational control over fiscal 1974 spending in the order of priorities. In the absence of such permanent machinery, I urge all committees and all Members to exercise restraint as we pass on these measures.

I supported most of the programs which have been vetoed or cut back by impoundments. But congressional power over the purse is too important to our system of government to be lost just because the President can convince the majority of Americans that the Airport and Airway Development Act, or the rural environmental assistance program, is not sufficiently important to justify a tax increase.

On that basis, we will lose. It will not be a Democratic loss or a Republican loss. It will be a loss for representative government. It will be a transfer of power from elected officials closest to the people they represent to one man in the White House and an army of executive bureaucrats.

It is not a liberal or conservative issue, nor is it a partisan issue. It is an issue which must be properly framed and put to the American people, not by Republican and Democratic Senators and Representatives, but by U.S. Senators and Representatives.

Admittedly, we face great difficulties in communicating our collective views to the electorate. We do not speak with one voice, we cannot command the networks at our whim, and whoever heard of a charismatic Congress? The public opinion surveys reflect our dilemma: A recent Harris Poll indicates that the public's positive rating of Congress has fallen in just 6 years from 64 to 26 percent.

The ox is clearly in the ditch. The American people have lost faith in their Congress, although we are supposed to be the branch closest and most responsive to them.

I believe it is not too late to restore that faith. I am convinced that people want to see Congress retain the power of the purse—if we can demonstrate that we are still capable of handling the job. Given a fair hearing, I am convinced we will win. But unless we begin to demonstrate responsibility, we are not even going to get a hearing.

We have painful decisions to make if we are to recapture the confidence of the American people—if we are to avoid one-man government by decree.

APPOINTMENT BY THE PRESIDENT OF THE SENATE—ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

The PRESIDING OFFICER (Mr. JOHNSON). The Chair, on behalf of the President of the Senate, pursuant to Public Law 86-380, appoints the following Senators to the Advisory Commission on Intergovernmental Relations: the Senator from Maine (Mr. MUSKIE), the Senator from South Carolina (Mr. HOLLINGS), and the Senator from Illinois (Mr. PERCY).

ORDER OF BUSINESS

The PRESIDING OFFICER. Under the previous order the Senator from Massachusetts is recognized for not to exceed 15 minutes.

SENATE RESOLUTION 67—SUBMISSION OF A RESOLUTION CALLING ON THE PRESIDENT TO PROMOTE NEGOTIATIONS FOR A COMPREHENSIVE TEST BAN TREATY

(Referred to the Committee on Foreign Relations.)

Mr. KENNEDY. Mr. President, I send to the desk a resolution on behalf of myself and Senators MATHIAS, HART, HUMPHREY, MUSKIE, CASE, ABOUREZK, BAYH, BROOKE, BURDICK, CHURCH, CLARK, CRANSTON, FULBRIGHT, GRAVEL, HASKELL, HATFIELD, HATHAWAY, HUGHES, INOUYE, JAVITS, MAGNUSON, MCGOVERN, MONDALE, NELSON, PELL, PROXMIRE, RIBICOFF, STEVENSON, TUNNEY, WILLIAMS, and BIDEN.

The resolution reads as follows:

S. RES. 67

Whereas the United States is committed in the Partial Test Ban Treaty of 1963 and the Non-Proliferation of Nuclear Weapons Treaty of 1968 to negotiate a comprehensive test ban treaty;

Whereas the conclusion of a comprehensive test ban treaty will reinforce the Non-Proliferation of Nuclear Weapons Treaty, and will fulfill our pledge in the Partial Test Ban Treaty;

Whereas there has been significant progress in the detection and identification of underground nuclear tests by seismological and other means; and

Whereas the SALT accords of 1972 have placed quantitative limitations on offensive and defensive strategic weapons and have established important precedents for arms control verification procedures; and

Whereas early achievement of total nuclear test cessation would have many beneficial consequences; creating a more favorable international arms control climate; imposing further finite limits on the nuclear arms race; releasing resources for domestic needs; protecting our environment from growing testing dangers; making more stable existing arms limitations agreements; and complementing the on-going strategic arms limitation talks; Now, therefore, be it

Resolved, That it is the sense of the Senate that the President of the United States (1) should propose an immediate suspension on underground nuclear testing to remain in effect so long as the Soviet Union abstains from underground testing, and (2) should set forth promptly a new proposal to the Government of the Union of Soviet Socialist Republics and other nations for a permanent treaty to ban all nuclear tests.

Mr. KENNEDY. Mr. President, I am submitting today with Senators MATHIAS, HART, HUMPHREY, MUSKIE, and CASE, and 26 other Senators a resolution calling on the President to propose to the Soviet Union an immediate suspension of underground nuclear testing, a suspension to remain in effect so long as the Soviet Union abstains from testing.

The resolution also urges the President to present a new proposal for the conclusion of a comprehensive nuclear test ban treaty to the Soviet Union and other governments, a proposal based on today's verification capabilities and not on yesterday's dogma.

This year will mark the 10th anniversary of the Partial Test Ban Treaty of 1963, but it will also mark the 10th anniversary of our failure to achieve a permanent halt to all nuclear weapons tests.

It was 10 years ago this past December that President Kennedy and Premier Khrushchev began the final round of letters and discussions that was to conclude with the signing of a partial test ban treaty in August 1963, and its ratification by the Senate on September 24, 1963.

Between the first high-level correspondence and the final negotiations, there was strong support voiced here in the Senate by Senator HUMPHREY and 33 other Senators who joined on May 27 to introduce a resolution calling for a limited test ban treaty. That action offered to the President a clear statement of the firm backing of the Senate.

Today we are offering President Nixon a similar statement of support if he will act as forcefully and expeditiously as did President Kennedy in pursuing a comprehensive test ban treaty.

Addressing the Nation, the day after the partial test ban treaty was initiated in Moscow by our chief negotiator, Averill Harriman, President Kennedy reminded the Nation of civilization's efforts:

To escape from the darkening prospects of mass destruction. Yesterday a shaft of light cut into the darkness.

It is time to direct a brighter, more lasting light into that darkness by permanently ending all nuclear testing.

This resolution is our effort to convince this administration that the Senate and the people of this Nation want and will support a comprehensive test ban treaty. And we believe that the achievement of this treaty to ban all tests should be at the top of the President's agenda in his dealings with the Soviet Union.

Our goal should be to meet the target set by the United Nations for completing the agreement to end all tests—August 5, 1973—the 10th anniversary of the partial test ban treaty.

I ask unanimous consent for the U.N. resolutions to appear at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. KENNEDY. Mr. President, it is to further that goal that we recommend an immediate suspension of underground nuclear weapons testing, a moratorium to remain in effect so long as the Soviet Union abstains. Just as the moratorium announced by President Kennedy in his June 10, 1963, speech at American University helped create a favorable negotiating climate, so do we believe a suspension now will have a similar effect.

In the last session of the Congress, I introduced Senate Resolution 230 on this subject. Senators HART and MATHIAS introduced a similar resolution, Senate Resolution 273. Some 28 Senators cosponsored either one or both of these resolutions. We now have joined in this single resolution because it is vital for the Senate to reaffirm our support for further arms control agreements as the best path to relieve the tensions and dangers of the nuclear era.

The President deserves considerable credit for negotiating the SALT I agreements to place quantitative limits on ABM's and on offensive weapons systems.

However, approval of the SALT I agreements adds a sense of urgency to this subject, a view that has been expressed by Dr. Kissinger, by such international authorities as Sweden's ambassador to the Geneva Committee on Disarmament and by numerous private citizens who are experts in the field.

Dr. Kissinger stated on May 29 in Kiev:

> This agreement, if it is not followed on by other negotiations, will, over a period of time, permit a qualitative race . . .

Ambassador Myrdal stated the matter even more succinctly in Geneva:

> Only a ban on further testing can stop the competition for qualitative proliferation: i.e., the quest for "product improvement" which is the most dangerously destabilizing element in the arms race.

We share those views and believe that a strong endorsement by the Senate of this resolution will demonstrate our concern that there be early action to prevent any further escalation in the qualitative arms race.

Nor is the Senate acting on a tabula rasa. For the Senate, not once, but twice before, has ratified treaties pledging this Nation to achieve the discontinuance of testing for all times. In the Partial Test Ban Treaty and then again in the Nonproliferation Treaty, the Senate has committed itself and the Nation to that pursuit. In a very real sense, we are delinquent in our commitment to valid international treaty obligations.

I ask unanimous consent to include the text at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. KENNEDY. Mr. President, for, since the partial test ban treaty was signed, we have been obligated to negotiate a permanent ban on all testing. Yet the record of the past 10 years is one of flagrant disregard for that commitment. Every administration has verbally pledged its determination to negotiate a treaty; yet none has offered a single new proposal to achieve that objective. We stand with the same stale proposal at Geneva that we put forward a decade ago.

In recognition of that disappointing record, I sent a private letter to President Nixon prior to his departure for Moscow last year, urging him to raise the subject with Soviet leaders. Once again, an opportunity was lost, an opportunity that could well have produced not only a mutual moratorium on testing, but renewed negotiations for a permanent treaty.

I fervently hope that the President will immediately begin the process now of preparing a new proposal on a comprehensive test ban treaty for presentation to the Soviet Union so that the upcoming visit of the Soviet Premier might be the occasion for the signing of a CTB and the completion of a vital step in the journey toward arms control and eventual disarmament.

Hopefully, passage of this resolution will elevate the negotiations for a comprehensive test ban treaty from the forgotten level where they now seem relegated, to the highest level of priority on the President's list of arms control measures.

Since the partial test ban treaty of 1963, we have announced the conduct of over 246 underground tests of nuclear weapons and the Soviet Union has conducted over 80. In fact, on the average, there have been more nuclear tests in the 10 years since the treaty than in the 18 years that preceded it.

For those who see the unparalleled disaster that would befall mankind in the accidental or deliberate use of nuclear weapons, time is running short for a decision to halt their testing and development.

A comprehensive test ban treaty would represent both an actual and a psychological leap forward on the path toward control of the destructive might unleashed by nuclear energy.

First, a comprehensive test ban would complement the SALT I agreements by placing a sizable hurdle on the potential for qualitative improvements in nuclear armaments.

It would place an additional restraint on the ever more senseless pursuit for new weapons, bolstered by the agreement of the Soviet Union not to build an ABM network, the need for new weapons is illusory.

The ABM treaty has voided the need for further improvements of ABM warheads since the limit of 200 to each side makes it absurd to justify testing for that purpose. No improvement of the effectiveness of these warheads could hope to compensate for this confirmed vulnerability to being overwhelmed by the sheer force of numbers. And similarly, with the ABM treaty, there no longer exists the threat that a Soviet ABM shield might deny our already available second strike capability and thereby undermine our deterrent.

Now, the illusory threat of an impenetrable anti-ballistic-missile shield has been removed and the need for new offensive weapons has therefore been reduced substantially. In that situation, the need for further testing loses its major rationale. For our security is based on our capacity for deterrence and our nuclear striking force already amply fulfills that requirement.

More testing can only undermine that deterrent, which even the Defense Department acknowledges to be fully sufficient. And the past decade should be evidence enough that unfettered testing does not add to our security but rather diminishes it.

Second, a comprehensive test ban treaty would significantly strengthen the Nonproliferation Treaty, which is perhaps the most important agreement in the nuclear era for the preservation of world peace and security. Yet its full potential has never been realized.

For since 1968, more nations have declined than have ratified the agreement. And it has been mainly those nations with the capacity to develop nuclear weapons which have remained aloof from the treaty.

These nations argue convincingly that there is both hyprocisy and arrogance in the demand that they adhere to the treaty while the superpowers blithely engage in unrestrained underground testing.

And the impact of the CTB would not be felt by the smaller nations alone. Whatever hope there is of bringing France and China into the frame of arms control agreements surely would be strengthened by demonstrating the willingness of the United States and the U.S.S.R. to give up further underground weapons testing. Even if China and France fail to join now in a CTB, it still is in our security interest and would hasten the day when nuclear testing would be ended everywhere.

There are today five nations which possess the power to trigger a nuclear holocaust. Nine years ago, there were four. It was then that President Kennedy said:

> I am haunted by the feeling that by 1970, unless we are successful, there may be ten nuclear powers instead of four, and by 1975, fifteen or twenty . . . I see the possibility in the 1970's of the President of the United States having to face a world in which fifteen or twenty nations may have these weapons. I regard that as the greatest possible danger.

The specter that he foresaw is slowly being realized and today there are a half

a dozen nations which stand at the threshold of entering the nuclear club.

Can anyone doubt that we as well as all nations would be far less secure were we to continue to develop modest refinements in our nuclear stockpile at the cost of seeing nuclear weapons in the hands of Germany and Japan, Israel and Egypt, or India and Pakistan?

Foregoing further nuclear testing may be the firmest and most security-minded step that we can take if it brings with it the reinforcement of the Nonproliferation Treaty.

Third, halt to underground nuclear testing would eliminate a continuing environmental hazard.

The State Department has commented that—

> The environmental issue . . . cannot by itself be an overriding reason for our adopting a moratorium.

While it may not be the overriding reason, it is an important benefit that would result from an end to testing. Thus, ACDA Deputy Director Philip Farley, testifying last May before the Senate Foreign Relations Arms Control Subcommittee listed it as one of the four important advantages of a CTB.

The Stockholm Conference on the Environment this past June reaffirmed its concern on this subject, passing a resolution calling for an end to all testing.

For despite all of the precautions and all of the safeguards devised by the Atomic Energy Commission, one of every four underground tests has vented. And there are other environmental risks as well. While the Cannikin test did not produce the earthquake and tidal wave which was thought possible by a 1968 panel of eminent scientists, the danger of this occurring in another test still remains. And the massive power unleashed by nuclear testing carries unknown risks to the environment, risks that we discover only after the tests have occurred. We are too little versed in the delicate balance of man and energy on this planet to continue to take such risks with our environment.

Finally, the conclusion of a comprehensive test ban treaty would expand and encourage the potential for additional steps toward nuclear disarmament.

It would be a clear signal to the world that the superpowers are in earnest in their determination to wind down the nuclear arms race. It would help foster a new political climate encouraging all nations to move in the direction of disarmament. And it would be a strong incentive for reaching an early agreement in the second round of the Strategic Arms Limitations Talks.

These are the substantial and compelling reasons why a comprehensive test ban treaty is in the interest of the United States and all mankind and why I believe the Senate should go on record encouraging steps leading to the attainment of that objective.

And today, the steadfast demand for on-site inspections, has lost whatever semblance of logic it ever possessed. In 1963, the U.S. bargaining position rested on the requirement for seven on-site inspections in order to deter Soviet cheating. The Soviet Union would permit a maximum of three. At that impasse of questionable significance, the negotiations for a CTB were derailed.

Now it is 10 years later. And today the technology is vastly different and the stage for negotiation with the Soviet Union is vastly different.

The most obvious signs of those changes are the SALT agreements which passed this body last session. For these treaties, the ABM Treaty, and the Interim Agreement on offensive weapons systems, represent a marked shift in the relationship between the United States and the Soviet Union and a basic affirmation of confidence in our capacity to verify adherence to them. Both of these treaties involve delicate questions of balance and in neither did the United States believe that on-site inspection was of sufficient importance to justify holding up the agreements. Every relevant U.S. official—from the Defense Department to the CIA to the State Department to Henry Kissinger has testified that national means of verification are adequate to protect the interests of the United States and to insure that cheating does not take place.

What they are saying is that based on our highly sophisticated satellite photography, and other intelligence gathering techniques, the risk of discovery of any cheating outweighs from the Soviet viewpoint any benefits they might obtain.

And they have set up a process in which both sides agree not to interfere with national means of inspection and both sides agree not to disguise or in any other way block verification. Suspicions of any sort can be brought before a standing commission and if we are not satisfied with the explanation then we have the right under the treaty to withdraw.

So it is that we have the very persuasive comments of Dr. Kissinger that—

> We are confident that national means of verification are sufficient to monitor the numerical limitations of this agreement . . . we are confident that the national means of verification are sufficient to give us the highest degree of confidence that this agreement will be lived up to, or that we will know it almost immediately if it is not lived up . . .

Dr. Kissinger was supported strongly in this by ACDA Director, Ambassador Gerard Smith, who said:

> As a matter of fact, if I had my "druthers" and could have on-site inspection instead of our present national means, there would be no question in my mind that we would be much better off with national means of verification.
>
> In addition to that, we will have commitments from the Soviets not to interfere with those national means of verification and not to take measures to conceal their operation so as to prevent the working of national means of verification . . .

These very strong statements, repeated in testimony before the Senate Foreign Relations and Armed Services Committees, emphasized the exceptional improvement in our nonseismic capabilities for determining whether the Soviets are violating agreements. For the use of satellites for intelligence gathering has become a fine art, providing closeup photos that are now capable of distinguishing details down to a matter of feet. Thus, in 1971, the Defense Department announced its conclusions concerning Soviet missile buildups by satellite photos that disclosed a change of a few feet in the diameter of Soviet missile silos.

All of these methods of intelligence gathering have been refined in the past 10 years. And all of them are applicable to monitoring compliance with a test ban treaty.

And they do not include the seismic verification capabilities which have been refined tenfold since 1963. Seismological experts have testified convincingly that present methods of detection are adequate to locate and identify all but the smallest underground events. A 1971 report on hearings held before the Foreign Relations Subcommittee on Arms Control concluded that—

> Enormous advances have been made in seismology so that it is now possible, through seismic means alone, to identify underground explosions to a degree unknown five years ago (and) even presently deployed systems are vastly supperior to those deployed a few years ago.

Also, the summary of the Woods Hole seminar of the Advanced Research Project Administration of DOD reported a consensus that the current state of the art included the ability to identify most underground explosions down to the level of 2 kilotons in hard rock.

Dr. Franklin A. Long, former Assistant Director for Science and Technology of the Arms Control and Disarmament Agency, also described the new seismological ability last year as being extremely close to the situation when we can distinguish between earthquake and nuclear explosion whenever we can detect an underground disturbance.

In that situation, on-site inspection becomes virtually meaningless as a guarantee against cheating, DOD witnesses before the Joint Atomic Energy Committee testified in 1971 that on-site inspections were only marginally effective. If the disturbance is too small to detect, then there would be no reason to ask for an inspection. And if we were able to detect it, then we also could identify it as a nuclear test without on-site inspection.

There also are new developments in the environmental field which add to our belief that on-site inspection is no longer a legitimate obstacle to concluding a test ban treaty. As part of last year's environmental agreement between the United States and the Soviet Union, earthquake measurement instruments will be installed in each country. These black boxes and the Soviet agreement for U.S. scientists to install them in the Soviet Union might provide added confidence to the United States in policing a CBT.

I ask unanimous consent that the environment agreement fact sheet and memorandum be included in the RECORD at the end of my remarks.

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

(See exhibit 3.)

Mr. KENNEDY. Mr. President, the results of these developments in our technology perhaps was summarized best in a statement by a Committee of the Federation of American Scientists.

The committee included Adrian Fisher, former Deputy Director of the Arms Control and Disarmament Agency; Herbert York, former Director of Defense Research and Engineering under Presidents Eisenhower and Kennedy; Morton Halperin, former Deputy Assistant Secretary for Arms Control and Policy Planning under President Johnson and senior staff member of the National Security Council under President Nixon; Herbert Scoville, Jr., former Deputy Director for Science and Technology of the Central Intelligence Agency; George Rathjens, former Deputy Director of Advanced Research Projects Administration; Franklin Long, former Assistant Director for Science and Technology of the Arms Control and Disarmament Agency; George Kistiakowsky, Science Advisor to President Eisenhower; and Marvin L. Goldberger, former chairman of the Strategic Weapons Panel of the President's Science Advisory Committee.

Advocating a treaty without requiring on-site inspection, their statement read:

Given recent improvements in seismology and other means of detection, we believe that the United States would detect Soviet violation of a test ban treaty long before the Soviets could carry out enough tests to score a breakthrough that would threaten the stability of the nuclear balance . . . Without any on-site inspections, clandestine cheating is far less plausible now than it would have been in 1963 with on-site inspections when President Kennedy urged such a treaty.

I ask that the full statement and other articles appear at the conclusion of my remarks.

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

(See exhibit 4.)

Mr. KENNEDY. Mr. President, these statements reflect a widely held view in the scientific community that no nation could undertake tests of more than a few kilotons with any confidence that they would go undetected.

Finally, it might be noted that nothing in the track record of the Soviet Union in its treaty relations with this Nation since 1963 would challenge the presumption that they intend to bide by their treaty obligations. Neither in the partial test ban treaty, the nonproliferation treaty, the sea-beds treaty, the outer space treaty, nor in the SALT agreements has there been a requirement for onsite inspection in the Soviet Union, yet there has been no deliberate violation reported of any of these treaties. Nor has the absence of that requirement jeopardized our security in any way.

What does exist within these treaties is a withdrawal clause and particularly within the SALT agreements, a detailed provision for the establishment of a consultative commission whose function it is to provide a forum for queries which might be raised by either side in its monitoring of adherence to an agreement.

Any question or doubt which could not be resolved would provide the rationale for invocation of the withdrawal clause. But more important, the risk to the Soviet Union, in light of our seismological satellite photography and traditional intelligence-gathering methods is immense. Even tests at the lowest possible level of strength would be liable to error and exposure, as our own incidents of venting over the past decade have shown. And the potential benefit of any individual test is so negligible that it would be outweighed a hundredfold by the reactions which would occur should the cheating be discovered.

The Soviet Union has a vested interest in the network of arms control agreements which have been erected so carefully over the past decade. They know that this carefully balanced superstructure would come tumbling at the first indication of a treaty violation. And they know that the present state of verification makes the risk of discovery enormous.

For all of these reasons, I believe that it is imperative that the issue of verification no longer stand in the way of a goal that all nations and all rational men must accept, the goal of an end to nuclear weapons testing.

It is time for the United States to take the lead in achieving that goal, in lighting once more darkness, in helping to assure that our children and our children's children have an opportunity to live free from the threat of nuclear destruction.

EXHIBIT 1

TREATY BANNING NUCLEAR WEAPONS TESTS IN ATMOSPHERE, IN OUTER SPACE AND UNDER WATER

(PARTIAL TEXT)

Preamble: The governments of the United States of America, the United Kingdom of Great Britain & Northern Ireland, and the Union of Soviet Socialist Republics, hereinafter referred to as the "original parties,"

Proclaiming as their principal aim the speediest possible achievement of an agreement on general and complete disarmament under strict international control in accordance with the objectives of the United Nations, which would put an end to the armaments race and eliminate the incentive to the production and testing of all kinds of weapons, including nuclear weapons,

Seeking to achieve the discontinuance of all test explosions of nuclear weapons for all time, determined to continue negotiations to this end, and desiring to put an end to the contamination of man's environment by man's environment by radioactive substances.

Have agreed as follows:

Article I: 1. Each of the parties to this treaty undertakes to prohibit, to prevent, and not to carry out any nuclear weapon test explosion, or any other nuclear explosion at any place under its jurisdiction or control:

A. In the atmosphere, beyond its limits, including outer space, or under water, including territorial waters or high seas; or

B. In any other environment if such explosion causes radioactive debris to be present outside the territorial limits of the state under whose jurisdiction or control such explosion is conducted. It is understood in this connection that the provisions of this subparagraph are without prejudice to the conclusion of a treaty resulting in the permanent banning of all nuclear test explosions including all such explosions underground, the conclusion of which, as the parties have stated in the preamble to this treaty, they seek to achieve.

2. Each of the parties to this treaty undertakes furthermore to refrain from causing, encouraging, or in any way participating in, the carrying out of any nuclear weapon test explosion, or any other nuclear explosion, anywhere which would take place in any of the environments described, or have the effect referred to in Paragraph 1 of this article.

Article II: 1. Any party may propose amendments to this treaty. The text of any proposed amendment shall be submitted to the depositary governments which shall circulate it to all parties to this treaty. Thereafter, if requested to do so by ⅓ or more of the parties, the depositary governments shall convene a conference, to which they shall invite all the parties, to consider such amendment.

2. Any amendment to this treaty must be approved by a majority of the votes of all parties to this treaty, including the votes of all of the original parties. The amendment shall enter into force for all parties upon the deposit of instruments of ratification by a majority of all the parties, including the instruments of ratification of all the original parties.

Article III: 1. This treaty shall be open to all states for signature. Any state which does not sign this treaty before its entry into force in accordance with Paragraph 3 of this article may accede to it at any time.

2. This treaty shall be subject to ratification by signatory states. Instruments of ratification and instruments of accession shall be deposited with the governments of the original parties. . . .

3. This treaty shall enter into force after its ratification by all the original parties and the deposit of their instruments of ratification.

4. For states whose instruments of ratification or accession are deposited subsequent to the entry into force of this treaty, it shall enter into force on the date of the deposit of their instruments of ratification or accession. . . .

Article IV: This treaty shall be of unlimited duration.

Each party shall in exercising its national sovereignty have the right to withdraw from the treaty if it decides that extraordinary events, related to the subject matters of this treaty, have jeopardized the supreme interests of its country. It shall give notice of such withdrawal to all other parties to the treaty 3 months in advance.

Article V: This treaty, of which the English and Russian texts are equally authentic, shall be deposited in the archives of the depositary governments. . . .

FINAL TEST OF NON-PROLIFERATION TREATY

This is the complete text of the final and approved draft of the "Treaty on the Non-Proliferation of Nuclear Weapons" (new language is indicated in italics; deletions are noted in brackets where they occur):

The states concluding this treaty, hereinafter referred to as the "parties of the treaty."

Considering the devastation that would be visited upon all mankind by a nuclear war and the consequent need to make every effort to avert the danger of such a war and to take measures to safeguard the security of peoples,

Believing that the proliferation of nuclear weapons would seriously enhance the danger of nuclear war.

In conformity with resolutions of the United Nations General Assembly calling for the conclusion of an agreement on the prevention of wider dissemination of nuclear weapons,

Undertaking to cooperate in facilitating the application of International Atomic Energy Agency safeguards on peaceful nuclear activities,

Expressing their support for research, development and other efforts to further the application, within a framework of the International Atomic Energy Agency safeguards system, of the principle of safeguarding effectively the flow of source and special fissionable materials by use of instruments and other techniques at certain strategic points,

Affirming the principle that the benefits of applications of nuclear technology, including

any technological by-products which may be derived by nuclear-weapon states from the development of nuclear explosive devices, should be available for *peaceful purposes to all parties to the treaty, whether* nuclear-weapon or non-nuclear-weapon states,

Convinced that, in furtherance of this principle, all parties to the treaty are entitled to participate in the fullest possible exchange of scientific information for, and to contribute alone or in cooperation with other states to, the further development of the applications of atomic energy for peaceful purposes,

[One paragraph deleted]

Declaring their intention to achieve at the earliest possible date the cessation of the nuclear arms race *and to undertake effective measures in the direction of nuclear disarmament,*

Urging the cooperation of all states in the attainment of this objective,

Recalling the determination expressed by the parties to the 1963 treaty banning nuclear weapon tests in the atmosphere, in outer space and under water in its preamble to seek to achieve the discontinuance of all test explosions of nuclear weapons for all time and to continue negotiations to this end,

Desiring to further the easing of international tension and the strengthening of trust between states in order to facilitate the cessation of the manufacture of nuclear weapons, the liquidation of all their existing stockpiles, and the elimination from national arsenals of nuclear weapons and the means of their delivery pursuant to a treaty on general and complete disarmament under strict and effective international control.

[One paragraph deleted]

Recalling that, in accordance with the Charter of the United Nations, states must refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations, and that the establishment and maintenance of international peace and security are to be promoted with the least diversion for armaments of the world's human and economic resources.

Have agreed as follows:

Article I. Each nuclear-weapon state party to the treaty undertakes not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly, or indirectly; and not in any way to assist, encourage or induce any non-nuclear-weapon state to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices.

Article II. Each non-nuclear-weapon state party to the treaty undertakes not to receive the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices.

Article III. 1. Each non-nuclear-weapon state party to the treaty undertakes to accept safeguards, as set forth in an agreement to be negotiated and concluded with the International Atomic Energy Agency in accordance with the Statute of the International Atomic Energy Agency and the Agency's safeguards system, for the exclusive purpose of verification of the fulfillment of its obligations assumed under this treaty with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices. Procedures for the safeguards required by this article shall be followed with respect to source or special fissionable material whether it is being produced, processed or used in any principal nuclear facility or is outside any such facility. The safeguards required by this article shall be applied on all source or special fissionable material in all peaceful nuclear activities within the territory of such state, under its jurisdiction, or carried out under its control anywhere.

2. Each state party to the treaty undertakes not to provide: (a) source or special fissionable material or (b) equipment or material especially designed or prepared for the processing, use or production of special fissionable material, to any non-nuclear-weapon state for peaceful purposes, unless the source or special fissionable material shall be subject to the safeguards required by this article.

3. The safeguards required by this article shall be implemented in a manner designed to comply with article IV of this treaty, and to avoid hampering the economic or technological development of the parties or international cooperation in the field of peaceful nuclear activities, including the international exchange of nuclear material and equipment, for the processing, use or production of nuclear material for peaceful purposes in accordance with the provisions of this article and the principle of safeguarding set forth in the preamble.

4. on-nuclear-weapon states party to the treaty shall conclude agreements with the International Atomic Energy Agency to meet the requirements of this article either individually or together with other states in accordance with the Statute of the International Atomic Energy Agency. Negotiation of such agreements shall commence within 180 days from the original entry into force of this treaty. For states depositing their instruments of ratification or accession after the 180-day period, negotiation of such agreements shall commence not later than the date of such deposit. Such agreements shall enter into force not later than 18 months after the date of initiation of negotiations.

Article IV. 1. Nothing in this treaty shall be interpreted as affecting the inalienable right of all the parties to the treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with articles I and II of this treaty.

2. All the parties to the treaty undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy. Parties to the treaty in a position to do so shall also cooperate in contributing alone or together with other states or international organizations to the further development of the applications of nuclear energy for peaceful purposes, especially in the territories of non-nuclear-weapon states party to the treaty, with due consideration for the needs of the developing areas of the world.

Article V. Each party to this treaty undertakes to [word "cooperate" deleted] take appropriate measures to ensure that, in accordance with this treaty, under appropriate international observation and through appropriate international procedures, potential benefits from any peaceful applications of nuclear explosions will be made available [words "through appropriate international procedures" deleted] to non-nuclear-weapon states party to this treaty on a non-discriminatory basis and that the charge to such parties for the explosive devices used will be as low as possible and exclude any charge for research and development. [One sentence deleted] Non-nuclear-weapon states party to the treaty shall be able to obtain such benefits, pursuant to a special international agreement or agreements, through an appropriate international body with adequate representation of non-nuclear-weapon states. Negotiations on this subject shall commence as soon as possible after the treaty enters into force. Non-nuclear-weapon states party to the treaty so desiring may also obtain such benefits pursuant to bilateral agreements.

Article VI. Each of the parties to the treaty undertakes to pursue negotiations in good faith on effective measures [word "regarding" deleted] relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.

Article VII. Nothing in this treaty affects the right of any group of states to conclude regional treaties in order to assure the total absence of nuclear weapons in their respective territories.

Article VIII [formerly Article V]. 1. Any party to the treaty may propose amendments to this treaty. The text of any proposed amendment shall be submitted to the depositary governments which shall circulate it to all parties to the treaty. Thereupon, if requested to do so by ⅓ or more of the parties to the treaty, the depositary governments shall convene a conference, to which they shall invite all the parties to the treaty, to consider such an amendment.

2. Any amendment to this treaty must be approved by a majority of the votes of all the parties to the treaty, including the votes of all nuclear-weapon states party to the treaty and all other parties which, on the date amendment is circulated, are members of the Board of Governors of the International Atomic Energy Agency. The amendment shall enter into force [words "all parties' 'deleted] *each party that deposits its instrument of ratification of the amendment* upon the deposit of such instruments of ratification of all nuclear-weapon states party to the treaty and all other parties which, on the date the amendment is circulated, are members of the Board of Governors of the International Atomic Energy Agency. *Thereafter, it shall enter into force for any other party upon the deposit of its instrument of ratification of the amendment.*

3. 5 years after the entry into force of this treaty, a conference of parties to the treaty shall be held in Geneva, Switzerland, in order to review the operation of this treaty with a view to assuring that the purposes *of the preamble* and the provisions of the treaty are being realized. *At intervals of 5 years thereafter, a majority of the parties to the treaty may obtain, by submitting a proposal to this effect to the depositary governments, the convening of further conferences with the same objective of reviewing the operation of the treaty.*

Article IX [formerly Article VI]. 1. This treaty shall be open to all states for signature. Any state which does not sign the treaty before its entry into force in accordance with paragraph 3 of this article may accede to it at any time.

2. This treaty shall be subject to ratification by signatory states. Instruments of ratification and instruments of accession shall be deposited with *the governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America.* which are hereby designated the depositary governments.

3. This treaty shall enter into force after its ratification by [words "all nuclear-weapon states signatory to this treaty" deleted] *the states, the governments of which are designated depositaries of the treaty,* and *40* other states signatory to this treaty and the deposit of their instruments of ratification. For the purpose of this treaty, a nuclear-weapon state is one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to Jan. 1, 1967.

4. For states whose instruments of ratification or accession are deposited subsequent to

the entry into force of this treaty, it shall enter into force on the date of the deposit of their instruments of ratification or accession.

5. The depositary governments shall promptly inform all signatory and acceding states of the date of each signature, the date of deposit of each instrument of ratification or of accession, the date of the entry into force of this treaty, and the date of receipt of any requests for convening a conference or other notices.

6. This treaty shall be registered by the depositary governments pursuant to Article 102 of the Charter of the United Nations.

Article X [formerly Article VII]. [One sentence ("This treaty shall be of unlimited duration.") deleted.] *1.* Each party shall, in exercising its national sovereignty, have the right to withdraw from the treaty if it decides that extraordinary events, related to the subject-matter of this treaty, have jeopardized the supreme interests of its country. It shall give notice of such withdrawal to all other parties to the treaty and to the United Nations Security Council 3 months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests.

2. 25 years after the entry into force of the treaty, a conference shall be convened to decide whether the treaty shall continue in force indefinitely, or shall be extended for an additional fixed period or periods. This decision shall be taken by a majority of the parties to the treaty.

Article XI [formerly Article VIII]. This treaty, the English, Russian, French, Spanish and Chinese texts of which are equally authentic, shall be deposited in the archives of the depositary governments. Duly certified copies of this treaty shall be transmitted by the depositary governments to the governments of the signatory and acceding states.

In witness whereof the undersigned, duly authorized, have signed this treaty.

3. POWERS PLEDGE SECURITY OF NON-NUCLEAR NATIONS

The UN Security Council June 19 adopted a resolution welcoming pledges by the U.S., USSR and Britain to act "immediately" through the Council in the event of a nuclear attack or threat of such an attack on non-nuclear-weapon states. The vote on the resolution was 10-0 with 5 abstentions. Those abstaining were Algeria, Brazil, France, India and Pakistan. The intention of the pledge was to assure the non-nuclear-weapon states that they would not jeopardize their security by signing the treaty.

In submitting the pledge for the U.S., Amb.-to-UN Goldberg noted that the security guarantee "introduces a powerful element of deterrence against aggression with nuclear weapons" and "lay[s] a firm political, moral and legal basis for assuring the security of non-nuclear-weapon parties" to the non-proliferation treaty. Soviet First Deputy Foreign Min. Vasily V. Kuznetsov, submitting the Soviet pledge, said the guarantee was a "logical and natural" demand of the non-nuclear-weapon states since "there still remains in the world the possibility of unleashing a nuclear war against non-nuclear countries." Lord Caradon submitted the pledge for Britain and declared that it should be clear "to everyone" that any country considering nuclear aggression against a non-nuclear-weapon signatory of the treaty "would be deterred by these assurances." Caradon described the "common determination of East and West in this issue of supreme international concern" as a "development of the utmost significance and importance in world affairs."

The text of the U.S. pledge, identical to the ones submitted by the Soviet Union and Britain:

The government of the U.S. notes with appreciation the desire expressed by a large number of states to subscribe to the treaty on the non-proliferation of nuclear weapons.

We welcome the willingness of these states to undertake not to receive the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices.

The U.S. also notes the concern of certain of these states that, in conjunction with their adherence to the treaty on the non-proliferation of nuclear weapons, appropriate measures be undertaken to safeguard their security. Any aggression accompanied by the use of nuclear weapons would endanger the peace and security of all states.

EXHIBIT 2

[United Nations General Assembly, Twenty-Seventh Session, Agenda Item 32]

RESOLUTIONS ADOPTED BY THE GENERAL ASSEMBLY

(On the Report of the First Committee (A/8906))

2934 (XXVII). Urgent need for suspension of nuclear and thermonuclear tests.

A

The General Assembly,

Recognizing the urgent need for the cessation of nuclear and thermonuclear weapon tests,

Recalling its resolution 2602 E (XXIV) of 16 December 1969, by which it declared the decade of the 1970s as a Disarmament Decade, and its resolution 2734 (XXV) of 16 December 1970, which contains the Declaration on the Strengthening of International Security,

Recalling also its resolutions 914 (X) of 16 December 1955, 1762 (XVII) of 6 November 1962, 1910 (XVIII) of 27 November 1963, 2032 (XX) of 3 December 1965, 2163 (XXI) of 5 December 1966, 2343 (XXII) of 19 December 1967, 2455 (XXIII) of 20 December 1968, 2604 (XXIV) of 16 December 1969, 2663 (XXV) of 7 December 1970 and 2828 (XXVI) of 16 December 1971,

I

Noting with regret that all States have not yet adhered to the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water, signed in Moscow on 5 August 1963,[1]

Expressing serious concern that testing of nuclear weapons in the atmosphere has continued in some parts of the world, including the Pacific area, in disregard of the spirit of that Treaty and of world opinion,

Noting in this connexion the statements made by the Governments of various countries in and around the Pacific area, expressing strong opposition to those tests and urging that they be halted,

1. Stresses anew the urgency of bringing to a halt all atmospheric testing of nuclear weapons in the Pacific or anywhere else in the world;

2. Urges all States that have not yet done so to adhere without further delay to the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water and, meanwhile, to refrain from testing in the environments covered by that Treaty;

II

Noting that no less than nine years have elapsed since the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water came into force,

Taking into account the determination expressed by the parties to that Treaty to continue negotiations to conclude a treaty resulting in the permanent banning of all nuclear weapon test explosions,

1. Declares that a treaty banning all nuclear weapon tests is an important element in the consolidation of the progress towards disarmament and arms control made thus far and that it would greatly facilitate future progress in these fields;

2. Calls upon all nuclear-weapon States to suspend nuclear weapon tests in all environments;

3. Calls upon the Conference of the Committee on Disarmament to give urgent consideration to the question of a treaty banning all nuclear weapon tests, taking into account the views already expressed in the Conference, the opinions stated at the current session of the General Assembly and, above all, the pressing need for the early conclusion of such a treaty.

The General Assembly,

Conscious of the dangers to mankind presented by a continuation of the nuclear arms race,

Believing that a cessation of all nuclear and thermonuclear weapon tests, including those carried out underground, would contribute to a declaration of the nuclear arms race, to the promotion of further arms control and disarmament measures, and to a reduction in world tension,

Believing further that a cessation of all nuclear weapon testing would inhibit the wider dissemination of nuclear weapons,

Noting with regret that not all States have yet adhered to the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water, signed in Moscow on 5 August 1963,[2]

Noting with regret that, despite the determination expressed by parties to that Treaty to achieve the discontinuance of all test explosions of nuclear weapons for all time, parties to the Treaty continue to test nuclear weapons underground, and no specific proposals for an underground test ban agreement are under negotiation.

Recalling that the General Assembly has repeatedly expressed its concern regarding the continuation of nuclear and thermonuclear weapon testing, in particular in its resolutions 914 (X) of 16 December 1955, 1762 (XVII) of 6 November 1962, 1910 (XVIII) of 27 November 1963, 2032 (XX) of 3 December 1965, 2163 (XXI of 5 December 1966, 2343 (XXII) of 19 December 1967, 2455 (XXIII) of 20 December 1968, 2604 (XXIV) of 16 December 1969, 2663 (XXV) of 7 December 1970 and 2828 (XXVI) of 16 December 1971.

Having considered the report submitted on 26 September 1972 by the Conference of the Committee on Disarmament,[3] and in particular the sections thereof concerned with achieving a comprehensive test ban,

Noting with satisfaction the completion of a first set of bilateral agreements on the limitation of strategic arms and expressing the hope that the progress so far achieved will lead to further agreed limitations on nuclear arms and be conducive to the negotiation of a ban on underground nuclear weapon testing,

1. Stresses again the urgency of halting all nuclear weapon testing in all environments by all States;

2. Urges all States that have not yet done so to adhere without further delay to the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water, and meanwhile to refrain from testing in environments covered by that Treaty;

3. Calls upon all Governments conducting underground nuclear weapon tests, particularly those parties to the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water, immediately to undertake unilateral or negotiated measures that would suspend or reduce such testing, pending the early entry into force of a

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Footnotes at end of article.

ban on all nuclear weapon tests in all environments;

4. Urges Governments that have been carrying out nuclear weapon tests to take an active and constructive part in presenting and developing in the Conference of the Committee on Disarmament, or in any other appropriate body, specific proposals for a comprehensive test ban;

5. Requests the Conference of the Committee on Disarmament to give first priority to its deliberations on a treaty banning underground nuclear weapon tests, taking full account of views of experts and of technical developments bearing on the verification of such a treaty, and further requests the Conference to submit a special report to the General Assembly at its twenty-eighth session on the results of its deliberations on this matter;

6. Urges Governments to take all appropriate measures further to develop existing capabilities for detection and identification of underground nuclear tests through seismological and other technical means, and to increase international co-operation in the elaboration of relevant techniques and evaluation of seismographic data, in order to facilitate an underground nuclear weapon test ban;

7. Calls upon Governments to seek as a matter of urgency a halt to all nuclear weapon testing, and to endeavour to achieve at the earliest possible date a comprehensive test ban and to obtain universal adherence to such a ban.

C

The General Assembly,

Reaffirming its deep appreciation concerning the harmful consequences of nuclear weapon tests for the acceleration of the arms race and for the health of present and future generations of mankind,

Deploring that the General Assembly has not yet succeeded in its aim of achieving a comprehensive test ban, despite twenty-one successive resolutions on the subject,

Deploring further that the determination expressed by the original parties to the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water, signed in Moscow on 5 August 1963,[4] to pursue negotiations to achieve the discontinuance of all test explosions of nuclear weapons for all time has not so far produced the desired results,

Recalling its resolutions 1762 A (XVII) of 6 November 1962 and 2828 A (XXVI) of 16 December 1971, whereby all nuclear weapon tests, without exception, were condemned,

1. Reiterates once again with the utmost vigour its condemnation of all nuclear weapon tests;

2. Reaffirms its conviction that, whatever may be the differences on the question of verification, there is no valid reason for delaying the conclusion of a comprehensive test ban of the nature contemplated in the preamble to the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water;

3. Urges once more the Governments of nuclear-weapon States to bring to a halt all nuclear tests at the earliest possible date, and in any case not later than 5 August 1973, either through a permanent agreement or through unilateral or agreed moratoria;

4. Requests the Secretary-General to transmit the present resolution to the nuclear-weapon States and to inform the General Assembly at its twenty-eighth session of any measures they have taken to implement it.

FOOTNOTES

[1] United Nations, *Treaty Series*, vol. 480, No. 6964, p. 43.

[2] *Ibid.*

[3] A/8818–DC/235.

[4] United Nations, *Treaty Series*, vol. 480, No. 6964, p. 43.

EXHIBIT 3

(The White House Fact Sheet)

AGREEMENT ON COOPERATION IN THE FIELD OF ENVIRONMENTAL PROTECTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNION OF SOVIET SOCIALIST REPUBLICS

BACKGROUND

Prospects for environmental research cooperation began with the Agreement on Exchanges and Cooperation negotiated for 1972–1973. That Agreement was signed in Moscow by Ambassador Beam and Deputy Foreign Minister A. A. Smirnov in April, 1972 and provided for further consultation.

Though discussion of expanded cooperation in the environmental reesarch area goes back to 1971, talks were held by Dr. Gordon McDonald, a member of the President's Council on Environmental Quality and Konstantin V. Ananichev, Director of Department, State Committee of the USSR Council of Ministers for Science and Technology, earlier this month. These talks culminate in the Agreement signed by the President and President Podgorny.

OUTLINE OF THE AGREEMENT:

As suggested in Aritcle 2, the cooperation formalized by this Agreement will focus on the areas of:

Air Pollution: Including reduction of content of noxious substances in emissions and the development of new improved technology.

Water Pollution: Including purification of waste waters by chemical, biological and other methods and the development of new improved technology.

Environmental pollution associated with agricultural production:

Including methods of using mineral fertilizers, chemical and biological means of plant protection, solving the problems of soil productivity and the disposal of wastes.

Enhancement of Urban Environment: Including the problems of urban planning, transportation problems, water supply, reduction of noise levels.

Preservation of Nature: Including the preservation of natural ecological systems, species of plant and animal life.

Marine pollution: Including the prevention of contamination by oil, metals and other pollutants.

Environmental Changes on Climate: Including the study of carbon dioxide, carbon monoxide, oxygen and ozone balance.

Earthquake prediction: Including joint studies of the mechanism of earthquakes.

Arctic and subarctic ecological systems.

Legal and administrative measures for protecting environmental quality.

This technological research will be facilitated by:

—exchange of scientists, experts and research scholars;

—organization of bilateral conferences, symposia and meetings of experts;

—exchange of scientific and technical information and documentation, and the results of research on environment;

—joint development and implementation of programs and projects in the field of basic and applied sciences; and

—other forms of cooperation which may be agreed upon in the course of the implementation of this Agreement.

A U.S.-U.S.S.R. Joint Committee on Cooperation in the Field of Environmental Protection will be established under the agreement to implement the proposed measures. Meetings will be held twice a year. The Chairman of the Committee for the U.S. side will be Russell Train, Chairman of the Council on Environmental Quality.

Between sessions of the Committee, designated coordinators will supervise the implementation of the agreement.

The agreement enters into force upon signature and remains in force five years after which it will be extended for successive five year periods unless one party notifies the other of the termination before six months prior to its expiration.

MEMORANDUM OF IMPLEMENTATION OF THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE UNION OF SOVIET SOCIALIST REPUBLICS ON COOPERATION IN THE FIELD OF ENVIRONMENTAL PROTECTION OF MAY 23, 1972

The first meeting of the U.S.-Soviet Joint Committee on Cooperation in the Field of Environmental Protection was held in Moscow September 18 to 21, 1972. The Joint Committee was established by the Agreement on Cooperation in the Field of Environmental Protection, signed in Moscow by the President of the United States Richard Nixon and Chairman of the Presidium of the Supreme Soviet N. V. Podgorny on May 23, 1972. As provided for in the Agreement, the Joint Committee approved concrete measures and programs of cooperation, and designated the participating organizations responsible for the realization of the programs.

Agreement was reached upon specific projects in the eleven subject areas named in the Agreement. Work will begin on a number of high priority projects during 1972–1973. For each project, responsible organizations were named by each side, although it was understood that other organizations from each side may participate in agreed projects, in many cases by working groups established in the specific area. It was agreed that the respective Coordinators would verify the initiation of the agreed projects and remain in communication regarding the development of the program as a whole.

Agreement was reached upon the following initial projects:

IX. EARTHQUAKE PREDICTION

1. Earthquake prediction.

The San Andreas fault area in the U.S. and the Garm-Dushanbe region in the USSR were designated as subjects for the installation of jointly operated earthquake measurement instruments and detection equipment. Both sides will exchange visits and information with regard to earthquake prediction research, seismic risk mapping, seismicity and earthquake resistant design.

2. Integration of U.S.-USSR Tsunami (earthquake produced tidal waves) warning systems.

Both sides will exchange visits and information and will consider the possibility of the integration of the Tsunami warning systems currently being operated by the U.S. in the Hawaii area and by the USSR in the Kurile-Kamchatka area. The two systems will be integrated to provide an exchange of data produced from each one and to improve the operation of both systems.

One working group will be established. It will meet on the subject of earthquake prediction in the United States in early 1973 and later in 1973 in the USSR. The lead agencies for the United States will be the Department of the Interior for earthquake prediction activities and the National Oceanic and Atmospheric Administration of the Department of Commerce for integration of the Tsunami warning systems, and for the USSR the Academy of Sciences of the USSR.

EXHIBIT 4

[From the F. A. S. Newsletter, January 1972]

FAS CALLS FOR TOTAL TEST BAN WITHOUT ON-SITE INSPECTION

We believe that the United States should now seek to negotiate a treaty banning all underground nuclear tests without requiring any on-site inspection. The risks are minimal and the gains could be very substantial.

Given recent improvements in seismology and other means of detection, we believe that the United States would detect Soviet violation of a test ban treaty long before the Soviets could carry out enough tests to score a breakthrough that would threaten the stability of the nuclear balance. Indeed, we are aware of no persuasive argument explaining how even unrestricted Soviet testing below the level easily detected by seismic means could threaten the balance. Moreover, the Soviet leaders could not be given any confidence by Soviet scientists that even a single violation would go undetected.

Without any on-site inspections, clandestine cheating is far less plausible now than it would have been in 1963 with on-site inspections when President Kennedy urged such a treaty. Indeed, we believe on-site inspection would be of only marginal significance, amongst other present methods, in monitoring Soviet test activity. We urge greater declassification of nonseismological methods (and seismological ones also) to permit the public a better appraisal of our ability to monitor a ban.

Much of the opposition to the Test Ban Treaty in the United States does not arise from fear of Soviet cheating. It springs from the desire to continue American nuclear testing in order to develop new weapons, to request existing weapons and to keep our laboratories vigorous.

We see no need to develop new weapons to maintain the reliability of the American deterrent. A SALT agreement banning ABMs, or restricting them to low levels, would eliminate the need for much planned additional testing to develop improved MIRV and ABM warheads. But even without a SALT agreement, existing warheads would be sufficient. The vigor of the weapons laboratory is not an end in itself. And we can design around any uncertainty which may be created in the future by our inability to test old or modified designs.

There are a variety of means, all consistent with American interests, of dealing with peaceful explosions; our goal should be to find the means which have the greatest international support.

The positive advantages of a Test Ban Treaty are obvious and need not be labored. The treaty could slow down the strategic arms race indirectly. It would greatly reinforce the nonproliferation treaty and decrease the probability that additional nations would seek to develop nuclear weapons. It would eliminate the ecological dangers of further testing. It would inhibit the development of cheaper weapons whose technology might spread to other nations. Finally, it would contribute to an environment in which further steps leading to nuclear disarmament would be possible.

SOME POLICY CONSIDERATIONS OF A COMPREHENSIVE TEST BAN

A Treaty banning the testing of nuclear weapons would contribute to world security and to the security of the United States by: (1) reinforcing the distinction between nuclear and non-nuclear weapons and hence reducing the likelihood that nuclear weapons would ever be used; (2) slowing down the strategic nuclear arms race and thereby contributing to the stability of the balance; and (3) contributing to prevention of the spread of nuclear weapons through the adherence of non-nuclear powers. The arguments advanced against the treaty are: (1) continued American testing is necessary to develop weapons that we need such as advanced MIRVs and ABMs and to "proof test" existing weapons; and (2) without (and even with) on-site inspection the Soviet Union could cheat and make a breakthrough that would unset the stability of the nuclear balance. An examination of these considerations follows.

The test ban treaty would greatly enhance the existing arms control measures designed to strengthen the belief that nuclear weapons are different and should not be used even when nuclear powers fight. Much has already been accomplished in this direction from the time in the late 1950's when President Eisenhower was asserting without serious contradiction that nuclear weapons were now "conventional" and would be used in a future conflict. The total test ban treaty would make a reversal of this process extremely unlikely. There is great symbolism in agreeing not to test a weapon. Military men are reluctant to rely on, or to recommend, the use of weapons which have not been tested. Overtime the military bureaucracies of these nuclear powers that adhered to the treaty would plan less and less for nuclear warfare except in defense against a nuclear attack.

A prohibition on nuclear testing would slow the strategic arms race. It is worth noting that a complete test ban five years ago would have slowed down if not prevented the installation of both MIRVs and ABM, two developments now clearly seen to be destabilizing. A test ban now would make the development of highly accurate MIRVs on either side more difficult if not impossible.

The effects of a test ban on the proliferation of nuclear weapons could be most important. Some countries which have refused to sign the NPT would find it difficult, if not impossible, to refrain from adhering to the test ban treaty. India, in particular, has long pressed for the test ban and would thus find it difficult not to join.

Of equal importance, the test ban treaty would increase the probability that adherents to the NPT would not, at some future date, renounce that treaty. The NPT is disliked in many countries because it imposes an unequal obligation. The nuclear powers give up nothing that they are doing, and simply promise to do what they had no intention of doing—sharing nuclear weapons with non-nuclear powers. The non-nuclear powers are asked, on the other hand, to give up for all time their right to make nuclear weapons or to possess them. The test ban treaty seems a more equal bargain. The nuclear powers give up what they are now doing—testing weapons—and the non-nuclear powers give up the right to decide to test in the future.

It is generally conceded that, despite the large number of tests done by both sides, more can always be learned about weapons effects, weapons design and development. But, with one possible exception, none of this seems likely to have major military consequences. For example, yield to weight ratios have improved 1,000 times since Hiroshima but could hardly go up by more than about two times more. Of far greater importance today are the changing characteristics of the weapon systems themselves—accuracy, warhead carrying capacity and so on.

The one possible exception of major importance concerns the possibility of a thermonuclear weapon which did not require a fission trigger. [See, for example, "Nuclear Weapons Technology" by J. Carson Mark in *Impact of New Technologies on the Arms Race*, MIT Press 1971.] Such a discovery would lead to very cheap powerful weapons. But this would unquestionable *undermine* the security of the United States as the secret spread. It would encourage proliferation more than any other single discovery. In general, a continuation of testing will encourage proliferation in any case as other nations decline to practice a rule that we only preach.

Validation tests

In recent testimony, the Assistant to the Secrtary of Defense for Atomic Energy, Dr. Carl Walske has put forward what may become a major new argument against halting tests—the need to validate the continued reliability of stockpiled nuclear weapons. Pressed by the Muskie Subcommittee, Dr. Walske noted that since the mid-fifties there have been "five principal cases in which a nuclear test was an integral part of a corrective program for a nuclear weapon in our stockpile." These arose because important modifications of the design of the nuclear assembly system were being made for mechanical, metallurgical or safety standard reasons.

It is significant that Dr. Walske was forced to return to the Dulles-era analysis of the test ban that the test ban is desirable only if linked to other agreements in order to keep his requirement for continued testing consistent wtih the Administration position that a "suitably verified test ban" *was* desired. He said:

"I strongly endorse, as does the Defense Department, a comprehensive test ban treaty with adequate safeguards. . . . You may wonder how that is compatible with worrying about the reliability of stockpile. . . . My view is, my personal view, that a comprehensive test ban treaty should be judged as a first step in arms control, or another step since we have already had some and beyond that point you should go into real disarmament before too long. I don't mean one month, but I mean before too long. If you have a comprehensive test ban treaty and you do not eventually follow it up with real disarmament, then you would be faced with nuclear powers with large arsenals of nuclear arms and decreased reliability, which could be destabilizing."

Further investigation is required to put on the public record the extent to which these tests were required by aging on the one hand, or by planned changes on the other (new safety standards, etc.). But Dr. Walske's argument that a failure to be able to validate the continued workability of the warheads was "destabilizing" is questionable at best.

IS UNRELIABILITY DESTABILIZING?

A destabilizing effect is one which increases the ability of an aggressor to attack. Uncertainty on each side about the workability of its own, and its opponent's weapons, does not have that character. In the first place, the aggressor must have high confidence that his planned attack will work in virtually all particulars. The defender needs only ensure a much lower weapons reliability to retaliate effectively. And the aggressor cannot be sure that the defender's weapons are not working—when even the defender does not know. A more plausible argument suggests that a roughly comparable degree of uncertainty about weapon reliability would *discourage* aggressive use of nuclear weapons.

Nor was Dr. Walske correct in suggesting that the destabilization could be removed by eliminating "large" stockpiles. Short of general and complete disarmament, questions of reliability of weapons would, all political things being equal, tend to *increase* with dimunition in weapons stockpiles. Interestingly, in contrast, to the comment quoted above, Dr. Walske's letter noted that:

"If nuclear testing were stopped, uncertainties regarding the reliability of existing stockpiles of nuclear weapons could become quite large over a period of years, an effect which might be *stabilizing or destabilizing* depending on the circumstances."

In any case, the problems of deterioration of stockpiles could be resolved in direct ways by using a previously tested method or warhead, or even by replacing the warhead completely thereby restoring whatever effectiveness it had at the time of its entry into the stockpile. The Department of Defense statement adds:

"Of course, the reliability of the stockpile will be affected by the willingness of the government to spend possibly large sums of money to work around recognized deficiencies without nuclear tests. With such funding available the loss in reliability could often be avoided or delayed, although in the absence of nuclear testing corrective

measures might involve longer periods of system degradation and might involve settling for a warhead performance well off the optimum."

The question of weapon reliability must also be put in some perspective; most of the concern about weapons firing has to do with their reaction to nuclear-weapons-effects of enemy warheads rather than with anything analogous to simple mechanical or chemical failure. Thus the Defense Department recently testified:

"Since the environments in which weapons may be required to perform are complex, hard to define, and often hostile, it is almost always impossible to guarantee their reliability by actual nuclear tests of the final stockpile design in all the various required combinations of physical environments."

Thus, for example, the partial test ban treaty is already restricting the ability of weapons designers to find out, in realistic tests, how our weapons will be affected by atmospheric nuclear bursts. But this is true for both sides.

The small possibility of a systematic defect in all the weapons in a strategic system, after all U.S. testing to date, could be covered by the withdrawal clause in arms control treaties of this kind.

It should also be pointed out that the long-term apprehensions about validating weapons in stockpiles will arise in a political context that is different from this one. As the cold war wanes dramatically over periods as short as five or ten years, fears appropriate to older periods often go unmentioned later. Still more predictably, the technology of detecting Soviet tests by seismological and non-seismological methods can be expected to continue to increase dramatically as it has steadily for years. No comparable improvement in methods for hiding nuclear tests has occurred. While these political and military trends need not be relied upon, it would be foolish to consider the policy issues of the comprehensive test ban treaty in the absence of speculative judgment upon these control issues.

We have mentioned as military motivation for testing: improvements in "Yield to Weight Ratio"; reduction in radiation (Low Fission); Validation Tests; and Missile Design problems—as in ABM penetration. Other reasons for continued testing given by the Defense Department in recent testimony were: the return to the economy of now necessary special materials as plutonium, oralloy and tritium (Reduced Special Materials); smaller diameter weapons (Special Geometry); still greater weapon safety (Safety); needed improvements in lifetime of weapons (Lifetime); and improvements in a category called "Special Output"—this presumably refers to output of x-rays or other special weapons effects for special purposes. None of these latter reasons seem persuasive objections to a comprehensive test ban treaty and some seem minor indeed.

Clandestine testing

As a related article (see below) shows, clandestine testing would be limited to detonations of a few to several kilotons—with great effort warheads of a few tens of kilotons might be involved. It is a startling and important fact that no one seems to suggest a way in which even *unlimited* clandestine testing by the Soviets at this level could shift the strategic balance in any significant way. In effect, if the United States agreed to halt all tests while permitting the Soviet Union to test below the threshold of, for example, 20 kilotons—no important strategic effect is foreseen. Thus if the test ban is desirable, it is desirable without regard to the problem of cheating, or the problems of inspecting for cheating.

Moreover, the problems of cheating are substantial. They include great uncertainty about the effects of any particular explosion. They include also even the human problems of preventing scientists from revealing that the Nation has cheated. Most important, there are the problems of conventional espionage, satellite reconnaissance and so on (see page 6). It seems likely that any series of tests, perhaps even a single test, would have to be carried out with the willingness of the Soviet leadership to be exposed if necessary and to accept that exposure with all the political and arms race consequences inherent in it.

UNDERGROUND TEST DETECTION

Although inspection of underground nuclear tests is generally assumed to depend entirely on seismology, in fact the U.S. now relies on a variety of intelligence means (see page 6) to detect Soviet underground nuclear tests. Together these methods give the U.S. high confidence that it would detect Soviet cheating long before the Soviets could conduct a sufficient number of tests to affect the security of the United States in any way. This is the relevant test—not whether any single explosion might conceivably go undetected.

Seismologists measure earth tremors by measuring body have (mb) magnitudes. A body-wave magnitude of 4 (mb4) corresponds to the tremor that would result from an explosion of about 2 kilotons in solid rock. Because the scale is logarithmic, a body-wave magnitude of 5 (mb5) corresponds to an explosion of about 20 kilotons in hard rock. As the Berkner Panel observed in March, 1959, larger explosions might, in principle, give the same body-wave signature if conducted in softer material (salt, alluvium) or if detonated in large hole—thus "decoupling" the force of the explosion from the earth. Indeed, if the explosion is set off in soft, dry alluvium, the explosion might be approximately "8" times larger and give the same body-wave magnitude.

However, explosions of this kind larger than several kilotons would leave large observable (by satellite) collapse structures. Similarly decoupling for explosions larger than several kilotons requires large amounts of excavation and risks detection by other means of intelligence. (Firing during earthquakes has also been mentioned but it obviously requires involved complicated maintenance of readiness around the clock over long periods if any useful measurements are to be taken—and infrequent tests).

Part of the renewed interest in the test ban has arisen from recent advances in seismology. These have, in effect, demonstrated that criteria for discriminating between earthquakes and explosions previously established above a magnitude mb4.5 could be applied to magnitudes of mb4.0. Thus explosions of approximately 2 kilotons (i.e., two thousand tons of TNT equivalent or one-tenth the size of the Hiroshima bomb) in hard rock could be detected and identified about 90% of the time from stations outside the Soviet Union.

Foster on on-site inspection

The Defense Department has not, however, given up its insistence on on-site inspection. In recent testimony, Dr. John S. Foster testified that "we have established the need for on-site inspection":

"(a) for events 'sufficently large to detect but sufficiently small that positive identification cannot be made'

"(b) 'to establish the nuclear or non-nuclear nature of low-yield explosions'

"(c) 'to restore international confidence in any cases where earthquakes are misidentified'

"(d) 'to deter violations by increasing the chance of getting caught' ".

At the present time, the Defense Department has estimated that a seismic monitoring system could be built to identify all but two or three events per year over magnitude four and a half (five to fifty kilotons in hard or soft rock respectively). At magnitude 4, there would be about 25 identified events per year. But many, if not all, of these events could be quickly disposed of on the basis of satellite reconnaissance—for example, many would occur in the midst of an untracted wilderness. Public reports on the extraordinary resolution of satellite photography have suggested that garbage can tops can be seen from satellite altitudes.[1] DOD announced comparable variations in Soviet missile silo diameters.

According to one witness before the Joint Atomic Energy Committee many of these events would be hard to resolve seismologically because obscured by the accidental occurrence of large earthquakes elsewhere in the world at the same time. Here a judgment on the feasibility of useful clandestine testing on the basis of "waiting for earthquakes" might eliminate our concern.

More information is required to believe that there is a serious problem of confusing Soviet nuclear explosions for conventional ones. How often does the Soviet Union set off thousands of tons of TNT equivalent in conventional explosions? And are there not ways in which the Soviet Union could communicate its intention reliably without on-site inspection—perhaps to watching satellites. During the Cuban crisis we accepted a visual look at boxes of missiles leaving Cuba as a solution to a similar on-site inspection problem.

International confidence

The case for restoring "international confidence" after misidentification really means giving the Soviet Union a chance to prove its innocence after the United States has mistakenly decided that the treaty has been violated. But no treaty need embody this right. The Soviet Union could always act to avoid U.S. abrogation by offering to permit an observer to visit the scene if and when other explanations did not suffice.

Finally, a few on-site inspections will not much increase the deterrent effect on violations. The on-site inspection method can only confirm deeply felt suspicions of the inspecting party. A successful clandestine test will avoid giving out signals that would trigger inspection. And if identifiable signals of violation may be emitted, on-site inspection or not, the violator must assume that abrogation may well follow.

It is significant also that these four reasons could be used to support on-site inspection notwithstanding any possible seismological advance. There will, after all, always be the possibility—with or without on-site inspection—of clandestine tests under the threshold, and of ambiguous events and misinterpretations.

If one-site inspections are of marginal significance for the U.S., and of deeply felt importance to the Soviets, there is a prima facia case for considering closely whether the treaty can go forward without them. Persumably this is why a representative of the Arms Control and Disarmament Agency, Mr. Philip Farley contented himself in recent testimony, with saying that on-site inspection "could" play an important role in deterring violators and "could" provide parties with added confidence that the treaty was being complied with. In answer to questions he noted that he did not exclude the possibility of an agreement without on-site inspection.

It should also be mentioned that on-site inspection could be the source of misunderstanding. The U.S.-Soviet disagreement over *numbers* of permitted inspections has always masked a more complicated unresolved negotiation over the modalities of inspection. Disputes over timing, rights of movement, and so on could turn an unnecessary inspection into a world incident producing heightened and unwarranted suspicion.

Footnotes at end of article.

Nonseismological methods of verification

Eight years ago, the President of Itek Corporation, Franklin Lindsay wrote:

"Soon it may even be possible to detect clandestine underground nuclear explosions with satellite cameras that can observe subtle changes in the surface of the ground above the point of detonation."

Among the subtle and not so subtle observed events might be: drilling, general site activity, subsidence craters, dust clouds raised by the explosion, or crater subsidence, radiation sensors or radar observation of the ground.[2] These methods do not require on-site inspection.

DISARMAMENT EXPERT SUFFERS LEGAL OUTRAGES

Thomas S. Lough served five years in the Arms Control and Disarmament Agency, and another year in the U.S. Disarmament Affairs Secretariat. His sound judgment and good character is well known to many FAS specialists in this field. While teaching as a professor of sociology in Kent State University, Professor Lough became one of many innocent persons indicted as scapegoats for the Kent State killings committed through police error. Although these cases have now been dropped. Professor Lough's legal expenses left him $10,000 in debt. In view of Professor Lough's long service to FAS goals, members are advised that contributions to his defense could be sent to him through the Department of Sociology at Kent State University, Kent, Ohio 44242.

HISTORY OF TEST-BAN NEGOTIATIONS

On March 1, 1954, a U.S. thermonuclear explosion at Bikini Atoll contaminated a local Japanese vessel with radioactive fallout and produced radioactive rain over wide areas of the Pacific Ocean. From 1955 to mid-1957, the Soviet Union pressed for an agreement on nuclear tests as a separate measure while the U.S. linked such an agreement to progress in arms limitation or disarmament. When the Soviet Union began to talk in concrete terms of "control," the United States conceded the possibility of a "temporary suspension" of testing as "part of an agreement for a first step in disarmament" and proposed a Committee of Experts be convened to consider the matter.

By the beginning of 1958, the United States had completed about 110 announced tests and the Soviets had held about 30.[3] The Soviets then set off about 10 more and announced, on March 31, 1958 that they would halt but would feel free to resume testing if others did not follow suit. President Eisenhower did not accept Premier Khrushchev's moratorium offer but persuaded a reluctant Khrushchev to agree to a Geneva Conference of Experts that began in July. After the Conference, President Eisenhower agreed to halt testing for one year with a view to negotiating an agreement along the lines the experts had sketched; the year would begin when the negotiations began.

Starting a month after the Soviet moratorium proposal, the United States had performed 50 more announced tests in six months halting with the onset of negotiations on October 31, 1958. Noting that the offer of a moratorium had not been accepted, the Soviet Union claimed the right to perform as many tests as the West had since the moratorium had been announced; it proceeded to conduct 16 atmospheric tests between September 30 and November 3—two of these overlapped the onset of negotiations on October 31 by a few days. President Eisenhower announced that the U.S. was relieved of any obligation to suspend tests but would continue "for the time being." Thus began a three year stoppage of tests.

Negotiations begin

In the negotiations, in January the West dropped its link between a ban on testing and progress toward disarmament. But it introduced new evidence from recent underground tests that suggested seismic detection would be less effective than had been supposed and proposed reconsidering the conclusions agreed to at the conference of experts. A great deal of discussion followed concerning the modalities of on-site inspection: the makeup of inspection teams, the rights of movement, logistic support, staffing of control posts, and control headquarters, rights of veto, and so on.

After a special U.S. panel on Seismic Improvements (the Berkner Panel) confirmed, on March 16, 1959 that underground tests would be harder to monitor than anticipated, President Eisenhower wrote Premier Khrushchev urging a separate atmospheric ban. The Soviet Union rejected this proposal and there then ensued, among other strands of negotiation, haggling over the number of on-site inspections to be permitted. The West had asked 20 inspections and the Soviets had offered three.

Technically the unofficial and informal moratorium had come to an end on December 29, 1959 when President Eisenhower stated that "America considered itself free to resume nuclear weapons testing" subject to advance notice of such intention. (See, for example, Senate Foreign Relations Committee analysis of The Test Ban, September 3, 1963). But neither side tested until, on August 30, 1961, the Soviet Union began a two month series of about 30 atmospheric tests. With regret, President Kennedy followed suit.

In December, after the Cuban Crisis, Premier Khrushchev wrote President Kennedy and, alluding to the risks of war just passed, offered to settle the test ban problem on these terms: 2–4 on-site inspections (he noted that Ambassador Arthur Dean had used this number in discussions with First Deputy Foreign Minister V. V. Kuznetsov), and automatic seismological stations as suggested by "British" scientists. President Kennedy responded that Ambassador Dean had suggested "eight to ten" inspections that three automatic stations would not be sufficient, and that he had been informed that the automatic station notion was a "Soviet" idea, endorsed by independent scientists of other countries.

The Partial Test Ban Treaty

Finally, on June 10, 1963, President Kennedy announced in an American University speech:

"To make clear our good faith and solemn convictions on the matter, I now declare that the United States does not propose to conduct nuclear tests in the atmosphere so long as other states do not do so. We will not be the first to resume."

The Partial Test Ban Treaty negotiations followed swiftly and the draft treaty was initialed on July 25, 1963.

Hearings before the Foreign Relations Committee revealed only one official witness opposing the treaty: Dr. John S. Foster, then Director of the Lawrence Radiation Laboratory, now Director of Defense Research and Engineering (DDR&E) in the Department of Defense. Of scientific consultants to the Government, only Edward Teller opposed the treaty.

The Joint Chiefs of Staff argued that the risks of the treaty could be reduced through certain safeguards: (a) continuation of a comprehensive, aggressive, underground nuclear test program; (b) maintenance of the vitality of our nuclear laboratory facilities and weapons programs (c) the maintenance of a state of readiness to resume atmospheric nuclear testing in the event of violation or abrogation of the treaty and (d) the improvement of detection methods for Soviet and Chinese tests. President Kennedy reassured the Senate on these points in his letter of transmittal of the treaty to the Senate, and in a special letter to Senator Everett Dirksen. Supporting the treaty, the Joint Chiefs had their most serious reservations about the possibility of unwarranted "euphoria" in the West. They considered possible Soviet progress due to clandestine testing to be only a "relatively minor factor" in the overall balance and they argued that the "broader advantages" of the treaty in terms of world tension and proliferation justified the risks.

The Partial Test Ban Treaty entered into force on October 10, 1963. Since that time, both powers have overlooked violations of the other in which explosions have vented to the point where radioactivity leaked over boundaries. Each side has engaged in vigorous underground testing.

CREDENTIALS OF CO-SIGNERS

In addition to the necessary approval of the Executive Committee of the Federation, both statements released on page 1 had the explicit endorsement of certain FAS specialists in these matters. Their credentials for endorsing one or both statements appear below. Because both statements involved strategic weapons, there is some overlap in co-signers. (However, an expression of support for one statement and not the other does not in any of the present cases constitute disapproval. It simply means, that the statement in question was not circulated to that co-signer for his support.)

Marvin L. Goldberger, formerly Chairman of the Strategic Weapons Panel of the President's Science Advisory Committee, and now Chairman of the Department of Physics of Princeton University. (FAS Chairman)

Herbert Scoville, Jr., former Deputy Director for Science and Technology of the Central Intelligence Agency, former Assistant Director for Science and Technology of the Arms Control and Disarmament Agency. (FAS Secretary)

Herbert F. York, former Director of Defense Research and Engineering (under Presidents Eisenhower and Kennedy), now Chancellor of the University of California at San Diego. (FAS Chairman 1969–70)

George W. Rathjens, who has been Deputy Director of ARPA, Deputy Assistant Director for Science and Technology of ACDA, Director of the Weapons Systems Evaluation Division at IDA, and Special Assistant to the Director of ACDA, now professor of Political Science at MIT.

Morton H. Halperin, former Deputy Assistant Secretary for Arms Control and Policy Planning (under President Johnson) and Senior Staff Member of the National Security Council under President Nixon.

Leslie H. Gelb, former Acting Deputy Assistant Secretary for Arms Control and Policy Planning and Director of the Policy Planning Staff.

Eugene Skolnikoff, who has been Special Assistant to three Presidential Science Advisors and is now Chairman of the Department of Political Science at MIT.

Richard H. Ullman, Professor of Politics and International Affairs at Princeton University and a former member of the Policy Planning Staff in the Pentagon's ISA and the National Security Council in the White House.

Adrian Fisher, former Deputy Director of the Arms Control and Disarmament Agency under Presidents Kennedy and Johnson, now Dean of Georgetown Law School.

FOOTNOTES

[1] Public reports on the resolution of satellite photography have been compiled in a chapter authored by Jeremy J. Stone in "ABM," (edited by Abram Chayes and Jerome B. Wiesner, Harper & Row, 1969).

[2] This list of possibilities, and indications that these kinds of methods are being exploited in the U.S. Vela Satellite program, appears in a Swedish Peace Research Institute (SIPRI) report, "The Test Ban", October 1971.

[3] These announced tests understate the number of tests of both sides but they are probably indicative of relative numbers.

WIESNER ON TEST BAN

. . . as Science Advisor to President Kennedy, I participated in the decisions leading up to the Limited Test Ban Treaty. . . . Actually, there was no technical reason why we should not have concluded a comprehensive test ban treaty at that time. We now know that only political considerations on both sides prevented reconciliation of the minor differences that existed at the time.

Today, the feasibility of an undeground test ban is even greater. It was recently announced that a scientists' panel at a test detection conference of the Advanced Research Project Agency of the Defense Department concluded that progress in seismology now makes it possible to distinguish all but the smallest tests from earthquakes. A test ban agreement without on-site inspection, therefore acceptable to the Soviet Union and practical to implement would now appear possible.—Dr. Jerome B. Wiesner President of MIT, July 22, 1971, statement to Senator Edmund Muskie, on opening of hearings by the Senate Subcommittee on Arms Control on the Test Ban.

TWO TREATY COMMITMENTS TO SEEK TOTAL TEST BAN

OCTOBER 10, 1963

Seeking to achieve the discontinuance of all test explosions of nuclear weapons for all time, determined to continue negotiations to this end. . . . —Partial Test Ban Treaty.

JULY 1, 1968

Recalling the determination expressed by the Parties to the 1963 Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water in its Preamble to seek to achieve the discontinuance of all test explosions of nuclear weapons for all time and to continue negotiations to this end. . . . —Nonproliferation of Nuclear Weapons Treaty.

IMPROVED IDENTIFICATION VERSUS ON-SITE INSPECTION

It does seem to me a quite reasonable estimate that a system for accomplishing distant identification can be established which will permit identification of distant nuclear explosions in rock as small as perhaps 2 or 3 kilotons. . . .

. . . as the capability for identification approaches more closely the limit for detecting, it is getting to the point where the number of suspect events detected but not identified is becoming somewhat less significant in terms of numbers. That is why I myself believe that the current capabilities and the clear indications of improvements by installing better systems and so on makes it really entirely reasonable to contemplate a comprehensive test ban treaty in which on-site inspections are not called for.—Pg. 49 Muskie Committee Hearings, July 22, 1971, Franklin A. Long, former Assistant Director for Science and Technology of the Arms Control and Disarmament Agency, 1962–63.

SEISMOLOGICAL IDENTIFICATION

"For underground testing in hard rock, we can assume that the superpowers are in a position to achieve a detection threshold of about 5–10 kt. Theoretically these numbers are higher by a factor of ten for testing in alluvium and much higher still for testing in a large hole (i.e. decoupling). But taking into account technical realities we can say that underground testing above 10–20 kt can be made extremely risky for the tester, by the use of seismic monitoring alone."—SIPRI assessment, October, 1971 "The Test Ban"

PARTIAL TEST BAN TREATY OPPONENTS STRESSED "KNOWLEDGE"

To acquire more knowledge in order to know how to defend ourselves, this, I would suggest, is not quite properly called an arms race.

This treaty will not prevent the arms race. It will stimulate it. This treaty is not directed against the arms race. This treaty is directed against knowledge, our knowledge.—Edward Teller, August 20, 1963, Test Ban Hearings, Senate Foreign Relations Committee.

The proposed treaty would limit not only our knowledge of the actual state of Soviet military deployment, but would also restrict our knowledge of what may even be technically possible. Specifically, this requires that the United States explore vigorously all areas of technology critical to our security.—John S. Foster, August 21, 1963, Test Ban Hearings, Senate Foreign Relations Committee. (Dr. Foster was then Director of the Lawrence Radiation Laboratory.)

[From the Scientific American, November, 1972]

THE GREAT TEST-BAN DEBATE

(By Herbert F. York)

The modest but significant progress toward the control of nuclear weapons that has been made during the past nine years has brought to the fore the question that was raised in the first place: Is the time ripe for a treaty prohibiting all tests of nuclear weapons? Indeed, both the limited-test-ban treaty of 1963 and the nonproliferation treaty of 1968 contain clauses obligating the signatories to seek to achieve a treaty establishing a comprehensive ban. The issue is therefore being debated again, as it was when Jerome B. Wiesner and I discussed the subject in these pages in October, 1964. This time, however, it is possible to employ hindsight to sharpen foresight, because most of the arguments being made against a comprehensive test ban now are essentially the same as the ones that were put forward in the long debate preceding the adoption of the limited test ban. An examination of how those arguments look in the light of experience will help to supply a basis for estimating how much weight they should be given in the present debate.

The questions involved are of two general types. One type has to do with the means for monitoring a test ban to ensure that the signatories are complying with the treaty. That subject was recently reviewed in these pages [see "Extending the Nuclear-Test Ban," by Henry R. Myers; Scientific American, January]. The other types has to do with the potential effects of a test ban on the national security of the parties to a treaty or other agreement. I shall limit my discussion to questions of this type.

In the debates of a decade and more ago (from 1957 to 1963, to be more precise) the national-security matters most frequently raised by people who opposed or seriously questioned the test ban came under the following general headings: anti-ballistic-missile (ABM) systems, weapons effects, pure fusion bombs, improvement of the yield-to-weight ratio of nuclear weapons and new knowledge, possibly involving military surprises. Let us review the arguments and the subsequent developments under each heading.

In the early 1960's claims were made by Russian officials that the U.S.S.R. had solved the problem of intercepting and destroying incoming ballistic missiles. Not long afterward U.S. intelligence activity discovered that the Russians were indeed beginning to deploy an ABM system. Moreover, the extensive series of nuclear tests conducted by the Russians during 1961 and 1962 had included explosions at altitudes that would be of interest to designers of an ABM system. The U.S. had also conducted a number of high-altitude tests, leading certain scientists and military officials to assert that this country had enough knowledge to design an ABM system. Secretary of Defense Robert S. McNamara and other high officials did not agree, however, and so no ABM-system deployment was then authorized in this country.

Opponents of a test ban contended that the reason for the difference between the Russian decision to deploy and the U.S. decision not to deploy must be that the Russians knew something we did not know. They suggested that this something had been discovered during the Russian test series. Some opponents: went on to speculate that the reason the Russians were now willing to consider a test ban was that they had learned some essential secret and saw the test ban as a way of preventing the U.S. from learning it.

For example, the physicist Edward Teller said: "I think there is a disparity in knowledge, and the disparity of knowledge today means a disparity of power tomorrow. . . . I believe that, because they have acquired this knowledge, they don't need any more atmospheric tests, and I believe that is why Khrushchev is willing to sign the treaty at present." Senator Strom Thurmond said: "All it will take to put the Soviets in a dominant nuclear position is two things: one, enough time to build up a stockpile of the already perfected Red antimissile missile, which will render our huge arsenal of ICBM's [intercontinental ballistic missiles] useless, and second, ratification of the test-ban treaty that will prevent the United States from high-altitude tests necessary for completion of our own Nike X antimissile-missile program, thereby leaving America defenseless against Red missiles."

When pressed for details, the opponents of the test ban commonly referred to several matters on which, they said, insufficient information existed, at least in the U.S. One matter was the blackout phenomenon, in which a nuclear explosion at high altitude produces a large volume of ionized air that is for a time opaque to radar. There were also allusions to certain long-range "kill" mechanisms that would work against incoming warheads. Here it was argued that tests were needed in order to design defensive warheads that would produce such effects and offensive warheads that would survive the effects.

On the other side of the argument it was contended that the U.S.S.R. had not gained any special advantage due to some private knowledge about high-altitude effects. Harold Brown, who was then Director of Defense Research and Engineering, said: "I feel rather strongly that they [the Russians] are not substantially ahead of us." He added that it was not a defect in nuclear knowledge that had prevented the U.S. from deploying ABM systems but rather that "the U.S. decided not to deploy the Nike Zeus because its effectiveness was inadequate against U.S. penetration aids . . . and we assume the same would be true of the Soviet penetration-aid capability." The U.S. Joint Chiefs of Staff said that "development of the U.S. [AMB] system does not depend on atmospheric testing and hence this treaty will not significantly influence any imbalance that may exist."

What have subsequent events revealed about these claims and predictions? The Russian ABM program proceeded erratically from the base described in 1963. After several periods of delay that indicated indecision and uncertainty, the Moscow ABM system (now called the Galosh system) was reported early this year to have fewer than 100 ABM vehicles ready for launching. The system was generally judged to be quite inadequate for coping with an attack against it by U.S. missiles. Russian ABM installations that had at one time been reported around Leningrad and Tallinn either were dismantled or turned out to have a different purpose. Nothing that has happened since the test-ban debate has confirmed the notion that the U.S. did not know. Indeed, the Russian decision to deploy the Galosh sys-

tem seems to have been due to a poor understanding of just how easy it is to penetrate systems of that type and size.

On the U.S. side the development of an ABM system continued through the 1960's at a level of about $500 million per year. The system slowly evolved, as did the political situation both domestically and internationally. Finally, near the end of the Johnson Administration, a decision was made to deploy an ABM system called Sentinel around certain cities. The main reason given was that it would provide protection agianst a prospective Chinese missile force.

After considerable public reaction this decision was rescinded, and a deployment of the same equipment under a new name (Safeguard) was proposed by the Nixon Administration. The Senate accepted the proposal after a long debate about the effectiveness of the system and the problems being met in developing it. In the entire debate developments in nuclear weaponry were never cited as having a crucial role in the various decisions concerning deployment. The serious questions that were raised about the feasibility of the system all had to do with such matters as the computers, the radar and the problems posed by decoys and MIRV's (multiple independently targetable reentry vehicles). When nuclear problems such as blackout were mentioned, it was only peripherally and never as constituting a major problem.

None of this proves that nuclear-weapons development and weapons-effect research are entirely irrelevant to ABM development, but it does indicate that recent research and development in this field have been far from essential. Apparently any lack of perfection in weapons can be overcome in the design of other parts of the system. Moreover, as the ABM program has shifted from Sentinel to Safeguard and now to the site-defense (sometimes called Hardsite), the emphasis has shifted from interception at great distances and high altitudes to interception near the target at relatively low altitudes, where the phenomena to be dealt with are much better known.

I turn now to weapons effects. During the years when nuclear weapons were tested aboveground, the basic effects—blast, radiation, fallout—that kill, injure and destroy were studied in great detail. These are the weapons effect that matter; the entire concept of deterrence, which all sides cite as the main reason for maintaining nuclear forces, is based wholly on the threat of unacceptable levels of death and destruction through these effects. For decades the phenomenology of these effects has been known with a precision that far exceeds the practical use of the information.

In addition to these basic phenomena one hears of a few other more exotic effects that are of technical interest in connection with certain duels between nuclear weapons. Uncertainties about such effects are sometimes raised as an issue in test-ban debates. Among the effects are "TREE" and "EMP."

TREE stands for transient radiation effects on electronics. It is an old problem that has become relatively more important as more complex devices have been introduced into nuclear-weapons systems. It is also mainly of interest in connection with duels in outer space, where there is nothing to attenuate radiation, which therefore would far outreach other effects such as blast.

EMP stands for eletromagnetic pulse. It refers to the fact that a nuclear explosion produces a large electromagnetic field, which in turn can induce large electric currents in conductors at substantial distances. Such currents, if nothing is done about them, can sometimes produce destructive effects in insufficiently protected equipment.

Some of the people who work on nuclear weapons have envisioned an attack in which an enemy explodes a series of warheads high over U.S. missile fields, producing a series of TREE and EMP phenomena (or other long-range effects) timed in such a way that the U.S. could not launch its missiles while the barrage continued. (The tactic is known as "pin-down.")

It is impossible to believe that real political or military leaders would consider such an effort in the face of the variety and dispersion of retaliatory weapons that could be employed. Even so, the claim that further research was needed on this matter was advanced in the early 1960's as an argument against the test ban. (At the time the argument was largely conducted behind the curtain of secrecy that surrounds much military activity; public discussion of the issue became possible only later.)

All the more exotic effects were observed before the partial test ban went into effect. They were not as thoroughly studied as the basic effects, however, and in addition certain new forms of interaction between these phenomena and specific weapons systems have been found since 1963. At first it was thought that it would be difficult to learn more about the exotic effects in underground explosions, and that possibility was raised as an argument against the partial test ban. Later it turned out that a good deal can be learned about the effects from underground testing and by other means. In 1968 Vice-Admiral Lloyd M. Mustin, director of the Defense Atomic Support Agency, reported to Congress: "We think we have the interaction of threats with these two systems [Minuteman and Polaris] well understood and identified and very carefully developed and sophisticated countermeasures far advanced."

In sum, no really new phenomena produced by the explosion of nuclear weapons has been discovered in about 15 years, and there is no good reason to expect that any will be forthcoming. In those years the U.S. has refined its knowledge of the effects of specific systems and in specific environmental situations. Even at that level of detail we have long since passed the point of diminishing returns. The remaining uncertainties are small compared with the other uncertainties about any nuclear attack: the kind, number, yield and accuracy of the weapons; the targets selected; the timing, the relation to other attacks or to political moves, and so on. These are the uncertainties that will dominate the thinking of any statesman who may one day be considering the use of nuclear weapons. No doubt there is more to be learned about weapons effects, but the matter is largely of interest to specialists, and concern about it should have no bearing on important political questions such as whether or not to ban further nuclear tests.

Pure-fusion bombs and bombs with a high ratio of fusion to fission (also called neutron bombs) were seen in the late 1950's as offering a number of advantages, and the need to develop them was therefore raised as an argument against a test ban. Teller, for example, was reported to have said to a Republican committee on nuclear testing in 1963: "We have started the development of clean and cheap nuclear explosives. We need more tests to complete this development. Clean and cheap nuclear explosives are needed for battlefield use, for peaceful applications and for missile defense." John A. Wheeler of Princeton University was reported as telling the same group: "As a physicist and specialist on nuclear fission I see a decisive loss to national security from a test ban. It will prevent us from developing a technology of pure hydrogen devices free of fission fallout. . . . The new technology will have important peacetime applications in mining and earth-moving and will revolutionize ground warfare. . . . It is unconscionable to renounce for the free world a revolutionary device which others will then make without our knowledge."

On the other side, William C. Foster, director of the U.S. Arms Control and Disarmament Agency, said that the expert advice he had received was that pure-fission weapons would not be of great advantage. The reason, he said, was that "they would constitute primarily a cheaper substitute for the explosive components in our already large stockpile of nuclear weapons."

How did matters turn out? The pure-fusion bomb remains undeveloped, and responsible people no longer talk much about it as being the basis of a new revolution in weaponry. When officials of the Department of Defense and the Atomic Energy Commission present arguments for continued testing now, they do not rate the need for fission-free bombs any higher than the need for other and more orthodox modifications and improvements.

A pure-fusion explosion may yet be achieved as a result of all the effort that has been expended. It would be a technological accomplishment, but the likelihood that it would have any large military or political value seems small. The basic fact is that the nuclear capability of the major nuclear powers is already supersaturated in the sense that it can produce more varieties of death, destruction and horror than anyone can seriously contemplate seeking to inflict.

It was also stated during the debate preceding the test ban of 1963 that further improvement in the yield-to-weight ratio of nuclear weapons was in prospect and that certain other improvements and modifications were both possible and necessary. Among them were decreased vulnerability to nearby nuclear explosions and increased safety of weapons. Substantial progress has indeed been made along these lines since 1963. The important question, however, is: How important and how relevant has the progress been?

The Poseidon missile provides a basis for discussion. It is more advanced than its predecessor, the Polaris A–3, in many ways. It is bigger, it can carry a larger payload a longer distance and it has improved accuracy. Moreover, its payload is of the MIRV type: each missile launches a "bus," which has on board a large number of reentry missiles, each of which can be accurately and independently targeted. None of these advances depended on nuclear tests.

M. Carl Walske, Jr., assistant to the Secretary of Defense for Atomic Energy, recently stated that the warhead for the Poseidon MIRV was developed after the limited test ban went into effect, and he argued that if the ban had been comprehensive, nothing like the present Poseidon MIRV could have been developed. I believe his statement is highly misleading. If a pre-1963 warhead such as the one for the Polaris A–3 had been adapted for the Poseidon, the Poseidon MIRV would have had either lower multiplicity (fewer independent missiles) or a shorter range, but it could have had a higher total yield.

Presumably the new Poseidon warhead has been further modified so as to reduce its vulnerability to attempts to intercept it. These modifications apparently resulted in a reduction of the yield-to-weight ratio. In any case such modifications were superfluous, since the basic multiple-warhead feature is in itself the most effective means for penetrating anti-ballistic-missile defenses of the kind that now exist. It does so simply by overwhelming the defense with larger numbers. The only requirement is that the individual warheads be hardened enough and separated enough so that one interceptor must be launched for each reentry vehicle. An A–3 warhead on a MIRV bus of the Poseidon type would easily satisfy this requirement.

Defense penetrability beyond what could be achieved in 1963 is needed only against an ABM defense consisting of very large numbers of relatively sophisticated interceptors. No such defense now exists—nor, I believe, is

there any serious prospect of one in the foreseeable future. To say the least, deployment of the post-1963 Poseidon warhead is premature.

It is small wonder that the concern over surprises and new knowledge persists. One need only recall the early years of nuclear development to realize that surprises and new knowledge abounded at that time. The phenomenon of nuclear fission was discovered in 1938. The first nuclear-test device was exploded only seven years later, which was also the first (and so far the only) time that nuclear bombs were employed in warfare. In terms of energy output those bombs were 1,000 times larger than the biggest chemical bombs.

Seven years later the first thermonuclear device was exploded. It was 1,000 times as large in output of energy as the first atomic bombs. Both of these huge technological steps can be characterized as breakthroughs, and they had major political and military consequences. No such huge gains in yield were made thereafter, but during the next seven years fundamentally important factors such as yield-to-weight ratio continued to improve radically. By 1960 the yield-to-weight ratio of fission bombs was two orders of magnitude (100 times) larger than it had been at the beginning. Means also had been found for both reducing the size and increasing the yield-to-weight ratio of thermonuclear weapons, again by order-of-magnitude amounts.

As a result of such developments many people came to believe politically significant technological breakthroughs had become the norm for nuclear technology. One thus finds many leaders in the field emphasizing the likelihood and importance of further technological surprises and arguing that no bars should be raised against obtaining new knowledge. In 1963, questioning the limited-test-ban treaty, John S. Foster, Jr., then director of the Lawrence Radiation Laboratory (he is now director of defense research and engineering in the Department of Defense), said: "We are involved in a field of technology that is not fully understood, nor its applications, and hence new experiments frequently bring surprises." Teller said a ban would "prohibit future science" and was "directed against knowledge." In 1961 Representative Chet Holifield, then chairman of the Joint Committee on Atomic Energy, expressed concern about "the ultimate general effect on weapons technology of a continuing test ban," which would "inevitably stifle developments undreamed of at the present time." He added: "Concepts are now being considered by our scientists which could be as revolutionary as the H-bomb [was] in 1949." General Curtis E. LeMay, as Chief of Staff of the U.S. Air Force in 1963, said: "We are just at the beginning of our investigations into the nuclear-weapons field."

On the other side, proponents of a test ban expressed doubt about the importance of specific potential breakthroughs and saw as unlikely the possibility that any such development would upset the balance of power. William Foster of the disarmament agency, supporting the limited test ban, suggested that nuclear science was maturing. "The point of diminishing returns in improving weight-yield ratios is fast approaching," he said.

At the time of the debate on the partial test ban the issue of surprises and new knowledge was still difficult to resolve. On the one hand there was the record of a remarkable series of discoveries, technological advances and politically significant applications. On the other hand no further breakthroughs were then in sight, with the possible exception of the pure-fusion bomb, and of that many experts said it would be technologically novel but without great political or military significance.

Now, however, it seems to me that this issue has been resolved. Nuclear weapons have been further refined, and there is greater understanding of the details of certain effects, but no new knowledge or surprises remotely similar is kind or importance to those of the first two nuclear decades have been reported or claimed. Moreover, the nuclear arsenal is so large and varied that the significance of new inventions is small in any case. Compared with the danger of further proliferation of nuclear weapons, the danger that the U.S. will be overwhelmed by an unsupected breakthrough seems vanishingly small.

Let us turn now to the arguments that were made in 1963 and earlier in support of the limited test ban. Five principal points were made and can be set forth here in quotations of participants: (1) "A nuclear test ban treaty would constitute a significant step in the direction of slackening the arms race" (Dean Rusk). (2) It would preserve for a "longer period our present nuclear advantage" (William Foster). (3) "The treaty will curb the pollution of the atmosphere" (President Kennedy). (4) It would create a political climate in which "new opportunities for further steps toward turning the arms race downward might well be more within the realm of possibility than at present" (Rusk). (5) "A nuclear test ban would constitute a significant first step in achieving control over the further spread of nuclear weapons" (Foster).

Each of the statements also amounted to a prediction. Let us see how the predictions stand up in 1972. The limited test ban probably did slow down the arms race between the U.S. and the U.S.S.R., but it cannot be considered to have been outstandingly successful in this respect. It probably has severely limited the further development of very large thermonuclear weapons, but the rate of nuclear testing has continued at about the same level—although the tests are now underground.

Similarly, the treaty does not appear to have much to preserve the "nuclear advantage" of the U.S. Since the treaty was signed, the U.S.S.R. has achieved rough parity with the U.S. in strategic weapons. In any event, the degree of "overkill" in the nuclear capability of both countries is such that further technological advances would make little political or military difference.

The treaty has been quite effective in curbing radioactive pollution of the atmosphere. Although France and China have continued to conduct nuclear tests in the atmosphere, the tests are far less frequent than was the case when the U.S. and the U.S.S.R. were conducting them. Moreover, without the treaty there would be no hope of persuading those nations and other potential nuclear powers to accept similar restraints. Meanwhile, in the absence of a comprehensive test ban such hazards as underground contamination, earthquakes and leakage of radioactive substances into the atmosphere remain possible.

The record of the treaty in creating an environment that made further moves toward arms control possible is excellent. The treaty has been followed by agreements to prohibit nuclear weapons in space (1967), make Latin America a non-nuclear zone (1967), bar further proliferation of nuclear weapons (1968), rule out the seabed for the emplacement of nuclear weapons (1971) and prohibit the use of biological weapons (1972). One might also cite the "hot line" agreements of 1963 and 1971 and the recent strategic-arms-limitation talks (SALT) that resulted in agreement by the U.S. and the U.S.S.R. to put ceilings on their offensive and defensive missiles.

One should also recognize, however, that many of the treaties are peripheral to the main problem and in effect prohibit actions that no nation particularly wanted to undertake anyway. The British disarmament expert Philip J. Noel-Baker, reviewing the results of the 1959 treaty that demilitarized Antarctica, commented that "while disarming Antarctica, we put 7,000 nuclear weapons in Europe; we should have disarmed Europe and put those weapons in Antarctica." Nonetheless, all the agreements are steps in the right direction, and collectively they add up to something significant. Moreover, they help to make arms-control and disarmament measures seem more feasible.

Probably the most important result of the limited test ban has been its contribution to inhibiting the further proliferation of nuclear weapons. Since the treaty was signed, only China has begun testing nuclear weapons, and the Chinese program to develop nuclear weapons had been set in motion long before 1963. The cause was greatly aided by the nonproliferation treaty, which now has some 70 signatories in addition to the original adherents (the U.S., the United Kingdom and the U.S.S.R.). It also seems evident that the treaty has deterred nonsigners from testing.

Indeed, the most important reason for moving now toward a comprehensive ban on testing nuclear weapons is that it would strengthen and reinforce the nonproliferation treaty. The present situation contains elements of hypocrisy and unfairness, since the two major nuclear powers are trying to persuade other nations that nuclear weapons are unnecessary while at the same time both are conducting test programs.

To sum up, a decade of hindsight on the debates preceding the limited-test-ban treaty of 1963 suggests the following main conclusions:

1. The predictions of major surprises and ominous developments were wrong. There has been no "third revolution" in nuclear weapons. The atmospheric tests before 1963 and the underground tests since then have not produced a solution to the problem of developing an ABM system that would be likely to have more than limited success.

2. On the other hand, the passage of time has confirmed the more moderate claims that there was substantial progress to be made in improving the yield-to-weight ratio, hardening weapons against interception, making better fits to new delivery systems and so on. The questions to be asked, however, are how progress in these areas has affected the nuclear balance and whether such technical progress is politically significant. The answers seem to be that, if anything, continued testing has further degraded whatever nuclear advantage the U.S. still had in 1963 and that the political significance of nuclear weapons is derived from the huge numbers of such weapons rather than from their technical sophistication.

3. The limited test ban has not done much to slow the main arms race between the two superpowers. The reason is the limited nature of the agreement. A comprehensive ban in 1963 probably would have done much more.

4. On the other hand, the limited ban has accomplished several of the most important objectives that were set for it. In ascending order of importance they are cleaner air, the establishment of a political climate conducive to much additional progress in arms control and disarmament and the distinct slowing of the spread of nuclear weapons.

On balance, therefore, the limited test ban can be described as a success. Clearly, however, it needs to be extended to prohibit underground testing. A comprehensive treaty may now be within grasp; we must reach for it while we can.

Mr. HUMPHREY. Mr. President in the fall of 1972, Congress approved the ABM Treaty and the Interim Agreement on the Limitation of Strategic Offensive Weapons. The ABM Treaty in particular

was universally heralded as a great step forward for the control of armaments and the stabilization of weapons development. At last, the United States and the Soviet Union, after having attained a roughly equal ABM capability, recognized how significant ABM developments were to the whole arms race, and how marginal ABM protection of our land-based missiles was to our overall retaliatory capability. In abandoning future ABM deployments beyond a two-site limitation, both the United States and the Soviet Union have decided that their mutual security lies in their mutual vulnerability. They have recognized the virtual impossibility of ever obtaining a fail safe system of defense and that it is better to build a system of defense and trust in the form of concrete arms control agreements.

For trust to develop between the United States and the Soviet Union, they must have enough confidence in their own defense capabilities and in their own national means of verification. Because we have both of these capabilities, particularly with respect to the ABM, the United States was fully prepared to enter into another important arms control treaty with the Soviet Union. Article XII of the ABM Treaty capsulizes what I call the confidence factor. It endorses national verification capabilities as the most efficient form of enforcement for full treaty compliance.

I draw attention to this article because I think it provides an interesting departure from earlier agreements with the Soviet Union, particularly with respect to the Partial Test Ban Treaty of 1963. During the negotiations of the partial test ban, the level of sophistication we had reached in our seismic technology was not sufficient to provide for a high confidence factor, something we needed to have for a comprehensive test ban. Hence, we had to settle for something short of a comprehensive test ban—a limited test ban, and hence, the full trust on this matter which we hoped would grow between the United States and the Soviet Union never was fully nurtured.

Mr. President, I held a number of hearings on the subject of verification and seismic technology during the time I served as chairman of the Committee on Disarmament and Arms Control.

I am suggesting today that with the advent of article XII, with the advent of the ABM Treaty, the Interim Agreement, and the resumption of the SALT talks, the time has come for our Government to take a new initiative to end all nuclear testing—in the air, on the surface, under the waters of the seas, and underground. There is reason for confidence in our own means of verification, in our own defense capabilities. There is adequate precedent in other arms control agreements to move forward now on a comprehensive test ban. There are indications of a Soviet readiness to negotiate a comprehensive test ban. I, therefore, join my colleagues in introducing a sense of the Senate resolution for an immediate suspension of all underground nuclear testing in both the United States and the Soviet Union and for a new U.S. proposal for a permanent treaty to ban all nuclear tests among all nations.

The precedent for a CTB at this time would seem clear. There is the Partial Test Ban Treaty of 1963, the Non-Proliferation Treaty of 1968, the ABM Treaty of 1972, the Interim Agreement, and the Declaration of Basic Principles agreed upon in Moscow by both the United States and the Soviet Union.

In all of these matters in my experience in public service I have had some hand or played some part. I held the early hearings on the Nuclear Test Ban Treaty in the Committee on Foreign Relations, starting with my work as chairman of the special subcommittee established by a resolution of this body and seeing the culmination of our efforts in the Limited Nuclear Test Ban Treaty of 1963.

During the time I served as Vice President it was my privilege to work with our people in the State Department, the Department of Defense, and with Mr. William Foster, who was our Director of the Arms Control and Disarmament Agency, on bringing about the Nuclear Nonproliferation Treaty of 1968.

In the spring of 1967 I went to Europe as a representative of this Government to work with a number of countries involved in that treaty negotiation. During the time that I served as Vice President I was a member of the committee on principles in the field of arms control. We used to meet regularly at the State Department. There were representatives from the State Department, the Department of Defense, the Atomic Energy Commission, the President's Office on Science and Technology, and other offices. I was privileged to serve with that group working on this whole subject of arms control.

Much of my life in the vice presidency and in the Senate has been given over to arms control, so I approach this with some interest and experience, recognizing it is at the heart of national security, knowing we have to be exceedingly cautious and prudent, but at the same time I believe recognizing there is no real safety or security in an expanded arms race. Security must come in agreement, verification, and arms control.

None of these treaties are complete in the sense that none have achieved the ultimate objective: halting the arms race and reducing the level of arms deployments through general disarmament arrangements. Each agreement strengthens or weakens the other depending upon the extent of its enforcement. The partial test ban, that treaty which is directly relevant to the general underground testing issue, is the most partial. It is one of the weaker links in the whole chain and must be repaired.

The Interim Agreement on Strategic Offensive Weapons has stirred up a lot of controversy both within the United States and the Soviet Union. It, too, is a weak link but it is, nevertheless, an important link to SALT II where our hopes lie for reaching arrangements on numerical ceilings, reduction formulas, and qualitative controls on our weaponry. These are all extremely complex issues and we must, therefore, all be aware that completion of SALT II is a long way down the road, perhaps even as long as the 5-year duration of the interim agreement itself.

The partial test ban treaty, on the other hand, does not need to wait another 5 years for it to be expanded to an underground nuclear test ban. As its name indicates, it was always considered a partial treaty which would be completed with compromises in national positions, and with technological developments which would satisfy the concern for adequate enforcement of the treaty. An interim agreement is only of an interim nature; a partial test ban is only partial. Alone they signify separate, very incomplete efforts. Together, and completed, they can prevent the spread of nuclear weapons to other countries who can neither afford nor are necessarily anxious to obtain these weapons.

There is a world of difference from consideration of these agreements alone and uncompleted as opposed to being viewed together, both in a satisfactorally completed form.

When I was head of the Disarmament Subcommittee of the Senate Foreign Relations Committee in 1963, I noted the worth of the partial test ban treaty, but I expressed a certain regret that we could not obtain a comprehensive test ban. I realized that this would have been immensely hard to achieve at the time, and I, therefore, worked strenuously to achieve this limited test ban treaty. During the Senate Foreign Relations Committee hearings on the treaty in August 1963, I noted in an exchange with the well-known scientist, Dr. Kistiakowsky, that I would have preferred a comprehensive test ban. I asked Dr. Kistiakowsky whether he thought the treaty would act as a limited brake upon the arms race. His reply with which I concurred was that "It is a small beginning." He went on to say that—

> I believe that the total prohibition of nuclear weapons test, providing there would be adequate monitoring, of course, which is absolutely essential in this case, would have been far more effective in slowing down the arms race and would be in our national interest.

In his address to the General Assembly on October 15, 1963, after the United States had ratified the partial test ban, Ambassador Adlai Stevenson said:

> With the test-ban treaty, we have moved a little closer to a world governed by reason rather than by force. We are that much closer to an agreement on a comprehensive test-ban treaty. It should also improve the prospects for achieving agreement on other measures which might, in turn, lead to general and complete disarmament.
>
> In considering the benefits of the partial test ban, it is also important to note what the treaty will not do. The fact that we have a test-ban treaty must not lull any of us, especially here in the United Nations, into believing that the task that we have set for ourselves has more than just begun. As the President of the United States, (President John F. Kennedy), it is a milestone but not a millennium. The treaty does not stop underground testing, nor does it put an end to all weapons development. It does not reduce the nuclear arsenals of States. It does not eliminate the threat of war. These are serious problems, and we must continue to work toward the solution of each of them.
>
> We share emphatically the view . . . that we must work urgently toward agreement on an adequately verified comprehensive test-ban treaty ending all nuclear weapons tests. While we in this country recognize the diffi-

culties of this task, we are nonetheless convinced that such an agreement can be reached.

The United States also believes . . . that a ban on underground testing is the important next forward step in stopping the nuclear arms race.

Ambassador Stevenson went on to say that the United States would be devoting millions of dollars on advanced research to improve our knowledge of seismology and nuclear test detection. In so doing, it was the hope of American planners at the time that the American position would not have to stress the importance of onsite inspection as the only secure means of verifying fulfillment of the obligations of the treaty.

That was 1963, and yet the pledge of Ambassador Stevenson, Senator HUMPHREY, and President Kennedy, the preamble of the partial test ban seeking to achieve the discontinuance of all test explosions of nuclear weapons for all time, determined to continue negotiations to this end, and desiring to put an end to the continuation of man's enviroment by radioactive substances has not been met.

In 1963, there were technological uncertainties, as Ambassador Stevenson pointed out in his 1963 U.N. statement, making both the United States and the Soviet Union uninclined to seek a comprehensive test ban. Now the progress in seismology has been so great as to provide us with the assurances which we originally lacked concerning the practicality of a comprehensive test ban.

We now have the capability of identifying by national means underground explosions to a degree unknown in 1963. New seismic equipment can be deployed which would provide an even more efficacious monitoring than we now have available. Few tests can now go undetected, and such undetectable tests probably would not aid significantly in the development of new nuclear weapons. These were the conclusions implicit in the Woods Hole Report of July 1970, sponsored by the Advanced Research Projects Agency of the Department of State. The report provided us with a detailed study and evaluation of the scientific breakthroughs we have all expected in order to make the CTB both practical and feasible at this time.

The confidence factor which I have already referred to is greater than it was in 1963 and with much justification. In testimony on October 27, 1971, before the Joint Committee on Atomic Energy, Dr. Stephan J. Lukasik, Director of the Advanced Research Projects Agency in the Department of Defense, discredited to a large extent the utility of onsite inspections. And just for the sake of history, I feel compelled to recall that it was our faith in the efficacy and the necessity of onsite inspections in 1963 which trimmed a potential comprehensive test ban down to a partial test ban.

In haggling over the number of onsite inspections, which according to Dr. Lukasik are of only marginal utility, we lost the chance to have a CTB in 1963. Need we lose it again by failing to recognize the great importance of our most recent seismic technological developments?

What we thought we could do in 1963 only by on-site inspections, we can now do with unmanned seismic observatories. The larger the array of observatories up to a certain point the more accurate our detection capabilities—or to put it into political terms, the higher the degree of confidence we attain. In the same set of hearings before the Joint Committee on Atomic Energy, Dr. Carl F. Romney, Director of the Geophysics Division, Air Force Technical Applications Center, stated that with a network of 25 array stations, we would have the capability of determining a magnitude of seismic events of 3.9 on the Richter scale which is, I am told, roughly 1 kiloton detonated in hard rock, or 20 kilotons in soft rock. And Dr. Romney's estimates were, as he stated, very conservative. Others say we would only need 12 array stations to have a workable network of unmanned seismic observatories to satisfactorily determine what other countries' testing programs are. With new verification capabilities, we have more assurance of full compliance in a CTB Treaty.

Despite the scientific progress and the commitment of the chief negotiators to expanding the limited test ban to underground nuclear tests, there has still been relatively little progress in this direction. Now we hear other arguments emanating from the Defense Department in defense of continued underground nuclear testing, reasons which are far astray from those provided during the original negotiations. Rather than indicate any real need to maintain an active or semi-active testing program, they show a desire to stress the utility of tactical nuclear weapons in our overall nuclear strategy, and the uncertainty which exists, and which will always exist, about the efficacy of our nuclear arsenal.

The arguments ignore the threats to our environment which continued testing presents. They ignore the threat that they present to the further ratification of the Non-Proliferation Treaty by nonnuclear countries. Every day the nuclear powers continue their testing programs, the less credibility they can offer to the nonnuclear countries about their sincerity in putting a halt to the arms race. The more testing which occurs, the greater the currency among nonnuclear powers that nuclear weapons actually can provide them with any military utility or political prestige. Nuclear testing will, if it has not already, become equated with nuclear proliferation, greater international risk, and a continuation of the arms spiral.

It almost defies human logic to imagine that the United States and the Soviet Union would seek agreement in SALT II while maintaining an active underground testing program. While a CTB could put teeth into the interim agreement, continued underground testing would give it cavities hitting the very nerves of our existence.

This inherent connection cannot be stressed enough. For this reason, and for the others to which I have already alluded today, I join with Senators KENNEDY, MATHIAS, HART, MUSKIE, and CASE in offering this resolution on underground nuclear weapons testing. Ten years ago the partial test ban and the moratorium on nuclear testing which President Kennedy ordered went into effect. It was clearly this moratorium which helped to bring about the Partial Test Ban Treaty, just as we all hope that a suspension of all underground nuclear tests at this time will induce a comprehensive test ban.

The moratorium was President Kennedy's bargaining chip, and it worked. It can work again with the Senate's acceptance of this resolution. It can work if the Soviet Union also refrains from further testing. The second part of this resolution calls upon the President to make a new proposal to the Soviet Union and other nuclear and nonnuclear countries in an effort to get the negotiations for a CTB moving again. While the Disarmament Conference in Geneva has not been short on proposals, the United States appears to have been dragging its feet. And for negotiations to be successful, the added impetus of American support is a fundamental requirement.

Finally, the intent of this resolution is to round off an important phase in the negotiating process. It is logical, tenable, and it can be instrumental in the human task of achieving general and complete disarmament.

Mr. President, I am very honored to be privileged to be associated with the distinguished Senator from Massachusetts in this effort. I intend to give a good deal of my time and attention to the accomplishment of our objective. I hope the Senate will look with good favor and ultimate support on the resolution being offered today which I believe will represent a positive and constructive start toward controlling the nuclear arms race which is our most dangerous development in the last quarter of the 20th century.

Mr. KENNEDY. Mr. President, as I entered the Chamber, I was once again reminded of the extraordinary leadership that has been provided in this area by the distinguished Senator from Minnesota (Mr. HUMPHREY). Over the history of this country's efforts to try to bring some sense into our nuclear policy, I do not think there is anyone in the Senate who has been more aware and more sensitive about insuring that this country has adequate and full security in nuclear weaponry and who has yet spoken with such eloquence, reasoning, and understanding about the efforts that must be made between the United States and other nuclear powers to achieve an end to the arms race. So I would like, for just a few moments, to talk with my good friend the Senator from Minnesota about some of the areas which I covered in some details in my comments of today, and to try, perhaps as a result of some of these exchanges, to make the record as complete as possible, by drawing upon his wisdom and understanding in these matters.

I think it is important to understand that there is very important leadership on this issue being provided by members of the Republican Party as well as the Democratic Party, and certainly there is no issue in which less partisanship, and quite appropriately so, has been shown than on this issue.

I would like to ask my friend from Minnesota whether he does not agree with me that what we are interested in achieving by this resolution is really greater security for the United States, not less; and if this measure is actually adopted and what it provides therein becomes the national policy, what we are providing is greater security for this Nation rather than the future perils from an ever-increasing arms race.

I am interested in the comments of the Senator from Minnesota as to whether he thinks the step we are taking today is important because it provides greater security for our country to meet any potential threats from other nuclear powers. Does he not understand that the sense of this resolution recognizes this important and fundamental pillar of our proposal? I would be interested in the comments of the Senator from Minnesota on this issue.

Mr. HUMPHREY. Mr. President, it is the view of the Senator from Minnesota that this resolution goes to the very heart of what I would call genuine national security. I know of very few voices, and no responsible voices, that today believe we could have greater security out of an uncontrolled arms race. As a matter of fact, everything that has been suggested recently—the Partial Test Ban Treaty, the Nonproliferation Treaty, the ABM Treaty, the interim agreement—all of them are designed to slow down the weapons race and to put the nuclear genie back into the bottle, so to speak.

The witnesses we have had to date, in years past and at present, from the scientific community, demonstrate further that there is added national security in a total nuclear test ban. The only reason that this was not done in the past was we had doubts about monitoring the testing. Now we do not need that. We have the scientific technology which can give us the assurance of not cheating.

We do not have to trust the Soviet Union. We do not have to trust anybody. We have the unmanned seismic technology which can reveal whether or not there has been an underground test. To put it in the most simple terms, we can now differentiate the kind of movement that comes from an earthquake as compared with the kind of earth movement that comes from a nuclear test. That was the critical problem we had in the past.

I say to the Senator from Massachusetts that none of us would be here talking about a comprehensive nuclear test ban if we thought it was going to weaken our security. We are talking about it because it limits the danger to our security. The nuclear arms race merely extends the element of danger. The limitation on the nuclear arms race, particularly in our present position of nuclear power, gives us more security.

Mr. KENNEDY. I would certainly agree with the Senator from Minnesota. We have heard from the Armed Services Committee and from the Foreign Relations Committee, from those charged with defense, that we have the ability to respond to any nuclear threat by the Soviet Union. It is my understanding that if the Soviet Union and other nuclear powers were really to make a breakthrough in this area, they would have to move ahead with some kind of testing. If we are able to achieve the banning of tests, in effect we are freezing the advantage of the United States in this area, rather than taking a chance on whether our technology will exceed that of other nuclear powers.

I would agree with the Senator from Minnesota, certainly with regard to the adequacy of national means through seismic and nonseismic means.

I would be interested in the opinion of the Senator from Minnesota about the danger to our environment from the continuation of nuclear explosions. I think the record would indicate quite clearly that, with regard to underground nuclear explosions, one in four nuclear explosions actually vent and provide a threat to the human environment. I am wondering if that is not also a concern of the Senator from Minnesota in pressing forward in this area.

Mr. HUMPHREY. This matter is of concern to me. At the time I was privileged to serve as chairman of the committee on disarmament and arms control the whole subject of environment was not as prominent in our thinking as it is today. We were concerned then about monitoring, certification, to make sure there would not be any breakthroughs in testing that we could not detect.

As the Senator from Massachusetts has pointed out, one of the important elements of the resolution and the hope of getting a comprehensive nuclear test ban is that there have not been any breakthroughs in new weaponry. So it is to our interest, and it is in the interest of mankind, to have a comprehensive test ban treaty. We know there have been serious problems with underground testing, where there has been venting of radioactive debris coming up through the surface and into the air and falling upon populated centers, upon fields, upon cattle, exposing them to strontium 90 radioactive particles. We know this and that it has been a problem. Likewise, in recent days, when the test was conducted in Alaska, there was a genuine concern that we might set off a series of earth movements in that area which is prone to earthquakes because of nuclear explosions underground. But, to simplify it and come directly to the point, another argument for the comprehensive test ban treaty is the effort of the Senator from Massachusetts in this matter, along with some of the rest of us, to protect the environment.

Might I say to the Senator that none of us can ever be sure that no kind of explosion underground might not have very series effects. This is why the people out West wanted to get these tests out of their area, because they saw the danger and the threat to human life, plant life, animal life, and the threat of pollution in the atmosphere.

Mr. KENNEDY. Mr. President, does the Senator from Minnesota not agree with me as well that one of the important considerations of a comprehensive test ban treaty is to try to prevent the proliferation of nuclear weaponry to other nations?

What we have seen since the passage of the nonproliferation treaty, since 1968, is that more nations have declined to ratify that agreement than have accepted it.

And the point that is constantly made by many of these countries that are moving ahead in the development of nuclear potentials is that the United States on the one hand is trying to put a limitation on the development of weaponry and on the other hand is continuing its own testing program.

It would appear to me that we in the United States have been talking out of both sides of our mouth on this issue, trying to indicate that we are really interested in placing limitations on the proliferation of weaponry and on the other hand are moving ahead on our own nuclear weapons development.

If we are really interested, as the Senator pointed out, in putting the genie back in the bottle, does not this resolution move us in the right direction?

Mr. HUMPHREY. Mr. President, it is my judgment that the resolution which the Senator is presenting today would, if we can get through a comprehensive nuclear test ban, put some real integrity into the nuclear nonproliferation treaty.

I think the Senator has touched here on a subject which has been discussed worldwide and has not had nearly enough discussion in the United States. In other words, we are asking every nation in the world to sign a treaty which says in substance that they will not do any experimentation in nuclear weaponry, that they will forever give it up. And, in the meantime, we have already had our experimentation. We have our weapons. But that has not satisfied us up to now. We continue to test new weapons. We who sponsored the Nuclear Nonproliferation Treaty—which, I think, was a commendable effort to slow down the spread of the nuclear threat to the world on a worldwide basis—continue to test new weapons underground and improve on new weapons technology and continue to search for new weapons, as we did in MIRV, multiple independently targeted reentry vehicles.

What this test ban proposal says is, "Let us all stop the testing. Let us not have any of it in the United States, the Soviet Union, or any place else."

And I believe we are right and that we are facing up to our obligations for world peace and arms control and not merely asking others to do the job.

Mr. KENNEDY. Mr. President, if we were to move ahead on the subject of a moratorium commenced by the United States to remain in effect so long as the Soviet Union abstains, we would in this way be able to preserve our options. And we would demonstrate our firm intention to conclude a treaty permanently halting all nuclear testing.

This is an eminently reasonable, rational, and sensible program which is based on national security and environmental and economic grounds.

Would the Senator not agree that this proposal for a suspension of testing would preserve our options?

Mr. HUMPHREY. Absolutely. Let me say of course that the Senator from Massachusetts is absolutely right. We have all the options for our own security under the nonproliferation treaty. We

have it under all of the treaties we have signed, any treaty we have signed. This comprehensive test ban would include the provision that if there were a violation, there would be no reason why the other country—ourselves in this instance—could not resume whatever testing we wished to protect our national interest.

But the national interest is protected in the sense of the Senate resolution. It reads:

Resolved, That it is the sense of the Senate that the President of the United States (1) should propose an immediate suspension on underground nuclear testing to remain in effect so long as the Soviet Union abstains from underground testing . . .

So it is not as if it was all one way. We know this has some effect, as we knew in 1963 when President Kennedy spoke on the moral problems involved and proposed that we were prepared to stop all testing in the atmosphere and on the land providing that the Soviet Union was willing to do so.

It was this that triggered and made possible the Nuclear Test Ban Treaty.

President Eisenhower did something like this at one time.

We are in a position to do this.

Finally I would think that this gives us a chance to get on some very high moral ground where we can take the peace initiative, because that is more than an end of war. It is trying to build trust and confidence among people of all nations. Surely there is no real peace accomplishment if this arms race goes on unabated.

The Senator from Massachusetts mentioned another greater truth that security is not to be found in a mad arms race, but rather in a rational approach to the control of nuclear weapons.

By stopping the testing and limiting the arms capability, we protect the environment. We also reduce the cost and build faith and confidence. I cannot think of any better or more worthy subject than that proposed in the Senator's resolution today.

I am proud to be associated with it.

Mr. MATHIAS. Mr. President, it was in March of 1972, just a little more than a year ago, that the distinguished Senator from Michigan (Mr. HART) and I submitted S. Res. 273, calling upon the President to propose an extension of the Nuclear Test Ban Treaty of 1963 to include underground testing.

The distinguished Senator from Massachusetts (Mr. KENNEDY) had also submitted a resolution which called for the conclusion of a comprehensive test ban treaty, and hearings on both of those measures were held by the Committee on Foreign Relations.

Now—as I say, nearly a year later—in the aftermath of the SALT I accords, this issue has received a considerable amount of attention from the public and the press across the country. The sponsors of last year's resolutions, I am glad to say, have joined forces, and the legislation that we proposed today, which is being discussed in the Senate today, is a union of the two resolutions that were introduced separately by Mr. KENNEDY, Mr. HART, other Senators, and myself a year ago.

I believe this proposal merits the close examination of the Senate, for it could provide the President with the support he needs for a bold new approach in the second round of strategic arms limitation negotiations.

Under the terms of the Nuclear Test Ban Treaty which entered into force on October 10, 1963, the United States is committed to seek a comprehensive, total, and complete ban on nuclear tests. The test ban treaty provided that all parties are "seeking to achieve the discontinuance of all test explosions of nuclear weapons for all time, determined to continue negotiations to this end."

I quote because I believe it is important that we recognize exactly what was decided at that time.

This legal obligation, reaffirmed on July 1, 1968, in the preamble and article VI of the nonproliferation treaty, has not been fulfilled. Neither the United States nor the Soviet Union, or any of the signatories to the NPT has entered into meaningful negotiations to extend the partial test ban treaty to a comprehensive test ban treaty. Indeed, the negotiating positions of the two sides have remained essentially what they were in 1963. At that time, the negotiations broke down over the issue of onsite inspections and the U.S. position that seven sites were the acceptable minimum. The U.S.S.R. position was that only three sites would be required. At that time, seismic detection and satellite reconnaissance were not yet sufficiently advanced to provide adequate national means of verification.

The resolution which we introduce today is a bipartisan effort, an example of the Senate giving its advice on an important matter of foreign policy as prescribed by the Constitution. This resolution urging a reopening of negotiations for a comprehensive test ban is based upon the historical memory of the Senate and the role played by the Congress in previous negotiations such as the partial test ban, NPT, and SALT I. This effort, therefore, is consistent with the purposes of this country as expressed in the policy statements of both the executive and legislative branches over the past 30 years. It is a positive instance of the legislature joining with the executive branch in the making of foreign policy. So in this formal resolution, we in the legislature express our judgment that it is now time for the United States to take another step toward peaceful diplomatic negotiations to bring under further control the scourge of the deadly nuclear arms race.

During the 10 years which have passed since that deadlock, there have been technical advances that have negated the arguments for on-site inspection. Because seismological detection capabilities have increased substantially, underground testing above 10 or 20 kilotons can be monitored by the use of seismic means alone. At the same time, satellite reconnaissance capabilities have also improved enormously. These two verification capabilities, extremely sensitive seismic detection devices and reliable reconnaissance satellites, make it possible for the United States to be confident that it can detect any significant violation of a complete test ban. Most experts now believe that these two methods, together with other intelligence resources, can provide a firm basis for the negotiation of a suitable treaty using national means of verification alone.

The arguments against reopening negotiations for a comprehensive test ban of nuclear weapons are essentially the same as those put forward 120 years ago. The main objectives are as follows:

First, confidence tests are necessary to assure that the nuclear warheads emplaced upon our launcher systems that make up U.S. deterrent forces will function properly. This argument does not bear practical analysis for, in fact, very few if any—solely to test stockpile warheads—confidence tests have been conducted over the past 10 years. A comprehensive test ban could be entered into in phases.

The initial phase, for example, could allow a limited number of confidence tests, perhaps three annually and then confidence tests could be phased out completely as the limited utility of confidence tests becomes known, particularly when weighed against the advantages of a total test ban.

Second, if the United States and the Soviet Union entered into an agreement not to test nuclear weapons, it would be of little value unless the nuclear powers and the near nuclear powers do so as well. I find this argument a valid one but it seems to me that the answer to this view is that if we lead the way, the chances that France, Great Britain, China, India, and Japan will follow, are much greater than if we do nothing.

In essence, the comprehensive test ban is a practical assertion of two factors: First, that the great powers have as much security from their present nuclear weapons stocks as they can ever hope to get. Second, nuclear warheads technology is now at a mature stage. The refinements gained from further testing, according to experts, will be of a relatively significant magnitude to warrant the costs involved and the risks of proliferation by other nations should further testing be permitted to continue.

A treaty for a comprehensive test ban is not just simply a minor bit of unfinished business. It could be an important addition to our national security. It is conceded by most experts that it is unlikely that there will be any dramatic new developments from continued testing. In fact, continued testing will yield only marginal improvements and refinements. We would be giving up very little in the way of weapons development. We would gain a great deal by lessening the means for nuclear proliferation.

It is my hope that the United States will reopen negotiations for a comprehensive test ban and it is my belief that the administration, upon examination of the evidence, will conclude that the case is strong for reopening negotiations at the present time. There is little to be lost by making the effort, but it seems to me essential for the United States and the Soviet Union to lead the way.

If the great nuclear powers can agree to a comprehensive test ban, the likeli-

hood of the other nuclear powers agreeing as well will increase. Further, these negotiations will certainly enhance the chances for preventing the further spread of nuclear weapons to nations of the world who do not now possess them.

Mr. President, I think that this is the time that the Senate should act. Great efforts are now being made worldwide to strengthen the peace: SALT II, MBFR, the European Security Conference, the end of hostilities in Southeast Asia and the Middle East. Reopening the negotiations on a comprehensive test ban would only help to further the noble effort being made and could only contribute to the realization of the generation of peace we all desire.

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

Mr. MATHIAS. I am happy to yield to the Senator from Massachusetts.

Mr. KENNEDY. I commend the Senator from Maryland for his comments and his statement. His record in this area is most significant, his concern most real, and the logic and persuasiveness which he brings to this issue is, I think, most compelling. He handled superbly in his comments, as he has on other occasions, the issues of security and of verification, as well as the questions of environment and negotiation, and the plain sense of this resolution. I just want to commend him for his leadership in this area. Other members of his party as well have been in the forefront of the effort to bring rationality and reason to our nuclear arms policy. I want to say what a pleasure it is to join him today in the introduction of his resolution and, hopefully, we will be able to obtain some action by Congress in the very near future.

Mr. MATHIAS. Mr. President, I consider it a privilege to be associated with the distinguished Senator from Massachusetts in this effort. It is one example of the chemistry that can work within Congress, that although we started out from slightly different beginning points last year, we have now come to positions which are compatible with each other. We can now support the same legislative instrument which promoted the comprehensive test ban treaty.

I think that the Senator, in his arguments for the test ban treaty, has also helped to underscore the somewhat historic position in which we find ourselves. I suppose every generation of men has talked about the scourge of war, the horrors of war, and the potential disaster which is war; but, really, we are the first generation of men who can talk about the weapons of war as being physically capable of totally destroying the earth. That is an absolute fact as we now know it. For the first time, man has the complete and total ability to destroy life on this earth.

That is really the measure of the magnitude of the issue with which we are dealing today. Are we going to opt for getting this awesome and unprecedented power in harness, where it can be controlled, or are we going to take the risk of going on for a few more years, perhaps a few more generations, allowing this power not only to continue to grow without the kind of harness that should be imposed upon it but even allow it to get bigger and more awesome and more dangerous?

I believe that all of those who have joined in sponsoring this resolution are fully aware of the kind of historic challenge posed to the Senate. I hope that the full Senate will give this matter early attention and that it can be placed high on the list of priorities on the national agenda of the United States.

Mr. President, I ask unanimous consent that the statement on the subject of the test ban treaty by the distinguished Senator from New Jersey (Mr. CASE) may be printed in the RECORD at this point.

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

STATEMENT BY SENATOR CASE

I am today joining Senators Kennedy, Mathias, Hart, Humphrey, and Muskie in introducing a Senate resolution which calls upon the President to intensify negotiations on a treaty to end all underground nuclear testing.

The resolution urges the President to propose an immediate suspension of underground testing to the Soviet Union. The suspension would remain in effect so long as it is respected by the Soviet Union. The resolution further calls for a new proposal to be made to the Soviet Union and other nations for a permanent treaty to ban all nuclear tests.

The resolution does not tie our hands in any way as to the content of any proposal we might advance concerning a permanent treaty.

But the resolution does affirm Senate support for a new initative on our part.

For almost ten years, the United States and the Soviet Union have been deadlocked in the negotiation of an underground nuclear test ban treaty. For ten years, the United States has insisted upon—and the Soviets have resisted—on-site inspections as a means of verifying compliance with such a treaty.

At the beginning of this period, U.S. insistence upon on-site inspections was probably justified in view of our then-relatively primitive ability to verify compliance solely by seismic monitoring stations on our own soil or on that of countries bordering on the Soviet Union.

But since then there have been great advances in seismic monitoring techniques. The significance of these advances is that the United States may now be able safely to rely upon these monitoring techniques and drop or modify its insistence upon on-site inspections.

Despite these advances, there has been no change whatever in the U.S. position on on-site inspections:

(Acting Director of the Arms Control Agency, Philip J. Farley, on July 22, 1971): ". . . we have not had occasion to review formally the precise number and have not either introduced or determined privately a new number since we last spoke of seven, I think it was in 1963."

Some arms control experts now question whether any further improvement in our seismic monitoring capabilities is necessary. Others argue that the United States can now begin serious negotiations of a test ban without requiring on-site inspections in the Soviet Union to verify compliance.

Others, especially within the Defense Department, argue that our seismic systems will never be sufficiently reliable and sensitive to deter covert underground testing.

Whatever the outcome of this debate among the technicians, it presents no argument against revising our negotiating position in light of the unquestioned technical advances of the past decade.

There are compelling reasons to re-open this subject at the highest level:

Since the conclusion of the Limited Nuclear Test Ban Treaty in 1963, the rate of nuclear testing has actually increased.

The non-nuclear powers have become increasingly restive at the prolonged delay in ending nuclear testing. The Nuclear Non-Proliferation Treaty itself is further endangered with the passage of every day—and we have been specifically warned by nations who have not yet ratified it that time is running out.

The United States and the Soviet Union continue their inexorable competition to refine their warheads through this testing, with always the potential for a technical breakthrough by either side which would wreck our hopes for arms limitation.

As the first step in the effort to resolve the impasse in which we find ourselves, I urge my colleagues to support this resolution.

Mr. MUSKIE. Mr. President, I am pleased to join today with Senators KENNEDY, HART, MATHIAS, HUMPHREY, and CASE, and other Senators in the introduction of the resolution calling on the President to promote negotiations for a comprehensive nuclear test ban treaty. Such a treaty to cover underground as well as atmospheric explosions is necessary and long overdue. Hence, I hope that Congress will act quickly on this legislation and that the President will subsequently get on with the urgent business of negotiating a comprehensive test ban with the Soviets.

By the terms of both the Limited Test Ban Treaty of 1963 and the Nuclear Non-Proliferation Treaty of 1968, the United States committed itself to make every effort to conclude an agreement ending all nuclear testing. More recently, in March 1969, President Nixon explicitly committed his administration to work toward the conclusion of a comprehensive nuclear test ban treaty. Unfortunately, none of these commitments has yet resulted in any concrete achievement. And underground testing continues to go on unimpeded.

Official U.S. policy for many years has favored a comprehensive test ban provided it can be adequately verified to protect our security. For verification, the United States has always insisted on on-site inspections to provide assurance that unidentifiable seismic events are not clandestine explosions. The Russians have consistently claimed that such inspections are unnecessary, although they have at times consented to limited onsite inspections.

Mr. President, both in 1971 and 1972, the Arms Control Subcommittee of the Foreign Relations Committee, of which I am chairman, held hearings on a comprehensive nuclear test ban treaty. At these hearings, a host of national scientific experts documented the progress that has been made in recent years in the techniques of detection and identification of underground nuclear tests. The fact is that our seismic research during the last decade has paid off handsomely, and the administration position of supporting a test ban only with onsite inspections rests on extremely weak technical grounds.

Onsite inspections add very little to our verification capabilities. Discrimination between earthquakes and underground explosions is now possible with

high reliability for energy yields of a few kilotons. Onsite inspections at best now seem useful for only a narrow yield range below this level and above the threshold at which seismic signals are detectable, that is, about one to a few kilotons. It is hard to see how cheating in this yield range could be of great security significance. Strategic weapons have yields 10 times more than these levels.

Furthermore, since last year's subcommittee hearings, this country has successfully concluded a treaty with the Soviets that limits the deployment of ABM's to two sites and a maximum of 100 missiles per site. In past years, arguments have frequently been made in favor of further nuclear weapons testing on the grounds that more advanced strategic weapons were needed to penetrate the Soviets' ABM system. Given the strict SALT I limitations on ABM deployment, this argument now makes no sense at all.

It is time, therefore, for the administration to take a new and bold initiative toward concluding a comprehensive nuclear test ban treaty. Such an accord is a natural corollary to SALT I. It would slow or perhaps terminate the arms race in the area of nuclear warhead development. It would strengthen the 1968 Non-Proliferation Treaty by imposing the same constraints on the nuclear powers that are already placed on the nonnuclear powers and thus encourage acceptance of the nonproliferation treaty by several important potential nuclear powers. It would avoid such environmental hazards as radioactive leakage and venting from underground testing. It would save this country the millions of dollars that are now spent annually on a nuclear testing program of questionable value to our national security. Finally, and perhaps most important, it would maintain the momentum after SALT I toward breaking new ground in controlling the arms race.

Congress can help to maintain this momentum by passing the comprehensive test ban resolution being introduced today. It should have our full support—for the sake of this country's security as well as for the future of world peace and stability.

The United States must move to a position of leadership, rather than passive indifference, in the area of controlling nuclear arms. Passage of the comprehensive test ban resolution by Congress would be a signal to the world that this country is serious about assuming that position of leadership.

Mr. President, I ask unanimous consent that excerpts from the 1971 Staff Report of the Arms Control Subcommittee, entitled "Prospects for a Comprehensive Nuclear Test Ban Treaty," be printed in the RECORD.

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

PROSPECTS FOR A COMPREHENSIVE NUCLEAR TEST BAN TREATY

INTRODUCTION

Since the signing of the Limited Test Ban Treaty in 1963—one of the most significant arms control measures of the nuclear age—the world has been spared the consequences of nuclear testing in the atmosphere by the United States, the United Kingdom and the Soviet Union. While continued testing by France and China—countries which did not sign the Treaty—has stimulated vigorous objections by many governments, nuclear testing virtually disappeared as a public issue following the Limited Test Ban. Meanwhile, the rate of nuclear testing actually increased and the arms race continued its own momentum, only marginally restrained by the inconvenience posed by having to conduct nuclear tests underground.

Recently the subject of nuclear testing has returned to the arena of public discussion. The multimegaton tests by the United States in Alaska and the U.S.S.R. in the Arctic have recalled attention to this subject and to the lack of progress since 1963 toward a comprehensive test ban (CTB) covering underground tests as well. The question has been raised with increasing frequency—what are the barriers to a ban on *all* nuclear tests? The hopes and expectations generated by the Limited Test Ban Treaty, when it seemed that we were so close to a total ban, have remained unfulfilled.

The possibilities of movement toward a CTB have always foundered on the question of on-site inspection. In 1963 the dispute focused on the *number* of permissible inspections (although there were other unresolved issues involving on-site inspection). The United States insisted on seven such inspections, while the U.S.S.R. would accept only three. Subsequently the Soviets took the position that on-site inspection was no longer necessary and that national means of verification were sufficient. In contrast, the U.S. position has remained unchanged since 1963.

In that period, however, enormous advances have been made in seismology so that it is now possible, through seismic means alone, to identify underground explosions to a degree unknown five years ago. It is now possible to deploy a new seismic monitoring network which would constitute a powerful force in the monitoring of a CTB. In addition, even presently deployed systems are vastly superior to those deployed a few years ago. These advances would seem to justify, indeed require, a reassessment of the U.S. position regarding on-site inspection. Yet there is little evidence that the United States is preparing any initiative in this area. In fact, funding for seismic programs since 1969 has been diminishing, not increasing, a trend which does not suggest a high priority for further progress in this area.

Many of the nations at the Conference of the Committee on Disarmament in Geneva are becoming increasingly impatient with the lack of progress toward a CTB and the lack of precise proposals or serious negotiations on the part of the nuclear powers. They raise the difficult question of whether the nuclear powers are taking the further steps toward disarmament which were promised the non-nuclear powers upon the signing of the Non-Proliferation Treaty. The lack of progress toward a CTB has become the focal point of attention, and the continued U.S. insistence on on-site inspection is viewed by many of those nations as an untenable position in light of seismic improvements. Most recently Canada has parted company with the United States on this issue, calling for the United States to make a determined effort to eliminate the "political difficulties" caused by its insistence on on-site inspection.

The issues involved are extraordinarily complex. The following is an analysis based on material developed in public hearings before the Subcommittee on Arms Control, International Law and Organization held on July 22 and 23, 1971. This Report may serve as a basis for further discussion of the obstacles to a comprehensive test ban and to a reassessment of the possibility of an initiative in this area, including the significance of on-site inspection as an element in the U.S. negotiating position.

Participants in the hearings

On July 22 Mr. Philip J. Farley, Acting Director of the Arms Control and Disarmament Agency (ACDA), set forth the Administration's position with respect to a CTB. On that day the Subcommittee also heard testimony from Dr. Franklin A. Long, who was Assistant Director of ACDA for Science and Technology during the period when the Limited Test Ban Treaty was concluded. Now a professor of Chemistry and Director of the Program on Science, Technology and Society at Cornell University, Dr. Long testified as to the relative risks and benefits of a CTB for the United States. On the same day, Dr. Bernard T. Feld, Professor of Physics at MIT and President of the Council for a Livable World, appeared on behalf of the Task Force for the Nuclear Test Ban and discussed the effects of a CTB on the nuclear arms competition in the non-nuclear world.

On July 23, the Subcommittee heard testimony from Senator Mike Gravel of Alaska and Mr. John Havelock, the Attorney General of Alaska, regarding the Cannikin nuclear test on Amchitka, from Dr. Carl Walske, Assistant to the Secretary of Defense for Atomic Energy, on the military effects of a CTB, and from Dr. James N. Brune, Professor of Geophysics at the Institute of Geophysics and Planetary Physics and Scripps Institution of Oceanography at the University of California, San Diego, as to the current status of seismic means of identifying earthquakes and explosions.

Policy considerations supporting a CTB

The United States has pledged, under the Limited Test Ban Treaty, to seek to achieve "the discontinuance of all test explosions of nuclear weapons for all time." This commitment was recalled in the 1968 Non-Proliferation Treaty (NPT) and provision was made for a conference in 1973 which will, among other things, review the progress made toward that end.

As indicated by many of the witnesses testifying before the Subcommittee, including Philip J. Farley, Acting Director of ACDA, speaking for the executive branch, the principal benefits to be derived from an effective comprehensive nuclear test ban include the following: First, a CTB would render significantly more difficult the development of nuclear weapons by those signatories which do not yet have them, and it would reinforce the Non-Proliferation Treaty by encouraging adherence to that Treaty by the countries which have not already done so. The purposes of the NPT are an important foreign policy objective of the United States which should not become obscured with the passage of time and the direction of attention to more pressing matters. As Franklin A. Long stated before the Subcommittee:

"It is reasonable to suppose that the longer the U.S. and the U.S.S.R. postpone active negotiations [on a CTB], the more discouraged the currently non-nuclear nations will become and the more likely it is that they will make a decision to develop their own nuclear weapons. And a world of ten or twenty nuclear weapon states is not one which I contemplate with anything but apprehension."

Furthermore, it seems likely that even if a country will not adhere to the NPT, its ability to develop an effective nuclear capability would be severely curtailed, if not entirely eliminated, if it were a party to a comprehensive nuclear test ban treaty. Japan, India, Israel and the United Arab Republic are examples of countries which are parties to the Limited Test Ban Treaty but not to the NPT. Adherence by those countries to a CTB would represent an important achievement in the pursuit of nuclear nonproliferation.

In addition, a CTB would eliminate the possibility of adverse environmental effects caused by underground nuclear testing. Finally, and most important, an effective comprehensive test ban would dampen the arms race by curtailing further improvements in nuclear warheads by the nuclear powers adhering to the Treaty, and it would be a natural supplement to agreements between the United States and the Soviet Union at SALT.

Military considerations bearing on a CTB

Although established United States policy has for many years supported the achievement of a comprehensive test ban adequately verified, the military considerations involved in that policy determination must be examined in any review of the prospects for a CTB. The factors weighing against a CTB are in essence the military corollaries of its principal advantage. One major argument advanced in opposition to a CTB is that it would preclude the improvement of our nuclear weapons stockpile which might in turn somehow hamper our ability to deter nuclear war.

Nevertheless, the weapons systems currently maintained by the United States are now adequate to deter a Soviet attack. To continue that capability, it should not be necessary to have the most efficient or sophisticated warheads theoretically available. In fact, precluding such improvements on both sides would be an effective way of insuring the continuation of that capability. In developing any new weapons systems which may become necessary, the configuration of such a system may have to be modified to fit a warhead already in the stockpile rather than using a newly developed optimum warhead which could not be relied upon without testing. Of course, all the other components of the system could be tested, a much more important matter since the basic characteristics of nuclear reactions are well known. Therefore, while a CTB may preclude the "optimum" exploitation of new military technology, there is no evidence to suggest that it would fundamentally hinder the maintenance of a sufficient deterrence capability by the United States.

It can also be argued that we cannot maintain confidence in the continuing reliability of our existing warheads without continuous testing. The potential reliability problem is, however, put into perspective by information furnished by the Department of Defense to the Subcommittee as a result of the hearings. DOD stated that—

"Validation tests of nuclear assemblies are not conducted after a warhead has entered the stockpile unless such tests are deemed necessary to determine performance degradation which is suspected because of evidence obtained in the stockpile sampling program, or to demonstrate that defects have been satisfactorily corrected."

There were only five principal cases since the mid-1950s cited by the Department of Defense where a nuclear test was an integral part of a corrective program, and the corrections involved were designed either to meet stricter safety standards or to correct a metallurgical or mechanical problem which developed after the warhead entered the stockpile. In a statement entitled "Stockpile Reliability in the Absence of Nuclear Testing" the Department of Defense added:

"[Stockpile] Reliability may be affected by decisions to incorporate seemingly acceptable improvements into nuclear assembly systems without validation from a nuclear test. Changes affecting reliability may also be made in an effort to correct a defect developing in a nuclear assembly system."

There is no question but that improvements in weaponry will be hindered by a CTB; that is, of course, one of the purposes of such a Treaty. Acceptance of a CTB necessarily entails foregoing even "seemingly acceptable" improvements to the stockpile if they present a serious threat to stockpile reliability. As to changes designed to correct a defect developing in a particular type of warhead, it would appear that if a CTB were implemented, such defects would have to be remedied by a previously tested method or by replacing the warhead *de novo*, thereby restoring whatever effectiveness it had at the time of its entry into the stockpile. The Department of Defense adds:

"Of course, the reliability of the stockpile will be affected by the willingness of the government to spend possibly large sums of money to work around recognized deficiencies without nuclear tests. With such funding available the loss in reliability could often be avoided or delayed, although in the absence of nuclear testing corrective measures might involve longer periods of system degradation and might involve settling for a warhead performance well off the optimum."

There may be significant economic costs attached to a CTB, but those costs would be minor in comparison to the benefits derived from a Treaty and the savings derived from not testing and indefinitely replacing warheads to match improvements by the Soviets.

An additional problem concerns the possibility that a potential defect would be discovered which was not the result of aging but was inherent (but unknown) in the warhead at the time it entered the stockpile. There is no doubt that it would be a very serious matter if a metallurgical or mechanical problem were discovered in one of the warheads in a strategic system, provided the problem could not be corrected by substituting a completely rebuilt warhead (i.e., if the problem were not one which had developed merely as a result of aging). At the same time, it seems inconceivable, after all the testing which has been done by the United States to date, that such a fundamental problem could now exist in warheads which are part of our strategic systems. This appears to be one of the extremely improbable risks which we can afford to take, in view of the benefits of a CTB, assuming the other problems can be worked out. Furthermore, since nuclear testing is not primarily used to determine reliability of stockpiled weapons, the probability of discovering such a weakness would not be significantly affected by a CTB.

Any diminution of confidence in the reliability of a nuclear stockpile should operate with comparable effect on all nuclear powers which are parties to the Treaty, and hence a CTB could be a stabilizing factor which would actually enhance the existing state of mutual deterrence.[1] Furthermore, since the United States has conducted approximately four times as many tests as the Soviet Union since 1963 (based on the announcements of nuclear tests by the AEC), it would seem to follow that a CTB would leave the United States in an established position of significant relative advantage, another consideration favoring a CTB from the U.S. point of view.

The verification question

Reflecting the clear preponderance of considerations favoring a CTB, the policy of the Nixon Administration, as well as of preceding Administrations, has been unequivocally in favor of a comprehensive test ban adequately verified. It is the requirement of adequate verification which has raised most of the difficult problems. This requirement is of central importance in considering whether to proceed with a CTB, since successful violations by the Soviet Union over a period of time could conceivably upset the existing military balance. The United States could not adhere to a CTB if the possibility of evasion by the Soviet Union were so great that the United States had no confidence that the Treaty's benefits were in fact being realized. In fact, wide-spread suspicion of clandestine testing, even though created by natural seismic events, could itself add to international tensions. At the same time, it is clear that no verification system can be implemented which will guarantee that no violation has occurred. There will always be a yield threshold below which the chance of detection is very low. This would be the case even if the Treaty called for on-site inspection. The concern with adequate verification is not directed to such an ambitious goal. The purpose of verification procedures are instead to deter a nation from conducting prohibited tests by rendering significant violations so likely to be discovered that a possible evader will not judge clandestine testing to be worth the risk. Therefore, an evaluation of what constitutes adequate verification is a highly inexact art since it depends on political judgments and unknown future conditions which could lead a nation to conclude that it was worth taking great risks to pursue a test program, as well as depending on the inherently uncertain capability of seismic monitoring systems (and other intelligence means) which could detect clandestine tests.

A significant portion of the current debate on verification has focused on whether it is possible to identify earthquakes and explosions down to a magnitude[2] of 4.0 on the Richter scale. Such a capability would undoubtedly increase our ability to detect clandestine violations of a Treaty and hence would have an incremental, if unquantifiable, effect on deterring such violations. Nevertheless, being able to identify earthquakes and explosions down to a magnitude of 4.0 should not be regarded in itself as a prerequisite of a comprehensive test ban or as a key which will solve all the problems inherent in the questions involved.

It should also be noted that the statement that a system has the capability of identifying earthquakes and explosions down to a given magnitude generally refers to a 90% incremental probability of identification of the stated magnitude. Just as there is no magic in the magnitude 4.0, there is no magic in the 90% probability factor. Even if there is less than 90% probability of identifying explosions at successively lower magnitudes, there will always be some prospect of identification and hence some deterrent effect on a potential evader. For example, a 50% probability, or even less, probably would be adequate for the very low magnitudes in view of the fact that a single test of small yield would have no effect on the strategic balance. The decreasing scale of probability of identification should be calculated for various yields detectable by various possible monitoring networks and should become part of the debate on a CTB.

In testimony before the Subcommittee, Professor James N. Brune pointed out that it is now theoretically possible to identify earthquakes and explosions down to a magnitude of about 4.0 on the basis of previously established discrimination criteria. He suggests that a new seismic monitoring system, using currently available instrumenta-

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[1] Since China would presumably not sign a CTB at this time, it would be free to pursue a complete nuclear program. In view of the enormous U.S. lead over China, this factor poses no problem at this time. Consideration should be given to inclusion of a procedure for review of the CTB at some future time (or at periodic intervals) if all nuclear powers are not then parties to the Treaty.

[2] The size of the seismic event produced by either an explosion or an earthquake is normally described in terms of magnitude on the Richter scale which is determined by the amplitude of the seismic waves transmitted through the earth. Since magnitudes are expressed on a logarithmic scale, a change in magnitude of one represents a change in energy transmitted of 10

tion, could be constructed internationally to exploit this possibility. The executive branch's position on this issue has been articulated in a statement by Dr. Stephen Lukasik to the Conference of the Committee on Disarmament (CCD) at Geneva. The executive branch's approach is more cautious, but is not inconsistent with that of Dr. Brune as a matter of principle. The executive branch agrees that in principle the ability to identify earthquakes and explosions will continue below a magnitude of 4.5, although it does not commit itself to any specific lower limit. Dr. Lukasik also recognized that the exploitation of that capability would require a massive investment in new instrumentation:

"Improved seismic instrumentation is clearly needed to attain further advances below magnitude 4.5 and to assess the limits of teleseimic discrimination.

"We have seen that to translate the greater scientific understanding of the identification problem into improvements in the seismic verification capability requires more sophisticated installations than currently exist; * * * expansion of the existing network of seismic arrays and individuals stations would seem highly desirable * * *

"Many of these improvements would undoubtedly require considerable time and they would represent a substantial capital investment. Much effort would have to go into determining where these additional facilities should be located in order to achieve maximum performance."

Nevertheless, the executive branch does not propose to proceed at this time with the deployment of a new seismic monitoring network. By deferring such a move, it is apparently felt that the U.S. will gain time to assess the data produced by three large seismic arrays, two of which are just now becoming operative, and a companion program involving new instruments (for measuring very long period waves) at ten stations, four of which have not yet been completed. This will permit the testing of a variety of discrimination criteria, exploration of techniques to improve the effectiveness of discrimination criteria (enhancing surface to noise ratios) and improvement of means to locate seismic events. Time is also needed for completion of the necessary site surveys and agreements. Under the executive branch's approach, after approximately two years we will have greater understanding of the best design for a new network (which will depend on the discrimination criteria chosen) and the optimum siting and distribution of instruments; and we will then have acquired useful experience in the actual operation of a large and complicated network, including experience with the automated data processing techniques which become increasingly important as lower magnitudes are approached.

It seems to be conceded by all that the capability of a seismic monitoring network can be developed to identify explosions down to somewhere in the neighborhood of magnitude 4.0. It is also clear that substantial investments in equipment will be necessary to implement that capability, although that cost, perhaps up to $200 million, is insignificant when compared to the amounts spent on arms and the value derived from a CTB.[3] Although we cannot be certain at this time that a new seismic monitoring network will attain the hoped for identification capability at magnitude 4.0, it seems highly probable that it will reach a capability near 4.0. Upon the deployment of such a system, it is clear that there would be a very powerful additional deterrent available to police a CTB.

[3] In every year since 1963 the AEC has spent over $250 million on the nuclear test program alone.

On-site inspection

The executive branch insists that on-site inspection is indispensable to adequate verification of a CTB. On-site inspection would certainly create an additional inhibition against violations of a Treaty, but the question is how significant this would be and whether it is necessary. A factor which must weigh very heavily in the consideration of these issues is that, even without on-site inspection, a country would be inhibited from violating such a Treaty in view of the probable political and diplomatic consequences of being caught.

Furthermore, on-site inspection is useful only in dealing with a limited range of seismic events. On-site inspection is of no help in explaining events at the lower end of the magnitude range where the events cannot be detected (or in explaining events which cannot be located). And it is not necessary for events at the higher end of the range because seismic means should be adequate. To place the role of on-site inspection into proper perspective it would be helpful to have available calculations showing the numbers and magnitudes of events in which on-site inspection would be theoretically useful, assuming various seismic capabilities.

Other factors to be considered

There will always be some ambiguous events of possible significance even above the identification threshold, but their number will decrease rapidly as magnitude increases. Since the number of such events will depend on the operating efficiency of the seismic monitoring systems deployed, the extent to which the number can be lowered from its present level is not now predictable with any degree of precision.

In weighing the risks inherent in a CTB, consideration must be given to the possibility of detection of violations by other means and to the military significance of violations. Some events can be eliminated from concern through the use of other diagnostic aids and inferences from other known factors, utilizing both seismic instruments and other intelligence means. Although these means of interpretation may only help eliminate events in an unpredictable or fortuitous fashion, their potential provides an additional deterrent against evasions. At the same time, there will always be some unidentified events, especially at the lower magnitudes.

In assessing the significance of unidentified events (or events below the identification threshold) other variables must also be considered. If the event is an explosion, the magnitude of the event does not reveal the yield of the exploded device. Extrapolating the yield from the magnitude of the event requires consideration of the soil in which the device is tested and the extent, if any, to which efforts have been made to "decouple" the impact of the explosion. According to Dr. Carl Walske, an explosion recorded at a magnitude 4.0 would be equivalent to about 1½ KT if the test were in granite or 12 KT if the test were in alluvium. At magnitude 4.5 the comparable figures are approximately 6 KT and 45 KT. Although an evader could thus maximize the chance of escaping detection by testing in alluvium or comparable dry "soft" soil, such soil would be the most likely to collapse or leave a crater at the surface after a test, which renders it more susceptible to detection by other intelligence means.

Of greater theoretical concern are possibilities of evasion. These possibilities include the use of a very large cavity in which to explode the device ("decoupling"), a technique which can be enhanced by encompassing the device with a material which will absorb energy from the blast to reduce the seismic waves. In addition, it is possible to explode the device in a seismically active area concurrently with an earthquake of great magnitude so that the seismic waves generated by the explosion become mixed with those from the earthquake (known as "hiding in an earthquake"). The first of those methods requires extensive activity and a substantial period of time to prepare. The larger the explosion, the larger the hole would have to be and hence the more activity involved and time required. The activities associated with any substantial clandestine testing program present great enough risks to constitute a significant impediment against exploiting these decoupling techniques. The other technique, hiding in an earthquake, poses formidable uncertainties with regard to the location and timing of explosions. The use of a number of large arrays and sophisticated seismic analysis presents a significant possibility of detection in the use of this technique as well. The same deterrent applies to the use of a coordinated succession of nuclear tests designed to simulate an earthquake.

Furthermore, it must be noted that the possibilities of successful evasion through any of the techniques mentioned are greatest at the low yield level where the military significance of testing, from the point of view of the overall strategic balance, is of lesser significance.[4] As yields (and hence military significance) increase, the possibility of evasion falls off. The practical ceiling for these techniques may not be significantly different from that resulting from the use of soft soil for testing. While the possibilities of evasion through decoupling or hiding in an earthquake cannot be ignored, on balance they seem to pose an acceptable risk far outweighed by the benefits to be derived from a CTB. Indeed it would seem that a CTB resting on seismic verification means alone would provide a high degree of assurance that high yield violations were not occurring, a defensible objective in itself.

Since 1963 many advances have been made, particularly in seismology, which make the time auspicious for a hard look at the continuing need for on-site inspection. It is clear that the deployment of a variety of seismic stations and arrays would add considerably to the deterrent available to police a CTB. At the same time, there are a number of problems which must be explored further, including the timing and other details involved in achieving optimum results from the deployment of new instrumentation, the deterrent effects achievable by the network deployed, and the handling of peaceful nuclear explosions.

Peaceful nuclear explosions

A major impediment to a CTB is posed by the possible continuation of peaceful nuclear explosions (PNE). Since it would be possible to pursue weapons development in conjunction with a PNE program, it must be recognized that the possibilities of evasion through these means are at least as serious as the problems inherent in seismic identification. There does not appear to have been any exploration of the amenability of other nations to the idea of a total ban on all nuclear explosions, including those for peaceful purposes. Since this would seem to be inconsistent with the expectations of many nonnuclear countries, and in view of the active Soviet PNE program, it may be that a ban including peaceful explosions is impractical. On the other hand, if on-site inspection were eliminated as an issue, perhaps it would be possible to induce other states to forgo the limited potential benefits of peaceful nuclear explosions as a price required to be paid for a CTB.

If not, the most promising procedure would seem to involve supervision of peaceful nuclear explosions by the International Atomic Energy Agency or a new international body

[4] For example, warheads for the Soviet SS–9 and SS–11 produce yields measured in hundreds or thousands of kilotons.

established for the purpose. There would be many problems such as the mechanics of supervision, control of instrumentation, supply and control of the nuclear device, timing of the explosion and composition of the decisionmaking body. Negotiation of these problems would inevitably consume a considerable period of time, during which it would be possible to acquire additional confidence in seismic identification possibilities and to assess the true capability of the entire seismic network as deployed.

Mr. HART. Mr. President, I am delighted that this year we are able to present for the consideration of Senators, and with bipartisan support, a single comprehensive test ban resolution.

It would be my hope that such a resolution would have broad appeal both in the Congress and at the White House, as a logical next step in arms control.

The ending of nuclear testing has appeal from many points of view—improvement of the international climate, safeguarding the environment, releasing resources for domestic needs, complementing the ongoing SALT talks.

There are two points on which I would like to elaborate as this resolution is introduced.

EFFECT ON MIRV WARHEADS

Although both the United States and the U.S.S.R. have nuclear weapons designs which will satisfy their requirements for a secure strategic deterrent force and for tactical nuclear weapons to inhibit a large-scale conventional war, a comprehensive test ban would nevertheless place a final cap on the continuing efforts to upgrade the nuclear arsenals A treaty would probably place greater restrictions on the Soviet Union because it is generally conceded that in most areas the United States has more sophisticated nuclear weapons designs available. In particular, a comprehensive test ban should provide added confidence to the United States that the Soviets were not procuring a first strike counter missile strategic capability. As such, it will be an important complement to the strategic arms limitations talks.

For example, a comprehensive test ban would prevent the Soviets from further development of the type of nuclear warheads which would be needed if they were to acquire a highly accurate MIRV system with sufficient warheads to threaten our Minuteman force. My understanding is that to obtain such high accuracies, the dimensions of the reentry vehicle and, accordingly, the nuclear warhead must become smaller, and in particular, narrower. All of these restrictions present problems for the nuclear weapons designer. Since in the past the Soviets have never had a missile system calling for such design, it is quite likely that further tests would be required if they were to seek to achieve it. Thus, if they were to subscribe to a comprehensive test ban, we would have greater confidence that they were not aiming at or capable of attaining this objective.

CHINA AND THE COMPREHENSIVE TEST BAN

It would, of course, be best if a comprehensive test ban were adhered to by all five nuclear powers that is, China and France in addition to the United States, U.S.S.R., and Great Britain. However, initially it seems unlikely that the Chinese and, consequently also the French, will be willing to join. Until the Chinese are confident that they have an independent nuclear deterrent of their own, they will probably wish to maintain the option to continue testing.

But this in no way negates the value of a comprehensive test ban which would be concurred in by the other three nuclear powers. Even though the Chinese have made rapid strides in developing their nuclear capabilities in the last 10 years, their forces are so limited and will remain so for many years that it is inconceivable that they could, by continued nuclear testing, accomplish any development that would call for additional tests on our part. We have developed warheads covering a wide spectrum of designs and applicable to a large number of military uses. These are considered more than adequate to deal with Soviet weapons which have been developed over a period of 20 years by hundreds of nuclear tests and with tremendous industrial backing. Unrestricted Chinese testing for 10 or even 20 years at the present rate is unlikely to develop any justification for additional U.S. testing. The answer to the developing Chinese capability must lie in the political arena and not in further nuclear developments.

A halt of all nuclear testing by the United States and the U.S.S.R. should furthermore produce increased pressure on the Chinese to eventually come to a stop themselves. As long as we continue underground tests even with the very large backlog of nuclear weapons design information, we are only providing an incentive for further work on the Chinese part. Our efforts to persuade them to forgo atmospheric tests sound hollow under the present circumstances. While early success in this effort to persuade the Chinese to adhere cannot be forecast, that day will undoubtedly be hastened by United States-Soviet action on the comprehensive test ban. It will also have important bonuses in getting such countries as Japan and India to forgo the option of acquiring nuclear weapons. It will provide useful ammunition to those groups in each of these countries who are urging a policy of restraint on their governments. On the other hand, continued testing is providing ammunition to those who seek to acquire the illusory advantages of a nuclear weapons capability.

Mr. President, I commend our resolution to the Senate Foreign Relations Committee, where I hope it will have early consideration and approval.

POSTAL SERVICE

Mr. ROBERT C. BYRD. Mr. President, I am continuing to receive many complaints from my constituents regarding the deterioration of the postal service. These complaints cover a wide range, involving virtually all classes of mail as well as parcel post. It is my understanding that many Members of the Congress are receiving such complaints.

When the Postal Reorganization Act of 1970 was enacted, it was with high hopes for a better and more modern U.S. mail service. The quasi-independent corporation which the act created, the U.S. Postal Service, it was widely believed, could do a better job than that which had been done by the old Post Office Department. Unfortunately those hopes, to date, have not been realized. Instead, almost the opposite of what was intended has occurred. The service has steadily grown worse.

It was stated that the recent Christmas holiday mailing period was to have been a showcase for displaying improvement in the service. Yet, at the very time when rosy statements were being released saying how well the mail was being handled, constituents were calling to my attention delays in the delivery of the mail such as they had never experienced before.

The dissatisfaction appears to have been widespread. Charges have been made that Christmas mail was actually delayed, hidden, and even ignored because of efforts by postal officials to save money.

Perhaps it may not be thought too important from an overall economic standpoint that Christmas cards and packages reached addressees many days late, but it is certainly highly important to all segments of our national economy that this country not only have an adequate mail service, but that it also have a dependable and swift one as well. We simply do not have such mail service at this point. On the contrary, the service as it has been operated thus far by the U.S. Postal Service can only be described as inadequate, undependable, and slow. I emphasize the word slow.

As one West Virginian said facetiously—but not without substance—communication by smoke signals would be faster.

He may have been thinking about the 3,475 mail sacks found gathering dust not long ago in the basement of the Charleston, W. Va., post office. Or perhaps he was simply hoping that the Pony Express could be resurrected, considering the devastating demonstration put on here recently of the superiority and swiftness of horseback mail compared with present methods.

Levity aside, Mr. President, something has got to be done about the poor performance of the new Postal Service in its first year and a half effort. It is for that reason that I heartily welcome the forthcoming intensive, indepth inquiry into the Postal Service's operations which is soon to be undertaken by the Senate Post Office and Civil Service Committee under the able guiding hand of the distinguished senior Senator from Wyoming, Senator McGEE.

We need to know all of the facts, and we need recommendations looking to the improvement of the mail service in the future. This is especially necessary in view of the postal rate increases which business people and other citizens are being asked to bear.

An 8-cent first-class stamp is supposed to provide first-class handling of letter mail. But the increased rate which must be paid now does not seem to insure delivery as quickly as did a 2-cent stamp when I was growing up.

It is frustrating to me—and virtually unexplainable to constituents—that letters coming to my office complaining of, and documenting, poor service should be received days late, or, in one case earlier this year, several weeks late.

It is no wonder the Postal Service now leaves out the time of cancellation. Even the post office of origin stamp has become only a faded memory. Proud local identities, many of them historic, have been obliterated by the so-called "improvements." Indeed, a great, gray anonymity and a pervading aura of mediocrity have enveloped the once-proud service which boasted that "neither snow, nor rain, nor heat, nor gloom of night" could stay "its couriers from the swift completion of their appointed rounds."

Mr. President, I voted for the Postal Reorganization Act. I was glad to see the postal service taken out of politics, an action that was long overdue. But I am disappointed, indeed, that the new Postal Service has not yet demonstrated that it can even do as good a job as was being done before.

Now, of course, any new system will have bugs in it, and it takes a little time to remove them, but the numerous bills which have been introduced to restore the old Post Office Department attest to the widespread dissatisfaction with the new setup, as have numerous editorials and other statements in the press. The General Accounting Office, which has begun a study of the overhead costs of the new service, has produced a report which says, among other things, that first-class mail service has been adversely affected by measures taken by the Postal Service, and that the first-class mail service is worse today than it was in the latter half of fiscal year 1969 under the former Post Office Department.

How could it be otherwise when pick-ups and deliveries have been curtailed, and when much mail must now be transported long distances to sorting and dispatching centers for processing, even though sender and receiver may be only a few miles, or a few city blocks, apart?

I spoke a moment ago of the loss of local post office identities. This has occurred because of the establishment of the processing centers to which I just referred. An example is to be found in the Virginia cities and communities across the Potomac River, the mail from each of which is now being trucked to the center at Merrifield in Fairfax County, where it is stamped simply "Northern Virginia." The extra hauling and the vast amount of sorting required at the center, I am told, has added to the delays.

But apparently, we have not seen anything yet. When the Postal Service's new bulk mail system centers—which are costing right at $1 billion—become operational in 1975 or 1976, the country will be treated to the spectacle of mail, bound for nearby destinations, being trucked hundreds of miles to processing centers and back before being delivered. On the face of it, the system which is now being set up, seems to me to defy logic.

Under the new system, I am informed, a package going from, say, Tampa, Fla., to Sarasota, a distance of about 75 miles, would be carried first to Jacksonville, then back to Tampa before going to Sarasota, a distance of 470 miles. A parcel bound from Richmond, Va., to Norfolk, a 94-mile trip, would be brought to Washington first, then taken to Norfolk, a distance of 312 miles. A Christmas gift sent from Chapel Hill, N.C., to Carrboro, N.C., a mile away, would be taken first to Greensboro, entailing a trip of 160 miles.

There are many more examples, but what really boggles the understanding are two extreme examples in the West. A package going from a small town in Colorado—Trinidad—to Raton, N. Mex., a short 24 miles, would be carried 912 miles, going through Pueblo, Denver, Albuquerque, and Las Vegas; and a parcel from Modena, Utah, bound for Panaca, Nev., only 20 miles away, would go to Provo, Utah; Salt Lake City; Denver; Los Angeles; and Las Vegas, a total incredible distance of 2,309 miles.

It seems to me that the long trucking hauls involved in such planning can only serve to further slow down deliveries and make matters even worse than they are now.

The public is already disenchanted with the Postal Service's handling of parcel post. We need look no further to see that that is true than to the fact that the privately operated United Parcel Service has now passed the U.S. Postal Service in the volume of packages it handles. That ought to tell us what the public thinks about how the Postal Service has been discharging that important part of its responsibility.

And with all of this, the threat of further rate increases hangs over users of the mails. This is especially serious in the case of second-class mail, which historically has moved at reasonable cost to newspaper and magazine publishers so as to facilitate the widest possible dissemination of the information, ideas, and opinions which are so essential to the functioning of a democratic society. Keeping mail rates for publications down has always heretofore been considered to be in the public interest. But this concept is seriously endangered by efforts to increase second-class rates, which, if successful, could help to drive more publications out of business. Already a number of mass-circulation publications have given up the ghost.

Mr. President, it is my sincere hope that the matters which I have briefly mentioned here will, indeed, be delved into deeply in the forthcoming studies of the operations of the Postal Service—and I am confident that they will be.

Senator McGEE has assured me upon more than one occasion that a very thorough hearing and investigation in depth will be conducted, lasting over a period of perhaps several months. The people of my State, and people throughout the country, are looking to Congress to take action that will reverse the deterioration which has occurred in the Nation's mail service.

In a Nation as technologically oriented as ours—with as much know-how, and with as much ability to get things done—we should have a postal service second to none. As I have already indicated, I have more than once discussed this matter with Senator McGEE, who shares my feeling in this regard. I hope that the hearings which his committee will conduct will point the way toward giving the Nation the efficient service it should have.

ORDER FOR CONSIDERATION OF THE FEDERAL AVIATION ACT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its consideration of the Rural Electrification Act (S. 394), the Senate then proceed to the consideration of S. 39, a bill to amend the Federal Aviation Act of 1958. This is in accordance with the previously expressed intention of the leadership.

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

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, it is my understanding that the distinguished Senator from New Jersey (Mr. CASE) wishes to have his time under the order vacated. However, I shall not now ask that it be vacated, because I wish to suggest the absence of a quorum, and I ask unanimous consent that the time for the quorum come out of the order for the recognition of Mr. CASE, so as to give Mr. EAGLETON, under the next order, further time in which to reach the floor. He is on his way now.

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

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.

Mr. ROBERT C. BYRD. Mr. President, how much time remains under the order for Mr. CASE?

The PRESIDING OFFICER. Eight minutes.

Mr. ROBERT C. BYRD. I ask unanimous consent that that time be reserved at this point.

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

Under the previous order, the Senator from Missouri (Mr. EAGLETON) is recognized for not to exeed 15 minutes.

PRIVILEGE OF THE FLOOR

Mr. EAGLETON. Mr. President, I ask unanimous consent that a staff assistant of mine, Mr. Brian Atwood, be permitted on the floor during the course of my remarks for the next 15 minutes.

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

THE WAR POWERS ACT

Mr. EAGLETON. Mr. President, several Senators have asked Senator JAVITS and me whether, if enacted, the provisions of the War Powers Act (S. 440) would apply to the reintroduction of American Forces to Indochina now that a cease-fire agreement has been signed. To clarify that point we have today released the following joint statement:

Section 9 of the War Powers Act, which is entitled "Effective Date and Applicability," reads as follows:

This Act shall take effect on the date of its enactment but shall not apply to hostilities in which the armed forces of the United States are involved on the effective date of this Act.

It is our understanding that the cease-fire agreement will not be fully consummated until March 28, 1973, 60 days from the date of the signing. If on that date all other provisions of the cease-fire agreement are upheld by the signatory nations, American participation in hostilities within North and South Vietnam will terminate. At such time and in accordance with Section 9, the provisions of S. 440 would, on the date of enactment, apply in full to any reintroduction of forces to North and South Vietnam.

Section 9, as currently written, would exclude our present involvement in air support operations over Cambodia and Laos from the provisions of our bill. However, cease-fire agreements may be signed by the hostile parties within those countries in the near future. We understand that American participation will be terminated when those agreements take effect. At such time, the provisions of S. 440 would apply to the reintroduction of American forces in or over Cambodia and Laos as well.

Mr. President, this body is well aware of the great contribution Senator JOHN STENNIS has made as a principal author of this important legislation. The unfortunate and tragic event that has hospitalized him has prevented him from participating personally in the drafting of the above statement. However, the day before Senator STENNIS was wounded, I had the opportunity to discuss with him on the floor of the Senate the applicability of the war powers bill to Indochina. This statement reflects the understanding we arrived at during that discussion.

My colleagues are well aware that there is no more forceful or eloquent advocate in this body than the distinguished chairman of the Armed Services Committee. It is therefore most regrettable that he is not here today to personally lend his voice in support of the War Powers Act.

Last year at the outset of the Senate debate, Senator STENNIS explained the reason the sponsors decided to exempt hostilities in which the United States was involved on the effective date of the act. In defense of section 9 of our bill, Senator STENNIS said:

I'm afraid that this important legislation could never be considered objectively if we attempt to make it yet another vehicle for assessing our involvement in the war in Vietnam. We must look upon this bill as a new start.

Prior to his tragic misfortune, Senator STENNIS expressed his great satisfaction that the President was able to achieve a cease-fire agreement in Vietnam. He strongly supported President Nixon, and President Johnson before him, in their conduct of the Vietnam conflict. But, as he said last year in support of the War Powers Act.

The last decade has taught us . . . that this country must never again go to war without the full moral sanction of the American people. The only practical way for all parts of the nation to participate in such a decision is through the Congress.

Now as our involvement in Vietnam comes to a close and as, with great elation, we welcome home our POW's and our military men, we must, in the words of Senator STENNIS, "look upon this bill as a new start." American Forces must never again be committed to battle in any part of the world without the consent of Congress—the branch of Government to which the awesome responsibility to declare war is constitutionally assigned.

Mr. President, the War Powers Act represents the combined efforts of the principal sponsors. I would like today, however, to pay tribute to the great work the distinguished Senator from New York (Mr. JAVITS) has done to bring this important legislation to the attention of the American people. Senator JAVITS was the first Senator to introduce war powers legislation, and he has been a leader in the effort to help Congress regain its proper role in this important area.

Mr. President, at this time I yield to the Senator from New York.

The PRESIDING OFFICER (Mr. BIDEN). The Senator from New York is recognized.

Mr. JAVITS. Mr. President, first I wish to acknowledge the indispensable efforts of the Senator from Missouri (Mr. EAGLETON). It is a fact that I introduced the first bill, but it is also a fact that the final product as it emerged from me and then from the Committee on Foreign Relations was heavily influenced by the considerations in the bill of the Senator from Missouri (Mr. EAGLETON). Especially was this true of the protective clauses respecting previous treaties and the effect of previous legislation. This was a critically important subject, in delimiting the war powers legislation.

I cannot acknowledge enough the great contribution in that and in every other phase of the bill of the Senator from Missouri (Mr. EAGLETON).

Also, it is characteristic of him that his thoughtfulness and foresight have brought about this colloquy today. It is a fact that the cease-fire in Vietnam has created a new situation from that which prevailed last year when under the war powers bill, we expressly excluded the ongoing hostilities in Indochina. We all felt and the Senator from Mississippi (Mr. STENNIS) took the lead in this that if we did not separate the War Powers Act from the Vietnam situation we would get into serious legal problems, not to mention recriminations as to ex post facto applicability, which could have torpedoed a monumental achievement in the bill itself. The Senator from Mississippi (Mr. STENNIS) proved to be absolutely correct, as evidenced by the Senate vote. Now, the Vietnam war is at an end, so far as U.S. combat involvement is concerned.

It is a fact that the Secretary of State, testifying for the administration in 1971 in opposition to the War Powers Act, stated that the Senate should have another look at the situation after the Vietnam war. Well, this is now after the Vietnam war.

For all these reasons I think the question raised by the Senator from Missouri (Mr. EAGLETON), following his discussion with the Senator from Mississippi (Mr. STENNIS) as to the applicability of this historic measure to Indochina if we have to go back in, is extremely pertinent. I am pleased to join in the joint statement with him on the applicability on section 9 in light of the Vietnam cease-fire.

I wish to say in a considered way that, having analyzed the situation as he has presented it, and also having had reference to the fact that on the heels of the introduction of the War Powers Act the Senator from Idaho (Mr. CHURCH) and the Senator from New Jersey (Mr. CASE) introduced an amendment prohibiting reintroduction of U.S. Forces in that area without prior congressional approval, a concept which, according to the construction now placed on the war powers bill, would be comprehended in the War Powers Act, which is much better, I wish to adopt that construction, to wit, the construction that when the cease-fire is consummated the reintroduction of any forces would be fully comprehended by the War Powers Act.

The second construction is, as we presently have written the bill, we also exclude ongoing hostilities in Cambodia and Laos, and the terms of our involvement so long as that involvement is continuing. But we already have the announcement of a Laotian cease-fire to be entered into tomorrow, and when the cease-fire is entered into and American participation is terminated, the provisions of the War Powers Act shall apply. The Cambodian cease-fire is also expected shortly. Hopefully, there will be an effective cease-fire in all three of these Indochinese states by the time we pass the War Powers Act again.

The principal sponsors of the War Powers Act are together on this interpretation of the law and who hope this will make unnecessary other resolutions which might distract us from the consideration of this historic and fundamental piece of legislation.

I thank my colleague for the opportunity he has given me. I would hope that just as the administration asked us to reconsider our position, which we are in the process of doing in this colloquy, we may ask them to reconsider their position and to join with us and the American people in a resolution of this question under the Constitution. In the judgment of the Senate a fair resolution has been made in the War Powers Act. If they think otherwise let them tell us, because now is the time for the Senate to act and send our measure to the House promptly so that a new sense of consideration in the House may occur in view of all that happened in the last year, and so that we may have a law for this lacuna in the Constitution; to wit, the "undeclared" or Presidential war.

Mr. President, I ask unanimous consent to have printed in the RECORD an article by Prof. Raoul Berger, of the Harvard University Law School. It is a splendid work entitled "War-Making by the President," and represents a most impressive analysis of the constitutional roots and intent of the Founding Fathers on this issue.

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

War-Making by the President

(By Raoul Berger †)

I. Introduction

To a nation wracked by interminable, undeclared war in Vietnam—described by an informed English observer as "the greatest tragedy that has befallen the United States since the Civil War" [1]—the presidential power to commit it to such luckless adventures is of surpassing importance. Thirty-odd years of recurrent international crises, exploding against a background of superpower hostility such as had long been unknown to the American people, have fed swollen executive claims to war-making power, often with the acquiescence if not encouragement of Congress.[2]

It is not my purpose to conduct yet another inquest into the propriety of the presidential steps that led to our involvement in Vietnam, or whether the war received congressional sanction.[3] Instead the focus of discussion will be whether the original constitutional distribution of powers can be restored by statute in order to insure congressional participation in war-making policy. A long overdue step in that direction was recently taken by the Javits-Spong War Powers Bill, approved by a vote of 68 to 16 in the Senate,[4] which seeks to lay down rules governing the use of armed force in the absence of a declaration of war by Congress. Roughly speaking, the Bill would authorize the President in the absence of a declaration of war by Congress only "to repel an armed attack upon the United States" or upon its armed forces "located outside the United States," and to forestall the "direct and imminent threat of such an attack," such use of the armed forces not to extend beyond thirty days without congressional authorization.[5]

Secretary of State William Rogers warns that the Bill "would violate the Constitution," that it departs from an allocation of powers which is "basic to our system." [6] Rogers' statement may be heavily discounted as self-serving, just as Justice Jackson dismissed his own "self-serving press statements" as Attorney General when they were paraded before the Court.[7] The case stands differently with Professor Eugene V. Rostow's elaborate attack on the Javits Bill.[8] Although he was one of the executants of the presidential policy, his high repute as a scholar entitles his apologia to careful consideration.

For Professor Rostow, the Javits Bill constitutes a retreat into the "dangerous realm of constitutional myth," [9] a fundamental "change [in] the constitutional relationship between President and Congress," [10] a "serious attack on the Constitution" [11] which "would destroy the Presidency" and "abolish the principle of the separation of powers," no less.[12] Congress is portrayed as "drawing all power within its impetuous vortex"; [13] but that hardly squares with the fact that the Supreme Court, in rejecting President Truman's seizure of the steel plants in reliance on alleged war powers, "refus[ed]," in the words of Justice Jackson, "further to aggrandize the presidential office . . . at the expense of Congress".[14]

In truth, the Constitution *withheld* from the President the powers claimed for him by Professor Rostow. He makes a mechanical obeisance to "the document, viewed against the background of [the Framers'] words," [15] but spends precious little time on the governing constitutional provisions and none at all on the explanations of those provisions by the Framers, preferring copious generalities about constitutional purposes. His real reliance is in "182 years of opinion and practice" [16]—the "gloss of life" [17]—whereby successive Presidents have *altered* the original constitutional distribution of powers, reallocating to the President powers exclusively conferred on Congress. On this, issue must be joined, bearing in mind that Professor Rostow inveighs against the Javits Bill because "it would permit Congress to amend the Constitution without the inconvenience of consulting the people." [18] Amen! No amendment without "consulting the people." But the rule cuts both ways; it is not open to the President to amend the Constitution by *his* "practices."

Professor Rostow recognized that there is a "real crisis of our foreign policy," that there is no harmony between [the presidential] pattern of action, and widespread, and now perhaps prevailing views as to what . . . foreign policy ought to be.

The tension between public opinion and the behavior of government [read President] is much too great for safety. That tension has already destroyed the careers of two Presidents, Truman and Johnson; divided the nation. . . .[19]

A crisis of such dimensions, exhibiting such tensions and divisions, entitles one to question the wisdom of a presidential claim singlehandedly to commit the nation to such disastrous policies. But I must eschew analysis in terms of wisdom, a matter endlessly debated, and canvassed afresh by Professor Rostow. Let it be assumed that wisdom counsels solo presidential power to meet terrifying contemporary contingencies,[20] and the question remains: was such power conferred by the Constitution. "The peculiar circumstances of the moment," said Marshall, "may render a measure more or less wise, but cannot render it more or less constitutional." [21]

The cardinal index of constitutionality is the Constitution itself, not what others have said about it. In the words of the great Erskine, "a statute is ever present to speak for itself"; [22] so too, we must look at the Constitution with eyes unclouded by the opinions of others. On so great a constitutional issue, nothing less suffices than the most searching analysis of the immediately relevant text and what the Framers *stated* they meant to accomplish by it. Professor Rostow too quickly cheapens the understanding of the Framers in reliance on Justice Jackson's statement in *Youngstown Sheet & Tube Co. v. Sawyer* [23] that it "must be divined from materials almost as enigmatic as the dreams Joseph was called upon to interpret for Pharaoh." [24] Notwithstanding that rhetorical flourish, Jackson experienced no difficulty in finding the intention clear enough to lead him emphatically to reject inflated presidential claims to war powers.[25] So that the reader may readily determine for himself where the truth lies, I shall set forth the sources. The historical records will appear far removed from the "enigmatic dreams of a Pharaoh," from "constitutional myth."

Preliminarily a few words should be said about the historical background—upon which Professor Rostow lays great stress—from which the Constitution emerged. Among the colonists the prevalent belief was that "'the executive magistracy' was the natural enemy, the legislative assembly the natural friend of liberty. . . ." [26] This derived first from the fact that the House of Commons had been the cradle of liberty in the seventeenth century struggle against Stuart absolutism,[27] a period that greatly influenced colonial thinking.[28] Then too, colonial assemblies were elected by the colonists themselves whereas governors and judges were placed over them by the Crown.[29] Little wonder that in most of the early state constitutions, the governor's office was "reduced almost to the dimensions of a symbol," with all roots in the royal prerogative cut.[30]

When the colonists assembled in the Continental Congress and adopted the Articles of Confederation, they dispensed with an executive altogether; [31] and in appointing George Washington commander in chief, they made sure, as Professor Rostow remarks, that he was to be "its creature . . . in every respect." [32] Before long the excesses of the new state legislatures led to disenchantment,[33] and the Founders began to think of a genuinely tri-partite structure of government. It was against this background that Madison, in a quotation invoked by Professor Rostow,[34] said that the founders of the several states "seem never for a moment to have turned their eyes from the danger to liberty" from a king to recollect "the danger from legislative usurpations, which, by assembling all power in the same hands, must lead to the same tyranny as is threatened by executive usurpations." [35] This testifies to the need for a strengthened executive coupled with a lively fear of monarchy and of potential executive tyranny.[36] Even so, Madison stated in a subsequent issue of *The Federalist* that "[i]n republican government, the legislative authority necessarily predominates," [37] as the Constitution clearly designed in the distribution of the war powers.

To say, as does Professor Rostow, that the Framers intended to go beyond the "Executive" of the Continental Congress [38] is to leave open the scope of his function. Here once more the Framers did not leave us in doubt. Roger Sherman "considered the Executive magistracy as nothing more than an institution for carrying the will of the Legislature into effect. . . ." [39] Although James Wilson was the "leader of the 'strong executive' party," [40] the "only powers he conceived strictly executive were those of executing the laws and appointing officers. . . ." [41] Madison emphasized that preliminarily it was essential *"to fix the extent* of the Executive authority . . . as *certain* powers were in their nature executive, and *must be given* to that department. . . ." [42] He added that the executive powers "shd. be confined and defined," [43] as they were in the subsequent sparse enumeration of executive powers.

The explanation of executive power to the Ratifying Convention reaffirmed these views. The executive powers were "precisely those of the governors," said James Bowdoin in Massachusetts, as did James Iredell in North Carolina.[44] "What are his powers?" said Governor Randolph in Virginia: "To see the laws executed. Every executive in America has that power." [45] In Pennsylvania James Wilson, in order to defend the President against the charge that he "will be the tool of the Senate," pointed first to the fact that he was to be commander in chief, and then added, "[t]here is another power of no small magnitude intrusted to this officer. 'He shall take care that the laws be faithfuly executed.' " [46] Iredell likewise stressed that the "office of superintending the execution of the laws . . . is . . . of the utmost importance;" and this was likewise the view expressed in North Carolina by Archibald Maclaine.[47] Charles Pinckney, a Framer, said in South Carolina, "His duties, will be, to attend to the execution of the acts of Congress"; [48] and to ward off fears of the danger of the executive. Pinckney stressed that the President cannot "take a single step in his government, without [Senate] advice." [49] Another Framer, William Davie, told the North Carolina convention that "jealousy of executive power which has shown itself so strongly in all American governments, would not admit" of lodging the treaty powers in the President alone.[50]

When Professor Rostow relies on *The Federalist* and Madison's notes for a "pattern of shared constitutional authority in this vital area," [51] he fails to take into account Hamilton's emphasis on how small the presidential share was to be. "Calculating upon the aversion of the people to monarchy," Hamilton wrote, opponents of the Constitution "have endeavored to enlist all their jealousies and apprehensions in opposition to the intended President . . . as the full-grown progeny, of that detested parent." [52] To counter such fears he launched upon a minute analysis of each of the enumerated executive powers; in particular the commander in chief was merely to be the "first General." [53] Nothing was "to be feared" from an executive "with the confined authorities" of the President.[54]

Footnotes at end of article.

After going through the short list he stated, "The *only remaining powers* of the executive are comprehended in giving information to Congress of the state of the Union. . . ." [55]

On the specifics of the commander in chief function, Hamilton took pains to assure the people that the President's authority would be "much inferior" to that of the British King, the bulk of whose powers "would appertain to the legislature." [56] Professor Rostow's statement that the "British monarch was much more in their [the Framers'] minds as a point of departure than the revolutionary commander" [57] is therefore correct, but in a very different sense than he intends—the prerogatives of that monarch were the very thing that the Framers meant at all costs to avoid.[58]

II. THE INTENTION OF THE FRAMERS

A. The Commander in Chief clause

The commander in chief as conceived by the Framers bears slight resemblance to the role played by the President today, when, as Justice Jackson said, the clause is invoked for the "power to do anything, anywhere, that can be done with an army or navy." [59] From history the Framers had learned of the dangers of entrusting control of the military establishment to a single man who could commit the nation to war.[60] Let a single quotation suffice. James Wilson, the "most learned and profound legal scholar of his generation," second only to Madison as an architect of the Constitution,[61] who almost single-handedly carried the Constitution through to adoption by the Pennsylvania convention, told that convention that the power to "declare" war was lodged in Congress as a guard against being "hurried" into war, so that no "single man [can] . . . involve us in such distress." [62] It was for this reason that the vast bulk of the war powers was conferred on Congress, leaving to the President a very meager role. Wilson's summary of the constitutional provisions graphically illustrates the glaring disproportion between the allocations to Congress and President:

> The power of declaring war, *and the other powers naturally connected with it*, are vested in congress. To provide and maintain a navy—to make rules for its government—to grant letters of marque and reprisal—to make rules concerning captures—to raise and support armies—to establish rules for their regulation—to provide for organizing . . . the militia, and for calling them forth in the service of the Union—all these are powers naturally connected with the power of declaring war. All these powers, therefore, are vested in Congress.[63]

Congress was also empowered to "provide for the common defense" and to make appropriations for the foregoing purposes. Since all the powers "naturally connected" with that of declaring war are vested in Congress, it follows, so far as war-making goes, that they are not to be exercised by the President.[64] The President, said Wilson, "is to take care that the laws be faithfully executed; he is commander in chief of the army and navy"; like the Saxon "first executive magistrate . . . he ha[s] authority to lead the army." [65] How narrowly the function was conceived may be gathered from the *instruction* by the Continental Congress to George Washington in 1783 to arrange for the takeover from the British of occupied ports and for the liberation of prisoners.[66]

Virtually every early state constitution made the Governor "captain-general and commander-in-chief" to act under the laws of the State—which is to say, subject to governance by the legislature.[67] In the Convention, the New Jersey Plan proposed by William Paterson provided that the Executive was "to direct all military operations" but not "on any occasion [to] take command of the troops, so as personally to conduct any enterprise as General," that is, in the field.[68] In the plan Hamilton submitted to the Convention, he proposed that the Executive should "have the direction of war when authorized or begun," implying it was not for him to "begin" a war.[69] The words "commander in chief" were adopted without explanation; but it is a fair deduction that Hamilton's explanation in *The Federalist* expressed the general intention.[70] As commander in chief, said Hamilton, the President's authority would be "much inferior" to that of the British King: "It would amount to nothing more than the supreme command and direction of the military and naval forces, as first General and admiral . . . while that of the British king extends to the *declaring* of war and to the *raising* and *regulating* of fleets and armies,—all which, by the Constitution . . . would appertain to the legislature." [71] Hamilton thus deflated this and other executive functions in order to rebut attacks upon the Constitution by those who, "[c]alculating upon the aversion of the people to monarchy" portrayed the President "as the full-grown progeny of that detested parent." [72]

Corwin commented on Hamilton's explanation of the commander role: "this appears to mean that in any war . . . the President will be top general and top admiral of the forces provided by Congress, so that no one can be put over him or be authorized to give him orders in the direction of the said forces. But otherwise he will have no powers that any high military or naval commander who was not also president might not have." [73] So it appeared to Chief Justice Taney as late as 1850.[74] The severely limited role of the President was a studied response to what Madison called "an axiom that the executive is the department of power most distinguished by its propensity to war: hence it is the practice of all states, in proportion as they are free, to disarm this propensity of its influence." [75] The object, in Wilson's homelier phrase, was to prevent a "single man" from "hurrying" us into war. "Those who are to *conduct a war*," said Madison, "cannot in the nature of things, be proper or safe judges, whether *a war ought to be commenced, continued or concluded*. They are barred from the latter function by a great principle in free government, analogous to that which separates the sword from the purse, or the power of executing from the power of enacting laws." [76] All appeals to the power of the President as commander in chief must therefore proceed from the incontrovertible fact that the Framers designed the role merely for command of the army as "first General."

B. "Congress shall have power . . . to declare war"

Under the Articles of Confederation the Continental Congress had the "sole and exclusive right and power of determining on peace and war." [77] That practice influenced the Framers; thirty-five of the fifty-five Framers had been members of the Continental Congress. No reference was made to the war-making power in either the Virginia or New Jersey Plans; the former endowed Congress with the "Legislative Rights of," the latter with all powers vested in, the Continental Congress.[78] Early in the Convention Madison agreed with Wilson that "executive powers . . . do not include the Rights of war and peace. . . ." [79] The draft submitted by the Committee on Detail provided that the legislature should "make war," [80] lifting this as well as other powers specifically granted to Congress "bodily from the old Articles of Confederation." [81] It was this provision that became the subject of debate.

Charles Pinckney opposed "vesting this power in the legislature. Its proceedings were too slow"; [82] he preferred the Senate, as Hamilton had proposed in his own plan.[83] Pierce Butler, on the other hand, "was for vesting the power in the President"; but Roger Sherman considered that the Committee's provision "stood very well. The Executive shd. be able to repel and not to commence war." [84] Eldridge Gerry was astonished to hear "a motion to empower the Executive alone to declare war." George Mason also "was agst. giving the power of war to the Executive, because not (safely) to be trusted with it . . . He was for clogging rather than facilitating war." [85] The fact that no motion was made to substitute the President for Congress and that the power was left in Congress justifies the conclusion that presidential "commencement" of a war or his power "alone to declare a war" found no favor.

Any power to which the President may lay claim, apart from what he enjoys as commander in chief, derives from a joint motion by Madison and Gerry to substitute *declare* for *make* war "leaving to the Executive the power to repel sudden attacks." [86] The textual change from "make" to "declare" was approved; explanation of the change was furnished by Rufus King " 'make war' might be understood to 'conduct' it [war] which was an executive function," [87] a function reserved to the commander in chief. But in that role the President was merely to act as "first General" of the army.[88]

The shift from "make" to "declare" has elicited varied explanations; [89] for example, Professor Ratner states that the "declare" clause recognized "the war-making authority of the President, implied by his role as executive and commander-in-chief and by congressional power to declare, but not make, war." [90] No war-making power was conferred by the commander in chief clause; and Madison and Wilson agreed that "executive powers . . . do not include the rights of war and peace." [91] The grant to Congress of *all* the powers "naturally connected" with the "declare" power (except the command function) excludes any war-making power from the President's "role as executive." Only in a very limited sense—command of the armed forces plus authority to repel sudden attacks—can one accurately refer to a presidential war-making power.[92] Pretty plainly when Madison and Gerry proposed to *leave* to the President power "to repel sudden attacks" they reflected Sherman's view that the "Executive should be able to repel and not to commence war." This is the true measure of the presidential power. Certainly Gerry did not mean to repudiate his rejection of the proposition that the Executive could "alone declare war," still less propel the nation into undeclared war.[93] It is we who have replaced their blunt realism with semantic speculation.

Viewed against repudiation of royal prerogative, no more can be distilled from the Madison-Gerry remark than a limited *grant* to the President of power to repel attack when, as the very terms "sudden attack" imply, there could be no time to consult with Congress. Despite the fact, therefore, that the replaced "make" is a verbal component of "war-making," the shift to "declare" did not remove the great bulk of the war-making powers from Congress; it merely removed the power to *conduct* a war once declared, as Rufus King explained.[94] If the war-making power did not remain in Congress, the exception for presidential power "to repel sudden attacks" was superfluous.[95] Even the power to repel attacks was to some extent left subject to congressional control for, at a time when standing armies were much feared, the Constitution left it to Congress "[t]o provide for calling forth the militia to . . . repel invasions." [96]

In using "declare war," Professor Rostow argues the Framers had in mind the sharp distinction drawn by the law of nations between the law of war and law of peace. Under the latter nations enjoyed a right of "self-help," which was "subsumed under the inherent and sovereign right of self-defense."

Footnotes at end of article.

Rostow is critical of Hamilton's suggestion that the President was allocated only the power to exert "self-help in time of peace" on the ground that "[t]he constitutional pattern is, and should be, more complex than any such formula." [97] But where is the evidence that such was the understanding of the Framers? However broad the *national* power of "self-help" may be, the fact, as Justice Frankfurter pointed out, "that power exists in the Government does not vest it in the President." [98] Then too, the very careful distribution of powers by the Framers precludes any inference that they intended to grant to the President any incidents of the "nation's" war power under international law beyond the power to "repel sudden attacks" on the United States.[99] Professor Rostow would substitute unsupported speculations for concrete evidence such as Sherman's remark that the Executive should not be able to "commence war," Mason's statement that the Executive was "not safely to be trusted" with the war power, and Wilson's explanation that the power to "declare" war was lodged in Congress to prevent a "single man" from "hurrying" us into war—a "propensity" underscored by Madison.

Professor Alexander Bickel suggests that the "'sudden attack' concept of the framers . . . denotes a power to act in emergencies in order to guard against the threat of attack, as well as against the attack itself, when the threat arises, for example, in such circumstances as those of the Cuban missile crisis of 1962." [100] Gerry and Madison, however, spoke of a "power to repel sudden attacks," which connotes actual, not threatened attack; and there is reason to believe that a restricted connotation should be given to their remark. Imminent danger of attack had been expressly provided for in the antecedent Articles of Confederation. In conferring the exclusive war power upon the Continental Congress, article IX made an exception for article VI, which provided, "[n]o state shall engage in any war without the consent of the united states in congress assembled, unless such state be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such state, and the danger is so imminent as not to admit of a delay, till the united states in congress assembled can be consulted . . ."[101] Thus resistance to invasion was limited to invasion of "such state"; it did not extend to invasion of even a contiguous sister state in the "league of friendship." Georgia was not authorized to resist the invasion of New York, let alone of Canada. And danger of imminent attack permitted reaction only if there was not time for consultation with Congress. We are apt to think that devastating surprise is peculiar to our times, forgetting that the Founders had lived through surprise massacres in frontier forts and settlements and well knew such havoc. It was that experience which led them to leave imminent danger of Indian attacks to the individual threatened state.

A provision similar to the Articles of Confederation exception for state resistance was recommended to the Convention by the Committee of Detail,[102] and was embodied in article I, section 10(3). Thus the Framers well understood the distinction between actual invasion and the imminent threat of invasion, and they expressly empowered a state to meet both. No mention whatsoever was made, however, in any of the conventions of a *presidential* power to react to such imminent danger.[103] The omission is significant against a background of strictly enumerated presidential powers and pervasive jealousy of the Executive.[104]

Asserting "it can scarcely be doubted that the President possesses the authority to take whatever action is necessary to protect the interests of the United States in a threatened emergency," McDougal and Lans cite *Martin v. Mott* [105] for the proposition that "the Supreme Court, in dealing with the powers of the President to call out the militia and employ the armed forces of the United States, concluded that he was empowered to act not only in cases of actual invasion, but also when there was 'imminent danger of invasions.' This latter contingency was held to be a question of fact to be determined by the President." [106] *Mott* presented a challenge by one called into the militia under the Act of 1795 which authorized the President to call out the militia "whenever the United States shall be invaded, or be in imminent danger of invasion." [107] Of course, it could not be left to a soldier to determine whether the emergency existed, and the Court held that the decision "whether the exigency has arisen, belongs exclusively to the President. . . ." [108] This express *statutory* authorization furnishes no foundation for a presidential claim of unlimited *constitutional* power to forestall "imminent danger of invasion."

Expansion of the "sudden attack" remark in the Convention to include "imminent threat of invasion" requires great caution because it opens the door to a whole multitude of other expansive readings of presidential power.[109] To be sure, there must be a means of meeting a Cuban missile crisis, but that means is through congressional authorization, such as the Act of 1839 exemplifies and the War Powers Bill proposes.[110] For Congress, not the President, was given virtually plenary power to deal with all facets of war-making.

This brings us to the question whether the Javits Bill impermissibly delegates to the President authority to use the armed forces "to foresall the direct and imminent threat" of an armed attack on the United States or on its armed forces located abroad.[111] Professor Rostow defends prior delegations chiefly on the basis of *Zenel v. Rusk*,[112] where the Court, citing *United States v. Curtiss-Wright Export Corp.*[113] stated that "Congress—in giving the Executive authority over matters of foreign affairs—must of necessity paint with a brush broader than that it customarily wields in domestic areas." [114] In opposition, Professor Francis Wormuth makes an extended analysis of the delegation cases and the history of prior attempts to delegate war powers.[115] From the cases he extracts the principle that Congress may determine the general policy to be pursued and then "authorize the President to determine the facts which call the Congressional policy into play." [116] Although he cites the *Zenel v. Rusk* remark that Congress cannot "grant the Executive totally unrestricted freedom of choice," [117] he recognizes that war cannot be made "perfectly automatic upon the occurrence of a future event." [118] That is, given a "direct and imminent threat" of attack, the President cannot be left with no choice but to wage war. Wormuth draws the teeth out of this concession, however, by concluding that the decision *for* war must be taken by Congress contemporaneously with the declaration of war,[119] a conclusion which amounts practically to a total ban on delegation in the premises. Generally persuaded by Professor Wormuth's analysis, I find his approach too narrow here. Because, like him, I distrust any doctrine that builds on Justice Sutherland's vulnerable *Curtiss-Wright* opinion,[120] I shall outline at least two considerations which suggest a more flexible approach.

First, having concluded that the plenary war-making power was vested in Congress rather than the President, I would be guided by John Marshall's statement in *McCulloch v. Maryland*: [121]

"It must have been the intention of those who gave these powers, to insure . . . their beneficial execution. This could not be done, by confiding the choice of means to such narrow limits as not to leave it in the power of Congress to adopt any which might be appropriate, and which were conducive to the end." [122]

McCulloch, to be sure, did not involve a delegation problem, but its principle has wide scope.

Second, the historical course of Congress, chartered in part by Professor Wormuth, has not been all one way. It will be recalled that article I, section 8(15), empowers Congress "To provide for calling forth the militia . . . to repel invasion." Instead of providing a detailed expression of policy, Congress was content by the Act of 1795 to authorize the President to call forth the militia "whenever the United States shall be invaded, or be in imminent danger of invasion," a policy no more detailed than the Javits "direct and imminent threat of an attack [on the United States]." [123] It is not a little remarkable that the delegation point was not so much as mentioned in *Martin v. Mott*. A similar course was pursued in the Act of March 3, 1839, which empowered the President "to resist any attempt on the part of Great Britain, to enforce, by arms, her claim to exclusive jurisdiction over" a disputed portion of Maine.[124]

Like Professor Wormuth, I little relish congressional issuance of a blank check to determine policy; [125] and I am aware that on the domestic front it was said in *Panama Refining Co. v. Ryan* [126] that Congress "must establish a criterion to govern the President's course." [127] A criterion, however, can be made only as explicit as the particular circumstances admit. If a tighter standard than that of the Javits Bill can be devised, so much the better; but until then I am satisfied to read the Bill's "forestall" phrase [128] as did Professor Bickel, who instanced before the Senate Foreign Relations Committee a threat like that of the Cuban missile crisis, that is "a reactive, not a self-starting affirmative power." [129] But I would add a provision akin to the early exemption for state action afforded by the Articles of Confederation for resistance when the "danger [of invasion] is so imminent as not to admit of a delay, till the . . . congress assembled can be consulted." Few, if any, recent presidential adventures were launched in circumstances so crucial as to admit of no delay until Congress could be consulted. That circumstances may occur which will render such consultation impossible must be conceded; and it will not do to foreclose *both* Congress and the President from meeting that situation. In fine, the limits on delegation, which some consider a moribund doctrine,[130] must not be so rigorously applied as to deprive Congress as well as the President of power to cope with the fearful exigencies of our contemporary world.[131]

C. Rostow's evocation of the original intention

The Legal Advisor of the State Department had little quarrel with the foregoing reading of the original intention: "In 1787 the world was a far larger place, and the framers probably had in mind attacks upon the United States." [132] Professor Ratner, whom Professor Rostow invokes as a Daniel come to judgment,[133] likewise concedes that "[i]n 1787, 'repel sudden attack' probably meant 'resist invasion or rebellion.'" [134] Apparently not entirely satisfied to rely solely on the escape hatch resorted to by others—alteration of the Constitution by presidential practices—Professor Rostow intimates that an expended presidential war power is imminent in the Constitution,[135] relying on various quotations to create an atmosphere in which any other reading is presumably unthinkable.[136] Coming from so reputable a scholar, they cannot be dismissed out of hand.

The Rostow article begins with several epigraphs that resemble nothing so much as scareheads. One, Madison's "impetuous vortex" of the legislature that threatens to en-

Footnotes at end of article.

gulf everything in sight, has been shown to be without relevance, to our problem.[137] When Madison focussed squarely on the distribution of war powers, he stated:

"Every just view that can be taken of this subject, admonishes the public of the necessity of a rigid adherence to the simple, the received, and the fundamental doctrine of the constitution, that the power to declare war, including *the power of judging the causes of war, is fully and exclusively* vested in the legislature; that the executive has no right, *in any case,* to decide the question, whether there is or is not cause for declaring war; that the right of convening and informing congress, whenever such a question seems to call for a decision, *is all the right* which the constitution has deemed requisite or proper . . . ." [138]

What better illustrates the futility of citing generalizations which are well enough in their original context to determine a specific issue, than Madison's own judgment on the President's limited war power, so remote from Professor Rostow's claim that it must be free from the "impetuous vortex" of Congress.

Another Rostow epigraph is Hamilton's statement in *The Federalist Number 23:* "The circumstances that endanger the safety of nations are infinite, and for this reason no constitutional shackles can wisely be imposed on the power to which the care of it is committed." [139] Hamilton was concerned there with the needed surrender by the states to the "federal government" of powers "essential to the common defense," not with a plea that *presidential* war powers must not be shackled.[140] Hamilton's argument for lodging power in the nation rather than the states is not convertible into an argument that power is to be vested in the President rather than in Congress. Well did he know that the presidential powers were indeed limited; [141] and even after he had moved from a narrow [142] to a broader view of the Executive power,[143] he still declared that it is the exclusive province of Congress, *when the nation is at peace,* to change that state into a state of war . . . *it belongs to Congress only, to go to war.* But when a foreign nation declares or . . . makes war upon the United States . . . any declaration on the part of Congress is . . . unnecessary.[144]

In short, but for a presidential power to defend against attack upon the United States, "it belongs to Congress only to go to war." [145]

Professor Rostow also paraphrases Chief Justice Marshall's statement that "we should never forget it is a *constitution* we are expounding—a constitution intended to endue for ages to come, and capable of adaptation to the various crises of human affairs." [146] What such "adaptation" has come to mean may be illustrated by the words of the State Department: "In the 20th century the world has grown much smaller. An attack on a country far from our shores can impinge directly on the nation's security. . . . The Constitution leaves to the President the judgment to determine whether the circumstances of a particular armed attack are so urgent and the potential consequences so threatening to the security of the United States that he should act without formally consulting the Congress." [147] That was not the view of the Framers, of Madison and of Hamilton. What portion of the Constitution confers this astonishing power? Because the world is contracting it does not follow that the President's constitutional powers are correspondingly expanding.[148]

Certainly Marshall would have been the last to distil such a proposition from his dictum in *McCulloch v. Maryland.* Too long has the dictum been reiterated without notice of the circumstances in which it was uttered. *McCulloch* presented the question whether Congress had constitutional power to establish the Bank of the United States; the issue turned on whether a bank was a proper *means* for execution of expressly granted federal powers. In granting the powers, said Marshall, the Framers intended to insure, their beneficial execution. This could not be done, by confiding the *choice of means* to such narrow limits as not to leave it in the power of congress to adopt any which might be appropriate, and which were conducive to the end. This provision is made in a constitution, intended to endure for ages to come, and consequently, to be adapted to the various *crises* of human affairs. To have prescribed the means by which government should, in all future time, execute its powers, would have been . . . [to give the Constitution] the properties of a legal code.[149]

Manifestly this is merely a plea for some freedom in the choice of "means," not for license to create a fresh power at each new crisis. For this we need not rely on inference, because Marshall himself made this plain in a debate with Judge Spencer Roane, the discovery of which we owe to the happy enterprise of Professor Gerald Gunther.[150]

McCulloch had immediately come under attack and Marshall leapt to its defense. Speaking directly to the above-quoted passage, he stated, "it does not contain the most allusion to *any extension by construction of the powers of congress.* Its sole object is to remind us that a constitution cannot possibly enumerate the means by which the powers of government are to be carried into execution." [151]

Again and again he repudiated any intention to lay the predicate for such "extension by construction." There is "not a syllable uttered by the court," he said, that "applies to an enlargement of the powers of congress." He rejected any imputation that "those powers ought to be enlarged by construction or otherwise." [152] The Court, he stated, never intimated that construction could extend "the grant beyond the fair and usual import of the words. . . ." [153] Even the means are not to be "strained to comprehend things remote, unlikely or unusual." [154] Translated into terms of the present issue, a grant of power to "repel sudden attacks" on the United States is not to be construed as a presidential power to repel an attack by a foreign nation on Korea.[155]

Over-modestly appraising the impact of his discovery, Professor Gunther states:

"Clearly these essays give cause to be more guarded in invoking *McCulloch* to support views of congressional power now thought necessary. If virtually unlimited discretion is required to meet twentieth century needs, candid argument to that effect, rather than ritual invoking of Marshall's authority, would seem to me more clearly in accord with the Chief Justice's stance." [156]

Enough of such incantations!

Against such misinterpretations of Marshall, there is the pledge of Jefferson, after his election to the presidency, to administer the Constitution "according to the safe and honest meaning contemplated by the plain understanding of the people at the time of its adoption—a meaning to be found in the explanations of those who advocated . . . it." [157] Madison also clung "to the sense in which the Constitution was accepted and ratified by the Nation," adding, "if that be not the guide in expounding it, there can be no security for a consistent and stable government, more than for a faithful exercise of its powers." [158]

Considerations of space and the patience of the reader constrain me to content myself with one last Rostow quotation, Justice Frankfurter's statement in the *Youngstown* case:

"It is an inadmissibly narrow conception of American constitutional law to confine it to the words of the Constitution and to disregard the gloss which life has written on them. In short, a systematic, unbroken, executive practice, long pursued to the knowledge of Congress and never before questioned . . . may be treated as a gloss on the Executive Power vested in the President by § 1 of Art. II." [159]

Apparently Frankfurter was inspired by the Marshall remark in *McCulloch,* for he stated:

"The pole-star for constitutional adjudications is John Marshall's greatest judicial utterance that "it is a *constitution* we are expounding." . . . That requires . . . a spacious view in applying an instrument of government "made for an expanding future". . . ." [160]

Marshall, as we have seen, repudiated a "spacious view" of *power* conferred by the Constitution; not for him enlargement of those powers "by construction or otherwise." Moreover, Frankfurter's statement was utterly gratuitous, the sheerest dictum. The setting of the case, in his own words, was that Congress had "frequently—at least 16 times since 1916—specifically provided for executive seizure . . . . In every case it has qualified this grant of power with limitations and safeguards." [161] Congress, he said, had "expressed its will to withhold this power from the President as though it had said so in so many words." [162] Thus the facts at bar were 180 degrees removed from the hypothetical facts to which his dictum was addressed. No more importance should be attached to the Frankfurter dictum, in which no other member of the court joined, than Marshall attached to his own dictum, uttered on behalf of the entire Court in *Marbury v. Madison,*[163] when it was pressed upon him in *Cohens v. Virginia.*[164] Dicta, Marshall explained, never receive the careful consideration that is given decision of the particular case.[165]

Youngstown presented the validity of presidential action in the absence of an express statutory bar; and one may question whether Frankfurter would deny to Congress exercise of power expressly conferred because the President, by a "gloss of life," had reallocated the power to himself. The Marshall who declared in the Roane debate that the Court's exercise of the power of judicial review vested in it by the Constitution "*cannot* be the assertion of a right to *change that instrument,*" [166] would hardly have concurred with Professor Rostow that the President's repeated exercise of power withheld from him and conferred upon Congress constituted a "gloss of life" which converted the usurpation into constitutional dogma.[167] It is time to cry out against the substitution of such glittering generalities for the hard analysis that each specific case demands afresh.

The underlying reality, it may be countered, is that Marshall's acts were at war with his words, that he did in fact change the Constitution. This is to condone a divorce between words and deeds, to take a cynical view of adjudication, reminiscent of the lip service paid by the Renaissance princes to the Holy Church because religion made the masses more docile. Realism, to be sure, calls on us to look behind what courts say to what they do; but then ordinary honesty requires that the American people be told in plain words, which the man in the street can grasp, that the Court has assumed the function of amending the Constitution. Continued dissimulation on this score is unworthy of bench and bar.

In sum, the transformation of the "repel sudden attacks" exception of Madison and Gerry into an alleged presidential power, without congressional authorization, to commit the armed forces to battle against invasion of Korea or Vietnam can find no warrant either in the constitutional text or in the understanding of the Framers. About this there is virtually no dispute;[168] instead the apologists for the power rest it upon "adaptation by usage."

Footnotes at end of article.

III. ADAPTION BY USAGE

"Adaptation by usage" is a label designed to render palatable the disagreeable claim that the President may by his own practices revise the Constitution, that he may disrupt the constitutional distribution of powers, considered inviolable under the separation of powers. The argument on behalf of presidential "adaptation of the Constitution by usage" was most forcefully made by McDougal and Lans who, impatiently brushing aside the "absolute artifacts of verbal archaeology," [169] "the idiosyncratic purposes of the Framers," [170] concluded that "continuance of [a] practice by successive administrations throughout our history makes its contemporary constitutionality unquestionable." [171] In plain words, usurpation of power by the President, if repeated often enough, is legitimated.[172]

We may put to one side the example of the Supreme Court as the allegedly necessary engine for "adaptation" of the Constitution to the needs of a changing society, particularly since the President's single-handed revision of the Constitution is claimed to be immune from judicial review.[173] So too, the clarification of an ambiguous grant of power to the President by resort to his long continued practice thereunder is to be differentiated. Here we have an attempted take-over by the President of war powers plainly conferred upon Congress alone, and accompanied by an unmistakable intention to withhold them from the President. It therefore constitutes a bare-faced attempt to alter the constitutional distribution of powers, and to violate the separation of powers.[174]

When McDougal and Lans charge those who demur with slavery to "words of the Constitution as timeless absolutes," to "mechanical filiopietistic theory," [175] they totally misconceive the issue. The issue is not one of words but of *power:* is the President authorized to transfer power conferred upon Congress to himself? Whence comes the mandate to the President to rewrite the Constitution?

"The people," said James Iredell, "have chosen to be governed under such and such principles. They have not chosen to be governed or promised to submit upon any other." [176] Arguing for executive agreements, McDougal and Lans said, "the crucial constitutional fact is that *the people* (Presidents, Supreme Court Justices, Senators, Congressmen *and electorate*) who have lived under the document for 150 years have interpreted it . . . [to] authorize the making of international agreements other than treaties on most of the important problems of peace and war." [177] Now the inescapable fact is that the issue has never really been explained to "the people"; much less has the judgment of "the electorate" ever been solicited.[178] Though sympathetic to amendment by usage, Reveley sapiently observes that the "general public takes a relatively blackletter view of the Constitution," and that the "subtleties" of adaptation "by usage . . . would probably be lost on the general public." [179] It is therefore idle to impute informal ratification of the presidential power take-over to "the people." The people have been told by the President that he has acted under the Constitution, by which, in their benighted way, they understand textural warrant, not long-continued violation of the Constitution. It is always hazardous to prophesy how the American people would react in any given situation, but in view of the bitter strife over presidential war-making,[180] I venture to think that a nationwide howl of outrage would greet the disclosure that the presidential blood-letting in Vietnam is justified, not by constitutional grants of power to the President, but by a self-serving theory of boot-strap power built upon successive encroachments on exclusive congressional prerogatives.

Professor Ratner tells us that "constitutional policy for ensuing epochs is not congealed in the mold of 1787 referants." [181] Of course not; the Founders provided for change by a process of amendment. That process is cumbersome, and designedly so;[182] but it is a marvelous non-sequitur that in consequence the servants of the people may informally amend the Constitution without consulting them.[183] Indeed, Professor Rostow upbraids the Senate for attempting by the Javits Bill "to amend the Constitution without . . . consulting the people." [184] It is incongruous to insist that congressional restoration of the "original intention" respecting the constitutional allocation of powers must proceed by amendment while maintaining that the President is free unilaterally to alter the Constitution because, as his school insists, amendment is difficult.

Alexander Hamilton, that daring pioneer advocate of broadly-read presidential powers, writing with respect to the *express* treaty power (as distinguished from a power merely rested on "usage") regarded it as a fundamental maxim that a delegated authority [e.g. the President] cannot alter the constituting act, unless so expressly authorized by the constituting power. *An agent cannot new-model his own commission.* A treaty, for example, *cannot transfer* the legislative power to the executive department.[185]

Marshall, as we have seen, disclaimed judicial power to change the Constitution.[186] Now the followers of Hamilton, the citators of Marshall, would claim that the President *can* by his own "usage" "new-model his commission" and "transfer the legislative power to the executive."

To a believer in constitutional government, in the separation of powers [187] as a safeguard against dictatorship, there is no room for a take-over by the President of powers that were denied to him and, as our own times demonstrate, denied with good reason. "Ours is a government of divided authority," declared Justice Black in 1957, "on the assumption that in division there is not only strength but freedom from tyranny." [188] If present exigencies demand a redistribution of powers originally conferred upon Congress—a presidential power to commit the nation to war without congressional consultation or authorization—that decision ought candidly to be submitted to "the people" in the form of a proposed amendment, not masked by euphemisms.[189] For me Washington's advice remains the pole-star:

"The necessity of reciprocal checks in the exercise of political power, by dividing and distributing it into different depositories, and constituting each the Guardian of the Public Weal against invasions by the others, has been evinced. . . . To preserve them must be as necessary as to institute them. If in the opinion of the People, the distribution or modification of the Constitutional powers be in any particular wrong, let it be corrected by an amendment in the way in which the Constitution designates. But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly over-balance in permanent evil any partial or transient benefit which the use can at any time yield.[190]

A. Presidential "Usage"—The "125 Incidents"

"Since the Constitution was adopted," said the State Department, "there have been at least 125 instances in which the President has ordered the armed forces to take action or maintain positions abroad without obtaining prior Congressional authorization, starting with the 'undeclared war' with France (1798–1800)." [191] Professor Wormuth has located "the first serious discussion of the problem" in 1912, in a monograph by J. Reuben Clark, the Solicitor of the State Department, entitled *The Right to Protect Citizens in Foreign Countries.* There Clark "opined that, with the exception of our political intervention in Cuba and Samoa, all the earlier cases could be regarded as nonpolitical interposition for the protection of citizens. He suggested that they might fall within the President's constitutional power, but this opinion was 'with no thought or pretense of more than a cursory examination. It is entirely possible that a more detailed and careful study would lead to other or modified conclusions.' His tentative argument turned on the fact that the President possessed executive power. . . . Clark made no reference whatever to the commander-in-chief clause." [192]

As late as 1912, therefore, the legal theoretician of the State Department sought refuge in the Constitution rather than appeal to the President's own practices for legitimation of prior presidential nonpolitical interpositions for protection of citizens. From this frail seedling, in the short space of 38 years, grew the present over-weening executive claims. In 1950 the President committed troops to repel the sudden invasion of South Korea. Dean Acheson, then Secretary of State recommended to the President that he should not ask for a resolution of approval, but rest on his constitutional authority as Commander in Chief. . . ." Later he wrote, "There has never . . . been any serious doubt . . . of the President's constitutional authority to do what he did. The basis for this conclusion in legal theory and historical precedent," he said, was a State Department memorandum of 1950 which "listed eighty-seven instances in the past century in which [Truman's] predecessors" had exercised "presidential power to send our forces into battle. . . . And thus yet another decision was made." [193] Decisions can be made by executive fiat; but fiat cannot supply constitutional sanction.

The painstaking analysis of the "125 incidents" by Professor Wormuth cuts the ground from under the claims of Acheson and his associates.[194] Under Secretary of State Nicholas Katzenbach himself stated that "most of these [incidents] were relatively minor uses of force." [195] The "vast majority" of such cases, said Edward Corwin, "involved fights with pirates, landings of small naval contingents on barbarous or semi-barbarous coasts [to protect American citizens], the dispatch of small bodies of troops to chase bandits or cattle rustlers across the Mexican border." [196] For one reason or another such cases presented little or no possibility of armed conflict or bloodshed so there was no occasion to approach Congress for authorization to make war; [197] even so, some Presidents did seek such authorization.[198] These incidents are far from "Precedents" for sending our troops "into battle." [199]

Even were these incidents to be regarded as equivalent to executive waging of war, the last precedent would stand no better than the first; illegality is not legitimated by repetition.[200] It is one of the ironies of history that such "precedents" should be invoked for vastly greater incursions [201] at a time when "gunboat diplomacy" has been discredited and abandoned.[202] To extrapolate from a practice of landing "six sailors in a long boat to rescue a citizen" to a right to commit the nation to a Vietnam War,[203] which has cost $30 billion a year, engaged upwards of 500,000 men, resulted in some 200,000 wounded and 45,000 dead, is to make a breath-taking analogical leap across a chasm of non-equivalence.[204]

Professor Monaghan criticizes Wormuth's deflation of these "incidents" on which the State Department relies, first on the ground that "To dismiss American interventions in Latin America as 'minor' amounts to recognition of presidential power to wage war against weak opponents for limited purposes" [205] Consider, for example, the bom-

Footnotes at end of article.

bardment by an over-zealous navy captain of the "sovereign state of Greytown," Nicaragua, in 1854, in reprisal for some negligible "outrages" by what President Pierce described as a band of outlaws rather than an organized society, and which Secretary of State Marcy wrote was "an embarrassing affair" that could not be repudiated because of domestic political repercussions.[206] Professor Monaghan is welcome to regard this as the "waging of war"; but few would equate it with the presidential commitment of troops to resist the invasion of South Korea.

What if the "incidents" do demonstrate that "with ever-increasing frequency, presidents have employed that amount of force that they deemed necessary to accomplish their political objectives . . . Whatever the intention of the framers, the military machine has become simply an instrument for the achievement of foreign policy goals, which in turn have become a central responsibility of the presidency."[207] Monaghan's dismissal of "the intention of the framers" vastly simplifies the presidential argument; the Constitution is then merely a scrap of paper to be respected or disregarded at will. On the assumption that it remains, however, a charter of government, the hitching of the "military machine" to the "achievement of foreign policy goals" is a choice example of the tail wagging the dog. By endowing the President with authority to receive ambassadors. and, with Senate consent, to appoint ambassadors and make treaties—such are the slight sources of his claim to be the sole organ of foreign relations—the Framers hardly intended to confer upon him a power unmistakably withheld when the war powers were under consideration, the power singlehandedly to "commence" a war.

Against such dubious precedents there is the testimony of great contemporaries of the Constitution.[208] In 1801, President Jefferson was confronted by Tripoli's declaration of war; when an American naval vessel was attacked it disarmed but released the attacker. Jefferson explained to Congress, "Unauthorized by the Constitution, without the sanction of Congress, to go beyond the line of defense, the vessel, being disabled from committing further hostilities, was liberated with its crew. The Legislature will doubtless consider whether, by authorizing measures of offense also, they will place our forces on an equal footing with that of its adversaries."[209] And later, in 1805, when Spain disputed the boundaries of Louisiana, President Jefferson advised Congress that Spain evidenced an "intention to advance on our possessions," adding, "Considering that Congress alone is constitutionally invested with the power of changing our condition from peace to war, I have thought it my duty to await their authority for using force . . ."[210] "Imminent danger" of invasion did not deter Jefferson from consultation with Congress.

James Madison, the leading architect of the Constitution, who took a very narrow view of the presidential war power,[211] maintained that view after becoming President. In his message of June 1, 1812, he called attention to English outrages on American commerce, and to the failure of American "remonstrances," and then he referred the question whether we should oppose "force to force in defense of [our] national rights" to Congress as a "solemn question which the Constitution wisely confides to the legislative department of the Government."[212]

After adoption of the Monroe Doctrine, Colombia asked for protection against France in 1824. President James Monroe, a participant in the Virginia ratification convention, stated in a letter to Madison that "The Executive has no right to compromit the nation in any question of war"; and his Secretary of State, John Quincy Adams, replied to Colombia that "by the Constitution . . . the ultimate decision of this question belongs to the Legislative Department."[213]

Few Presidents had a more jealous regard for presidential prerogatives than Andrew Jackson; yet when faced with recognition of Texas he referred the question to Congress, stating, "It will always be consistent with the spirit of the Constitution, and most safe, that it should be exercised, when probably leading to war, with a previous understanding with that body by whom war alone can be declared, and by whom all the provisions for sustaining its perils must be furnished."[214] Can it be doubted that he would have been equally reluctant, without congressional authorization, to send troops into Texas to "defend" it against an attack by Mexico? His view was later reiterated by Secretary of State Daniel Webster when the issue was a possible attack by France on Hawaii: "the war making power . . . rests entirely with Congress . . . no power is given to the Executive to oppose an attack by one independent nation on the possessions of another."[215]

In brief, Jefferson and Madison did not regard attacks on American shipping or commerce on the high seas as dispensing with the constitutional requirement for consultation with Congress. And Monroe, Jackson, J. Q. Adams, and Webster did not view attacks on foreign nations, even though within the American sphere of influence, as a warrant to meet force without congressional authorization. Misguided as is the construction put by the State Department on the actions of Madison, Adams, and Jefferson,[216] the Department yet agrees that "Their views and actions constitute highly persuasive evidence as to the meaning and effect of the Constitution."[217] Their actions were faithful to the intention of the Framers as expressed by the constitutional text and in the records of the Convention; and were that intention in doubt, the actions of these early statesmen provide a contemporaneous construction which carries very great weight in the interpretation of the Constitution.

To the contemporaneous construction by the great statesmen who participated in the formation and adoption of the Constitution, we may add the voice of Chief Justice Marshall, himself a vigorous participant in the Virginia Ratification Convention, who stated in *Talbot v. Seeman*:[218] "The whole powers of war being, by the constitution of the United States, vested in Congress, the acts of that body can alone be resorted to as our guides in this inquiry."[219] Not even the crisis of the Civil War led the Court to depart in *The Prize Cases*[220] from the earlier view: "By the Constitution, Congress alone has the power to declare a national or foreign war." The President "has no power to initiate or declare a war either against a foreign nation or a domestic State. . . . If a war be made by invasion of a foreign nation, the President is . . . bound to resist force by force. He does not initiate the war, but is bound to accept the challenge. . . ."[221]

And so we come to Lincoln's "complete transformation in the President's role as Commander-in-Chief," by wedding it, says Corwin, to his duty to execute the laws to derive the "war power."[222] So far as the original meaning and intention are concerned, neither power taken alone conferred a "war-making power," and when nothing is added to nothing the sum remains nothing. In considering Lincoln's acts it needs to be borne in mind that they were triggered by a "sudden attack" on *American soil*, the firing upon Fort Sumter, and this when Congress was not in session,[223] exactly the situation envisioned by the Framers as the sole exception to the exclusivity of congressional war powers.[224] Congress was convened by Lincoln and met in about ten weeks;[225] in the words of Corwin, it accepted "willy-nilly"[226] when it did not expressly ratify the results of Lincoln's actions. It would be pointless to enter upon an examination of Lincoln's acts on the domestic scene, for they do not serve as a "precedent" for presidential resistance to a "sudden attack" on a *foreign* country.[227]

Such conduct had in fact been earlier condemned by Lincoln. When President Polk sent an army into territory disputed with Mexico, which engaged in battle, Congress declared war on Mexico.[228] But in 1848 the House adopted a resolution that the war had been "unconstitutionally begun by the President," and Lincoln, who voted for the resolution along with J. Q. Adams, explained to Herndon:

"Allow the President to invade a neighboring nation whenever he shall deem it necessary to repel an invasion, and you . . . allow him to make war at his pleasure. . . . The provision of the Constitution giving the war-making power to Congress was dictated by the [fact that] Kings had always been involving and impoverishing their people in wars . . . and they resolved so to frame the Constitution that no one man should hold the power of bringing oppression upon us."[229]

That his conduct on the domestic front during the Civil War did not spell repudiation of his 1848 view may be gathered from the fact that in his first annual message, he referred to a prior authorization by Congress to American vessels to "defend themselves against and to capture pirates," and recommended an additional authorization "to recapture any prizes which pirates may make of United States vessels and their cargoes [in the Eastern seas specially]."[230] Clearly this constitutes a disclaimer of power to employ force abroad without the consent of Congress.

It was Congress rather than the reluctant President McKinley which clamored for the Spanish-American War and issued a declaration of war.[231] The nineteenth century, in sum, offers no example of a President who plunged the nation into war in order to repel an attack on some foreign nation.[232] That remained for the twentieth century.

Although World War I proved the truth of Madison's apothegm that "War is . . . the true nurse of executive aggrandizement,"[233] this was again largely on the domestic front, a development traced by Corwin.[234] Reelected in 1916 on the slogan "He kept us out of war," Wilson asked Congress in February, 1917, for authority to arm American merchant ships for their defense. The measure was stalled in the Senate by a filibuster led by Senators Robert LaFollette and George Norris. Wilson then ordered the arming on his own,[235] though he later acknowledged that the action was "practically certain" to draw us into war.[236] Repeated attacks without warning by German submarines together with disclosure of the "Zimmerman note"[237] fueled the rising war fever as Wilson summoned Congress to a special session on April 20. Upon Wilson's request that Congress declare "the recent course of the German Government to be, in fact, nothing less than war . . .," it declared war.[238] Thus he withstood the temptation "to resist force with force," singlehandedly to commit the nation to war. Much as Wilson expanded the war power for domestic purposes, his conduct gives no comfort to the thesis that invasion of a foreign land affords an excuse for presidential war-making.

Franklin Roosevelt, more far-sighted than the nation, also took measures which might have involved us in World War II; he exchanged fifty destroyers for British bases in the Western Atlantic, and occupied Greenland and Iceland to insure the defense of America.[239] Doubts have been expressed as to the legality of the destroyer deal;[240] but it was soon ratified by Congress. While these might have involved the nation in war, they did not commit our troops to battle on foreign soil. In truth, the country, moving

Footnotes at end of article.

slowly from post-World War I isolationism, was sorely divided, and without the Japanese attack on Pearl Harbor, which united the nation, Roosevelt might have had to remain content with measures "short of war."[241]

The historical record therefore confirms the statement by the Senate Foreign Relations Committee that "only since 1950 have Presidents regarded themselves as having authority to commit the armed forces to full scale and sustained warfare."[242] In that year President Truman ordered our troops to repel the sudden invasion of South Korea.[243] Acheson's conversion of the "long-boat" incidents into "historical precedents" for commitment to full scale warfare[244] exhibits a high order of fantasy, but to elevate it to constitutional doctrine is something else again.

Whether or not the Tonkin Gulf Resolution (1964)[245] authorized President Johnson to commit our armed forces to war in Vietnam, a hotly-debated issue, need not detain us because, like Acheson, Johnson and Under Secretary of State Nicholas Katzenbach claimed plenary power. "[W]e did not think the resolution was necessary to do what we did and what we are doing," the President told the press; "we think we are well within the grounds of our constitutional responsibility."[246] And Katzenbach asserted that the administration could continue to fight the Vietnam War even if Congress repealed the Tonkin resolution.[247] The resolution has since been repealed;[248] and the war goes on and has indeed been extended by the President to Cambodia and Laos.[249]

In summary, the nineteenth century "incidents" mustered by the State Department for a presidential war-making power are wide of the mark;[250] the acts of Wilson and Franklin Roosevelt in the twentieth century were provocative and might have drawn the nation into war, but they were still "short of war"; neither Wilson nor Roosevelt sent combat troops to engage in actual hostilities on foreign soil until Congress declared war. So far as the Korean War is viewed against the over-blown claims of Acheson, it is a "precedent" created by the President only yesterday, and thus is far from "embedded in the Constitution."

The Senate Foreign Relations Committee has handsomely acknowledged that "Congress . . . bears a heavy responsibility for its passive acquiescence in the unwarranted expansion of Presidential power,"[251] that "Congress has acquiesced in, or at the very least has failed to challenge, the transfer of the war power from itself to the executive."[252] Various explanations have been proffered for this inertia,[253] the sufficiency of which need not here come in question. Coke long since said that no "act of parliament by nonuser can be antiquated or lose [its] force . . ."[254] Even less can Congress, by passivity or otherwise, divest itself of powers conferred upon it by the Constitution and accomplish the transfer of those powers to the President. It is a necessary consequence of the separation of powers that "none of the departments may abdicate its powers to either of the others."[255] Nor can any department, as John Adams was at pains to spell out in the Massachusetts Constitution of 1780, exercise the powers of another.[256] If powers, said Justice Jackson, are "granted, they are not lost by being allowed to lie dormant, any more than nonexistent powers can be prescribed by unchallenged exercise."[257]

On the foregoing analysis, the sole presidential "war-making" powers conferred by the Framers are to serve as commander in chief of the armed forces and to repeal sudden attacks on American soil.

IV. "INHERENT" POWER AND UNITED STATES V. CURTISS-WRIGHT EXPORT CORP.

Before considering how far these two presidential functions are exclusive and beyond congressional control, it is necessary to examine the oft-invoked doctrine of "inherent" power, of which *United States v. Curtiss-Wright Export Corp.*[258] was the finest flowering. In a recent Yale memorandum,[259] the writers, after setting forth Justice Jackson's categorization of exclusive presidential power, exclusive congressional power, and a "twilight area" in which either branch can act,[260] assert that in the latter area "there is a residuum of power over and above those specifically enumerated in the constitution."[261]

Preliminarily it needs to be noted that Justice Jackson's remarks were uttered in the context of action on the *domestic* scene—President Truman's seizure of strike-bound steel plants during the Korean War—that Jackson none too obliquely cast doubt upon the legitimacy of Truman's commitment of troops to Korea,[262] and that he made no reference to a "residuum" of extraconstitutional power, but rather rejected what may be regarded as its equivalent—a claim to "inherent" power.[263]

Reliance for that "residuum" is placed by the Yale memorandum on dicta in the *Curtiss-Wright* case,[264] itself dismissed by Jackson because it "involved, not the question of the President's power to act without congressional authority, but the question of his right to act . . . in accord with an Act of Congress."[265] Justice Sutherland, it is true, threw off a dictum that in foreign affairs there are supraconstitutional powers outside the sphere of "enumerated" powers on the theory that since the states severally never possessed international powers, such powers could not have been carved from the mass of state powers but obviously were transmitted to the United States from some other source . . . the powers of external sovereignty passed from the Crown not to the colonies severally, but to the colonies in their collective and corporate capacity as the United States. . . . Sovereignty is never held in suspense. When, therefore, the external sovereignty of Great Britain in respect of the colonies ceased, it immediately passed to the Union. See *Penhallow v. Doane,* 3 Dall 54, 80–81.[266]

Sutherlaind did violence to the historical facts.[267] To the minds of the colonists, "thirteen sovereignties," as Chief Justice John Jay[268] said in 1793, "were considered as emerged from the principles of the Revolution."[269] For this we need go no further than the Articles of Confederation, agreed to by the Continental Congress on November 15, 1977, signed by all but Maryland in 1778 and 1779, and ratified March 1, 1781.[270] Article II recited, "Each State retains its sovereignty, freedom and independence, and every power . . . which is not . . . expressly delegated to the United States, in Congress assembled."[271] Article III provided, "The said states hereby severally enter into a firm league of friendship with each other for their common defense . . ."[272] They entered into a "league"; they did not purport to create a "corporate" or "sovereign" body. Article IX declared that "The United States, in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war . . . [and] entering into treaties and alliances."[273] This express grant of war and treaty powers undermines Justice Sutherland's central premise that these powers were derived from "some other source" than the several states. If the fledgling Continental Congress possessed "inherent" war and treaty powers from the outset, the express grant was superfluous.

Nor did the Framers share Justice Sutherland's views on sovereignty. More pragmatic than he, they spoke, not in terms of sovereignty, but of power; and they were quite clear that the *people,* not even the cherished states, were sovereign. Power flowed from them, not from the Crown to fill a vacuum. Hear James Iredell in North Carolina: "It is necessary to particularize the power intended *to be given* . . . as having no *existence* before. . . ."[274] The people, stated Madison in the Convention, "were in fact, the fountain of all power";[275] a part they conferred upon the individual states. In the clause "We, the people of the United States . . . do ordain and establish this Constitution," said Chief Justice Jay, "we see the people acting as sovereign of the whole country."[276] "Sovereignty" was taken by the people to themselves.

Justice Sutherland's citation of *Penhallow v. Doane* referred solely to the opinion of Justice William Paterson,[277] ignoring the contrary majority opinions of Justices Iredell and Cushing. The case arose on a state of facts that antedated the adoption of the Articles of Confederation; and Paterson stated that the Continental Congress exercised the "rights and powers of war and peace" that "states individually did not." This does not tell the whole story. For example, Congress resolved on November 4, 1775, "That the town of Charleston ought to be defended against attempts that may be made to take possession thereof by the enemies of America, and that the convention or council of safety of the colony of South Carolina, ought to pursue such measures, as to them shall seem most efficacious for the purpose, and that they proceed immediately to erect such fortifications and batteries in or near Charleston, as will best conduce to promote its security, the expence to be paid by the said Colony."[278] Other testimony that the war-making power was thought to reside in each of the colonies is furnished by the July 12, 1776, draft of the Articles of Confederation: "The said Colonies unite themselves . . . and hereby severally enter into a firm League of Friendship . . . binding the said Colonies to assist one another against all Force offered to or attack made upon them. . . ."[279] Indeed, as Justice Chase was to mark in a cognate case, the very fact of delegation of war power by the states to the Congress demonstrates that the states must have "rightfully possessed" it.[280] In course of time the states did not "individually" exercise the power of war; but that did not spring from absence of original power but from a voluntary surrender expressed both in the article IX delegation and in article XIII of the 1776 draft Articles: "No Colony . . . shall engage in any War without the previous Consent of the United States assembled," a provision that was preserved in article VI of the Articles as adopted.[281]

Justice James Iredell, whose opinion in *Penhallow* went unnoticed by Sutherland, understood all this full well. Each province, he pointed out, had comprised "a body politic," in no wise connected with the others "than as being subject to the same common sovereign."[282] "If Congress," he continued, "previous to the articles of confederation, possessed any authority, it was an authority derived from the people of each province. . . ."[283] "[T]his authority was conveyed by each body politic separately, and not by all the people in the several . . . states jointly. . . ."[284] And he concluded that the war-making authority "was not possessed by congress, unless given by all the states."[285] In this view he was joined by Justice William Cushing;[286] and both are abundantly confirmed by the specific grants of war and treaty powers to the Congress in the Articles of Confederation.

Reliance for "inherent" war and treaty powers that antedate the Articles of Confederation also has been placed upon some remarks of Justice Chase[287] in *Ware* v. *Hylton*:[288] "The powers of Congress originated from necessity . . . ; they were revolutionary in their very nature. . . . It was absolutely and indispensably necessary that Congress should possess the power of *conducting* the war against *Great Britain,* and therefore if not expressly given by all (as it was by some [who had ratified in 1778]) of the States . . . Congress did rightfully possess *such* power."[289] A simpler and more prosaic explanation is at hand. Sitting and

Footnotes at end of article.

working together, the delegates from the thirteen states, who as early as July, 1776, proposed in the draft Articles of Confederation to reduce to writing the necessary delegation by the states to Congress and who agreed to the Articles of Confederation in November, 1777, presumably were agreed that the conduct of the war required centralization and thus authorized the necessary "confederated" acts pending formal adoption of the proposed Articles. Roughly that view was taken by Iredell, one of the great Founders who led the struggle for adoption of the Constitution in North Carolina.

The invocation of the treaty with France signed by Benjamin Franklin and his fellow commissioners in February, 1778, and ratified by Congress in May, little advances the argument for "inherent" national power.[290] Franklin and the other commissioners had proceeded to France under express instructions to enter into a treaty with the King of France, carrying with them "letters of credence" (September, 1776), running *not* from the Congress but from "the *delegates* of the United States of New Hampshire, Massachusetts Bay" and each of the other enumerated states.[291] Doubtless the delegates from the several states believed themselves authorized to send Franklin in search of an alliance, so that again we have a power delegated by the states. The resulting treaty, it bears emphasis, was concluded with "the thirteen United States of North America, viz. New Hampshire, Massachusetts Bay" and so forth,[292] scarcely testimony that France deemed it was concluding an alliance with a "sovereign" nation. But give the "revolutionary central government" its widest scope and the question remains: what relevance do deeds resulting from "revolutionary necessity" in the absence of an existing structure have to a subsequent written document, such as the Articles of Confederation, which carefully enumerates the powers granted and reserves all powers not "expressly delegated"? John Jay wrote of the cognate treaty making power in *The Federalist Number 64*, that it "should not be *delegated* but . . . with such precautions, as will afford the highest security . . . ." [293]

Study of the constitutional records convinces that the Framers jealousy insisted on a federal government of enumerated, strictly limited powers.[294] Avowal of a supraconstitutional "residuum" of powers not granted expressly or by necessary implication [295] would have affrighted them and barred adoption of the Constitution.[296] We have the testimony of James Wilson that *all* the "powers naturally connected" with that of declaring war were conferred on the Congress.[297] And John Quincy Adams, after serving as Secretary of State and as President, stated, "In the authority given to Congress by the Constitution . . . to declare war, all the powers incidental to war are, by necessary implication, conferred upon the Government of the United States." The "war power," be continued, "is strictly constitutional." [298] To invoke an extraconstitutional "residuum" of war powers can only deepen the "twilight" gloom.[299]

V. EXCLUSIVE PRESIDENTIAL POWER OVER WARMAKING

The statement in the Yale memorandum that there is an "exclusive" war-making zone where the President "is authorized to act even against the express will of Congress," [300] requires a caveat insofar as it is rested on the scheme set forth by Justice Jackson in *Youngstown*. Jackson proferred three categories for presidential activities. First, when "the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate." The steel seizure, he said, "is eliminated from the first" category "for it is conceded that no Congressional authorization exists for this seizure." [301]

His second category "is a zone of twilight in which he the [President] may have concurrent authority, or in which its distribution is uncertain." Here again presidential authority is subject to that of Congress. The steel seizure, said Jackson, "seems clearly eliminated from that class because Congress . . . has covered [the field] by three statutory policies inconsistent with this seizure." [302] Given concurrent powers, as Chief Justice Marshall held in an early war-powers case,[303] a congressional statute must prevail.

There remains the third category: "When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter." [304] Judicial caution is required in such cases lest "by disabling the Congress from acting upon the subject . . the equilibrium established by our constitutional system" be disturbed.[305] Jackson stressed that where the Court can sustain the President only by holding that his actions were "within his domain and beyond control by Congress," the President's position was "most vulnerable to attack and in the least favorable of possible constitutional postures." [306] Jackson went on to reject the argument that Truman's commitment of troops to Korea vested him with power to seize the nation's steel mills.[307] He could find no such power under the "executive power," the "commander-in-chief power," or in an "inherent power" (presumably drawn out of the "residuum") which he preemptorily rejected.[308]

If, following Jackson's analysis, we are to speak of an "exclusive" presidential power "beyond control by Congress," we should keep in mind Jackson's warning that such claims are the most difficult to sustain. Where they are raised the "presidential power [is] most vulnerable to attack and in the least favorable of possible constitutional postures." [309]

Is the role of commander in chief altogether beyond the control on Congress? This can be confidently affirmed of one set of circumstances only: once war is commenced, Congress cannot conduct a campaign; it cannot "deprive the President of command of the army and navy." But in the words of Justice Jackson, "only Congress can provide him an army or navy to command." [310] What it gives it can take away, in whole or in part.[311]

Presidential peace-time deployment of the armed forces in troubled areas sharply focuses the problem. Testifying in 1951 on behalf of President Truman's plan to station six divisions of American soldiers in Europe, Secretary of State Acheson asserted:

"Not only has the President the authority to use the Armed Forces in carrying out the broad foreign policy of the United States and implementing treaties, but it is equally clear that this authority may not be interfered with by Congress in the exercise of powers which it has under the Constitution." [312]

Acheson spoke *ex cathedra*, disdaining the citation of authority. His claim will not withstand scrutiny. Deployment of the armed forces in "hot-spots" may invite or provoke attack, dangerously risk American involvement in war,[313] and present Congress with a *fait accompli*.

It is Congress that is to "provide for the common Defense," [314] which implies the right to decide what is requisite thereto. Congress also is "to raise and support armies," and by necessary implication it can withhold or withdraw that support.[315] In determining the size of the army it will "support" it is entitled to weigh priorities. Shall troops be stationed in Germany or deployed in Cambodia? Indeed the constitutional mandate that "no appropriation" for support of the armies "shall be for a longer term than two years" implies that it is for Congress to decide at any point whether further appropriations should be made and in what amounts.[316] The duty of Congress, in Hamilton's words, "to deliberate upon the propriety of keeping a military force on foot," [317] surely comprehends the right to insist that a portion of the military forces should not be kept "on foot" in Vietnam or Europe.[318]

With the power of appropriation goes the right to specify how appropriated moneys shall be spent. This is not a mere matter of logic but of established parliamentary practice. After 1665, states Hallam, it became "an undisputed principle" that moneys "granted by Parliament, are only to be expended for particular objects specified by itself. . . ." [319] The Framers were quite familiar with parliamentary practice; [320] and we may be sure that in reposing in Congress the power of raising revenues and of making and reviewing appropriations for support of the armies they conferred the concomitant right to "specify" the "particular objects upon which its appropriations are to be expended." [321] So an early Congress read its constitutional powers in enacting a statute that all "sums appropriated by law for each branch of expenditure in the several departments shall be solely applied to the objects for which they are respectively appropriated." [322] The 1971 Act which prohibits use of appropriated funds "to finance the introduction of United States ground combat troops into Cambodia" is in this tradition.[323] If we may safely infer that the long-established parliamentary practice was adopted by the Founders, such statutes do not constitute an invasion of the President's powers as commander in chief.[324]

There remains the congressional power "To make Rules for Government and the Regulation of the land and naval forces." [325] This was added from the existing Articles of Confederation; but the Framers omitted the phrase that followed—"and directing their operations" [326]—having in mind that the President would be commander in chief who, in the words of the New Jersey Plan, would "direct all military operations." [327] Thus the Framers separated the presidential direction of "military operations" in time of war from the congressional power to make rules "for the government and regulation of the armed forces," a plenary power enjoyed by the Continental Congress. The word "government" connotes a power to control, to administer the government of the armed forces; the word "regulate" connotes a power to dispose, order, or govern. Such powers manifestly embrace congressional restraint upon deployment of the armed forces. Since the Constitution places no limits on the power to support and to govern the armed forces and to make or withhold appropriations therefor, arguments addressed to the impracticability of regulating all deployments go to the wisdom of the exercise, not the existence, of the congressional power.

The commander in chief clause empowers the President to conduct a campaign once a war is initiated by Congress or by foreign invasion of American soil, not to create incidents which embroil the nation in war. No "first General" may provoke, extend, or persist in a war against the will of Congress.[328] The duty of the President is to "take care that the laws be faithfully executed," and nothing in the Constitution absolves him from that duty in the role of commander in chief. Indeed the early state constitutions were careful to spell out that the executive was subject to the laws in his capacity of commander in chief.[329] In fine, the constitutional distribution of powers refutes Acheson's assumption that the President may deploy the armed forces as he sees fit in disregard of congressional will. This is the logic of Jefferson's statement that "We have already given in example one effectual check

Footnotes at end of article.

to the Dog of war by transferring the power of letting him loose from the Executive to the Legislative body, from those who are to spend to those who are to pay." [330]

Against this background, I submit, the constitutionality of the proposed War Powers Bill is unassailable. In limiting the President's use of the armed forces "to repel an armed attack upon the United States," section 3 of the Bill is declaratory of the Madison-Gerry "sudden attacks" remark in the Convention, upon which any claim to presidential power, apart from the "first General's" direction of the military forces, ultimately rests.[331] The section 3 authorization to repel an attack on the armed forces "located outside the United States," and "to forestall the direct and imminent threat of such an attack," goes beyond the Madison-Gerry remark; but it lies within the power of Congress, and it enables the President to meet modern exigencies.

I would add a requirement that congressional authorization be had for deployment of the armed forces outside the United States, recognizing that matters of practical convenience may be left to the legislative draftsmen. My concern herein has not been with the sufficiency or wisdom of the Javits Bill, but with whether Congress is prevented by the Constitution from enacting a bill which would draw back unto itself powers conferred upon it by the Constitution and preempted by the President without constitutional warrant. Only if the "intention of the Framers" counts for little,[332] is it possible to argue on the basis of the "125 incidents" that "a practice so deeply embedded in our constitutional structure should be treated as decisive of the constitutional issue." [333]

Who would maintain that the President, by proclamation, can revise the Constitution in particulars he considers sadly wanting? Why should his progressive revision by actions rather than by writing be entitled to more respect? The fact that Congress countenanced the encroachments cannot lift them to the plane of constitutional dogma any more than the President and Congress can revise the Constitution by mutual consent without submitting an amendment to the people. At bottom the President lays claim "to set aside, not a particular clause of the Constitution, but its most fundamental characteristic, its division of powers between Congress and the President, and thereby gather into his own hands the combined power of both." [334] It cannot be that a statute which seeks to give effect to the original intention of the Framers, aptly expressed in the text of the Constitution, is unconstitutional.[335]

V. CONCLUSION

Surveying the labors of the Framers some forty years later, Joseph Story said:

"[T]he power of declaring war is . . . so critical and calamitous, that it requires the utmost deliberation, and the successive review of all the councils of the nation . . . The representatives of the people are to lay the taxes to support a war [and to draft men for combat], and therefore have a right to be consulted, as to its propriety and necessity".[336]

For this reason the Constitution conferred virtually all of the war-making powers upon the Congress, leaving to the President only the power "to repel sudden attacks" on the United States. They meant, in the words of James Wilson, to put it beyond the power of a single man to hurry us into war. Their wisdom is confirmed by recent events: the mounting frightfulness of war, its staggering costs in blood, money, disruption of the national and international economies, the wounds it inflicts on the national psyche—alienation of the young, desertion, draft evasion—all cry out for consultation before plunging into war.[337]

Some have referred to Congress' occasional lack of wisdom,[338] but that lack cannot justify a presidential take-over of power confided to Congress. Courts, for eaxmple, cannot overturn legislation merely because it is unwise the choice of options is for the grantee of the power. Then too, lack of wisdom may also be exhibited by the President, as the Vietnam conflict shows. Arthur Schlesinger, who sat close to the throne while some of the fateful commitments were being made, stated that "in retrospect, Viet Nam is a triumph of the politics of inadvertence",[339] and if we are to credit General de Gaulle, a triumph of wrongheadedness.[340] Perhaps the decisions would not have been better had they been debated in Congress, but, as George Reedy, former special assistant and then Press Secretary to President Lyndon Johnson, remarked, they could not have "been much worse." [341] Since a nation of many millions cannot be convened in a town meeting, the great arena of public debate is necessarily the Congress.[342] Debate may bring into the open risks that executive advisers have overlooked; it may deflate the supposed advantages of a recommended course of action; it substitutes the experience of the many for that of the one; and above all it may serve to secure the consent of the people.

"[W]ithin the executive branch," states Reedy, "there exists a virtual horror of public debate on issues," compounded by the complacent assumption that the executive branch "have some sort of a truth that comes out of their technical expertise and that this truth . . . is not something to be debated." [343] But executive decision itself suffers from a deep-seated malady; as Reedy points out, it lacks the benefit of "adversary discussion of issues"; the "so-called debates are really monologues in which one man is getting reflections of what he sends out." [344] That courtiers are apt to reflect the desires of the monarch needs little documentation.[345]

Of course public criticism is painful; but official pain is outweighed by public benefit. A seasoned observer, Sir Ivor Jennings, stated, "Negotiations with foreign powers are difficult to conduct when a lynx-eyed Opposition sits suspiciously on the watch. We might have a better foreign policy if we had no Parliament: but we might have a worse. . . . We are a free people because we can criticize freely. . . ." [346] It is quite likely, as Reedy concludes, that the present division in our country, the loss of confidence in the government, results in large part from the fact that the Vietnam commitments were made without consultation with the people.[347]

Whatever the merits of debate, this is a requirement of our democratic system. Those who are to bleed and die have a right to be consulted, to have the issues debated by their elected representatives.[348] Unlike the totalitarian nations, we have not placed our faith in a "Fuehrer," a "Big Brother"; a benign dictatorship is not for us.[349] It is for that reason that there is an "American propensity to substitute 'for . . . the question of the beneficial *use* of the powers of government . . . the question of their *existence*.'" [350] Events since 1936, when Corwin penned the quoted words, have demonstrated still again that "use" of power may be not only "beneficial" but "malign, fearsome, hateful and dangerous." [351]

It was because the Framers were alive to the insatiable maw of power that they contrived the separation of powers.[352] It remains a bulwark against oppression, not a hollow shibboleth.[353] "With all its defects, delays and inconveniences," said Justice Jackson, "men have discovered no technique for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations." [354] That is what the Framers provided in distributing the war-powers, and to that scheme we must return.

FOOTNOTES

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[1] Buchan, *Questions About Vietnam*, in 2 THE VIETNAM WAR AND INTERNATIONAL LAW 35 (R. Falk ed. 1969). Buchan is Director of the Institute for Strategic Studies, London.

[2] *See* text accompanying notes 218–19 *infra*.

[3] *See* Reveley, *Presidential War-Making: Constitutional Prerogative or Usurpation?*, 55 VA L. REV. 1243 (1969); Rostow, *Great Cases Make Bad Law: The War Powers Act*, 50 TEXAS L. REV. 833 (1972); Wormuth, *The Nixon Theory of the War Powers: A critique*, 60 CALIF. L. REV. 623 (1972); Wormuth, *The Vietnam War: The President versus the Constitution*, in 2 THE VIETNAM WAR AND INTERNATIONAL LAW 711 (R. Falk ed. 1969). Note, *Congress, the President, and the Power to Commit Forces to Combat*, 81 HARV. L. REV. 1771 (1968) [hereinafter cited as *Power to Commit Forces*].

[4] N.Y. Times, Apr. 14, 1972, at 1, col. 3.

[5] S. 2956, 92d Cong., 2d Sess. §§ 3, 5 (1972).

[6] N.Y. Times, Mar. 30, 1972, at 10, col. 1.

[7] Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 647 (1952) (concurring opinion).

[8] Rostow, *supra* note 3.

[9] *Id.* 900.

[10] *Id.* 834.

[11] *Id.* 836.

[12] *Id.* 897, 900.

[13] *Id.* 833. *See id.* 835, 840.

[14] Yougstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 654 (1952) (concurring opinion).

[15] Rostow, *supra* note 3, at 844. This he does "because the animating principles of their project—democratic responsibility, the theory of checks and balances in the exercise of shared powers, and civilian control of the military—have retained their vitality, and must continue to do so if we hope to survive as a free and democratic society." *Id.*

[16] *Id.* 886.

[17] *Id.* 843.

[18] *Id.* 835.

[19] *Id.* 899. The Korean War, Rostow states, "became unpopular and was a decisive factor both in Truman's decision not to seek a second term and in the elections of 1952." *Id.* 871.

[20] "Of course Congress should participate," says Professor Rostow, "in decisions involving major and sustained hostilities, through processes of continuous consultation. . . . That is now the pattern of our politics, and of our constitutional usage." *Id.* 842. It is precisely because there is no such pattern that the Javits Bill went through the Senate. There was no consultation prior to the invasion of Cambodia, note 249 *infra*, or the mining of Haiphong, although the latter might have precipitated a fearful confrontation. The "pattern" was rolling dice out of sight of Congress.

[21] JOHN MARSHALL'S DEFENSE OF *McCulloch v. Maryland* 190–91 (G. Gunther ed. 1969), discussed in detail at text accompanying notes 150–56 *infra*.

[22] Trial of Horne Tooke, 25 How. St. Tr. 1, 268 (1794).

[23] 343 U.S. 579, 634 (1952) (concurring opinion).

[24] Rostow, *supra* note 3, at 849.

[25] One after another Jackson dismissed claims based on the executive power, the commander in chief clause, and inherent power. Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 640–44, 646–52) (concurring opinion). Jackson refused to "amend" the work of the Framers. *Id.* at 650.

[26] E. CORWIN, THE PRESIDENT: OFFICE AND POWERS 4 (3d ed. 1948).

[27] G. TREVELYAN, ILLUSTRATED HISTORY OF ENGLAND 391, 401 (1956).

[28] B. BAILYN, THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION viii, xi, 34–35, 53 (1967). "The 'founding fathers' owed their mental sustenance much more largely to seventeenth-century England than to the

England with which they were themselves contemporary." E. CORWIN, THE TWILIGHT OF THE SUPREME COURT: A HISTORY OF OUR CONSTITUTIONAL THEORY 102 (1934).

[29] 1. J. WILSON, WORKS 292–93 (R. McCloskey ed. 1967). Wilson felt constrained in 1791 to admonish the people that it was "high time" to regard executive officers and judges equally with the legislature as representatives of the people. *Id.* 293.

[30] E. CORWIN, *supra* note 26, at 4–5. For example, the Virginia Constitution of 1776 provided that the Governor shall "exercise the executive powers of government, according to the laws of this Commonwealth and shall not, under any pretence, exercise any power or prerogative, by virtue of any law, statute or custom of England." 2 B. POORE, THE FEDERAL AND STATE CONSTITUTIONS, COLONIAL CHARTERS, AND OTHER ORGANIC LAWS OF THE UNITED STATES 1910–11 (1878). Section 33 of the Maryland Constitution makes similar provision. 1 *id.* 825. Corwin justifiably concludes that under the pre-1787 state constitutions, " 'Executive power' . . . was cut off entirely from the resources of the common law and of English constitutional usage." E. CORWIN, *supra* note 26, at 5. In the Federal Convention James Wilson stated that he "did not consider the Prerogatives of the British Monarch as a proper guide in defining the Executive powers. Some of these prerogatives were of a Legislative nature. Among others that of war & peace. . . ." 1 RECORDS OF THE FEDERAL CONVENTION of 1787, at 65–66 (M. Farrand ed. 1911) [hereinafter cited as RECORDS].

[31] Professor Rostow's reference to the "weakness of the Executive under the Articles of Confederation . . . ," Rostow, *supra* note 3, at 844, must therefore be taken to mean the absence of the executive.

[32] Rostow, *supra* note 3, at 840. The instructions given Washington recited that "you are . . . punctually to observe and follow such orders and directions from time to time as you shall receive from this or a future Congress. . . ." *Id.* 840 n. 14.

[33] For a collection of authorities, see R. BERGER, CONGRESS V. THE SUPREME COURT 10–11(1969).

[34] Rostow, *supra* note 3, at 833.

[35] THE FEDERALIST No. 48, at 322 (Mod. Lib. ed. 1937) (J. Madison).

[36] 1 RECORDS, *supra* note 30, at 66, 83, 90, 96, 101, 113, 119, 152, 425; 2 *id.* 35–36, 101, 278, 513, 632, 640. In Virginia Patrick Henry said, "Your President may easily become a king." 3 J. ELLIOT, DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION 58 (2d ed. 1836). *See id.* 60; 4 *id.* 311. *See also* notes 42, 72, 84 *infra;* text accompanying note 53 *infra.*

[37] THE FEDERALIST No. 51, at 338 (Mod. Lib. ed. 1937) (J. Madison). *See also* Madison's explanation of the limited nature of the President's war-making power, notes 75–76 *infra.* Justice Brandeis referred to the deep-seated conviction of the English and American people that they "must look to representative assemblies for the protection of their liberties." Myers v. United States, 272 U.S. 52, 294–95 (1926) (dissenting opinion).

[38] Note 31 *supra.*

[39] RECORDS, *supra* note 30, at 65.

[40] E. CORWIN, *supra* note 26, at 11.

[41] 1 RECORDS, *supra* note 30, at 66.

[42] *Id.* 66–67 (emphasis added).

[43] King's notes recorded: "Mad: agrees with. Wilson in his definition [*sic*] of executive powers . . . [they] do not include the Rights of war & peace & c. but the powers shd. be confined and defined—if large we shall have the Evils of elective Monarchies. . . ." *Id.* 70.

[44] 2 J. ELLIOT, *supra* note 36, at 128; 4 *id.* 107. For the governors' powers, see note 30 *supra.*

[45] 3 J. ELLIOTT, *supra* note 36, at 201.

[46] 2 *id.* 512–13 (emphasis in original).

[47] 4 *id.* 106, 136.

[48] 3 RECORDS, *supra* note 30, at 111.

[49] 4 J. ELLIOT, *supra* note 36, at 258.

[50] *Id.* 120. "Fear of a return of Executive authority like that exercised by the Royal Governors or by the King had been ever present in the States from the beginning of the Revolution." C. WARREN, THE MAKING OF THE CONSTITUTION 173 (1947). Warren wrote:

It is probable that Madison and Randolph in preparing the Virginia Plan had in mind the conception of Executive power which Thomas Jefferson had set forth in his Draft of a Fundamental Constitution for Virginia in 1783, as follows: "By Executive power, we mean no reference to those powers exercised under our former government by the Crown as its prerogative, nor that these shall be the standard of what may or may not be deemed the rightful powers of the Governor. We give them those powers only, which are necessary to execute the laws."
Id. 177.

[51] Rostow, *supra* note 3, at 847. For Madison, see text accompanying notes 75–76 *infra.*

[52] THE FEDERALIST No. 67, at 436 (Mod. Lib. ed. 1937) (A. Hamilton).

[53] THE FEDERALIST No. 69, at 448 (Mod. Lib. ed. 1937) (A. Hamilton), quoted at text accompanying note 71 *infra.*

[54] THE FEDERALIST No. 71, at 468 (Mod. Lib. ed. 1937) (A. Hamilton).

[55] THE FEDERALIST No. 77, at 501 (Mod. Lib. ed. 1937) (A. Hamilton) (emphasis added). In the First Congress, Thomas Hartley commented that the President's "powers, taken together, are not very numerous." 1 ANNALS OF CONG. 482 (1789). (2d ed. 1836, print bearing running-title "History of Congress")

[56] *See* text accompanying note 71 *infra.*

[57] Rostow, *supra* note 3, at 841.

[58] See note 30 *supra.* Bagehot said that the Framers "shrank from placing sovereign powers anywhere. They feared it would generate tyranny; George III had been a tyrant to them, and come what might, they would not make a George III." W. BAGEHOT, THE ENGLISH CONSTITUTION 218 (1964). "From the American Revolution we inherited a stubborn distrust of committing power to the executive." J.W. HURST, THE LEGITIMACY OF THE BUSINESS CORPORATION 40 (1970).

[59] Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 642 (1952) (Jackson, J., concurring).

[60] Text accompanying notes 75–76, 84–85 *infra.*

[61] McCloskey, *Introduction* to J. WILSON, *supra* note 29, at 2.

[62] 2 J. ELLIOT, *supra* note 36, at 528.

[63] 1 J. WILSON, *supra* note 29, at 433 (emphasis added). The several powers are set out in U.S. CONST. art. I, § 8.

[64] *See* note 93 *infra.*

[65] 1 J. WILSON, *supra* note 29, at 440. In the Virginia ratification convention George Mason "admitted the propriety of his [the President's] being commander-in-chief, so far as to give orders and have a general superintendency; but he thought it would be dangerous to let him command in person." 3 J. ELLIOT, *supra* note 36, at 496. *See also* the New Jersey Plan, discussed at text accompanying note 67 *infra.*

[66] 24 JOURNALS OF THE CONTINENTAL CONGRESS 1774–1789, at 242–43 (1937). Distrust of executive power, of executive war-making propensities, see text accompanying notes 29–30, 36, 50, 52–56 *supra,* makes it altogether unlikely that the Framers meant to enlarge those powers beyond the conduct of operations once war was commenced by Congress or enemy invasion, as Hamilton confirms. *See* text accompanying notes 69, 71, 144 *infra,* and note 92 *infra.*

[67] Article VII of the Massachusetts Constitution of 1780 provides that the Governor shall be "commander-in-chief of the army and navy" with power to "repel, resist, expel" those who attempt the invasion of the Commonwealth, and entrusts him "with all these and other powers incident to the offices of captain-general and commander-in-chief, and admiral, to be exercised agreeably to the rules and regulations of the constitution and the laws of the land and not otherwise." 1 B. POORE, *supra* note 30, at 965–66. For similar provisions adopted by other states see *id.* 275 (Delaware), and 2 *id.* 1288 (New Hampshire).

Hamilton stated in THE FEDERALIST No. 69, at 449 (Mod. Lib. ed. 1937): "[T]he constitutions of several of the States expressly declare their governors to be commanders-in-chief . . . and it may well be a question, whether those of New Hampshire and Massachusetts in particular, do not, in this instance, confer larger powers upon their respective governors, than could be claimed by a President of the United States."

[68] 1 RECORDS, *supra* note 30, at 244. The Virginia Plan contained no express provision on the subject, incorporating "the Legislative Rights vested in Congress by the Confederation." *Id.* 21. In North Carolina, Robert Miller demanded that "Congress ought to have power to direct the motions of the army," 4 J. ELLIOT, *supra* note 36, at 114.

[69] 1 RECORDS, *supra* note 30, at 292.

[70] Corwin said of *The Federalist Number 78:* "It cannot be reasonably doubted that Hamilton was here, as at other points, endeavoring to reproduce the matured conclusions of the Convention itself." E. CORWIN, THE DOCTRINE OF JUDICIAL REVIEW 44 (1914). For example, Richard Spaight, a delegate to the Federal Convention, said in the North Carolina ratification convention that he "was surprised that any objection should be made to giving the *command* of the *army* to one man; that it was very well known that the direction of an army could not be properly exercised by a numerous body of men." 4 J. ELLIOT, *supra* note 36, at 114–15 (emphasis added). Lofgren concludes that "the evidence indicates" that the Hamiltonian view with respect to " 'the President's authority as commander-in-chief' . . . accorded well with that of his contemporaries in the state debates." Lofgren, *War-Making Under the Constitution: The Original Understanding,* 81 YALE L. J. 762, 687 (1972).

[71] THE FEDERALIST No. 69, at 448 (Mod. Lib. ed. 1937) (A. Hamilton).

[72] THE FEDERALIST No. 67, at 436 (Mod. Lib. ed. 1937) (A. Hamilton). Referring to the proposal to vest appointive power in the President, John Rutledge said in the Federal Convention, "The people will think we are leaning too much towards Monarchy." 1 RECORDS, *supra* note 30, at 119.

[73] E. CORWIN, *supra* note 26, at 276.

[74] Fleming v. Page, 50 U.S. (9 How.) 603, 615 (1850). Until 1850, said Corwin, the commander in chief clause "was still . . . the forgotten clause of the constitution." E. CORWIN, TOTAL WAR AND THE CONSTITUTION 15 (1947). So it appeared to President Buchanan, as is disclosed by his message of December, 1859: "after Congress shall have declared war and provided the force necessary to carry it on, the President, as Commander in Chief . . . can alone employ this force in making war against the enemy." 5 MESSAGES AND PAPERS OF THE PRESIDENTS 1789–1897, at 569 (J. Richardson ed. 1907) [hereinafter cited as MESSAGES]. "Without the authority of Congress," Buchanan continued, "the President can not fire a hostile gun in any case except to repel the attacks of an enemy." *Id.* 570.

[75] 6 J. MADISON, *Letters of Helvidius,* in WRITINGS 138, 174 (G. Hunt ed. 1906).

[76] *Id.* 148. *See also* text accompanying note 138 *infra.*

[77] H. COMMAGER, DOCUMENTS OF AMERICAN HISTORY 113 (7th ed. 1963).

[78] 1 RECORDS, supra note 30, at 21, 243.

[79] Note 42 *supra.* Article 26 of the South Carolina Constitution of 1776 carefully spelled out that the governor "and commander-in-chief shall have no power to make war or peace, or enter into any final treaty, without the consent of the general assembly. . . ." B. POORE, *supra* note 30, at 1619. *See also* J. WILSON, *supra* note 29, to the effect that the war power is legislative.

[80] 2 RECORDS, *supra* note 30, at 182.

[81] C. WARREN, THE MAKING OF THE CONSTITUTION 389 (1928).

[82] 2 RECORDS, *supra* note 30, at 318.

[83] 1 *id.* 292.

[84] 2 *id.* 318. Butler later explained to the South Carolina legislature that the grant of the power to "make war" to the President "was objected to, as throwing into his hands the influence of a monarch, having an opportunity of involving his country in a war. . . ." J. ELLIOT, *supra* note 36, at 263.

[85] 2 RECORDS, *supra* note 30, at 318–19.

[86] *Id.* at 318. The State Department distorts this interchange: "[I]t was suggested that the Senate might be a bettter repository. Madison and Gerry then moved to substitute 'to declare war' for 'to make war,' 'leaving to the Executive the power to repel sudden attacks.' It was objected that this might make it too easy for the Executive to involve the nation in war, but the motion carried with but one dissenting vote." OFFICE OF THE LEGAL ADVISOR, U.S. DEP'T OF STATE, THE LEGALITY OF THE UNITED STATES PARTICIPATION IN THE DEFENSE OF VIET NAM, *reprinted in* 75 YALE L.J. 1085, 1101 (1966) [hereinafter cited as LEGAL ADVISOR'S MEMO]. From this one might infer that the Convention intended to "make it too easy for the Executive to involve the nation in war"; but in fact *no* objection was made to the Madison-Gerry motion, which merely gave effect to the Sherman-Mason-Gerry objections to the grant of war-making power to the President, except to "repel sudden attacks." *See* Wormuth, *The Vietnam War: The President versus the Constitution*, in 2 THE VIETNAM WAR AND INTERNATIONAL LAW 711, 713–17 (R. Falk ed. 1969).

[87] 2 RECORDS, *supra* note 30, at 319. Story explains that the role of commander in chief gives the President "command . . . of the public force . . . to resist foreign invasion . . . and the direction of war." 2 J. STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 1491 (5th ed. 1905).

[88] *Cf.* Ratner, *The Coordinated Warmaking Power—Legislative, Executive and Judicial Roles*, 44 S. CAL. L. REV. 461, 462 (1971). Clinton Rossiter concludes that "the Court has refused to speak about the powers of the President as Commander in Chief in any but the most guarded terms. . . . The breathtaking estimates of their war powers announced and acted upon by Lincoln and Roosevelt have earned no blessing under the hands of the judiciary." C. ROSSITER, THE SUPREME COURT AND THE COMMANDER IN CHIEF 4–5 (1951). Since he wrote, the Court gave such claims a decided setback in Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952).

[89] *E.g., Power to Commit Forces, supra* note 3, at 1773; S. REP. No. 797, 90th Cong., 1st Sess. 8 (1967).

[90] Ratner, *supra* note 88, at 467.

[91] Text accompanying note 79 *supra*.

[92] In the Convention Hamilton stated that the "Executive ought to have but little power." He proposed that the Senate should "have the sole power of declaring war" and that the Executive should "have the direction of war when authorized or begun." 1 RECORDS, *supra* note 30, at 290, 292. Be it remembered that the Massachusetts Constitution, which expressly authorized the commander in chief to "repel, resist, [and] expel" those who attempted invasion of the Commonwealth (thereby implying that this was not an inherent power of the commander), made the exercise of that power subject "to the laws of the land and not otherwise." Note 67 *supra*. And Hamilton explained that the powers of the Massachusetts commander were "larger . . . than could be claimed by the President." *Id.*

[93] In the North Carolina convention, James Iredell stated, "The President has not the power of declaring war by his own authority. . . . Those powers are vested in other hands. The power of declaring war is expressly given to Congress . . . ." 4 J. ELLIOT, *supra* note 36, at 107–08. Charles Pinckney said in South Carolina that "the President's powers did not permit him to declare war." *Id.* 287. These men did not contemplate that he could independently *make* war, leaving to Congress the empty formality of then "declaring" war.

[94] After adoption of the Madison-Gerry motion, Pierce Butler "moved to give the Legislature power of peace, as they were to have that of war." 2 RECORDS, *supra* note 30, at 319. His motion was adopted without objection, suggesting an understanding that the power of making war, except for "conduct" of the war, remained in Congress.

[95] Speaking of the need to "provide for the common defence," which by article I, § 8(1) is vested in Congress, Wilson said, "Defence presupposes an attack . . . We all know . . . the instruments necessary for defense when such an attack is made," and then went on to list the powers conferred upon Congress. 1 J. WILSON, *supra* note 29, at 433. This precludes an inference that the power to "repel sudden attack" was vested in the President ab initio, but rather as a result of ratification of the Madison-Gerry motion. So too, Chancellor R. R. Livingston, in the New York ratification convention, met objections that the Continental Congress did not have "the same powers" as the proposed Congress with the reply, "They have the very same . . . [including] the [exclusive] power of making war." 2 J. ELLIOT, *supra* note 36, at 278.

[96] *Cf.* Statement of Justice Jackson in Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 644 (1952) (concurring opinion). Governor Randolph, a Framer, told the Virginia ratification convention that "With respect to a standing army, I believe there was not a member in the federal convention who did not feel indignation at such an institution. . . . In order to . . . exclude the dangers of a standing army, the general defense . . . is left to the militia. . . ." 3 RECORDS, *supra* note 30, at 319. *Cf* 2 *id.* 330 (statements of L. Martin and E. Gerry). *See also id.* 326 (statement of G. Mason).

[97] Rostow, *supra* note 3, 850–51.

[98] Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 604 (1952) (concurring opinion).

[99] As a delegate to the Federal Convention, Hamilton may be thought to have had a grasp of the Convention's understanding of "international law." In his attack on Jefferson's restrained response to attacks by Tripoli pirates, Hamilton stated, "it belongs to Congress only, *to go to war*. But when a foreign nation declares or openly and avowedly *makes war* upon the United States . . . any declaration on the part of Congress is . . . unnecessary." 8 A. HAMILTON, *Letter No. 1 of "Lucius Crassus,"* in WORKS 249–50 (H. Lodge ed. 1904) (emphasis added).

"What the preponderance of the evidence suggests," states Lofgren, *supra* note 70, at 688, is that that Founders "conceived of the President's war-making role in exceptionally narrow terms." He concludes that "Congress' power 'to declare War' was not understood in a narrow technical sense but rather as meaning the power to commence war, whether declared or not." *Id.* 699.

The Lofgren article came to me as this Article was being readied for press; it is solely devoted to the "original intention" and represents the most thoroughgoing discussion of that matter. My conclusions, after having independently gone over much of the same material, coincide with his.

[100] S. REP. No. 606, 92d Cong., 2d Sess. 4 (1972). Professor Richard B. Morris also states that "the war-making power of the President was little more than the power to defend against imminent invasion when Congress was not in session." *Id.* 15.

[101] H. COMMAGER, *supra* note 77, at 112.

[102] The Committee of Detail recommended that no state should, without consent of Congress "engage in any War, unless it shall be actually invaded by Enemies, or the Danger of Invasion be so imminent, as not to admit of a Delay, until the Legislature of the United States can be consulted." 2 RECORDS, *supra* note 30 at 169.

[103] The explanation, in part, may be historical reluctance to permit executive deployment of troops outside the country. In 1701 an act provided that "Englishmen were not to be involved by a foreign king in war for the defence of territory not belonging to the English crown. Henceforth William was scrupulously careful to consult Parliament at every point." C. HILL, THE CENTURY OF REVOLUTION 1603–1714, at 278 (1961). The Massachusetts Constitution of 1780, article VII, provided that the governor should not march inhabitants "out of the limits" of the Commonwealth without their consent or "the consent of the general court [legislature]." 1 B. POORE, *supra* note 30, at 966. Lofgren, *supra* note 70, at 683, states that the presence of the state invasion provision "in the Constitution at least further suggests that Americans of that day need not have envisaged that the President as Commander in Chief would have an especially broad role in repelling sudden attack."

[104] R. BERGER, *supra* note 33, at 260–62.

[105] 25 U.S. (12 Wheat.) 19 (1827).

[106] McDougal & Lans, *Treaties and Congressional-Executive or Presidential Agreements: Interchangeable Instruments of National Policy: II*, 54 YALE L.J. 534, 612–13 (1945).

[107] For Professor Rostow, *Mott* involved "the President's power to call out the militia whenever he deems it desirable to do so." Rostow, *supra* note 3, at 890. The Act conferred no such carte blanche.

[108] 25 U.S. (12 Wheat.) at 30.

[109] My analysis leads me to dissent from the statement in the War Powers Report, S. REP. No. 606, 92d Congress., 2d Sess. 4 (1972), that the authorizations contained in § 3 of the War Powers Bill to repel attacks on the United States and to forestall imminent danger of such an attack "are recognized to be authority which the President enjoys in his independent Constitutional office as President/Commander-in-Chief."

[110] For the Act of 1839, see text accompanying note 124 *infra*.

[111] S. 2956, 92d Cong., 2d Sess. § 3(1) (1972).

[112] 381 U.S. 1 (1965).

[113] 299 U.S. 304 (1936).

[114] 381 U.S. 1, 17 (1965); Rostow, *supra* note 3, at 888–89. The analogical leap from the relatively innocuous delegation of authority to embargo arms to the belligerents in the Gran Chaco (South America) war—the issue in *Curtiss-Wright*—to the delegation of authority to propel the nation into an international holocaust cannot be lightly made. Wormuth, *supra* note 86, at 789, underlines the quite different, considerations that come into play.

[115] Wormuth, *supra* note 86, at 780–99; Wormuth, *The Nixon Theory of the War Power: A Critique*, 60 CALIF. L. REV. 623, 692–97 (1972).

[116] Wormuth, *supra* note 86, at 792.

[117] Wormuth, *The Nixon Theory of the War Power: A Critique*, 60 CALIF. L. REV, 623, 695 (1972).

[118] Wormuth, *supra* note 86, at 796.

[119] *Id.*

[120] Wormuth, *supra* note 117, at 694. For a discussion of *Curtiss-Wright*, see text accompanying notes 264–86 *infra*.

[121] 17 U.S. (4 Wheat.) 316 (1819).

[122] *Id.* at 415.

[123] S. 2956, 92d Cong., 2d Sess. § 3 (1972).

[124] Act of March 3, 1839, ch. 89, § 1, 5 Stat. 355.

[125] Wormuth, *supra* note 86, at 781; *cf. id.* 789.

[126] 293 U.S. 388 (1935).

[127] *Id.* at 415, *Zemel v. Rusk* also stated that it was not true that "simply because a statute deals with foreign relations, it can grant the Executive totally unrestricted freedom of choice." 381 U.S. at 17.

[128] *See* text accompanying note 111 *supra*.

[129] S. REP. No. 606, 92d Cong., 2d Sess. 4 (1972).

[130] *E.g.*, K. DAVIS, ADMINISTRATIVE LAW TEXT 32 (3d ed. 1972).

[131] When it concerns the powers of the *nation*, as distinguished from those of the *President*, we need to recall Hamilton's words, in *The Federalist Number 23*, respecting the "authorities essential to the common defence": "These powers ought to exist without limitation, *because it is impossible to foresee or define the extent and variety of national exigencies, or the correspondent extent and variety of the means which may be necessary to satisfy them.*" THE FEDERALIST No. 23, at 142 (Mod. Lib. ed. 1939) (A. Hamilton) (emphasis added). Any application of the delegation doctrine that would shackle the *nation* must yield to this necessity.

[132] LEGAL ADVISOR'S MEMO, *supra* note 86, at 1101.

[133] Rostow, *supra* note 3, at 857, finds Ratner's study one of the two "most judicious" in the field. I shall have occasion to comment on the core of this "most judicious" piece.

[134] Ratner, *The Coordinated Warmaking Power—Legislative, Executive, and Judicial Roles*, 44 S. CAL. L. REV. 461, 467 (1971), *quoted in* Rostow, *supra* note 3, at 865.

[135] Nevertheless Rostow, *supra* note 3, at 886, is critical of those who "discover the source of their rule in what they regard as the original intent of the men who gave Congress the power 'to declare war,' despite 182 years of opinion and practice to the contrary."

[136] *Id.* 887–92. According to Rostow, *id.* 835, 843, the Javits Bill "would permit a plenipotentiary Congress to dominate the Presidency (and the courts as well) more completely than the House of Commons governs England . . ."; it "seeks to substitute parliamentary government for the tripartite constitution we have so painfully forged."

[137] THE FEDERALIST No. 48, at 322 (Mod. Lib. ed. 1937) (J. Madison), *quoted in* Rostow, *supra* note 3, at 833. *See* text accompanying notes 31–37 *supra*.

[138] 6 J. MADISON, *supra* note 75, at 174 (emphasis partially added). *Cf.* Letter from Alexander Hamilton to Secretary of War James McHenry, May 17, 1798, *reprinted in* 10 A HAMILTON, WORKS 281 (H. Lodge ed. 1904), *quoted in* note 209 *infra*.

[139] Rostow, *supra* note 3, at 833.

[140] *See* note 131 *supra*.

[141] *See* text accompanying notes 52–56, 69–71 *supra*.

[142] *See* note 92 *supra*.

[143] For Hamilton's later expansive reading of executive power in the realm of foreign relations, see E. CORWIN, *supra* note 26, at 217–18. It needs to be viewed in the light of his proposal in the Convention of a permanent body of the "rich and well born" to "check the imprudence of democracy . . . their turbulent and uncontrolling disposition." 1 RECORDS, *supra* note 30, at 290, 299. The patrician Henry Adams stated that "Hamilton considered democracy a fatal curse, and meant to stop its progress." *See* E. SAMUELS, HENRY ADAMS, THE MIDDLE YEARS 58 (1965). He would therefore prefer to concentrate power in the executive and to short-circuit the democratic process which contemplated congressional debate. His views found no favor with the Convention.

[144] 8 A. HAMILTON, *Letter No. 1 of "Lucius Crassus,"* in WORKS 249–50 (H. Lodge ed. 1904) (emphasis partially added). *See also* note 209 *infra*.

[145] Professor Rostow wrings from Wormuth's statement that "When a foreign country attacks the United States . . . the President . . . must . . . wage the war," a concession of broad war powers to the President, "for most Presidential uses of the armed forces" represent resistance to "the hostile act of another state . . . directed *against the security* of the United States." Rostow, *supra* note 3, at 850 n.28 (emphasis added). But it is precisely this difference between an attack on the United States and acts which are deemed by the President to menace "the security of the United States" upon which the whole debate hinges.

[146] Rostow, *supra* note 3, at 844. McDougal and Lans rely on this Marshall statement for an "adaptive or instrumental" theory, which "treats the Constitution as an 'instrument of government' rather than as a mere 'text for interpretation.' This theory received its classic statement in Chief Justice Marshall's reminder in *McCulloch v. Maryland*. . . ." McDougal & Lans, *Treaties and Congressional-Executive or Presidential Agreements: Interchangeable Instruments of National Policy*, 54 YALE L.J. 181, 213 (1945). Marshall's *McCulloch* dictum had been invoked for the theory of "adaptive interpretation" in 1926 by Corwin in *Judicial Review in Action*, 74 U. PA. L. REV. 639, 658–59 (1926).

[147] LEGAL ADVISOR'S MEMO, *supra* note 86, at 1101.

[148] In *Youngstown*, Justice Jackson said:

"The appeal . . . that we declare the existence of inherent powers *ex necessitate* to meet an emergency asks us to do what many think would be wise, although it is something the forefathers omitted. They knew what emergencies were, knew the pressures they engender for authoritative action, knew, too, how they afford a ready pretext for usurpation. . . . Aside from suspension of the privilege of the writ of habeas corpus in time of rebellion or invasion . . . they made no provision for exercise of extraordinary authority because of a crisis. I do not think we rightfully may so amend their work."

343 U.S. at 579, 649–50 (concurring opinion). Emergency powers, Jackson continued, "are consistent with free government only when their control is lodged elsewhere than in the Executive who exercises them. That is the safeguard that would be nullified by our adoption of the 'inherent powers' formula." *Id.* at 652.

The "emergency power" had been strongly advocated by Justice Clark, *id.* at 660–62 (concurring opinion), but Justice Douglas also rejected it, saying the fact that speed was essential "does not mean that the President, rather than the Congress, had the constitutional authority to act." *Id.* at 629.

[149] 17 U.S. (4 Wheat.) 315, 415–16 (1819) (emphasis partially added), *quoted in* Rostow, *supra* note 3, at 891.

[150] JOHN MARSHALL'S DEFENSE OF *McCulloch v. Maryland* (G. Gunther ed. 1969).

[151] *Id.* 185 (emphasis added).

[152] *Id.* 182, 184.

[153] *Id.* 92; *see id.* 185.

[154] *Id.* 168. "In no single instance does the court admit the unlimited power of congress to adopt any means whatever . . . ." *Id.* 186. Marshall emphasized that "in all the reasoning on the word 'necessary,' the court does not, in a single instance, claim the aid of a 'latitudinous,' or 'liberal' construction . . . ." *Id.* 92.

[155] "It is not pretended," said Marshall, "that this right of selection may be fraudulently used to the destruction of the fair land marks of the constitution" *Id.* 173.

[156] *Id.* 20–21.

[157] 4 J. ELLIOT, *supra* note 36, at 446.

[158] 9 J. MADISON, *supra* note 75, at 191, 372.

[159] Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 610–11 (1952) (concurring opinion), *quoted in* Rostow, *supra* note 3, at 843.

[160] Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 596 (1952) (concurring opinion).

[161] *Id.* at 597–98.

[162] *Id.* at 602.

[163] 5 U.S. (1 Cranch) 137 (1803).

[164] 19 U.S. (6 Wheat.) 264, 399–400 (1821).

[165] *Id.* at 399–400.

[166] JOHN MARSHALL'S DEFENSE OF *McCulloch v. Maryland* 209 (G. Gunther ed. 1969) (emphasis added).

[167] To still fears of usurpation, James Iredell, leader in the fight for ratification in North Carolina, and later a Justice of the Supreme Court, said, "If Congress, under pretence of executing one power, should, in fact, usurp another, they will violate the Constitution." 4 J ELLIOTT, *supra* note 36, at 179.

[168] *See* text accompanying notes 132–34 *supra*.

[169] McDougal & Lans, *supra* note 146, at 291.

[170] *Id.* 212.

[171] *Id.* 291. *Compare* their comment, "The phrase 'treaty of peace,' when bereft of the reification which makes it some mysterious, special kind of an agreement" excluded from the scope of solo presidential agreements, *id.* 286, *with* events in the Convention. Madison moved to "except treaties of peace" from the two-thirds concurrence provision. Gerry objected that treaties of peace were of special importance; and Hugh Williamson stated, "Treaties of peace should be guarded at least by requiring the same concurrence as in other Treaties." 2 RECORDS, *supra* note 30, at 540–41. The proposed exception was rejected. For the Framers a treaty of peace was unmistakably a "special kind of agreement," for reasons which were not at all "mysterious."

[172] Monaghan, *Presidential War-Making*, 50 B.U.L. REV. 19, 31 (1970): "A practice so deeply embedded in our governmental structure should be treated as decisive of the constitutional issue." "[H]istory has legitimated the practice of presidential war-making." *Id.* 29. For similar views, see Ratner, *supra* note 88, at 467; *cf.* Revely, *supra* note 3 at 1250–57.

[173] For a collection of authorities see Ratner, *supra* note 88, at 482-83.

[174] In *Youngstown*, Justice Douglas wrote, "If we sanctioned the present exercise of power by the President, we would be expanding Article II of the Constitution and rewriting it to suit the political conveniences of the present emergency." 343 U.S. at 632 (concurring option), *Cf.* note notes 83 & 148 *supra*.

[175] McDougal & Lans, *supra* note 146, at 212. In their defense of "executive agreements," they further stated, "[w]hether these powers are based on *interpretation* of the language of the Constitution or on *usage* is, strictly, a matter of concern only for rhetoricians . . ."*Id.* 239 no. 104.

[176] 2 G. McREE, LIFE AND CORRESPONDENCE OF JAMES IREDELL 146 (1857). *See also* Berger, *supra* note 33, at 13-14.

[177] McDougal & Lans, *supra* note 146, at 216 (emphasis added). They also state that "In preferring to alter the Constitution by informal adaptation, the *American people* have also been motivated by a wise realization of the inevitable transiency of political arrangements." *Id.* 294 (emphasis added).

[178] "The principal enzymes of changes have been the emergence of a more democratic philosophy of government, leading to replacement of some of the patrician institutions devised by the statesmen of 1787 . . ." *Id.* 292. McDougal and Lans were attacking the power of a senate minority to thwart a foreign policy favored by the nation, exemplified by Senate rejection of Wilson's Versailles Treaty. Alas for result-oriented jurisprudence: an even less democratic process has been substituted—executive agreements kept secret from the Senate, foreign policy fashioned by a behind-the-scenes elitist conclave which a recent critic, R. J. Barnet, charges, is not accountable either to the people or to Congress. R. BARNET, ROOTS OF THE WAR (1972). McDougal and Lans have themselves made the fitting comment: "[U]ntil we are furnished with the formula for the selection of the elite, we are entitled to doubt that the minority has any unique monopoly of wisdom. Government by a self-designated elite—like that of benevolent despotism or of Plato's philosopher kings—may be a good

form of government for some people, but it is not the American way." McDougal & Lans, *supra* note 106, at 577-78.

[179] Reveley, *supra* note 3, at 1255 n.31, 1293.

[180] *See* text accompanying note 19 *supra*.

[181] Ratner, *supra* note 88, at 467.

[182] The Founders fully understood the difficulties of amendment. Thus Patrick Henry argued in the Virginia ratification convention, "[F]our of the smallest states, that do not collectively contain one tenth part of the population . . . may obstruct the most salutary and necessary amendments." 3 J. ELLIOT, *supra* note 36, at 49. But the prevailing view was expressed in the North Carolina convention by James Iredell: the Constitution "can be altered with as much regularity, and as little confusion, as any act of Assembly; not, indeed, quite so easily, which would be extremely impolitic . . . so that alterations can without difficulty be made, agreeable to the general sense of the people." 4 *id.* 177. Charles Jarvis said in Massachusetts, "we shall have in this article an adequate provision for all the purposes of political reformation." 2 *id.* 116.

[183] "When, as has proved to be the case in most of the American states, the process of amendment is a relatively simple political problem, adaptation frequently proceeds by way of formal change; when, as has proved to be the case in the Federal Union, the process of amendment is politically difficult, other modes of change have emerged." McDougal & Lans, *supra* note 146, at 293. Because of the "difficulty of its formal amendment process, alteration by usage has proved to be the principal means of modifying our fundamental law." Reveley, *supra* note 3, at 1252.

In the First Congress, Gerry, one of the Framers, stated, "If it is an omitted case, an attempt in the Legislature to supply the defect, will be in fact an attempt to amend the Constitution. But this can only be done in the way pointed out by the fifth article of that instrument, and an attempt to amend it in any other way may be a high crime or misdemeanor. . . ." The people, he added, have "directed a particular mode of making amendments, which we are not at liberty to depart from. . . . Such a power would render the most important clause in the Constitution nugatory." 1 ANNALS OF CONG. 523 (1789). Willard Hurst remarked in our own time that the informal amendment approach "is a way of practically reading Article V out of the Federal Constitution. . . . [The Framers] provided a defined, regular procedure for changing or adopting it." SUPREME COURT AND SUPREME LAW 74 (E. Cahn ed. 1954).

[184] Rostow, *supra* note 3, at 835. Secretary of State Rogers likewise asserts that the presidential allocation of powers "should be changed, if at all, only by Constitutional Amendment." N.Y. Times, Mar. 30, 1972, at 10, col. 3.

[185] 6 A. HAMILTON, *Letters of "Camillus"* in WORKS 166 (H. Lodge ed. 1904) (emphasis added.)

[186] Notes 151–55, 166 *supra* & accompanying text.

[187] The executive branch clings to the separation of powers when it claims a right to withhold information from Congress under the doctrine of "executive privilege." *See Hearings on S. 1125 Before the Subcomm. on Separation of Powers of the Senate Comm. on the Judiciary*, 92d Cong., 1st Sess. 430, 473 (1971) (remarks of Secretary of State William Rogers and Assistant Attorney General William Rehnquist) [hereinafter cited as *Hearings*]. So too, Professor Rostow reminds Congress that it cannot fashion out of the necessary and proper clause "a bootstrap doctrine, empowering Congress to abolish the principle of the separation of powers." Rostow, *supra* note 3, at 897. The historical facts demonstrate that it is the President, rather than the Congress, who seeks to "abolish" the separation of powers, to preempt powers granted exclusively to Congress.

[188] Reid v. Covert, 354 U.S. 1, 40 (1957).

[189] Compare Professor Felix Frankfurter's advice to President Franklin D. Roosevelt in 1937: "the Supreme Court for about a quarter of a century has distorted the power of judicial review into a revision of legislative policy, thereby usurping powers belonging to the Congress." And "people have been taught to believe that when the Supreme Court speaks it is not they who speak but the Constitution, whereas, of course, in so many vital cases, it is *they* who speak and *not* the Constitution. And I verily believe that that is what the country needs most to understand." ROOSEVELT AND FRANKFURTER: THEIR CORRESPONDENCE, 1928–1945, at 383–84 (M. Freedman ed. 1967).

[190] 35 G. WASHINGTON, WRITINGS 228–29 (J. Fitzpatrick ed. 1940). The Massachusetts Constitution of 1780, which was drafted by John Adams, provided that the people "have a right to require of their lawgivers and magistrates an exact and constant observance" of the "fundamental principles of the constitution" which are "absolutely necessary to preserve the advantage of liberty and to maintain a free government." 1 B. POORE, *supra* note 30, at 959.

[191] LEGAL ADVISOR'S MEMO, *supra* note 86 at 1101. Wormuth, *supra* note 86, at 718, justly states of the "undeclared war" with France, "This is altogether false. The fact is that President Adams took absolutely no independent action. Congress passed a series of acts [cited by Wormuth] which amounted, so the Supreme Court said, to a declaration of imperfect war; and Adams complied with these statutes." Bas v. Tingy, 4 U.S. (4 Dall.) 36 (1800), amply confirms that Adams acted under congressional authorization.

[192] Wormuth, *supra* note 117, at 663.

[193] D. ACHESON, PRESENT AT THE CREATION 414–15 (1969). The argument had been made in 1945 by McDougal and Lans, *supra* note 106, at 612: "Now that the technology of war has made it imperative in the interests of national safety that aggressors be met with the threat of overwhelming force before they can commence their own military operations, it can scarcely be doubted that the President possesses the authority to take whatever action is necessary to protect the interests of the United States in a threatened emergency."

[194] *See* Wormuth, *supra* note 86. *See also* Wormuth, *supra* note 117, at 652–64. Reveley, *supra* note 3, at 1258, states, "[a]s precedent for Vietnam . . . the majority of the nineteenth century uses of force do not survive close scrutiny."

[195] *See* Mora v. McNamara, 389 U.S. 934 936 (1967) (Douglas, J., dissenting).

[196] Corwin, *The President's Power* in THE PRESIDENT'S ROLE AND POWERS 361 (D. Haight & L. Johnston eds, 1965). Elsewhere Corwin has written, "The vast proportion of the incidents . . . comprised . . . *efforts to protect definite rights of persons and property* against impending violence, and were defended on that ground *as not amounting to acts of war.*" E. CORWIN, *supra* note 74, at 146. *See also id.* 147–48; Wormuth, *supra* note 86, at 742–43, 746–48.

[197] Reveley, *supra* note 3, at 1258; Wormuth, *supra* note 86, at 742.

[198] Text accompanying notes 209–12, 214 *infra*.

[199] Perhaps President Polk's dispatch of troops into Mexico in 1846 may be deemed an exception, although when hostilities broke out he immediately asked Congress for approval; after bitter debate over his assertions that his acts were "defensive," Congress declared war. *Power to Commit Forces*, *supra* note 3, at 1780. In 1848, the House of Representatives, by a resolution in which Lincoln joined, condemned Polk's action. Wormuth, *supra* note 86, at 726. *See* text accompanying notes 228–29 *infra*.

[200] Powell v. McCormack, 395 U.S. 486, 546 (1969), reminded us "That an unconstitutional action has been taken before surely does not render that same action any less unconstitutional at a later date."

[201] E. CORWIN, *supra* note 26, at 241, perhaps the most influential 20th century apologist for enlarged presidential powers, states that the President has gathered "to himself powers with respect to war making which ill accord with the specific delegations in the Constitution of the war-declaring power to Congress." *Cf.* note 93 *supra*.

[202] Reveley, *supra* note 3, at 1289.

[203] *Cf.* Wormuth, *supra* note 86, at 762.

[204] Professor Bickel has said that "there comes a point when a difference of degree achieves the magnitude of a difference in kind." S. REP. No. 606, 92d Cong., 2d Sess. 16 (1972).

[205] Monaghan, *supra* note 172, at 27.

[206] Wormuth, *supra* note 86, at 743–46.

[207] Monaghan, *supra* note 172, at 27.

[208] These and other presidential utterances were collected by Putney, *Executive Assumptions of the War Making Power*, 7 NAT'L U.L. REV. 1 (1927).

[209] 1 MESSAGES, *supra* note 74, at 314. In December 1790, Secretary of State Jefferson submitted a report to Congress respecting American seamen captured at Algiers, stating, "it rests with Congress to decide between war, tribute, and ransom, as the means of re-establishing our Mediterranean commerce." 1 AMERICAN STATE PAPERS, FOREIGN RELATIONS 105 (1832). In 1793, Jefferson, then Secretary of State, said of reprisal, "if the case were important and ripe for that step, Congress must be called upon to take it; the right of reprisal being expressly lodged with them by the Constitution, and not with the Executive." Wormuth, *supra* note 86, at 758.

Hamilton, then in private life, attacked Jefferson's Tripoli position on the ground that a declaration of war by a foreign nation unleashes the President's defensive powers so that no congressional declaration of war was required for retention of the Tripolitanian ship and crew. 8 A. HAMILTON, *Letter No. 1 of "Lucius Crassus,"* in WORKS 246–52 (H. Lodge ed. 1904). This was a shift in position apparently dictated by political considerations, if we may credit the explanation by his sympathetic editor, Henry Cabot Lodge, that the letter "really constitutes a defence of the Federalist party and an elaborate and bitter criticism of their opponents." *Id.* 246 n.1. For, when in 1798 the French greatly endangered American shipping, Hamilton wrote Secretary of War James McHenry, "I am not ready to say that he [the President] has any other power than merely to employ ships or convoys, with authority to *repel* force by *force* (but not to capture), and to repress hostilities within our waters . . . . Anything beyond this must fall under the idea of *reprisals*, and requires the sanctions of that department which is to declare *or make war*. In so delicate a case, in one which involves so important a consequence as that of war, my opinion is that no doubtful authority ought to be exercised by the President." 10 *id.* 281–82. In 1798 he was therefore in accord with Jefferson's view, reflecting his own earlier narrow view of presidential war powers. *See* text accompanying notes 69, 71, 144 *supra*. *See also* note 67 *supra* note 209 *infra*.

[210] MESSAGES, *supra* note 74, at 376–77.

[211] *See* text accompanying notes 26, 27, 62 *supra*.

[212] 2 MESSAGES, *supra* note 74, at 484–85, 489.

[213] *See* Wormuth, *supra* note 86, at 738. Professor Rostow expatiates on Monroe's instructions to General Andrew Jackson "to proceed into Spanish Florida to put down the Seminoles, who were raiding settlements in Georgia from bases in Spanish Florida," on the ground of "Spain's inability to exercise effective control over her territory." Rostow, *supra* note 3, at 860. But Monroe well knew

the distinction between such policing and committing "the nation in any question of war."

[214] 4 MESSAGES, *supra* note 74, at 1484.

[215] *See* Wormuth, *supra* note 86, at 738–39.

[216] LEGAL ADVISOR'S MEMO, *supra* note 86, at 106. It is a mark of the State Department Legal Advisor's careless advocacy that he could argue against this background that "James Madison . . . Presidents John Adams, and Jefferson all construed the Constitution, in their official actions during the early years of the Republic, as authorizing the United States to employ its armed forces abroad in hostilities in the absence of any Congressional declaration of war." *Id* 1106.

[217] *Id.*

[218] 5 U.S. (1 Cranch) 1 (1801).

[219] *Id.* at 28.

[220] 67 U.S. (2 Black) 635 (1862).

[221] *Id.* at 668.

[222] E. CORWIN, *supra* note 26, at 275, 277.

[223] *Id.* 277.

[224] The dissenting Justices in *The Prize Cases* admitted that war had been initiated by the South in a "material sense," but maintained that it did not exist in a "legal sense" as "within the meaning of the law of nations" in the absence of a declaration of war by Congress. But the early statutes, which authorized the President to use the military and naval forces to suppress insurrection, would include a blockade as a measure of suppression. Act of Feb. 28, 1795, ch. 36, 1 Stat. 424; Act of Mar. 3, 1807, ch. 39, 2 Stat. 443. Whatever merit the dissenting argument may have is overcome by the fact that the Convention rejected the application of the law of nations to rebellion. 3 RECORDS, *supra* note 30, at 158.

Against the background, McDougal and Lans seem to me mistaken in stating that "the logic of the Civil War *Prize Cases* leads ineluctably to the conclusion that the President may recognize the existence or imminence of a war, which threatens American interests, before there is an actual invasion of our territory . . . ." McDougal & Lans, *supra* note 106, at 613. Lincoln held to the tenet that the Union is indissoluble, that no state can secede. The firing upon Fort Sumter therefore represented an "actual invasion of our territory," and Lincoln was empowered by statute to suppress insurrection.

[225] 7 MESSAGES, *supra* note 74, at 3214–16; E. CORWIN, *supra* note 26, at 277–79.

[226] E. CORWIN, *supra* note 26, at 282.

[227] *Cf. id.*, 279–80.

[228] Wormuth, *supra* note 86, at 726.

[229] *Id.* 727.

[230] 7 MESSAGES, *supra* note 74, at 3245–48.

[231] S. MORISON, THE OXFORD HISTORY OF THE AMERICAN PEOPLE 801 (1965).

[232] Putney, *supra* note 208, at 1–2; *Power to Commit Forces*, *supra* note 3, at 1790.

[233] 6 J. MADISON, *supra* note 75, at 174.

[234] *See* E. CORWIN, *supra* note 26, at 284–87.

[235] S. MORISON, *supra* note 231, at 855, 859.

[236] 55 CONG. REC. 103 (1917).

[237] *See* 2 H. CARMAN & H. SYRETT, A HISTORY OF THE AMERICAN PEOPLE 415 (1955). The "Note," sent by the German foreign minister urged Mexico to consider attacking the United States.

[238] S. MORISON, *supra* note 231, at 859–60; E. CORWIN, THE PRESIDENT'S CONTROL OF FOREIGN RELATIONS 141 (1917).

[239] E. CORWIN, *supra* note 26, at 288–89; *Power to Commit Forces*, *supra* note 3, at 1786.

[240] E. CORWIN, *supra* note 26, at 289; Kurland, *The Impotence of Reticence*, 1968 DUKE L. J., 619, 623. *But see* Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 645 n.14 (1952) (Jackson, J., concurring).

[241] S. MORISON, *supra* note 231, at 991, 995, 997. Justice Frankfurter "said that he had asked Byrnes (then Supreme Court Justice, later economic boss, former senator) if the President had called for a declaration of war the day before Pearl Harbor what the vote would have been. Byrnes estimated that at least two-thirds of Congress would have been in opposition." C. SULZBERGER, A LONG ROW OF CANDLES 200 (1969).

[242] S. REP. No. 797, 90th Cong., 1st Sess. 24 (1967). Writing in 1951, Clinton Rositer said, it is a "canon of our constitutional system that the nation cannot be finally and constitutionally committed to a state of war without the positive approval of both houses of Congress." C. ROSSITER, THE SUPREME COURT AND THE COMMANDER IN CHIEF 66 (1951).

[243] The Senate Foreign Relations Committee observed that "President Truman committed American Armed Forces to Korea in 1950 without Congressional authorization. Congressional leaders and the press were simultaneously informed of the decision but the decision had already been made." S. REP. No. 797, 90th Cong., 1st Sess. 16 (1967). Dean Acheson stated that Truman consulted with congressional leaders, and that at a second meeting several days later there was a "generous chorus of approval." D. ACHESON, *supra* note 193, at 408–09, 413. *See also* Reveley, *supra* note 3, at 1263 n.57; J. ROBINSON, CONGRESS AND FOREIGN POLICY MAKING 48 (1962).

[244] *See* note 193 *supra* & accompanying text.

[245] H.R.J. Res. 1145, 88th Cong., 2d Sess., 78 Stat. 384 (1964).

[246] Wormuth, *supra* note 86, at 711 n.1.

[247] Velvel, *The War in Viet Nam: Unconstitutional, Justiciable, and Jurisdictionally Attackable*, in 2 THE VIETNAM WAR AND INTERNATIONAL LAW 651, 654 (R. Falk ed. 1969).

[248] But the repeal did not "direct the termination of Indo-Chinese hostilities, disapprove continuing combat, or correct the President's prior interpretation." Ratner, *supra* note 88, at 474.

[249] American military forces were committed "to Cambodia in 1970, and to Laos in 1971, without the consent, or even the knowledge of Congress." S. REP. No. 606, 92d Cong., 2d Sess. 8 (1972).

[250] It needs to be borne in mind that such statements are mere "advocacy" for a predetermined policy. Such as led Justice Jackson to dismiss as "self-serving" earlier statements he had made as Attorney General. *See* note 7 *supra* & accompanying text.

[251] S. REP. No. 606, 92d Cong., 2d Sess. 18 (1972). Referring to the Middle East debate in 1957, the 1967 senate report on national commitments, S. REP. No. 797, 90th Cong., 1st Sess. (1967) states, "Senator Fulbright, whose view has changed with time and experience thought at the time that the President had power as Commander in Chief to use the armed forces to defend the 'vital interests' of the country . . ." *Id.* 18. The report concludes: "The Gulf of Tonkin resolution represents the extreme point in the process of constitutional erosion." *Id.* 20.

[252] S. REP. No. 797, 90th Cong., 1st Sess. 14 (1967).

[253] *Id.* 14, 20–21; S. REP. No. 606 92d Cong., 2d Sess. 10–11 (1972). Reveley, *supra* note 3, at 1263, 1265–71; Wormuth, *supra* note 86, at 806.

[254] 1 E. COKE, COMMENTARY ON LITTLETON § 81b (1832).

[255] *See* Panama Refining Co. v. Ryan, 293 U.S., 388, 421 (1935); *cf.* E. CORWIN, *supra* note 26, at 9.

[256] The Massachusetts Constitution of 1780 provides: "In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers . . . the executive shall never exercise the legislative and judicial powers . . . the judicial shall never exercise the legislative and executive powers . . . to the end it may be a government of laws, and not of men."1 B. POORE, *supra* note at 30, at 960. The New Hampshire Constitution of 1784 is similar, 2 *Id.* 1283.

Charles Pinckney submitted to the Convention that the President "cannot be cloathed with those executive authorities the Chief Magistrate of a Government often possesses, because they are vested in the Legislature and cannot be used or delegated by them in any but the specified mode." 3 RECORDS, *supra* note 30, at 111. In the Jay Treaty debate, Jonathan Havens "laid it down as an incontrovertible maxim, that neither of the branches of the Government could, rightly or constitutionally, divest itself of any powers . . . by a neglect to exercise those powers that were granted to it by the Constitution . . . ." 5 ANNALS OF CONG. 486 (1797). *See also id.* 447 (remarks of John Nicholas).

Madison regarded the separation of powers as "a fundamental principle of free government." 2 RECORDS, *supra* note 30, at 56. In 1796 President Washington, speaking to the demand of the House for information about the Jay Treaty, said, "it is essential to the due administration of the Government, that the boundaries fixed by the Constitution between the different departments should be preserved. . . ." 5 ANNALS OF CONG. 761–62 (1797). No incident is more frequently cited by the executive branch for the separation of powers when the issue is executive privilege than this Jay incident.

[257] United States v. Morton Salt Co. 338 U.S. 632, 647 (1950).

[258] 299 U.S. 304 (1936), *cited in* United States v. Pink, 315 U.S. 203, 229 (1942). *See* E. CORWIN, *supra* note 26, at 210; McDougal & Lans, *supra* note 146, at 255–58. As late as 1929, Willoughby wrote, "There can be no question as to the constitutional unsoundness, as well as of the revolutionary character of the theory" of inherent powers. 1 W. WILLOUGHBY, THE CONSTITUTIONAL LAW OF THE UNITED STATES 92 (2d ed. 1929).

[259] The memorandum, entitled *Indochina: The Constitution Crisis*, is reprinted in two parts in the CONG. REC., vol. 116, pt. 11, pp. 15409–15416 (Part I), and *id.* CONG. REC., vol. 116, pt. 12, pp. 16352–16355 (Part II) [hereinafter cited as YALE MEMO]. The memorandum was prepared for filing with the Senate by a group of Yale Law School students under the aegis of several eminent professors and former high government officers.

[260] Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 634 (1952) (concurring opinion).

[261] YALE MEMO, *supra* note 259, at pp. 15409–10. The plenary grant to Congress and the severely limited grant of war power to the President leave little "twilight" zone in this area.

[262] When the government argued in *Youngstown*, 343 U.S. at 632, that the President "had invested himself with 'war powers'" by sending troops to Korea "by an exercise of the President's constitutional powers," Justice Jackson said, "How widely this doctrine . . . departs from the early view of presidential power is shown by a comparison" with Jefferson's message to Congress respecting the Tripoli pirates (note 209 *supra*) 343 U.S. at 642 n.10. Professor Rostow repeatedly cites this Jackson opinion but takes no account of Jackson's rejection of inflated executive claims.

Prior to *Youngstown*, Clinton Rossiter had noted, "The breath-taking estimates of their war powers announced and acted upon by Lincoln and Roosevelt have earned no blessing under the hands of the judiciary'" C. ROSSITER, THE SUPREME COURT AND THE COMMANDER IN CHIEF 5 (1951). The Court, he said, "has refused to speak about the powers of the President as commander-in-chief in any but the most guarded terms," or "to approve a challenged presidential or military order solely on authority of the commander-in-chief clause if it can find a more specific and less controversial basis," such as "any evidence of congressional approval." *Id.* 4, 6.

[263] *See* note 148 *supra*. "The United States is entirely a creature of the Constitution. Its

power and authority have no other source." Reid v. Covert, 354 U.S. 1, 5–6 (1957).

[284] YALE MEMO, *supra* note 259, at p. 15410; United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 315–16 n.2 (1936).

[285] Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 635–36 n.2 (1952). For a trenchant critique of the *Curtiss-Wright* dictum, see Kurland, *supra* note 240, at 622–23.

[286] United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 316–17 (1936).

[287] Although they rely heavily on *Curtiss-Wright,* McDougal and Lans concede that Sutherland's analysis "unquestionably involves certain metaphorical elements and considerable differences of opinion about historical facts." McDougal & Lans, *supra* note 106, at 257–58. The Framers, as we shall see, would have no part of such metaphors. The issue is not, as McDougal and Lans suggest, merely a "quarrel about the naming of powers," *id.* 258, but a claim to powers not granted under a system of enumerated powers.

[288] Jay had served as Secretary of Foreign Affairs to the Continental Congress.

[289] Chisholm v. Georgia, 2 U.S. (2 Dall.) 419, 470 (1793). The Massachusetts Constitution of 1780 provided, "The people of this commonwealth have the sole and exclusive right of governing themselves as a free, sovereign, and independent State, and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right which is not, . . . by them expressly delegated to the United States . . . ." 1 B. POORE, *supra* note 30, at 958.

[270] H. COMMAGER, *supra* note 77, at 111.

[271] *Id.*

[272] *Id.*

[273] *Id.* 113.

[274] 4 J. ELLIOTT, *supra* note 36, at 179 (emphasis added).

[275] 2 RECORDS, *supra* note 30, at 476. For similar remarks by Mason, Iredell, Wilson and others, see R. BERGER, *supra* note 33, at 173 n.99, 174–175. With justice, therefore, did Professor Kurland dismiss Justice Sutherland's "discovery" that "the presidential power over foreign affairs derived not at all from the Constitution but rather from the Crown of England." Kurland, *supra* note 240, at 622. *See also* note 295 *infra.*

[276] Chisholm v. Georgia, 2 U.S. (2 Dall.) 419, 470 (1793).

[277] 3 U.S. (3 Dall.) 54, 80–81 (1793).

[278] 3 JOURNALS OF THE CONTINENTAL CONGRESS 1774–1789, at 326 (1937).

[279] 5 *id.* 546.

[280] "Virginia had a right, as a sovereign and independent nation, to confiscate any British property within its territory, unless she had before delegated that power to Congress. . . . [I]f she had parted with such power, it must be conceded, that she once rightfully possessed it." Ware v. Hylton, 3 U.S. (3 Dall.) 192, 231 (1796).

[281] 3 JOURNALS OF THE CONTINENTAL CONGRESS 1774–1789, at 549 (1937); H. COMMAGER, *supra* note 77, at 112.

[282] 3 U.S. (3 Dall.) at 90.

[283] *Id.* at 92.

[284] *Id.* at 94.

[285] *Id.* at 95.

[286] *Id.* at 116. Cushing stated, "I have no doubt of the sovereignty of the states, saving the powers delegated to congress . . . to carry on, unitedly, the common defense in the open war." *Id.* at 117.

[287] McDougal & Lans, *supra* note 106, at 258.

[288] 3 U.S. (3 Dall.) 199 (1796).

[289] *Id.* at 232.

[290] McDougal & Lans, *supra* note 106, at 258; 11 JOURNALS OF THE CONTINENTAL CONGRESS 1774–1789, at 421, 444, 457 (1937).

[291] 5 JOURNALS OF THE CONTINENTAL CONGRESS 1774–1789, at 827, 833 (1937) (emphasis added). McDougal and Lans say that "these early Congresses . . . although controlling foreign policy, essentially functioned as councils of ambassadorial delegates from a group of federated states . . .," the very point I have been making. McDougal & Lans, *supra* note 106, at 537. But this statement is at war with Sutherland's dictum that the states never had external "sovereignty."

[292] 11 JOURNALS OF THE CONTINENTAL CONGRESS 1774–1789, at 421 (1937). Rufus King's remarks in the Convention exhibit ignorance of the background: "The States were not 'sovereigns' in the sense contended for by some. They did not possess the peculiar features of sovereignty. They could not make war, nor peace, nor alliances nor treaties." 1 RECORDS, *supra* note 30, at 323.

[293] THE FEDERALIST No. 64, at 417 (Mod. Lib. ed. 1939) (John Jay) (emphasis added).

[294] For example, in the Virginia Ratification Convention, Governor Edmund Randolph, defending the Constitution against powerful onslaughts, said that the powers of government "are enumerated. Is it not, then, fairly deductible, that it has no power but what is expressly given it?—for if its powers were to be general, an enumeration would be needless." 3 J. ELLIOT, *supra* note 36, at 464. *See* text accompanying notes 42, 274 *supra.* Other authorities are collected in Berger, *supra* note 33, at 13–14, 377 n.52.

[295] In his 1791 lectures, James Wilson, then a Justice of the Supreme Court, referred to the executive powers granted by the Constitution and to the presidential veto as "a guard to protect his powers against their encroachment. Such powers and such a guard he ought to possess: but a just distribution of the powers of government requires that *he should possess no more.*" 1 J. WILSON, *supra* note 29, at 319 (emphasis added).

Justice Sutherland's easy assumption of supraconstitutional foreign powers contradicts Madison's statement that "The powers delegated by the proposed Constitution are few and defined. . . . [They] will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce." THE FEDERALIST No. 45, at 303 (Mod. Lib. ed. 1937).

[296] As Alexander White of Virginia stated in the First Congress, after insisting that the federal government must adhere to the limits described in the Constitution: "This was the ground on which the friends of the Government supported the Constitution . . . it could not have been supported on any other. If this principle had not been successfully maintained by its advocates in the convention of the State from which I came, the Constitution would never have been ratified." 1 ANNALS OF CONG. 515 (1789). *Cf.* R. BERGER, *supra* note 33, at 13–16.

[297] Text accompanying note 63 *supra.*

[298] 12 CONG. DEB. 4037–38 (1836). In Reid v. Covert, 354 U.S. 1, 69 (1957) (concurring opinion), Justice Harlan wrote: "Chief Justice Marshall, in *McCulloch v. Maryland,* . . . has taught us that the Necessary and Proper Clause is to be read with *all* the powers of Congress, so that 'where the law is not prohibited, and is really calculated to effect any of the objects entrusted to the government' " the Court will not " 'inquire into the degree of its necessity. . . .' " So read, the war powers are little short of plenary.

[299] It has been said that the "executive power clause is capable of indefinite expansion," that a construction thereof "as a broad grant of residual power to the executive was given the imprimatur of judicial approval in Myers v. United States [272 U.S. 52 (1926)]." McDougal & Lans, *supra* note 146, at 252, 260. The argument, it is true, had been advanced by Chief Justice Taft, over the vigorous dissent of Justices Holmes and Brandeis, whose views were later espoused by Justices Black, Douglas, Frankfurter, and Jackson in Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952). *See* text accompanying notes 39–58 *supra; cf.* notes 256 (statement of C. Pinckney), 294, 295 *supra. See generally* Berger, *Executive Privilege v. Congressional Inquiry,* 12 U.C.L.A.L. REV. 1043, 1074–76 (1965).

Justice Jackson brushed aside the claim of residual power with the query, why did the Framers expressly empower the President to "require the Opinion, in writing" of each department head, a trifling power that "would seem inherent in the executive if anything is." 343 U.S. at 640–41 (Jackson, J., concurring). Taft's view is squarely contrary to the design of the Framers to create a government of "enumerated" powers, an executive of "defined" and limited functions, and to preclude utterly any "inherent" executive prerogative.

[300] YALE MEMO, *supra* note 259, at S7529.

[301] 343 U.S. at 635, 638 (Jackson, J., concurring).

[302] *Id.* at 637, 639. So far as Jackson's "concurrent authority" or "uncertain distribution" tests go, there is next to no "twilight" zone in the area of war powers. Congress cannot encroach on the President's command of the armed forces, that is, it cannot conduct a campaign. *But see* note 310 *infra* & accompanying text. The Framers left little doubt about the restricted nature of the presidential power "to repel sudden attacks."

[303] Little v. Barreme, 6 U.S. (2 Cranch) 170, 177–78 (1804).

[304] 343 U.S. at 637 (Jackson, J., concurring).

[305] *Id.* at 637.

[306] *Id.* at 640.

[307] *Id.* at 642; *see* note 61 *supra.*

[308] 343 U.S. at 641–52 (Jackson, J., concurring).

[309] Professor Rostow sets forth the three Jackson classifications in extenso, and considers that the history of our foreign affairs "matches the classification." Rostow, *supra* note 3, at 862–63. Some match! More and more the President has sought to exercise monopolistic control of military and foreign affairs, from which, by executive agreements, by resort to claims of executive privilege, and the like, Congress is virtually excluded. How does this "match" the exceedingly narrow role assigned by Jackson to exclusive presidential power?

[310] 343 U.S. at 644 (Jackson, J., concurring). Another limitation, as Madison observed, is that although the President can command, the appointment of officers requires Senate consent. 3 J. ELLIOT, *supra* note 36, at 394. By its power to make rules for the "Government and Regulation of land and naval Forces," Congress, said Justice Jackson "may to some unknown extent impinge upon even command functions." 343 U.S. at 644. "Presidential power, even in the exercise of the commander-in-chief power, is not autonomous. . . ." Moore, *The National Executive and the Use of the Armed Forces Abroad,* 2 THE VIETNAM WAR AND INTERNATIONAL LAW 808, 813 (R. Falk ed. 1969).

[311] *Cf.* United States v. Hudson & Goodwin, 11 U.S. (7 Cranch) 32, 33 (1812); "the power which congress possesses to create Courts of inferior jurisdiction, necessarily implies the power to limit the jurisdiction of those Courts to particular objects. . . ." *See also* Sheldon v. Sill, 49 U.S. (8 How.) 441, 448–49 (1850).

[312] S. REP. No. 606, 92d Cong., 2d Sess. 17, 19 (1972). Resort to presidential power over foreign policy cannot supply any *military* power which the commander in chief lacks.

My criticism of Acheson's claim is not meant to be a covert attack on the *policy* of stationing troops in Europe, but on the presidential claim to be the sole arbiter of that policy.

[313] For example, Corwain reports that on November 28, 1941, the President and his "War Cabinet" "discussed the question: 'How shall we maneuver them [the Japanese] into the position of firing the first shot. . . .' " E. CORWIN, *supra* note 74, at 32.

Reveley, *supra* note 3, at 1262, states that Wilson and "especially Roosevelt, were forced to resort to deception and flagrant disregard of Congress in military deployment decisions because they were unable to rally congressional backing for action essential to national security." This substitutes a "Great White Father" for constitutional process. *See also*

Power to Commit Forces, supra note 3, at 1785–87, 1796, 1798.

[314] U.S. CONST. art. I, § 8(1).

[315] *Id.* § 8(12); *see* note 311 *supra*. In 1697, the Commons voted to disband the army notwithstanding that adherents of the King urged that the nation was still unsettled, and that there were fears of King James. 5 W. COBBLETT, PARLIAMENTARY HISTORY OF ENGLAND 1167 (1809). The Commons voted in 1698–1699 to reduce the army. *Id.* 1191.

[316] U.S. CONST. art I, § 8(12). When Gerry expressed fear about the absence of restrictions on the numbers of a peace-time army, Hugh Williamson "reminded him of Mr. Mason's motion for limiting the appropriation of revenue as the best guard in this case." 2 RECORDS, *supra* note 30, at 327, 330. In the early days the President was *compelled* to come to Congress for authorizations to employ troops abroad because he had to obtain funds to raise and support troops. Only when Congress supplied a standing army was he enabled to escape from this necessity. *See* note 96 *supra*.

[317] THE FEDERALIST No. 26, at 163 (Mod. Lib. ed. 1937). The Congress "will be *obliged*, by this provision, once at least in every two years, to deliberate upon the propriety of keeping a military force on foot; to come to a new resolution on the point. . . . They are not *at liberty* to vest in the executive department permanent funds for the support of an army, if they were even incautious enough to be willing to repose in it so improper a confidence." *Id.*

[318] In his testimony before the Senate Foreign Relations Committee, Professor Alexander Bickel stated, "Congress can govern absolutely, absolutely, the deployment of our forces outside our borders and . . . Congress should undertake to review and to revise present dispositions." S. REP. No. 606, 92d Con., 2d Sess. 29 (1972).

I would dissent from the proposition that "[t]o require congressional approval for every decision to deploy American troops is hardly either desirable or constitutionally required." *Power to Commit Forces, supra* note 3, at 1798. The congressional power is plenary, subject to no exceptions. It may be, as a practical matter, that Congress should leave the President free to make some peace-time deployments that cannot possibly lead to involvement in war; but that is a matter of accommodation by Congress, not "inherent" presidential power. In any event, the authors of the Note on presidential power to commit forces, *id.*, conclude that "there will be some situations, such as the rushing of troops to Lebanon . . . which, although not involving immediate commitment to combat, so clearly entail the possibility of conflict that prior approval should be sought. . . . [I]nstead of assuming that the President may deploy American forces as he sees fit and only in the exceptional case need he seek congressional approval, the presumption should be that congressional collaboration is the general rule wherever the use of the military is involved, with presidential initiative being reserved for the exceptional case." What these authors, and Moore, *supra* note 310 at 814, regard merely as the part of wisdom, seems to me to lie within the constitutional power of Congress to require.

[319] 2 H. HALLAM, CONSTITUTIONAL HISTORY OF ENGLAND 357 (1884). In 1624 "The king consented that the supplies granted should be used solely for purposes designated and spent under the direction of officers accountable to the house of commons." Turner, *Parliament and Foreign Affairs 1603–1760*, 34 ENG. HIST. REV. 172, 174 (1919). In 1701 the Act of Settlement, 12 & 13 Will. 3, c. 9, § 27, provided that appropriations were to be applied "to the several Uses and Purposes by this act directed and intended as aforesaid, and to no other Use, Intent or Purpose whatsoever." For an earlier example (1697), see 5 W. COBETT, supra note 315, at 1168. In 1711 the Commons complained to Queen Anne that the armed "service has been enlarged, and the charge of it increased beyond the bounds prescribed . . . a dangerous invasion of the rights of parliament. The Commons must ever assert it as their sole and undoubted privilege, to grant money and to adjust and limit the proportions of it." 6 *id.* 1027. Queen Anne replied that she would "give the necessary directions to redress the Grievances you complain of." *Id.* 1031. In 1697 the Commons resolved to disband the army notwithstanding opposition by royal adherents, 5 *id.* 1167. The principle remains vital in England. I. JENNINGS, PARLIAMENT 292, 338 (2d ed. 1957). Sir Edward Seymour was impeached for having applied appropriated funds to public purposes other than those specified, 8 How. St. Tr. 127–31 (1680). The misapplication of public moneys issued to the Earl of Ranelagh, Paymaster General of the Army, "to be applied to the use of the army and forces only, and to no other use or purpose whatsoever" was branded a "high crime and misdemeanor," and he was expelled from the Commons. 6 W. COBETT, supra note 315, at 97, 127.

[320] On a related point, Mason said in the Convention, "He considered the caution observed in Great Britain on this point as the paladium of the public liberty." 2 RECORDS, *supra* note 30, at 327. Madison referred to British appropriation practices in THE FEDERALIST No. 41, at 265 (Mod. Lib. ed. 1937). Madison, John Marshall and others assured the Virginia convention that the provision for jury trial carried with it all its attributes under English practice, including specifically, the right to challenge jurors. 3 J. ELLIOT, *supra* note 36, at 531, 546, 558–59, 573.

[321] For English use of appropriations to reduce the armed forces, see Coolidge & Sharrow, *The War-Making Powers: The Intentions of the Framers in the Light of Parliamentary History*, 50 B.U.L. REV. 5, 7 (1970).

[322] Act of March 3, 1809, ch. 28, 2 Stat. 535. The foregoing history refutes the executive argument that Congress' attempt "to command the expenditure of moneys that it appropriated for the construction" of the B–70 super-planes "would be a violation of the separation of powers, the invasion of presidential prerogative under the Constitution!" Kurland, *supra note* 240, at 630. *See also* note 324 *infra*.

[323] Special Foreign Assistance Act of 1971, Pub. L. No. 91–652 § 7, 84 Stat. 1942.

[324] *Cf.* Justice Jackson's statement: "Congress alone controls the raising of revenues and their appropriation and may determine in what manner and by what means they shall be spent for military and naval procurement." Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 643 (1952) (Jackson, J., concurring).

[325] U.S. CONST. art. I, § 8(14).

[326] 2 RECORDS, *supra* note 30, at 330; H. COMMAGER, *supra* note 77, at 114.

[327] 1 RECORDS, *supra* note 30, at 244.

[328] Consider also General Douglas MacArthur's crossing of the Yalu River, which drew powerful Chinese forces into the Korean War, and contributed to his removal by President Truman. D. ACHESON, *supra* note 243, at 462–66. As "first General," the President must be equally responsible to Congress for expanding a war upon Korea to one on China.

[329] Note 67 *supra*.

[330] 15 THE PAPERS OF THOMAS JEFFERSON 397 (J. P. Boyd ed. 1955), *quoted in* S. REP. No. 797, 90th Cong., 1st Sess. 8 (1967).

[331] Text accompanying notes 77–99 *supra*.

[332] *Cf.* text accompanying note 207 *supra*.

[333] Monaghan, *supra* note 172, at 31. Monaghan questions the constitutionality of a requirement that "the president obtain authorization from Congress before making any (major?) commitment of the armed forces to hostilities" on the ground that "it is too uncertain in what it demands." "What," he said, "precisely is the President to ask of Congress?" *Id.* 29. Let him ask, as a succession of early Presidents did, an authorization for a given "commitment of the armed forces to hostilities" and leave it to Congress to determine whether the authorization should take the form of a statute, a resolution, a declaration of war, or any other form deemed by it appropriate. The Act of March 21, 1839, ch. 89, § 1, 5 Stat. 355, may serve as a guide; it authorized the President to resist any attempt by Great Britain "to enforce, by arms, her claims to exclusive jurisdiction over that part of Maine which is in dispute between the United States and Great Britain." If Congress "is too divided to act clearly," the President will not obtain his authorization. Monaghan, *supra* note 172, at 29. He should not be permitted to commit a divided nation to war or to the grave risk of war. Even the strong-willed Franklin Roosevelt had to wait for Pearl Harbor.

Monaghan also questions the "textual basis" of an authorization that falls short of a declaration of war. *Id.* 30. A power to "declare" war surely comprehends authorization of steps short of war; the greater embraces the lesser, the more so as all power "naturally connected" with the power of declaring war is vested in Congress. Congress is authorized to wage both "perfect" and "imperfect" war. Das v. Tingy, 4 U.S. (4 Dall.) 37, 40–42 (1800). *See also* Lofgren, *supra* note 70, at 699.

[334] E. CORWIN, *supra* note 74, at 65.

[335] "In my considered judgment," said Professor Richard B. Morris, the "bill sets the constitutional balance true." Morris, *The Power to Make Wars*, N.Y. Times, Apr. 13, 1972, at 43, col. 6.

[336] J. STORY, *supra* note 87, at § 1171.

[337] The "executive, by acquiring the authority to commit the country to war, now exercises something approaching absolute power over the life or death of every living American—to say nothing of millions of other people all over the world. . . . Plenary powers in the hands of any man or group threaten all other men with tyranny or disaster." S. Rep. No. 797, 90th Cong., 1st Sess. 26–27 (1967). Even those who take a broad view of presidential powers conclude on practical grounds that "Congress must be given an opportunity to say whether it finds the potential gains from the use of force worth the potential losses." Reveley, *supra* note 3, at 1288, 1299–301; Moore, *supra* note 301, at 814.

In the course of a tremendous effort on behalf of "executive agreements," McDougal and Lans conclude that "surely the history of the United States affords every reason to believe that powers given to permit rapid action in an emergency will be used as sparingly as possible. Except in case of imperative self-defense, it is to be assumed that no President will commit the use of American troops without prior consultation of Congress. If direct action by the President will sometimes be necessary, it is again to be assumed that, as soon as possible, the situation will be explained to Congress and its views sought." McDougal & Lans, *supra* note 106, at 615. In connection with these words consider the presidential commitment of troops in Cambodia and Laos after repeal of the Gulf of Tonkin Resolution. Note 249 *supra*.

[338] Reveley, *supra* note 3, at 1293; Monaghan, *supra* note 172, at 25 n. 33. Former Ambassador John Kenneth Galbraith stated, "Over the last half-decade Fulbright, Morse, Gruening, Kennedy, Cooper, Church, Hatfield and McGovern have surely been more sensible than the senior officials of the Department of State. On the average I think we are safer if we keep foreign policy under the influence of men who must be re-elected." Galbraith, *Book Review*, N.Y. Times, Oct. 8, 1972, § 6 (Book Reviews), at 1, 12.

[339] Buchan, *supra* note 1, at 38.

[340] Consider President Kennedy's disregard of the informed advice of President Charles de Gaulle. On the occasion of his visit to France in May, 1961, Kennedy *"made no secret of the fact that the United States was*

planning to intervene [in Indochina]." De Gaulle records that he told Kennedy "he was taking the wrong road" that would lead to "an endless entanglement. . . . We French have had experience of it. . . . You Americans . . . want to . . . revive a war which we brought to an end. I predict that you will sink step by step into a bottomless military and political quagmire. . . ." C. DE GAULLE, MEMOIRS OF HOPE, RENEWAL AND ENDEAVOR, *reprinted in* N.Y. Times, Mar. 15, 1972, at 47, col. 5. Buchan observed of our Vietnam involvement "one cannot fail to be impressed by the slapdash manner in which decisions of profound importance were taken." Buchan, *supra* note 1, at 38.

The wage-control powers presently being exercised by the President derive from a statutory grant which he did not want. *Hearings, supra* note 187, at 519.

The National Commitments Report, S. REP. No. 797, 90th Cong., 1st Sess. (1972), states that, "Congress, it seems clear, was deficient in vision during the 1920's and 1930's, but so were Presidents Harding, Coolidge and Hoover and—prior to 1938—Roosevelt. Just as no one has a monopoly on vision, no one has a monopoly on myopia either." *Id.* 14.

[341] *Hearings, supra* note 187, at 460, 464. *See also* R. DAHL, CONGRESS AND FOREIGN POLICY 245 (1950) (assessment of Roosevelt's World War II policy).

[342] *Hearings, supra* note 187, at 462. "Congressional inquiry, discussion and debate ought to serve a second function: facilitating a rational decision by the electorate *outside* the Congress." R. DAHL, *supra* note 341, at 125.

[343] *Hearings, supra* note 187, at 455, 459. The philosopher Charles Frankel, who served as an Assistant Secretary of State, shed his outsider's respect for governmental expertise: "often the government does know something that people on the outside don't, but its something that isn't so . . . . After a while I came to suspect that I might not be dealing with hard facts but rather with a world created out of hunch, hope, and collective illusion." *Id.* 480. Military reports of constant progress in Vietnam illustrate the point. As Professor Dahl said, "The more closely debate moves toward broad and basic policy, the more competent is the legislative decision likely to be, and correspondingly less competent is the expert." R. DAHL, *supra* note 341, at 244.

In the executive branch there is also an ill-concealed contempt for Congress. "People like Mr. Acheson," stated Senator Fulbright, who had occasion as a member of the Foreign Relations Committee to know at first hand, "make no bones about it. They just say they [Senators] are boobs and ought to have nothing to do with foreign policy . . . ." *Hearings, supra* note 187, at 468. Acheson himself referred to the "anguishing hours" he spent in the Senate to "suffer fools gladly." D. ACHESON, *supra* note 193, at 101. When we reflect that Truman, Kennedy, Johnson, and Nixon came to the Presidency from the Senate, we may ask by what miracle "boobs" became demi-gods.

W. W. Rostow states, "In the period 1961–69 I had the privilege of observing the process of Congressional consultation with the President [Kennedy and Johnson] on many occasions . . . . I emerged with great respect for members of Congress and have heard them make wise and helpful observations, both critical of the President's course and supportive." *Hearings, supra* note 187, at 535.

[344] *Hearings, supra* note 187, at 465–66. Reedy states of some meetings of the Cabinet and of the National Security Council that "everyone [was] trying desperately to determine just what it is that the President wants to do." *Id.* 466. Former Attorney General Ramsey Clark stated that "he had been wrong not to speak out against the Vietnam war when he was . . . Attorney General in President Johnson's cabinet while the war was expanding," and is quoted as saying, "There is too much tendency in the executive branch not to argue with policy." N.Y. Times, Aug. 16, 1972, at 7, col. 1. Of course, there is the occasional maverick, like Under Secretary of State George Ball, who persisted in opposition to Vietnam escalation in the face of an inner-circle consensus.

[345] Senator Charles Mathias said, "The more a President sits surrounded only by his own views and those of his personal advisers, the more he lives in a house of mirrors, in which all views and ideas tend to reflect and reinforce his own." *Hearings, supra* note 187, at 17.

Even worse is a situation such as that of President Eisenhower. Ambassador Douglas Dillon, according to C. SULZBERGER, *supra* note 241, at 1018, said that "Eisenhower never reads the newspapers and therefore doesn't know what goes on, and the apparatus around him sees that he doesn't know what goes on. The President's information nowadays is limited to what he is allowed to see by his entourage."

[346] J. JENNINGS, THE BRITISH CONSTITUTION 82 (3d ed. 1950).

[347] *Hearings, supra* note 187, at 455–56. "In the conduct of foreign relations, unity is one of the most important assets leadership can possess, disagreement one of the greatest liabilities." R. DAHL, *supra* note 341, at 221, 262. In addition to the examples cited by Dahl, there is the current divisiveness over Vietnam, which toppled one President, and has strewn boulders in the path of another, in no little part because the people were not really consulted.

[348] Senator Fulbright stated, "the Congressman or Senator has to respond to the wishes . . . of his electorate. This anchor in reality is the elected Representative's one indispensable credential for participation in the policymaking process." *Hearings, supra* note 187, at 23.

[349] *Cf.* Kurland, *The impotence of Reticence*, 1968 DUKE L.J. 619, 625–628. *See generally* McDougal & Lans, *supra* notes 106 & 146.

[350] Monaghan, *supra* note 172, at 19.

[351] Jaffe, *The Right of Judicial Review*, 71 HARV. L. REV. 401, 404 (1958).

[352] B. BAILYN, THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION 56–57 (1967); R. BERGER, *supra* note 33, at 9. Attorney General Rogers stated in 1958 that "The doctrine of the separation of powers was thus the very foundation stone of the Federal Government . . . the basic guarantee of the liberties of the people." *See Hearings, supra* note 187, at 562.

[353] Justice Black stated in Reid v. Covert, 354 U.S. 1, 40 (1957), "Ours is a government of divided authority on the assumption that in division there is not only strength but freedom from tyranny."

[354] Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 655 (1952) (Jackson, J., concurring).

Mr. EAGLETON. I thank the distinguished Senator from New York. This discussion has been helpful and will be important to the Members of the Senate and the 60 cosponsors of the measure. I agree that we are of one mind so far as interpretation is concerned as it would apply to Indochina.

Mr. President, I am prepared to yield back the remainder of my time.

Mr. ROBERT C. BYRD. Mr. President, how much time does the Senator have remaining?

The PRESIDING OFFICER. The Senator has 5 minutes remaining.

Mr. EAGLETON. Mr. President, I reserve the remainder of my time.

Mr. JAVITS. Mr. President, if the Senator is willing, I have about 3 minutes of morning business.

Mr. ROBERT C. BYRD. Mr. President, will the Senator from Missouri yield to the Senator from New York?

Mr. EAGLETON. Mr. President, I yield my 5 minutes to the Senator from New York.

Mr. JAVITS. I thank the Senator from Missouri.

(The remarks Senator JAVITS made at this point on the introduction of S. 915, the National Health Insurance and Health Services Improvement Act, and S. 916, authorization of appropriations for the National Foundation of the Arts and Humanities, are printed in the RECORD under "Statement on Introduced Bills and Joint Resolutions.")

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum. I ask unanimous consent that the time be charged against the remaining time under the order for the recognition of Senator CASE; and that in the event additional time is needed for the quorum, the orders respecting Mr. HART and Mr. MUSKIE be reinstated accordingly.

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

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.

RESCISSION OF REMAINING SPECIAL ORDERS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that any remaining time orders be vacated.

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

TRANSACTION OF ROUTINE MORNING BUSINESS

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

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. 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.

THE MOURNING HOUR

Mr. McGEE. Mr. President, I would entitle this "The Mourning Hour," m-o-u-r-n-i-n-g, mourning the demise

of two programs that have been unconstitutionally wiped out by the unilateral action of the executive branch of this Government. I single out two; the REA 2 percent loan fund and the REAP program, only because I have the responsibility for allocating their funds in the Appropriations Committee.

I understand the problems the President faces, and I rally around his efforts and the efforts of this body to try to tighten up the whole budget, to squeeze out the fat, to wring out the excess water, or however someone wants to describe it with whatever convenient cliche. But my protest—and this is the "mourning" in these remarks—derives from another circumstance that has really nothing to do with impoundment. It has to do with an unconstitutional process by the executive branch. That occurred when this executive branch, this President, with his Budget Bureau, came up to my Appropriations Subcommittee on Agriculture a year ago this month and said:

We would like to have $140 million for REAP, and we would like to have $350 million for the REA two percent loan funds.

They asked for it. They did not say, "We do not like the program." They did not say, "We cannot afford it." They did not say it was inappropriate as a priority. They said, "We need it," and I made the mistake of summoning all the members of the appropriations subcommittee into session—as grown men, mature people—and said, "We have to make an honest judgment on this."

We met for I do not know how many hundred hours altogether on that request. We increased the request the President made by a good many millions of dollars, because we thought that was a more fair assessment of the requests we had received.

But that is neither here nor there. The point is that the President, having requested those funds and we having supplied them, then signed the bill into law. Not until New Year's Day did we have any inkling that there were any misgivings over the programs. When we heard of those misgivings they were expressed to us through the front page of the Washington Post.

What I am getting at is that this single action by the White House tore the Constitution asunder. It shredded that document, because we had lived up to the administration's request, we had carried out our legislative responsibility, and the President, under the Constitution, had signed it into a legal appropriation of funds. Then, after we all went home, he not only cut the programs, he terminated them, without any petition being made to change the status of the legislative enactments under the Constitution.

That is the reason, Mr. President, that I am constrained to say here that, as still the chairman of all agricultural appropriations for the Senate, I see no point in holding new hearings on appropriations. Just let the President tell the country, "I am going to spend this much money, and I am going to find it where I can." I am not willing to hold appropriations hearings. First thing you know, we will get their new budget and sit on it for hours and hours to try to make a judgment, and then we will read in the newspapers again next Christmas that now the President has decided to cut out some more programs.

Why does he not level with us, Mr. President? Why did he not say he did not want these programs one year ago? Why did he not tell us they have no basis as priority items today?

Unless we can come back under the Constitution, Mr. President—and I insist that we do—I can see no point in proceeding with hearings for new agricultural requests; because, as sure as we are standing here, come next Christmas we will find that they forgot something else to tell us this year, this February, and they will destroy additional programs.

So I say, Mr. President, that I am willing to proceed as chairman of that subcommittee in clear conscience, asking the other members of the subcommittee to convene, only if we can return under the Constitution, and not under impoundment.

Impoundment is not in issue. It is a question of wiping out two programs for which no request had been received to wipe them out. The REA loan fund and REAP. I do not need to make a case for how dear those programs are to rural America. That is not the issue here. The real issue is that we did grant the President what he asked for and then we found the programs destroyed unilaterally. I make this exception to the impoundment proceedings. This is a clear cut constitutional question and not an impoundment question about which we are attempting to find a constitutional answer.

EXECUTIVE REPORTS OF COMMITTEES

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

By Mr. JACKSON, from the Committee on Interior and Insular Affairs:

John Henry Kyl, of Iowa, to be an Assistant Secretary of the Interior.

Mr. JACKSON. Mr. President, in submitting this report of the Committee on Interior and Insular Affairs on the nomination of John H. Kyl to be Assistant Secretary of the Interior for Congressional and Public Affairs, I wish to state that this nominee has agreed and committed himself in open hearing before the Interior Committee to appear and testify at such reasonable times as the Interior Committee or any other duly constituted Senate committee might request his presence.

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. EASTLAND:

S. 911. A bill to provide for a mandatory life sentence in certain cases involving the unlawful distribution of certain narcotic drugs, and for other purposes. Referred to the Committee on the Judiciary.

By Mr. MOSS:

S. 912. A bill for the relief of Mahmood Shareef Suleiman. Referred to the Committee on the Judiciary.

By Mr. MOSS (for himself and Mr. GOLDWATER) (by request):

S. 913. A bill to amend title 5, United States Code, to provide for a change in the titles of the NASA Associate Administrator positions listed under level V of the Executive Schedule, and to add three more such positions to such schedule. Referred to the Committee on Post Office and Civil Service.

By Mr. PROXMIRE:

S. 914. A bill to amend the Truth in Lending Act to protect consumers against inaccurate and unfair billing practices, and for other purposes. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. JAVITS:

S. 915. A bill to provide a national health insurance program by extending the benefits, enlarging the coverage, expanding the role of private carriers, and otherwise improving the health insurance program established by title XVIII of the Social Security Act, by establishing a new title XX to such act to provide comparable health insurance benefits to individuals not covered therefor under the program established by such title XVIII, by providing Federal assistance to develop local comprehensive health service systems, and by authorizing the establishment of federally chartered national health insurance corporations. Referred to the Committee on Finance.

By Mr. JAVITS (for himself, Mr. PELL, Mr. EAGLETON, Mr. MONDALE, and Mr. TAFT):

S. 916. A bill to amend the National Foundation on the Arts and the Humanities Act of 1965, as amended. Referred to the Committee on Labor and Public Welfare.

By Mr. ERVIN (for himself, Mr. PEARSON, and Mr. JACKSON):

S. 917. A bill to protect the people's right to know by regulating the testimony of newsmen. Referred to the Committee on the Judiciary.

By Mr. GURNEY (for himself, Mr. BIBLE, Mr. PASTORE, Mr. THURMOND, and Mr. EASTLAND):

S. 918. A bill to require the imposition of a life sentence in connection with the unlawful distribution of certain narcotic drugs. Referred to the Committee on the Judiciary.

By Mr. GURNEY (for himself and Mr. CRANSTON):

S. 919. A bill to amend title XVIII of the Social Security Act to permit certain individuals, who have attained age 60 but not age 65 and who are entitled to widow's or widower's insurance benefits or are the wives or husbands of persons entitled to hospital insurance benefits, to obtain, in consideration of the payment of insurance premiums, coverage under the insurance programs established by such title. Referred to the Committee on Finance.

By Mr. JACKSON (for himself, Mr. FANNIN, Mr. GURNEY, and Mr. CHILES) (by request):

S. 920. A bill to authorize the acquisition of the Big Cypress National Fresh Water Reserve in the State of Florida, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

By Mr. JACKSON (for himself and Mr. FANNIN) (by request):

S. 921. A bill to amend the Wild and Scenic Rivers Act. Referred to the Committee on Interior and Insular Affairs.

S. 922. A bill to amend the Land and Water Conservation Fund Act of 1965, as amended. Referred to the Committee on Interior and Insular Affairs.

S. 923. A bill to provide for the cooperation between the Federal Government and the States with respect to environmental regulations for mining operations, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

S. 924. A bill to establish a national policy encouraging States to develop and implement land use programs. Referred to the Committee on Interior and Insular Affairs.

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

S. 925. A bill to establish a Federal Financing Bank, to provide for coordinated and more efficient financing of Federal and federally assisted borrowings from the public, and for other purposes. Referred to the Committee on Banking, Housing and Urban Affairs.

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

S. 926. A bill to amend the Social Security Act to assure that whenever there is a general increase in social security benefits there will be a corresponding increase in the standard of payments used to determine eligibility for aid or assistance under State plans approved under title I, X, XIV, or XVI of such act. Referred to the Committee on Finance.

By Mr. METCALF:

S. 927. A bill to amend chapter 35 of title 38, United States Code, in order to permit eligible persons to pursue a course of education in a vocational or technical school in a foreign country under certain circumstances. Referred to the Committee on Veterans' Affairs.

By Mr. ROTH (for himself, Mr. BEALL, Mr. BROCK, Mr. BUCKLEY, Mr. GURNEY, Mr. PERCY, Mr. RIBICOFF, Mr. SCOTT of Pennsylvania, Mr. STEVENSON, Mr. TAFT, and Mr. TOWER):

S. 928. A bill to create a catalog of Federal assistance programs, and for other purposes. Referred to the Committee on Government Operations.

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

S. 929. A bill to amend the Par Value Modification Act. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. BROCK (for himself and Mr. BAKER):

S. 930. A bill for the relief of Leticia Ramos. Referred to the Committee on the Judiciary.

By Mr. McCLURE:

S. 931. A bill for the relief of Jose Ramon Santa Maria. Referred to the Committee on the Judiciary.

By Mr. ABOUREZK:

S. 932. A bill to discourage experimentation on animals by elementary and secondary school children. Referred to the Committee on Labor and Public Welfare.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. EASTLAND:

S. 911. A bill to provide for a mandatory life sentence in certain cases involving the unlawful distribution of certain narcotic drugs, and for other purposes. Referred to the Committee on the Judiciary.

Mr. EASTLAND. Mr. President, I send to the desk a bill to provide for a mandatory life sentence in certain cases involving the unlawful distribution of certain narcotic drugs, and for other purposes.

I support the legislation introduced by the distinguished senior Senator from Florida. Senator GURNEY's proposed legislation would adopt on the Federal level the proposal of Gov. Nelson Rockefeller that all sellers of hard drugs be given life imprisonment without parole.

The legislation I am introducing would enact this concept into law with two variations:

First. The bill I am introducing provides that if the court determines, on the basis of a recommendation by the U.S. attorney or on the basis of other information available to it, that a person convicted for selling hard drugs has, to the extent of his ability, been cooperative in disclosing information or knowledge as to the source of the narcotic drug involved in his conviction, the court, in its discretion, may reduce the sentence of life imprisonment to a sentence of a term not to exceed 20 years.

Second. My proposed legislation also provides that the Attorney General of the United States, in his discretion, is authorized to pay an amount not to exceed $30,000 for information and services concerning the distribution of hard drugs.

Mr. President, I am truly in accord with the proposition that persons who traffic in narcotics should be given severe, swift, and certain punishment. We must increase the criminal penalties for drug pushers. These people must understand that if they are caught and convicted they will face a possible life sentence without hope of probation or parole. I am firmly convinced that the prospect of swift, certain, and meaningful punishment will deter such criminal activities.

However, I believe that most of us would agree that the primary purpose of laws dealing with narcotic drugs is to dry up the ultimate sources of such drugs. The experiences of law enforcement authorities dealing with this problem are that the small street pusher is caught and sentenced, but that the large wholesale suppliers remain free to furnish these drugs to new dealers.

We must destroy the ultimate sources of this poison that is infecting so many of our citizens.

It is with this principle in mind that I offer these modifications to the Rockefeller bill.

If a street pusher is convicted of distributing a hard drug, the knowledge, prior to his being sentenced for that crime, that his mandatory life sentence could be reduced to a term not to exceed 20 years would be a powerful inducement for him to make a full and complete disclosure as to the source or sources from which he obtained these drugs. This inducement to cooperate with the authorities would also exist before conviction when the street pusher would have reason to believe that his chances of being convicted were great.

It could be said, in a sense, that the drug retailer would have the key to his jail cell. That "key" would be full cooperation with the law enforcement authorities in disclosing the sources of his drugs.

In that way, many of the large wholesale suppliers of these drugs would be implicated, charged, tried, and convicted. It might be possible to smash the large drug rings that operate in the United States and to bring this terrible problem under control.

In my judgment, this approach might well produce panic in the criminal syndicates that engage in wholesale distribution. They would know that the retailers would have little choice, if apprehended, but to inform the authorities on their overlords.

Likewise, in my judgment, it would be useful to provide for payment not to exceed $30,000 for information or services relating to the source of such narcotic drugs. This, too, could be an effective means of rooting out the ultimate source or supply. There are precedents for this type of provision in 18 United States Code, sections 1751(g), 3056, and 3059.

I hope that Congress gives careful consideration to Senator GURNEY's bill, to my bill, and to any other legislation that may be introduced on this subject, so that we might enact effective legislation to deal with this problem.

By Mr. PROXMIRE:

S. 914. A bill to amend the Truth in Lending Act to protect consumers against inaccurate and unfair billing practices, and for other purposes. Referred to the Committee on Banking, Housing and Urban Affairs.

THE FAIR CREDIT BILLING ACT

Mr. PROXMIRE. Mr. President, I introduce for the second time the Fair Credit Billing Act and ask that it be appropriately referred. The purpose of the legislation is to protect consumers against inaccurate and unfair billing practices. The bill requires creditors to resolve billing disputes promptly and fairly; it strengthens a consumer's legal defenses regarding credit and purchases; and it prohibits retroactive finance charges on revolving credit accounts. The bill also prohibits other unfair billing practices and makes a number of changes in the Truth-in-Lending Act which were recommended by the Federal Reserve Board.

Members of the Senate may recall that I introduced a similar bill in the last Congress (S. 652) on February 8, 1971. Following hearings in October of 1971 by the Subcommittee on Financial Institutions of the Senate Committee on Banking, Housing and Urban Affairs, the chairman of that committee on April 17, 1972, reported to the Senate what I considered to be a sadly watered down version of my original bill (Rept. No. 92–750). Vital consumer safeguards were stricken from the bill and others were seriously weakened. As I pointed out in my individual views in the committee report, the committee bill might be more accurately termed the "Bank Protection Act of 1972." The bill was considered by the Senate on April 17, 1972. Unfortunately, most of the attempts to strengthen the bill on the floor were defeated.

Accordingly, I and the other cosponsors of the bill voted against it on final passage. This was a difficult thing to do since I had worked long and hard on the legislation and there were still some provisions in the bill which helped consumers. On balance, however, I felt the bill was of greater benefit to the banks and other creditors than it was to consumers. Moreover, I did not want to create the illusion that substantial progress had been achieved when this was not the

case. Under these circumstances, I believe and still believe that no bill was better than a bogus bill. These judgments were concurred in by the Consumer Federation of America, the AFL–CIO and other consumer groups.

Now that we have a new Congress, I am optimistic that a strong Fair Credit Billing Act can be enacted. Several recent developments lead me to this conclusion.

First, the Senate itself is composed of younger, newer members more inclined to support strong consumer protection measures;

Second, there has been a renewed interest in consumer legislation on the part of the Senate Banking Committee. For example, the chairman and ranking Republican on the committee have taken the initiative to create a new Subcommittee on Consumer Credit in order to concentrate more deeply on consumer legislation;

Third, the recent report of the National Commission on Consumer Finance gives support to some of the provisions in the Fair Credit Billing Act and particularly the provision giving consumers the right to assert the same legal defenses against credit card issuers that they have against the merchant honoring the card; and

Fourth, even responsible spokesmen in the credit industry have privately recognized the need for acting upon some of the more controversial provisions in the Fair Credit Billing Act.

THE CREDIT CARD REVOLUTION

Credit cards have been one of the fastest growing forms of consumer credit. Once an exclusive instrument of the rich, credit cards are now used by every segment of society. A recent study shows that 35 million families, or one half of all American families, use at least one credit card.[1]

While credit cards tend to be used more by those with higher incomes, the study shows that credit cards are also used extensively by middle- and low-income families. For example, 20 percent of families with incomes under $5,000 use credit cards. Nearly one-half, or 47 percent of families earning between $5,000 and $10,000 use credit cards. Of families earning between $10,000 and $20,000 a year, 69 percent use credit cards, while 82 percent of families making more than $20,000 a year use credit cards.

There are four principal types of firms which issue credit cards—retailers, banks, oil companies and travel and entertainment companies. The last category consists almost entirely of three companies—American Express, Diners Club, and Carte Blanche. There are about 12 to 15 major oil companies which have issued the vast bulk of the oil company credit cards. Two major bank interchange systems, BankAmericard and Master Charge, account for over 95 percent of the bank credit card business.

[1] Lewis Mandell, Credit Card Use in the United States, Institute for Social Research, Ann Arbor, Michigan, 1972. (Data based on surveys conducted in 1970.)

Retail cards tends to be more diversified, but the largest three national chains extend nearly 30 percent of the revolving credit offered by retailers. Thus the control of credit cards is rapidly evolving to a few firms which do business on a nationwide scale.

According to the survey mentioned above, about 35 percent of all families, or 25 million families, use retail cards; 24 million families use gasoline cards; 12 million families use bank cards; and 9 million families use travel and entertainment cards. The medium number of cards used by credit card using families is three. About 6 million families use nine or more credit cards. The 35 million families who use at least one credit card make credit card purchases of $26 billion a year; this comes to about $750 per family.

The latest figures of the Federal Reserve Board show the amount of credit outstanding on credit card accounts amounts to $14.2 billion as of December 1972, or nearly double the amount 4 years ago. These figures exclude an estimated $5 billion of additional revolving credit extended by department stores for which precise figures are not available, $1.6 billion in check credit plans offered by commercial banks; and $9 billion in miscellaneous charge accounts with utility companies, doctors, dentists, repair shops and others. Some of these charge account plans do not issue credit cards, although they are similar to credit card plans in the sense that they enable consumers to make periodic purchases without paying for them immediately.

The amount of charge account credit of all types outstanding as of December 1972 comes to $30 billion or 19 percent of all outstanding consumer debt. This total amount of debt credit card and charge account works out to an average outstanding debt of over $400 for every family in the United States. These figures are summarized as follows:

Outstanding Open End Credit December 1972

(Billions of dollars)

Type of Credit	*Amount*
Bank credit card	$5.3
Bank check credit	1.8
Oil company credit	1.8
Travel and entertainment cards	0.1
Department store revolving credit	5.0
Other retail charge accounts	7.0
Other charge accounts	9.0
Total	30.0

The ready availability of credit cards have made it more convenient for many consumers to make purchases without carrying large amounts of cash. But they have also tended to increase total consumer indebtedness. According to a recent study, 75 percent of all families said that credit cards make it too easy to buy things that they may not really want or that they really cannot afford. Among high income people, the credit card was seen mostly as a convenience instrument to facilitate transactions, while among most other groups, the card is seen largely as an instrument for incurring consumer debt.[2]

[2] Mandell, op. cit.

For the average family charge accounts and monthly bill paying have become a way of life.

The Fair Credit Billing Act is designed to remedy some of the problems brought on by the credit card revolution. Given the rapid expansion of charge account credit, it is perhaps inevitable that some of our consumer protection laws have lagged behind the new developments in this type of credit. Those in the credit industry who have led the credit card revolution have sometimes lost sight of the human element of their business. In their efforts to computerize and achieve maximum efficiency, the problems of the individual consumer have often been ignored.

As a result, the consumer has been harassed and intimidated by computer written dunning letters; he has been shortchanged by tricky billing practices which result in interest rates far above the legal usury ceilings; his legal rights have been eroded through the use of bank credit cards, and he has been subjected to a variety of other questionable practices.

SUMMARY OF BILL

In order to redress these and other abuses, I have prepared a 13-point program to strengthen the rights of the consumer in credit card and billing transactions. These provisions constitute a bill of rights for the consumer when he uses credit cards or charge accounts. They insure that the consumer will be dealt with fairly and equitably by the credit grantor. A summary of these provisions follows:

First. Correction of billing errors: Creditors are required to acknowledge customer billing inquiries within 30 days and to resolve those inquiries within 90 days. The creditor cannot send dunning letters, threaten the consumer with an adverse credit report, or take other collection action until the inquiry is resolved. An inquiry is resolved by either correcting the customer's bill or explaining why the original bill was correct. Creditors who fail to comply forfeit the amount in dispute up to $100, whether or not the bill was in error. (Sec. 161 and 162(a))

Second. Regulation of credit reports: If a consumer continues to dispute a bill after receiving the creditor's explanation, a creditor may not report the disputed amount as delinquent to a credit reporting agency unless the creditor so notifies the customer and tells the credit reporting agency the amount is in dispute. The creditor must also report any subsequent resolution of the dispute to the agency. (Sec. 162(b) and 162(c))

Third. Disclosures to consumers: Creditors must indicate on their monthly bills an address for handling billing disputes and disclose twice yearly the customer's right to have these disputes resolved as provided in the bill. (Sec. 104 and 105)

Fourth. Length of billing period: Creditors must mail their monthly billing statements at least 14 days before the payment is due. (Sec. 163)

Fifth. Prompt crediting of payments: Creditors cannot impose a finance charge

if a customer's payment is received before it is due. (Sec. 164)

Sixth. Crediting excess payments: Creditors must promptly credit excess payments or refund them if requested. (Sec. 165)

Seventh. Prompt notification of returns: Merchants honoring credit cards issued by third parties such as banks or credit card companies must promptly notify the card issuer of any return of merchandise or similar adjustment. (Sec. 166)

Eighth. Ban on retroactive finance charges: Creditors cannot impose retroactive finance charges on balances which were outstanding prior to the due date for payment. This provision would outlaw the so-called "previous-balance" billing system and other billing systems which impose retroactive finance charges. (Sec. 167)

Ninth. Ban on minimum finance charges on revolving charge accounts are prohibited. The prohibition does not cover charges imposed on all accounts to recover billing expenses or on all accounts delinquent more than 60 days. (Sec. 168)

Tenth. Discounts for cash buyers: Credit card issuers cannot prohibit merchants who honor the card from offering a discount to cash customers. (Sec. 169)

Eleventh. Prohibition of tie-in-services: Credit card issuers cannot require merchants to maintain deposits or purchase other services as a condition for participating in the credit card plan. (Sec. 170)

Twelfth. Prohibition of offsets: Financial institutions cannot offset a consumer's credit card debt against his checking or savings account unless the consumer has previously agreed and is given a 10-day period to rescind the offset. (Sec. 171)

Thirteenth. Legal defenses of credit card customers: Consumers who purchase defective merchandise with a bank credit card or similar card can withhold payment from the bank and assert the same legal claims or defenses against the bank that they have against the merchant. (Sec. 172)

In addition to the foregoing, the legislation also makes a number of procedural and technical changes in the disclosure provisions of the truth-in-lending law as recommended by the Federal Reserve Board in its annual report for 1972 or in separate correspondence. Most of these recommendations were reviewed by the Senate Banking Committee and were included in the bill which passed the Senate last year (S. 652). They are included under title II of the legislation.

Many of the provisions of the Fair Credit Billing Act appeared in a proposed trade regulation published by the FTC in October of 1970. The FTC delayed action on this regulation pending consideration of the Fair Credit Billing Act by the last Congress. However, since Congress has failed to act, the FTC has indicated it intends to reconsider a similar trade regulation in 1973. While FTC action in this area would certainly be welcome, it could have unfortunate implications for some segments of the credit card industry. It is not clear whether the FTC has sufficient authority to regulate commercial bank credit cards. If authority over banks is denied by the courts, retailers, oil companies and other creditors might find themselves under the FTC regulation while commercial banks would be exempt. Such a development would confer an unfair competitive advantage upon banks. It is therefore desirable that Congress enact a fair credit billing statute which will apply equally to all sigments of the industry.

I would now like to describe in greater detail the main provisions of the legislation.

RESOLVING BILLING ERRORS

Numerous complaints have been received by Members of Congress from consumers using credit cards who have had difficulty in resolving errors appearing on their monthly credit statements. The Federal Trade Commission has received nearly 2,000 complaints in this area. Similar complaints have been received by consumer protection agencies throughout the country. A survey taken by the Minneapolis Tribune shows that one out of every three consumers have been involved in at least one billing error problem.

Most consumer complaints about billing errors involve a common pattern. In a typical case, the consumer might discover a billing error on one of his monthly charge accounts or credit card statements. Or he might need further information about a particular item appearing on his statement. He writes to the creditor but receives no satisfactory response. In the meantime, he receives a series of computer written dunning letters. These letters may threaten the consumer with a bad credit rating or other legal action unless the amount in dispute is paid.

After literally months or years of carrying on correspondence with a computer, many consumers give up in frustration and pay the disputed amount even though they feel they do not owe such amounts. Some eventually resolve the dispute through sheer persistence although it may take many months or even years of patient letter writing. Some are able to get their billing problems corrected by writing to the president of the company or to their Congressman or Senator. A few hire attorneys to press their claim. One consumer witness testifying last year told of spending $150 in legal fees to get a $22 billing error corrected.

The bill requires that upon being notified of a billing error, the creditor must acknowledge the notification in 30 days and take positive action to resolve the error within two complete billing periods, but in no event later than 90 days. An error is resolved either by making appropriate corrections in the consumer's account or by explaining why the original amount billed was correct. In the latter case, the creditor is required to investigate the error and provide the consumer with copies of the transaction in question if requested. The requirement for an investigation is intended to preclude a creditor from making an automatic form letter response without actually looking into each billing inquiry.

While the creditor is investigating a billing inquiry, he is prohibited from reporting to a credit bureau that the amount in dispute is delinquent. He also is barred from taking action to collect the amount in dispute including threatening the consumer with an adverse credit report. Many consumers are now intimidated into paying an unjust bill because of these questionable collection tactics.

If a consumer still disputes the accuracy of a bill after it has been explained to him in accordance with the law, the creditor can begin his normal collection activity; however, if he reports the amount as delinquent to a credit bureau, he must indicate the amount that is in dispute and must notify the consumer that the amount was reported as delinquent and must give the consumer the name and address of the credit bureau involved.

Any creditor who fails to meet these requirements forfeits the amount in dispute up to a maximum of $100 whether or not the amount billed actually was in error. In other words, if a creditor fails to respond to a billing inquiry, as required by the bill, the consumer does not have to pay the disputed amount under $100, even if the creditor can later prove the bill was correct. Thus, the legislation should be largely self-enforcing and should not require a large bureaucracy to achieve compliance.

Creditors are also required to inform consumers of their rights under the Fair Credit Billing Act at least twice a year and disclose an address for receiving billing inquiries on or with their monthly billing statements.

All of these provisions are designed to establish a fair and equitable system for the resolution of billing disputes. They are fair to the consumer and workable to the credit industry. They have been carefully reviewed last year by the Senate Banking Committee and were adopted unanimously. Most of the requirements are already being met by responsible creditors and there is no reason why all creditors cannot or should not meet those same standards.

In addition to establishing a fair system for resolving disputes, I believe legislation is needed to insure that billing systems themselves are fair and equitable. Six provisions of the bill address themselves to consumer complaints in this area.

THE SHRINKING BILLING PERIOD

One typical consumer complaint involves the so-called shrinking billing period where a creditor mails his monthly statement so late that a consumer has only a few days to make payment in order to avoid a finance charge. Most credit card plans require payment within 25 to 30 days from the end of the previous billing period. However, the actual time remaining before payment is due can be considerably shortened if a creditor is late in sending out his bills. The FTC has received nearly 500 letters from consumers who have complained about the shrinking billing period. In one example, a consumer could not have avoided a finance charge even if he sent his payment back on the same day he received his bill.

There may be legitimate reasons for delays in mailing billing statements.

Nonetheless, the charge has been made that some creditors may be tempted to decrease the time available for payment after a bill is received as a method for increasing finance charge revenue. It is inevitable that more customers will fail to pay on time as the time available for payment is decreased. Some are simply too busy or may be away on travel. Others are paid twice a month and may be unable to pay their credit card bills until their next pay check is received.

The bill deals with this problem by requiring creditors to mail their billing statements at least 14 days before a payment must be made to avoid a finance charge. If a creditor fails to provide 14 days for payment, he is prohibited from collecting any finance charges on the amounts billed for that period.

PROMPT CREDITING OF PAYMENTS

Another billing complaint by consumers involves a failure to credit payments on the day they are received. A delay in crediting by the creditor can cost the consumer money. Many revolving credit plans require payment within 30 days to avoid a finance charge. If a consumer pays on the 30th day, he may still be hit with a finance charge if the creditor fails to credit the payment on the day it was actually received. This is obviously unfair to the consumer who has no control over the length of time it takes a creditor to post the payment to his books. Delays in crediting payments can also increase finance charges under average daily balance plans where the size of the finance charge varies with the amount of daily credit outstanding.

The bill would remedy this problem by requiring the prompt crediting of finance charges by creditors in accordance with regulations issued by the Federal Reserve Board. Some flexibility is needed, because of the wide variety of billing systems. However, the regulations must prevent a creditor from imposing a finance charge if the customer's payment is received on or before the due date.

CREDITING EXCESS PAYMENTS

While not a frequent complaint, some consumers have encountered difficulty in having excess payments refunded or credited to their account. The hearing record of last year contains a case of a consumer who was unable to obtain a cash refund for a $100 overpayment to an oil heating company at the end of the winter heating period. Instead, the account was credited so that the only way of getting the excess payment returned was to make additional oil purchases the following fall. In the meantime, the creditor had the use of the consumer's money until the additional oil purchases were made.

Most credit grantors will promptly credit excess payments to a customer's account or make a cash refund if requested. The bill requires all creditors to adhere to these standards.

PROMPT NOTIFICATION OF RETURNS

Another consumer complaint is that creditors sometimes fail to notify a card issuer when merchandise has been returned. For example, a consumer might use his bank credit card to purchase an item from a particular store. If he returns the item, the store does not always notify the bank of the credit to be entered in customer's account. The bank proceeds to bill the customer for the item as though it were a valid purchase. The consumer must then take the time and trouble to explain the situation to the bank in order to get his account properly adjusted. Airlines in particular have tended to be late in notifying credit card companies of a return of airline tickets, thereby causing numerous billing disputes. In other cases, the only way a consumer can get his money back is by making an equivalent purchase from the same store—something he may not be willing to do.

The bill would solve this problem by requiring creditors to promptly notify third-party credit card issuers of merchandise returns or other credits. The card issuer, in turn, would be required to promptly credit the consumer's account. These requirements should also help to cut down on the number of billing disputes.

PROHIBITION ON RETROACTIVE FINANCE CHARGES

Perhaps the most controversial provision of the bill would prohibit retroactive finance charges on revolving charge accounts where the consumer is charged interest on money he has already repaid. This provision failed to be included in last year's act by a 38-to-38-tie vote.

The most common method for assessing retroactive finance charges is the so-called "previous balance" billing system. Under this system, consumers are generally given 30 days to pay their outstanding balance before they are assessed a finance charge. However, if they make a partial payment, they are charged interest against the original balance in their account rather than the remaining balance. No credit is given for the partial payment.

For example, if a consumer has a balance of $100 in his revolving charge account and makes a partial payment of $90, he is charged interest against the original balance of $100 rather than the closing balance of $10. He thus pays 10 times the amount of interest he otherwise would have paid if the creditor charged against the closing balance.

Most creditors impose a finance charge of 1½ percent a month. Thus, in the above example, a creditor using the previous balance system would charge the consumer 1½ percent of the $100, or $1.50. On the other hand, if the creditor used the closing balance system, he would charge the consumer 1½ percent of the closing balance of $10 or 15 cents. When the previous balance system is used, the consumer is really paying $1.50 in interest for the remaining credit balance of $10. He thus pays 15 percent a month or a whopping 180 percent a year.

Another method of assessing retroactive finance charges is the so-called average daily balance system which some creditors claim is fairer to consumers. However, some varieties of the average daily balance system also impose retroactive finance charges. Under these circumstances, consumers can pay even higher finance charges than they do under the previous balance system. For example, if a consumer makes a single purchase of $100 on the first day of his billing period, he is sent a bill at the end of the month and has until the end of the next month to pay in order to avoid a finance charge. If he makes a partial payment of $90 at the end of the following month, some creditors will charge interest at the rate of 1.5 percent per month for the full 60 days on the $100 outstanding during that period. In this example, the finance charge would come to $3 or double what he would be charged under the previous balance method. Annualizing this finance charge against the $10 actually owing at the end of the grace period produces an astronomical interest rate of 360 percent a year.

The main arguments against retroactive finance charges are these:

RETROACTIVE SYSTEMS ARE DISCRIMINATORY

First, retroactive billing systems discriminate unfairly between different classes of credit customers. A customer who can afford to pay his balance in full within 30 days can obtain up to 60 days of free credit if he makes a purchase at the beginning of the previous billing period and takes the full 30 days to pay. However, these benefits are substantially reduced if the customer cannot afford to pay in full and the creditor has a retroactive billing system.

In order to appreciate this point, let us take a typical example. Assume a customer makes a purchase of $100 on March 1, the first day of his billing period. He gets his bill the following month showing a balance due on April 1 of $100 and has 30 days to pay in full to avoid a finance charge. He pays the bill in full on April 30. Result: No finance charge; 60 days of free credit from March 1 to April 30.

Now let us examine what happens under the various billing systems if he can only pay $50 on April 30 instead of the full $100.

Previous balance system—Under this system, the creditor applies a 1½ percent retroactive finance charge against the balance due on April 1, or $100. Result: A finance charge of $1.50; 30 days of free credit from March 1 to April 1.

Average daily balance system No. 1 Under this system, the creditor applies a 1½ percent per month finance charge to the average daily balance measured from the time of purchase—March 1—to the time of payment—April 30. Result: Finance charge of $3; no free credit.

Average daily balance system No. 2—Sears system: Under this system, the creditor applies a 1½ percent per month finance charge per month to the average daily balance measured from the close of the previous billing period—April 1—to the date of payment—April 30. Result: a finance charge of $1.50; 30 days of free credit from March 1 to April 1.

Adjusted balance system: Under this system, the creditor applies a 1½ percent finance charge to the amount owing—$50—at the end of the 30-day grace period. In effect, the finance charge is the cost of carrying the balance due for an additional 30 days beyond the 30-day grace period. Result: finance charge of $0.75; 60 days of free credit from March 1 to April 30.

The first three systems are retroactive systems in that they charge the custom-

er for balances in his account which were outstanding before the April 30 due date. The only nonretroactive system is the adjusted balance system. It does not begin charging until the end of the 30-day grace period. It provides all its customers with the same amount of free credit whether they make full or partial payment. On the other hand, the three retroactive systems discriminate against their customers by offering less free credit to those who make partial payments.

It might be argued that those making partial payments should not enjoy the same benefits provided to those making full payment because the former group is more costly to the creditor.

The answer to this argument is that those who make a partial payment already pay 18 percent a year for the credit they use. There is no logical reason for reducing the grace period for these customers simply because they elect to use the credit features of the plan.

Many creditors acknowledge that the previous balance system is inequitable and are beginning to shift to the average daily balance system which they represent as fairer to the consumer. Sears has recently converted to the average daily balance system with much fanfare and rhetoric about the great benefits they are bestowing on their customers.

In reality, the average daily balance system is simply a smokescreen contrived by creditors to preserve their illgotten gains under the discredited previous balance system while creating the illusion of reform and progress. As I have shown, the average daily balance system has the same retroactive features as the previous balance system and imposes the same degree of discrimination on those customers who cannot pay in full. Moreover, under one variety of the average daily balance method, the credit customer will pay a higher finance charge compared to the previous balance charge compared to the previous balance method.

The average daily balance system used by Sears and other creditors is sometimes represented as the ultimate in fairness. If a bill is not paid in full within 30 days, the creditor charges the customer for the exact amount of credit in his account—exclusive of current purchases—measured from the end of the previous billing period to the day of payment. If he pays early or makes larger payment, his finance charge is correspondingly reduced. What could be fairer, creditor spokesmen say?

The hooker is that the plan only applies to those who make a partial payment. If a person pays in full within 30 days, he receives free credit within those 30 days. If he does not pay in full, he is charged for the credit he uses during that same period. Why should a benefit be given to one group and denied another? One might approve of such a plan if those who benefit were especially needy or deserving. However, just the opposite is true. Those who pay in full tend to have higher incomes compared to those who make partial payments. Thus we have a clear case of the poor subsidizing the rich.

If we compare the level of finance charges under the previous balance system and average daily balance system, the differences are not very striking. Those who are pushing the average daily balance system as a substitute for the previous balance system claim the consumer can save money by paying earlier and in larger amounts. However, as a practical matter, those consumers who make partial payments—and thus pay interest at the rate of 18 percent per year—do so because their budgets are constrained. They simply don't have the money to make full payment. Moreover, their cash balances are so low, they must wait for their next paycheck before making any payment. The option of paying earlier or in larger amounts in order to reduce the amount of the finance charge is simply not a meaningful option. To the extent that consumers continue paying towards the end of the billing period they will pay roughly the same finance charge that they would have paid under the previous balance system. This analysis might be refuted if creditors could show their net yield under the average daily balance system is appreciably lower than what it was under the previous balance system. Up to now, these figures have not been produced.

To summarize, all credit plans using retroactive finance charges discriminate between customers who pay on time and those who do not. This is accomplished by reducing the amount of free credit provided to those who make partial payments. The free credit feature of revolving credit plans is essentially a device to promote sales and should be available to all credit card customers. To some extent the free credit period itself discriminates between cash customers and credit card customers. My legislation takes no position on whether creditors should or should not offer a free credit period to credit card customers. But if they do, the same benefit should apply equally to all credit card customers. This can be achieved by prohibiting retroactive billing systems which are triggered by a failure to make full payment.

RETROACTIVE SYSTEMS ARE DECEPTIVE

A second argument against retroactive billing systems is that they are inherently deceptive. The Truth in Lending Act requires creditors to disclose how their finance charges on revolving charge accounts are computed. Despite the disclosures required under the law, most consumers do not really understand how their finance charges are figured. For example, a poll was recently taken in California of customers of creditors who used the previous balance system. These customers were asked on what amount their finance charges would be computed if they had a bill for $100 and paid $25. Only 18 percent correctly replied that the charge would be based on the $100. The rest—82 percent—were misinformed or uninformed despite Truth in Lending.

It is understandable why consumers have a hard time understanding retroactive billing systems. It is natural to assume that when a creditor gives a consumer 30 days to pay he will begin assessing a finance charge after the end of the 30-day period and not before. Most consumers do not bother to read the fine print which would tell them otherwise. Because they do not really understand the system, many consumers wind up paying finance charges which they might have avoided.

RETROACTIVE SYSTEMS ARE USURIOUS

A third criticism of retroactive billing systems is that they make it possible for creditors to charge interest rates substantially in excess of State usury ceilings. I have already shown how it is possible for creditors to charge as much as 180 or 360 percent if the interest is figured on the amount actually owing after the expiration of the 30 day grace period. Creditors reply by arguing that the 30-day grace period must be taken into account in figuring the effective interest rate paid by consumers. But there is no reason to count the grace period for credit purposes when it is really offered free to the consumer as a sales device. The creditor cannot have it both ways. He cannot claim he is offering a free 30-day grace period and then include it in computing the effective interest rate paid by the consumer. If the creditor offers a free period for avoiding finance charges, the only proper method for computing the effective rate of interest paid by the consumer is to begin the computation after the expiration of the grace period.

Even if we accept the creditor's argument that the free grace period should be included in the computation, it can be shown that rates in excess of the usury ceiling are still possible under the previous balance system. For example, assume a customer makes a $100 purchase on the last day of his billing period. He receives his bill and pays $80, 15 days after the purchase date, leaving a balance due of $20. In this example, the customer has received $100 in credit for 15 days and $20 in credit for 15 days for an average of $60 during the entire 30-day period—$100+$20÷2=$60. Although he has had the effective use of only $60 in credit, the creditor will base his finance charge on the opening balance of $100 and charge him 1½ percent of that amount or $1.50. If we measure the $1.50 finance charge against the average amount of credit outstanding of $60, the monthly rate becomes 2½ percent and the equivalent annual percentage rate becomes 30 percent, or nearly double the rate disclosed under Truth in Lending. Even higher effective rates are possible under the previous balance billing system if the customer repays a greater fraction of his bill or repays earlier than the above illustration. Thus even if we accept the creditor's argument that the free grace period should be included in calculating effective interest rates, the conclusion that the previous balance system can exceed usury ceilings is not invalidated.

Some creditors will argue that the usury problem could be overcome by shifting from the previous balance system to the average daily balance system as Sears has done. Under the average daily balance system used by Sears, it is argued that the customer would never pay an effective rate greater than 18 percent a year, assuming a nominal monthly rate of 1½ percent. This is because he

would be given specific credit for early or partial payments. However, this conclusion depends upon including the 30-day grace period in the amount of credit assumed to be extended the consumer. If we exclude the grace period, as I believe we should, the effective rate can be many times higher than the 18 percent disclosed under truth in lending. On the other hand, if the grace period is included, as the creditor claims it should be, the average daily balance system becomes obviously discriminatory. Credit extended during the 30-day grace period is given away free to those who pay in full while a specific charge is made for the same credit to those who cannot afford to pay. Thus the average daily balance system is either discriminatory or potentially usurious. It cannot counter both of these criticisms at the same time.

RETROACTIVE SYSTEMS WEAKEN CONSUMER RIGHTS

A fourth argument against retroactive billing systems which are triggered by a failure to pay the full amount due is that they discourage a consumer from exercising his right to withhold payment for defective merchandise. A failure to pay for one small item on a monthly bill can result in a substantial finance charge on the entire bill. For example, suppose a consumer has an outstanding balance of $400 in his revolving charge account but has a dispute over one item costing $5. If he pays $395 and withholds $5 for the defective item, he will be assessed a finance charge against the entire $400 balance under the previous balance system. If the creditor uses the typical monthly rate of 1½ percent, the consumer's finance charge would come to $6, or more than the cost of the defective item—the finance charge under the average daily balance system would be nearly the same if the customer paid toward the end of the month, for example an average daily balance of $400 for 29 days and of $5 for 1 day averages $388.50 for the month. Moreover, if the dispute takes 3 or 4 months to settle, as is frequently the case, the finance charges paid on each monthly bill could total several times the amount of the disputed item. Consumers are thus unfairly penalized for exercising their rights to withhold payment for defective merchandise. In many cases, it is cheaper to pay a disputed amount even though it is not a legitimate debt.

RETROACTIVE SYSTEMS FRUSTRATE COMPARISON SHOPPING

A fifth argument retroactive billing systems is that they frustrate the objectives of the Truth in Lending Act. Because of the complexity and variety of different retroactive systems, the consumer is unable to shop intelligently for the best credit plan or to compare the cost of each plan. Almost all creditors impose a nominal monthly finance charge of 1½ percent on the outstanding balance in their revolving charge account plans, or an equivalent annual percentage rate of 18 percent. However, there can be considerable variance in the dollar amount of the finance charge between different plans using the same monthly and annual rate, depending upon the method used by the creditor to compute the outstanding balance against which the finance charge is assessed.

The variance in finance charges on revolving charge plans was clearly demonstrated in a study by Dr. Richard Morse, professor of family economics at Kansas State University. Professor Morse postulated a series of individual transactions involving purchases, payments and returns over a 6-month period. He applied six different billing systems to these transactions. Although each system used a monthly rate of 1½ percent, the actual finance charge over the 6 months for the same series of transactions varied from a low of $2.28 to a high of $5.44.

The prohibition of retroactive finance charges will not necessarily force each creditor to adopt the same billing system. It would be possible for creditors to use various computation methods for computing the balance due after the expiration of the free grace period. But as a practical matter, most creditors would likely choose the so-called adjusted balance method which is widely used by many creditors today. As previously explained, finance charges under this system are based on the amount owed after payments and other returns are deducted from the previous balance.

The adjusted balance method has been used by the J. C. Penney Co., by most oil companies and by many bank credit card plans. It is the plan which produces lower finance charges and is generally regarded as fair to consumers. If all creditors were to adopt the adjusted balance system, the consumer could make meaningful comparisons between different credit plans. By adopting a common billing system, the cost of each plan can be easily and quickly compared by comparing the rates charged.

It would be possible to achieve uniformity by simply requiring by law that each creditor use the adjusted balance system. The initial version of S. 652 took this approach. However, after reviewing the arguments, I feel it is sounder to prohibit the objectionable features of present billing systems without requiring the adoption of one particular system by all creditors. In so doing, we can achieve substantial uniformity without precluding experimentation and innovation in the development of future billing systems. It is the retroactive feature of many current billing systems which operates unfairly against the consumer and which should be prohibited. This is the approach I have chosen to take.

TWO HUNDRED MILLION OVERCHARGE

I have estimated that creditors are receiving at least $200 million a year in extra finance charges because of retroactive billing systems. Moreover, many creditors are switching to retroactive systems in the guise of helping the consumer. The J. C. Penney Co. has recently announced plans to change from the adjusted balance system to a retroactive average daily balance system. Further delays in enacting the Fair Credit Billing Act will thus result in ever greater overcharges to American consumers.

One of the main arguments used against Federal legislation to regulate billing systems is that the job should be left to the States. It has been argued that the regulation of billing systems affects the net yield received by a creditor and therefore falls under the category of usury or interest rate ceiling legislation, a subject traditionally left to the States. The same "States rights" arguments were made for 7 years by the opponents of truth in lending despite the lack of any significant progress by the States.

As of 1973, no State has outlawed retroactive finance charges although a few have abolished the previous balance system. In these States, creditors are permitted to use the average daily balance method with the same retroactive features as the previous balance system.

The Uniform Consumer Credit Code—UCCC—which is supposed to be the model for State regulation contains no regulation of billing systems. Creditors are permitted to charge the same rate regardless of the billing system they used. If the States have recognized that billing system regulation is closely linked with interest rate ceilings, one would think the UCCC would have established different interest rate ceilings for each particular billing system.

Even if a proposed uniform State law on the subject could be drafted, it would take many years before it could be put into effect. The UCCC has been circulating 4 years, and only a handful of States have adopted it. The Uniform Commercial Credit Code, a far less controversial model law, took 20 years to adopt.

Moreover, the national character of the charge account and credit card business argues for Federal rather than State legislation. Many creditors who issued credit cards operate in most of the 50 States. Their billing systems are set up on a national or multi-State regional basis. It would be burdensome to subject these nationwide firms to piecemeal State legislation.

For all of these reasons, when the argument for State legislation is analyzed, it really becomes an argument for no legislation at all.

BAN ON MINIMUM FINANCE CHARGES

Another controversial provision in the new Fair Credit Billing Act is the proposal to prohibit minimum finance charges. A similar provision was in the legislation last year; however, it was deleted in committee and an attempt to restore it on the floor was unsuccessful.

A minimum finance charge of up to 50 cents is imposed by some creditors on their revolving charge account customers whenever the application of the standard 1½ percent monthly rate would produce a lower charge. For example, if the unpaid balace is $40, the creditor will apply the standard 1½ percent rate, thus producing a finance charge of 60 cents. But if the balance is only $30, a 1½ percent finance charge will yield only 45 cents. In such cases, the creditor imposes a flat 50-cent charge.

The truth in lending law effectively limits minimum finance charges to 50 cents by requiring that the corresponding annual percentage be disclosed on minimum finance charges above 50 cents or less. Because of the computational difficulties involved in annualizing a flat monthly fee on standardized billing forms where the amount of credit and corresponding rate vary from month to month, creditors have generally not im-

posed minimum finance charges in excess of 50 cents.

Thus the Congress has already taken action to limit minimum charges to 50 cents. The remaining question is whether minimum charges are justified at all. Nine States have already prohibited minimum charges entirely. No evidence has been presented to suggest that the credit industry has been unduly disrupted in these States because of the abolition of minimum finance charges.

The main argument against minimum finance charges is that they tend to operate as a tax on low-income customers. They are primarily imposed on customers who do not pay their account in full within the 30-day grace period and whose unpaid balances are so low that a minimum finance charge applies rather than the traditional monthly charge of 1½ percent—18 percent a year. Balances below $33.33 fall in this category. For example, a minimum finance charge of 50 cents on a $10 balance is equivalent to a charge of 50 percent a month or 60 per cent a year.

Those who are most likely to have small unpaid balances are low-income consumers who cannot afford to pay their entire bill even though the amount may be modest by middle class standards. Minimum finance charges are thus a device for charging lower income customers a higher rate of interest.

One of the arguments used to justify the retention of minimum finance charges is that they compensate the creditor for the bookkeeping work involved in sending out monthly statements. This argument might be valid, if a flat minimum charge were imposed on all monthly accounts, regardless of size and manner of payment. It costs just as much to mail out a monthly statement to a rich customer living in the suburbs as to a welfare mother living in a ghetto. However, very few creditors impose a flat minimum charge on all accounts. The minimum charge is a selective charge which hits the poor for more than it hits the rich.

Another argument advanced to justify minimum charges is that they are needed as an incentive to induce the payment of small balances by recalcitrant consumers. According to this argument, a consumer might ignore repeated bills for small amounts such as $5 even if the amount is increased by a 1½ percent finance charge each month. A 1½ percent finance charge on a $5 balance amounts to only 7 cents, which is not much of a penalty on those who tend to be neglectful of their bills.

The Fair Credit Billing Act would generally prohibit minimum finance charges, but would allow them in two cases in response to the previous arguments advanced by spokesmen for the credit industry. Minimum finance charges would be permitted first if they were in the nature of a service charge imposed on all monthly accounts regardless of size or manner of payment; and second, where the customer has not made any payment into his account for two successive months. The first exception would permit creditors to impose a flat monthly charge on all their accounts as a method for recovering billing expenses provided such charges were otherwise authorized by State law. The second exception would permit creditors to use the minimum charge essentially as a collection tool. These two exceptions meet some of the specific criticisms raised against the provision last year. At the same time the general prohibition contained in the bill would still eliminate the discriminatory impact of minimum finance charges.

DISCOUNTS FOR CASH BUYERS

Another problem arising out of the use of bank or travel and entertainment crdedit cards is the restriction on merchants from offering a cash discount to customers who prefer to use cash instead of a credit card. The typical bank-merchant agreement forbids a merchant from offering a discount to cash buyers. Although this provision may not be enforced and some merchants do offer cash discounts in spite of the agreement, other merchants may feel compelled to comply with the agreement and thus refrain from offering cash discounts. The FTC has indicated that such agreements raise serious antitrust questions.

Under a typical three-party credit card plan, the merchant honoring a credit card sends a copy of each sales draft to the card issuer and receives payment at a discount which usually runs from 3 to 5 percent. This discount compensates the card issuer for the expense involved in operating the credit card plan. The merchant might be willing to offer a similar discount to his customer in return for paying cash but he is precluded by the terms of his agreement with the card issuer.

The bill would make some relief to cash customers possible by prohibiting agreements between card issuers and merchants which forbid the merchant to offer a discount to cash customers. The legislation does not require merchants to offer discounts to cash buyers, but it does give them the option of offering a discount if they so desire.

In order to facilitate the offering of cash discounts, the legislation also exempts such transactions from the disclosure provisions of the Truth in Lending Act provided the discount does not exceed 5 percent and its availability is disclosed and offered to all prospective buyers. The Federal Reserve Board has already exempted transactions involving discounts of 5 percent or less from the annual percentage rate disclosure requirements of the Truth in Lending Act. However, the other disclosure requirements of truth in lending currently apply including the disclosure of the cash price and the amount of finance charge. These additional requirements may have the unfortunate effect of discouraging cash discounts and accordingly they are waived by the legislation.

PROHIBITION OF TIE-IN ARRANGEMENTS

A related provision of the legislation prohibits credit card issuers from requiring that merchants maintain deposits or purchase other services as a condition for participating in a credit card plan. Hearings held by the House Select Committee on Small Business in 1970 revealed that some bank-merchant agreements required the merchant to open a deposit account with the issuing bank in order to join the credit card plan. These agreements raise serious antitrust questions and should be prohibited.

PROHIBITION OF OFFSETS

Another consumer complaint arises from the common practice of offsetting a credit card debt against funds held in a consumer's checking or savings account. Funds in these accounts can be attached without any recourse to the courts and in spite of any valid legal defense the cardholder may have against the bank. Banks which issue cards and also have the cardholder's funds on deposit may thus obtain a unique leverage over the consumer. Other creditors would have to apply to a court before being permitted to attach funds in a borrowers' deposit account.

The bill would prohibit any card issuer from offsetting a cardholder's debt against his deposit account unless the cardholder agreed in advance to authorize the offset and was given 10 days to rescind the offset in the case of a dispute. This will permit the continuation of consumer credit plans which call for offset such as various check credit plans but will also grant consumers the right to rescind an offset if there is a dispute about a specific transaction.

LEGAL DEFENSES OF CARDHOLDERS

Another controversial but critical provision of the Fair Credit Billing Act deals with a cardholder's legal defenses against the card issuer. This provision was deletec last year in committee by a vote of 8 to 7 and an attempt to reinstate it on the floor failed narrowly.

The prohibition would provide for a modified repeal of the so-called holder-in-due-course doctrine on credit card transactions. Under the holder-in-due-course doctrine, a consumer is required to pay a bank for shoddy merchandise purchased with a bank credit card even though he may have a legitimate claim or defense against the merchant who honored the card. The bill permits a consumer, under certain conditions, to assert the same claim or defense against the issuer of a credit card that he has against the merchant honoring the card. The consumer would thus not be required to pay for shoddy merchandise merely because it was purchased with a bank credit card or similar third-party card.

HOLDER-IN-DUE-COURSE WORKS AGAINST CONSUMER

Perhaps the best way to understand the holder-in-due-course is to take a typical example. Suppose that Mr. John Doe Consumer had a charge account at a furniture and appliance store. He uses his charge account to buy a $500 color TV set. When he gets the set at home, he finds that it does not work at all. He calls the store, but the store fails to repair or replace the defective set.

Mr. Consumer obviously has a problem. He owes $500 on a TV set that does not work. However, in this case, he has a remedy. He can simply refuse to pay for the set until the merchant repairs it or replaces it. He has some bargaining power—some leverage because he is dealing only with the merchant. If the merchant sues to collect, the consumer can raise as a defense the fact that the TV set did not work. If a court agreed that the consumer had a legitimate de-

fense to the merchant's suit, then the consumer would not be required to pay. Knowing this in advance, the merchant would have an obvious incentive to satisfy the consumer without going to court. Mr. Consumer has thus used his leverage as a credit customer to induce the merchant to stand behind his product.

Now let us take the same transaction, but make one slight change. Instead of using his charge account with the store, suppose Mr. Consumer buys the same TV set from the same merchant with his bank credit card. What is different? There are now three parties involved—the consumer, the merchant and a bank.

Again, let us suppose the set does not work. Again, the consumer contacts the merchant for relief and again the merchant ignores him. Mr. Consumer thinks to himself "Why should I pay for this TV set that does not even work?" He tries to withhold payment on his credit card account with the bank. Then he receives a rude awakening. The collection manager in the bank tells him about an obscure provision written on the back of his credit card. He must pay the bank regardless of any claim or defense he has against the merchant. The bank manager is sympathetic, but the result is the same. He must pay the bank for the defective TV set.

After this rude awakening, the consumer then goes back to the merchant. However, this time he finds the merchant much more difficult to deal with. The merchant has already been paid for the TV set from the bank. He sent the sales slip to the bank on the same day of the transaction and the next day he received the money for the set less the bank's customary discount. The merchant is perfectly happy. He made a sale. He has his money. He tells Mr. Consumer, "if you do not like the TV set, sue me."

The bargaining situation is now reversed. The merchant has the leverage and not the consumer. The consumer must initiate a costly law suit to recover his damages. In the meantime, he must still continue paying the bank for his unworkable TV set. The consumer has clearly been shafted by the antiquated "holder in due course doctrine"—a doctrine he probably never heard of an did not understand when he accepted the bank credit card. His legal rights and protections were taken away simply because he used a bank credit card instead of his account with the merchant.

Under my bill, the consumer would be protected. He would have the same rights on three party credit card transactions that he now has on two party transactions. In the example I have given, he could withhold payment from the bank. The bank would then have two options. It could sue the consumer or it could charge the item back to the merchant. If the bank sued the consumer, the consumer could raise as a defense the fact that the TV set did not work. If the court agreed with the consumer then he would not be required to pay.

If the bank thought the consumer had a legitimate defense, it probably would not bother with a law suit. Instead, it would simply charge the item back to the merchant by deducting the money for the set from funds it otherwise owed the merchant as it can under the terms of its agreement with the merchant.

If the bank charged the TV set back to the merchant, the merchant would have the problem of collecting from the consumer. The consumer would then have the same leverage—the same bargaining power—that he would have if he had dealt directly with the merchant. The merchant could sue to compel payment. But if he thought the consumer had a legitimate defense, he probably would not do this. Instead, he would repair or replace the set.

My bill thus restores the protections and rights which consumers unknowingly surrender when they use bank credit cards or similar cards issued by third parties. It does not protect deadbeats. It does not prevent creditors from collecting legitimate debts. It does not impede the flow of commerce. It simply gives consumers the same legal protections on bank credit card transactions that they have on other credit transactions.

LEGAL IMPACT OF CREDIT CARD GROWTH

Why is such a provision needed? Because of the phenomenal growth of bank credit cards and their projected future growth. Credit outstanding on bank credit cards has grown from $1.3 billion to $5.3 billion over the last 4 years. The bank credit card business has quadrupled in 4 years when the growth of the entire consumer credit industry was lagging. Some bankers are predicting that bank credit cards will account for over half the consumer credit extended within the next few years.

It is now possible to buy practically anything on a bank credit card—TV sets, furniture, major appliances, home improvements and the like. Just a few years ago, these items were financed by installment sales contracts or by revolving charge accounts operated by the merchant. Today, more and more are being financed by bank credit cards. And if the banker projections are correct, bank credit cards will dominate the credit industry in a few years. It is only a matter of time before cars can be purchased with a bank credit card. In fact, a few banks have already experimented with financing cars through credit cards.

As bank cards begin to replace conventional forms of credit, all of the legal safeguards which consumers have acquired on two-party credit transactions will be gradually eroded because of the antiquated holder in due course doctrine. Bank credit cards were never even thought of when the holder in due course doctrine developed in case law a century or two ago. Our legal system has lagged far behind technological innovations in the credit industry. The holder in due course doctrine no longer fits our modern credit society. We need legislation to redress the imbalance in consumer rights created by the rapid growth of credit cards.

Actually, the holder in due course doctrine is already on the way out with respect to installment sales transactions. Thirty-two States have already acted to restrict the holder in due course doctrine on installment sales transactions. But these laws have a loophole. They do not apply to credit card transactions. The banks have set their credit card plans up in such a way that they are considered to be cash lenders rather than the buyers of installment contracts. By this legal device, most bank credit card plans have been able to escape the holder in due course restrictions enacted by the States.

FEDERAL LEGISLATION NEEDED

Even if the States could be persuaded to close the loophole, there are sound reasons for Federal legislation. The bank credit card business is essentially national in scope. Two systems, Mastercharge and Bankamericard, account for over 95 percent of the bank credit card business. The cards issued under these plans are accepted in all 50 States. Those in the bank credit card business operate on a nationwide scale. They think national. They are huge and powerful. It is little wonder that the States have not been able to regulate them effectively. As a matter of fact, it would be confusing and chaotic to subject these nationwide credit card plans to a hodgepodge of conflicting and inconsistent State law. A national solution is needed to a national problem. Federal regulation is in the long-term interest not only of the consumer, but of the bank credit card industry as well.

BANK OBJECTIONS WITHOUT MERIT

Let us examine some of the arguments against this provision raised by the credit industry last year.

First, it is alleged that subjecting a bank to cardholder defenses would involve the bank in a policing function over retail merchants and that it would be inappropriate for banks to exercise this function. Shoddy practices should be regulated by the Government and not the banking industry, according to this argument.

It is encouraging to note that the banking industry has suddenly become an advocate of governmental regulation of shoddy practices within the retail industry. But whatever the motivation behind the banker's sudden change of heart, their argument completely ignores the fact that bank credit card issuers already exercise a policing function over retail merchants. The typical bank-merchant agreement enables the bank to charge an item back to the merchant if the consumer has a dispute about its quality. The bank also has an unqualified right to collect from the consumer under the holder in due course doctrine. Thus the bank is in a unique position. It has the option of collecting from either the merchant or the consumer. In this situation, it is really acting as a judge. It reviews the dispute, decides who is right, and imposes liability for payment on either the merchant or on the consumer.

Although the bank is really exercising a judicial function, it does not have the impartiality of a court. As a matter of fact, the bank has a basic conflict of interest. It does business with both the merchant and the consumer. While it would like to retain the good will of both parties, its volume of business with the merchant is far more substantial than with the consumer. Is it any wonder,

then, that in a close case, the bank will decide in favor of the merchant and against the consumer?

My bill would take away the bank's unilateral power to impose payment on the consumer. Instead of giving banks a new policing function over merchants, my bill would restrict the policing function which banks are already exercising over consumers.

Another argument made by the banking industry is that it would be unfair to make a bank responsible for the misdeeds of a merchant over whom it has no control. A corollary to this argument is that the consumer himself has the responsibility to determine the reputability of a merchant and if the consumer has a dispute, he should pursue it with the merchant rather than the bank which merely financed the transaction.

These arguments conveniently ignore the basic elements of bank credit card transactions.

First, banks do have control over merchants by admitting them into the credit card plan. If a merchant is continually involved in customer disputes, he can be excluded from participation in the plan by the sponsoring bank. Without my bill, banks would have an incentive to continue the participation of questionable merchants because of the business they brought in.

Second, the bank confers an implied stamp of legitimacy on a merchant by admitting him into the plan and permitting him to display the bank's decal on his window. Consumers rely upon this implied stamp of legitimacy when dealing with a merchant. If a bank wants a consumer to accept and use a bank credit card with confidence, it should be willing to stand behind the merchants who honor the card.

Third, the bank always has the option of charging a disputed item back to the merchant, thereby recovering its investment. Given this option, it is hard to see how a bank would be unfairly penalized because of a merchant's misdeeds. Moreover, my bill does not subject banks to cardholder defenses if the transaction took place out of State. Thus a bank would not be responsible for reviewing the operations of out-of-State merchants.

Fourth, the consumer has a far more difficult time in recovering from a disreputable merchant for shoddy merchandise. The merchant may have gone out of business. Or if still in business, he may use delaying tactics to impede recovery. Since the merchant has already been paid for the shoddy goods by the bank, he has less of an incentive to settle with the consumer. The holder in due course doctrine gives all of the leverage to the bank or the merchant. My bill would restore some of this leverage to the consumer.

A third argument raised by bankers is that my bill would somehow retard the development of the "cashless society," a plan which bankers have to replace currency and checks with bank credit cards. Whatever the merits of the so-called "cashless society," my bill would not affect its development. The restrictions on the holder in due course doctrine do not apply to transactions under $50. These are the typically cash transactions which the cashless society is intended to replace with credit cards. However, transactions over $50 are more likely to be credit transactions. Moreover, the profitability of bank credit cards should not be adversely affected by the legislation since a bank still has the legal power to charge a disputed item back to the merchant.

Finally, it is argued that we should leave the whole issue of holder in due course legislation to the States. This has become a recurring cry of those who are opposed to effective reform legislation. As I have already indicated, the credit card business is a national business and regulation at the Federal level is needed to insure uniformity and fair treatment.

While many of last year's arguments against the bill assumed a complete abolition of the holder in due course doctrine on credit card transactions, this is simply not the case. The bill has a number of conditions which a consumer must meet before he can assert a claim against a bank or other credit card issuer. These conditions are designed to eliminate all of the legitimate objections and fears raised by the credit industry in testifying against a complete repeal of the holder in due course doctrine. Here are the conditions:

First, the bill requires that before a consumer can assert a claim or defense against a bank credit card issuer, he must first make a good faith attempt to obtain satisfaction from the merchant. This is intended to eliminate frivolous disputes on the part of consumers who have made no attempt to get their money back from the merchant.

Second, the amount of the transaction giving rise to the claim or defense must exceed $50. As I indicated, this is intended to eliminate those transactions where a credit card is merely a substitute for a cash transaction. The legislation would thus apply primarily to those transactions where a credit card is a substitute for the merchant's own credit plan.

Third, the transaction must have occurred in the same State in which the card issuer maintained a place of business. This is intended to counter industry objections that a bank is not capable of reviewing the operations of distant merchants.

Fourth, the amount of the claim or defense cannot exceed the amount of credit originally extended if notification is made within 6 months, or the amount actually owing at the time of notification if made later than 6 months. The purpose of the 6-month period is to give consumers a reasonable opportunity to discover product defects before asserting a claim or defense. There are some who feel that the 6-month waiting period should be eliminated and that the consumer should be permitted to assert a claim or defense against a bank only for the amount actually owing at the time such notification is made. I believe this would put an unreasonable burden on consumers since an item purchased with a bank credit card can be paid for before the consumer realizes there is something wrong with the product.

The problem arises because of the common method for determining the amount owing for an individual item purchased with a credit card. Some State laws use the so-called first in-first out method or FIFO. Under the FIFO method, partial payments to a revolving charge account are allocated to individual transactions in the order of their occurrence. Thus if a consumer purchased an item for $100 with his bank credit card on the first of the month, any partial payment he made would be allocated first to that purchase. If he subsequently discovered the merchandise was defective, the chances are that he would have already paid for it, thus eliminating his right of recovery. On the other hand, if he purchased the same item towards the end of the month, the chances are that he could assert a claim for the full amount. A consumer's rights should not be arbitrarily affected by the timing of his purchases. I therefore believe it is essential that he be given a 6-month period to notify the bank or the merchant of any claim or defense before limiting his right of recovery.

In summary, the basic issue is quite clear. Consumers should not be required to pay for shoddy merchandise because of a legal technicality. It is as simple as that. We need Federal legislation to prevent a serious injustice to the American consumer.

TRUTH IN LENDING AMENDMENTS

In addition to title I, which deals with billing practices, title II of the legislation makes a number of technical and procedural changes in the existing Truth in Lending Act. The provisions contained under section 201 through 211 were recommended by the Federal Reserve Board in its annual report for 1972. Many of these provisions were already approved by the Senate last year when it passed the Fair Credit Billing Act (S. 652).

Section 212 would exempt State lending agencies from the 3-day recision provisions under section 125 of the Truth in Lending Act. Section 125 gives the consumer a 3-day opportunity to rescind a credit transaction if it involves a security interest on his home. The 3-day cooling-off period was primarily aimed at abuses fostered by unscrupulous home improvement contractors who made second mortgage loans to unsuspecting homeowners. I do not believe the Congress intended for these provisions to apply to State lending agencies such as the Wisconsin Department of Veterans Affairs which makes 3-percent second mortgage loans to eligible veterans.

Wisconsin officials have stated that the 3-day recision requirements have disrupted their program and in some cases the delays have caused veterans to lose out in the purchase of a home. This is because over 85 percent of the second mortgage loans made by the Wisconsin Department of Veterans Affairs are in connection with new home purchases. The delays involved in complying with the 3-day recision requirements have caused some sellers to shift their attention to other prospective buyers. The Federal Reserve Board has expressed sympathy for the problem, but feels it lacks administrative authority to exempt

State lending agencies from the 3-day recision requirements. Accordingly, the bill provides such an exemption, using language drafted by the Board at my request.

Mr. President, I ask unanimous consent that the Federal Reserve Board's report for 1972, the correspondence relative to the exemption for State lending agencies, and the text of the bill be printed in the RECORD at the end of my remarks.

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

ANNUAL REPORT TO CONGRESS ON TRUTH IN LENDING FOR THE YEAR 1972

This fourth Annual Report on Truth in Lending is submitted to Congress by the Board pursuant to section 114 of the Truth in Lending Act. In accordance with that requirement, this Report includes information on the Board's administration of its functions under the Truth in Lending Act, an assessment of the extent to which compliance with the requirements of Truth in Lending is being achieved, and recommendations for amendments to the Act. Each of these three topics is developed in the following sections of this Report.

ADMINISTRATIVE FUNCTIONS

Amendments and Interpretations of Regulation Z

During 1972, the Board amended Regulation Z in areas relating to disclosures on open end credit accounts and to the unsolicited issuance of credit cards and liability for their unauthorized use. The Board also issued proposed amendments for public comment dealing with the timing of disclosures and the advertising of credit.

Amendments to section 226.7 of Regulation Z relating to disclosures on open end credit accounts were adopted by the Board on November 2 and became effective on June 1, 1973.[1] They require the prospective disclosure of nominal annual percentage rates on open end billing statements, whether or not finance charges are imposed during the billing cycle. The amendments also require the disclosure on periodic billing statements of any minimum charges that may be imposed on the account. The amendments incorporate into the Regulation the provisions of two related interpretations (sections 226.702 and 226.704).[2]

A question arose whether the exemption for "extensions of credit" for business or commercial purposes in the Act applied to the prohibition against the unsolicited issuance of credit cards and to the $50 limit on liability for their unauthorized use. To clarify this matter, the Board amended section 226.13 of Regulation Z to provide that each credit card, regardless of whether issued or used for personal, family, household, agricultural, business or commercial purposes, and regardless of whether issued to a natural person, corporation, or other business entity is covered by the Act's maximum liability limit for unauthorized use as well as the restrictions on unsolicited issuance.[3] These amendments do not affect the business exemption in its application to the disclosure, rescission and advertising requirements. The validity of these amendments has been challenged in a suit against the Board.[4] The Board's recommendation for related adjustments to the Act is on page 18.

The question of proper timing of disclosures was raised in *Bissette* v. *Colonial Mortgage Corporation*.[5] The case involved disclosures made at the closing of a real estate loan for the purchase of a home, where the plaintiffs had previously entered into a prepossession agreement and had moved into the house. The court held that "Truth in Lending disclosures made only at closing frustrate the Congressional intent and basic purpose of the Act, and as such, constitutes [sic] a violation thereof." Subsequently, the Board issued a proposal for public comment to amend Regulation Z, which would have provided for a ten-day pre-settlement disclosure rule in certain real estate transactions.[6] The proposal was aimed at requiring the disclosures early enough to allow consumers ample time in a home purchase transaction, which typically is complicated and involves a large amount, to shop for the best available credit terms. However, many adverse comments were received on the proposal which pointed out problems with a rigid ten-day rule for consumers as well as creditors. The Board's staff is currently studying the comments in the light of possible Congressional action[7] and the fact that the *Bissette* case has been appealed. To be meaningful to the customer, any disclosure prior costs. The Board's recommendation in this regard is on page 19.

Late in the year, the Board issued for public comment proposed amendments to the advertising requirements of Regulation Z.[8] The proposals are aimed primarily at encouraging advertising of meaningful credit terms in open end credit so that consumers will be able to use advertising more effectively when shopping for credit. The period for public comment on the proposals expires on January 31, 1973.

During 1972 the Board also issued two new interpretations and amended one previously issued. To avoid further complication of periodic billing statements, interpretation section 226.706 was issued to provide that the creditor of an open end account is not required to disclose the method used in allocating payments on the account.[9] For example, explanation of the manner in which payments are applied to late charges, overdue balances, finance charges, insurance premiums or other portions of balances is not required. Nor is the creditor required to explain the method of allocating payments between cash advance and purchase portions of an account.

Interpretation section 226.707 provides a method of disclosure in open end credit accounts where the periodic rate may vary from time to time, *e.g.*, where periodic rate changes correspond to changes in the prime lending rate.[10]

Interpretation section 226.703 was amended to allow another method of disclosing the balance on which the finanace charge is imposed in an open end account where the creditor assesses finance charges on daily balances in the account.[11]

STATE EXEMPTIONS

Wyoming received an exemption from the disclosure and rescission requirements of the Act during the past year.[12] This brings to five (Connecticut, Maine, Massachusetts, Oklahoma and Wyoming) the number of States which have received exemptions from the Federal Act. Kansas also has applied for an exemption, and the application is currently being reviewed for completeness.

Based upon the reports received from the exempt States and the liaison maintained between the Board and the exempt States, the Board believes that the concept of State exemption is working well. The officials and the enforcement personnel of the exempt States have been diligent in attempting to assure the success of the concept. The Board is confident that each of the exempt States is effectively administering its own Truth in Lending law.

EDUCATION

Most of the Federal and the exempt State enforcement agencies report on-going educational programs which include oral presentations to creditor and consumer groups and distribution of materials relating to Truth in Lending.

The Federal Deposit Insurance Corporation is preparing a "FDIC Information and Consumer Guide" which it contemplates will include a description of consumer rights under the Truth in Lending Act. The Federal Trade Commission is preparing new consumer educational materials including radio and television spot announcements to inform the public how to make better use of disclosures, primarily the annual percentage rate, in certain major credit purchases, for example, the purchase of an automobile. Oklahoma reports that its mobile educational centers featuring audio-visual presentations on the rights, remedies and responsibilities of consumers under the Uniform Consumer Credit Code, which includes Truth in Lending, have been visited by 250,000 people in the past two years.

There still remains a demand for the educational material prepared by the Board. A total of 1.5 million informational pamphlets containing the Act and Regulation Z have been distributed. Over 3 million consumer-oriented leaflets have been issued. A new supplement to the Regulation Z pamphlet containing all amendments and interpretations of the Act and Regulation issued from September 12, 1969, to November 30, 1972, is available from the Board or any Federal Reserve Bank upon request. A list of educational and informational material released by the Board is included as Appendix A.

The most recent educational item prepared by the Board, a Spanish translation of the consumer leaflet, *What Truth in Lending Means to You*, has proved to be very popular, with almost a half million free copies distributed. In an effort to reach the Spanish-speaking consumers in Connecticut, that State reports the use of radio spot announcement in Spanish.

Currently, the Board, in conjunction with North Dakota State University, is exploring the possibility of developing teacher lesson plans for distribution nationwide in school systems. These lesson plans would relate to consumer credit and Truth in Lending and would be used primarily in high school courses. The Board believes that the inclusion of such topics in the educational curriculum is vital to the success of Truth in Lending.

ADVISORY COMMITTEE

The Board did not find it necessary to call any formal meetings of its Truth in Lending Advisory Committee during 1972. However, as in the past, Committee members were asked for individual comments and suggestions on specific topics, including the proposed amendments to the Truth in Lending Act in the Fair Credit Billing Act (S. 652) and the advertising requirements of the Act and Regulation Z. It is anticipated that the Advisory Committee will meet sometime in the Spring of 1973.

A list of Advisory Committee members is included as Appendix B.

LITIGATION

The issue of paramount importance in Truth in Lending litigation in 1972 has been a procedural one—the availability of class actions to consumer-plaintiffs. While the cases are split, the clear trend appears to be against the allowance of class actions in Truth in Lending suits.[13] In response to concern over unlimited class action exposure, a Senate-passed amendment to the Act (section 208 of S. 652) would have limited class action liability to actual damages, plus such additional amount as the court might allow, provided it did not exceed $100,000. The Board's recommendation in regard to class actions can be found on page 13. Some of the other more significant developments in Truth in Lending litigation reported during 1972 are outlined below.

On November 9, 1972, the Supreme Court heard arguments in *Mourning* v. *Family Publications Services, Inc.* on the issue of the

Footnotes at end of article.

validity of Regulation Z's "more-than-four-installment" rule. Under the rule, transactions are considered "consumer credit" subject to the Act, when, by agreement, they involve more than four installments, although the creditor has not specifically identified any finance charges. The Court of Appeals for the Fifth Circuit had held that the rule exceeded the Board's authority and that it created a conclusive presumption in violation of constitutional principles.[14] Other courts had split on the issue.[15] The Supreme Court's ruling is expected by Spring. The Board's recommendation on this matter appears on page 16.

The courts have also split on whether the Board exceeded its authority in sections 226.2 (z) and 226.9(a) of Regulation Z by providing that the right of rescission applies to consumer credit contracts secured by mechanic's or materialmen's liens on the customer's home, even though no mortgage or deed of trust is executed by the customer. The Court of Appeals for the District of Columbia affirmed a district court finding that the Board's regulation was valid.[16] The Second Circuit is presently considering a contrary district court decision.[17] The Board's recommendation can be found on page 16.

The constitutionality of the civil liability provisions of section 130 of the Act has been challenged in *Marcus v. Diner's Club Inc.*[18] The Board has intervened as a party in the litigation and has moved for summary judgment on the issue.

In *Richardson v. Time Premium Company*, the court held that the Board had the authority to require specific terminology for the various disclosures required by the Act and Regulation Z.[19] The Court of Appeals for the District of Columbia in *White v. Central Charge Service Inc.*, affirmed the lower court's dismissal of a complaint against a credit card issuer for failure to identify a charge imposed by a merchant for honoring the card as a "finance charge" where the card issuer had no knowledge of the additional charge.[20]

The issue was raised in *Gerlach v. Allstate Insurance Company* of whether Truth in Lending applied to the deferred payment plan of an insurance issuer.[21] The court concluded that an insurance premium installment payment plan under which the insured pays in advance for a period of coverage without any obligation to pay additional premiums does not involve "credit" which would bring the plan within the Act. The court distinguished this situation from premium financing where the insured becomes obligated to a broker, a bank, the issuing company, or other creditor to pay the premium or an indebtedness for premiums. The court also found that the McCarran Act precluded application of the Truth in Lending Act to insurance transactions to which it otherwise might be applicable.

A list of other cases reported during 1972 is attached as Appendix C.

PUBLIC UTILITY BILL EXEMPTION

Section 104(4) of the Truth in Lending Act exempts most public utility bills from its coverage, even though they may provide for a discount for early payment or a charge for a late payment. There has been some question whether such billings should be subject to some form of disclosure, particularly translation of the discount or late charge into an annual percentage rate. One suggestion has been to remove the public utility exemption from the Act. However, a recent study by a committee of the National Association of Regulatory Utility Commissioners recommends that State regulatory commissions "adopt a 'full disclosure' policy regarding utility billing." [22] This policy includes, among other disclosures, the disclosure of an effective annual rate if the bill is not paid when due.

The Board believes that the suggestion of the committee for State-required disclosures may be preferable to simply removing the utility exemption from the Federal Act for two reasons. First, even if utility bills are subject to Truth in Lending, the annual percentage rate would not be required to be disclosed on many of them, by reason of the exemption in section 128(a)(7).[23] Second, Regulation Z provides that bona fide charges assessed for delinquent payments are not finance charges subject to the disclosure requirements. It appears that the charges imposed by many utility companies would meet the "late payment charge" exemption in the Regulation and therefore would not be considered finance charges subject to annual percentage rate translation. Consequently, no specific recommendation for amendment to the Act is proposed.

COMPLIANCE

Enforcement of the Truth in Lending Act is spread among nine Federal agencies. In addition, those States that have received an exemption from the Federal Act are responsible for enforcing their own Truth in Lending statutes. The reports from these enforcement agencies indicate that substantial compliance with the Truth in Lending requirements is being achieved. This is especially true with respect to the larger creditors who have access to legal counsel and are better able to cope with the complexities of Truth in Lending.

Primarily because of these complexities, compliance by creditors with the detailed requirements is not always attained. Also, enforcement personnel themselves find it difficult to be fully knowledgeable of all the complex requirements. The Board recognizes the difficulty of the Regulation and is striving to simplify it where possible—an example is the proposed advertising amendments. In almost all cases where violations are noted, they are found to be a result of inadvertent error or misunderstanding.

Although the Federal Trade Commission, which is responsible for the bulk of the enforcement effort, has not conducted any new formal survey to determine the extent of compliance, the Commission reports its staff's impression that the pattern found in its earlier survey probably would be the same, *i.e.*, substantial compliance by the larger creditors, with lesser compliance by the smaller creditors. However, the Commission also reports some improvement in compliance by smaller creditors.

There was some doubt expressed before the Act was passed whether the multi-agency enforcement structure would be workable. The Board's experience with this arrangement has been favorable. It appears that Truth in Lending is being enforced evenhandedly and vigorously by all of the enforcement agencies in conformance with Regulation Z and the Board's interpretations of it. The predicted interagency conflicts in interpreting the law, with corresponding confusion and inequitable enforcement, have not materialized. This has been due in large part to the cooperative attitude of the various agencies involved. This is particularly true of the Federal Trade Commission which has the task of carrying the bulk of the enforcement responsibility.

RECOMMENDATIONS

The Board believes there are a number of problems in Truth in Lending which can be resolved by adjustments in the Truth in Lending Act. Suggested legislative language to implement each of the recommendations can be found in Appendix D. Many of these suggestions had been incorporated into amendments to the Truth in Lending Act, contained in the Fair Credit Billing Act, which was passed by the Senate in 1972.

CLASS ACTIONS AND CIVIL LIABILITY: CLASS ACTION LIABILITY LIMIT

The trend of the cases is away from allowing class actions for the enforcement of Truth in Lending.[24] Very likely, this trend is an outgrowth of judicial concern over the possible magnitude of recovery by a large class, given the statutory minimum of $100 per person.[25] While the Board shares this concern about possible liability, which might in some cases run into millions of dollars and may be disproportionate to any conceivable injury sustained by consumers, it also believes that potential class action liability is an important encouragement to the voluntary compliance which is so necessary to insure nationwide adherence to uniform disclosure. Consequently, it believes that any inquiry into the justification for class actions should not be restricted to whether the possible liability in such suits exceeds the actual damages incurred by the class members. Equally important, in the Board's view, is the prophylactic effect of the threat of class action exposure. That threat elevates a possible Truth in Lending law suit from the ineffective "nuisance" category to the type of suit which has enough sting in it to insure that management will strive with diligence to achieve compliance.

While the Board believes that the class action vehicle in some form should be preserved for appropriate Truth in Lending suits, it is conscious of the difficulty of formulating an equitable rule which will preserve its effectiveness without, at the same time, exposing legitimate business to unwarranted claims in frivolous law suits. In the Board's view, the best way to meet this problem is to set an upper limit on the aggregate amount of possible class action recovery (the greater of $50,000 or 1 percent of net worth is suggested in the Board's recommended amendment), while, at the same time, giving the courts the authority to set the amount of actual recovery within this limit in light of the circumstances of the particular case—for example, the severity of the violation and the size of the offender.

"GOOD FAITH RELIANCE"

One of the legitimate concerns of creditors who have attempted to comply in good faith with the requirements of Truth in Lending is that, although they have followed Regulation Z, a court may conclude that the Regulation is invalid and that different disclosures or procedures were mandated by the Truth in Lending Act itself. At present, the civil liability provisions of section 130 do not necessarily preclude a finding of liability where the creditor has followed regulatory requirements which subsequently are held invalid. In order to avoid this inequity, a "good faith reliance" provision is suggested for inclusion in the Act.

DEFINITION OF "TRANSACTION"

A final problem with section 130 of the Act is ambiguity as to the meaning of "transaction" to which the $100 minimum liability attaches where proper disclosures have not been made. While it is highly likely that the opening and use of an open end credit account or an entire credit contract would be considered a single "transaction" for purposes of this section, the Board believes that Congress should clarify this term to preclude its application to each separate extension of credit under an open end credit plan, or to each periodic statement or other single component of a consumer credit contract.

Right of Rescission: TIME LIMITATION

Section 125 of the Act, implemented by section 226.9 of Regulation Z, provides that in some consumer credit transactions in which a security interest in the customer's residence is involved, the customer has three business days in which to rescind the transaction. To start the three-day rescission period, the creditor must notify the customer of his right of rescission and provide a form which may be used in exercising that right. The law does not set any limit on the length of time that the right continues where the creditor has failed to notify the customer

Footnotes at end of article.

of his right. Also, even though the required notice is given, there is a question whether the rescission period may continue where the other required disclosures of credit terms are given but are incorrect. As a result, the titles to many residential real estate properties may become clouded by uncertainty regarding unexpired rights of rescission. The Board recommends that Congress amend the Act to provide a limitation on the time the right of rescission may run.

LIENS ARISING BY OPERATION OF LAW

The courts are presently considering the question whether the right of rescission is applicable to transactions in which no mortgage or deed of trust is signed by the customer, but where the transaction is nevertheless secured by lien rights in the customer's home.[26] The Board recommends that Congress amend the Act to remove any uncertainty about the coverage of these transactions under section 125.

"MORE-THAN-FOUR-INSTALLMENT" RULE

As discussed on page 7, the Supreme Court is considering the validity of the Board's "more-than-four-installment" rule in section 226.2(k) of Regulation Z. The Board is convinced that invalidation of the "more-than-four-installment" rule would seriously impair the effectiveness of the legislation and believes that Congress should amend the Act to remove any possible doubt that it includes transactions payable in more than four installments where there is no identifiable finance charge.

AGRICULTURAL CREDIT

The problems cited in the previous Annual Reports relating to the coverage of agricultural credit under the Act continue to exist. Creditors argue that the very nature of many agricultural credit transactions (which frequently involve advances and payments for which both time and amount are unknown) makes them unsuited for meaningful disclosure. Furthermore, frequently it has been argued that since agriculture is a business, it should be exempt from coverage of the Act, just as other business credit is exempt. On the other hand, associations representing agricultural interests have a diversity of views regarding continued coverage of agricultural credit.

The Board again recommends that credit primarily for agricultural purposes in excess of an appropriate amount should be exempt from the provisions of the Act, irrespective of any security interest in real property. This recommendation, if adopted by Congress, would have the effect of removing from coverage large extensions of credit, where borrowers are more sophisticated and less in need of the disclosures, while still providing the benefits of disclosure to the smaller borrowers, who presumably are more likely to benefit from such disclosures. Such an amendment would benefit creditors in reducing the number of disclosures to be made.

IDENTIFICATION OF GOODS OR SERVICES PURCHASED

Section 127(b)(2) of the Truth in Lending Act requires the creditor of an open end credit account to provide the customer with a brief identification of any purchased goods or services on the periodic billing statement, unless such identification was furnished to the customer previously, *e.g.*, on the sales slip. Regulation Z basically follows the requirements of the Act, except that it provides that such identification can be made on a slip accompanying the billing statement or by a symbol relating to an identification list printed on the statement. The statutory requirement can pose serious compliance problems for merchants whose sales for various departments are handled through a single cash register—for example, a discount store—or where a credit card may be used to purchase numerous small items, for example in drug store sales. The Board recommends that these requirements be modified through a proposed amendment, which nevertheless would not destroy the concept that consumers should be able to check the validity of charges appearing on billing statements.

CREDIT CARDS—BUSINESS OR COMMERCIAL USE

As discussed on page 2, the Board has amended Regulation Z to clarify the fact that the Act's provisions relating to credit card liability and unsolicited issuance of credit cards apply to cards used for business or commercial purposes, as well as for personal, family, household or agricultural purposes. Although the Board believes that these amendments to Regulation Z merely clarify what is already implicit in the Act, it is recommended that the Act be amended to eliminate any possible uncertainty as to the application of the credit card amendments to all cards.

DISCLOSURE OF CLOSING COSTS

Section 106(e) of the Act provides that certain typical costs involved in closing a real estate loan transaction shall not be included in the finance charge. However, there is no requirement that such charges must be itemized and disclosed to the customer in order to be eligible for the exemption from the finance charge, as there is with certain other charges listed in section 106(d) (recording fees, taxes, licenses, etc.). If the concept of early disclosure in real estate transactions is to be meaningful, it is necessary that these closing costs, which are often substantial, be revealed to the customer along with the other disclosures.[27] While the requirement for disclosure of such charges may be imposed pursuant to the Board's regulatory authority in section 105 of the Act, the Board recommends that Congress consider amending the Act to provide that the charges listed in section 106(e) must be itemized and disclosed to the customer in order to be eligible for the finance charge exemption. Some of these charges may have to be estimated, but such estimates are permitted by Regulation Z (section 266.6 (f)).

ADMINISTRATIVE ENFORCEMENT: FARM CREDIT ADMINISTRATION

The Farm Credit Administration is not specified in section 108 of the Act as one of the Federal authorities responsible for administrative enforcement, and therefore, the Federal Land Banks, Federal Land Associations, Federal Intermediate Credit Banks and Production Credit Associations are subject to administrative enforcement of the Federal Trade Commission. The Board suggests that Congress amend section 108 of the Act to delegate to the Farm Credit Administration the administrative enforcement responsibility with respect to those creditors which are chartered under Acts which that agency administers. The Farm Credit Administration and the Federal Trade Commission concur in this suggestion.

INTERSTATE COMMERCE COMMISSION

The Interstate Commerce Commission has issued regulations with respect to common carriers subject to the Acts which that agency enforces which require that freight charges be prepaid or be paid very promptly, normally four days in the case of railroads and seven days in the case of truckers. The carriers are not permitted to collect more or less than the applicable rates and charges as published in their tariffs. Presently, there are no common carriers subject to the Truth in Lending Act or Regulation Z. Consequently, the Board, with the concurrence of the Interstate Commerce Commission, recommends that the Commission's enforcement responsibilities be removed.

FOOTNOTES

[1] 37 Fed. Reg. 24337, 11/16/72.

[2] The interpretations were revoked as of June 1, 1973, the effective date of the amendments.

[3] Fed. Reg. *supra* note 1.

[4] *Universal Air Travel Plan et al. v. Board of Governors of the Federal Reserve System et al.*, U.S.D.C., D.C., Civ. No. 2485–72.

[5] U.S.D.C., D.C., Apr. 19, 1972, 4 CCH *Consumer Credit Guide* ¶ 99, 214.

[6] 37 Fed. Reg. 15522, 8/3/72.

[7] Section 905 of H.R. 16704, the omnibus housing bill which failed to clear the House Rules Committee last session, provided for disclosures at least 10 days prior to settlement.

[8] (Federal Register citation not available at time of printing.)

[9] 37 Fed. Reg. 13246, 7/16/72.

[10] 37 Fed. Reg. 24339, 11/16/72.

[11] Fed. Reg. *supra* note 6.

[12] 37 Fed. Reg. 24105, 11/14/72.

[13] Class actions have not been permitted in the following reported cases: *Ratner* v. *Chemical Bank New York Trust Company*, U.S.D.C., S.D.N.Y., Feb. 14, 1972, 4 CCH *Consumer Credit Guide* ¶99,238; *Buford* v. *American Finance Company*, U.S.D.C., N.D. Ga., Oct. 1, 1971, 4 CCH *Consumer Credit Guide* ¶99,302; *Rogers* v. *Coburn Finance Corp. of DeKalb*, U.S.D.C., N.D. Ga., Feb. 18, 1972, 4 CCH *Consumer Credit Guide* ¶99,234; *Allerton* v. *Century Credit Corporation*, U.S.D.C., S.D. Fla., Apr. 12, 1971, 4 CCH *Consumer Credit Guide* ¶99,271; *Mourning* v. *Family Publications Service, Inc.*, U.S.D.C., S.D. Fla., Nov. 27, 1970, 4 CCH *Consumer Credit Guide* ¶99,632; *Gerlach* v. *Allstate Insurance Company*, U.S.D.C., S.D. Fla., Feb. 17, 1972, 4 CCH *Consumer Credit Guide* ¶99,205; *Shields* v. *The Valley National Bank of Arizona*, U.S.D.C., D. Ar., Apr. 24, 1972, 4 CCH *Consumer Credit Guide* ¶99,195; *Shields* v. *First National Bank of Arizona*, U.S.D.C., D. Ar., June 5, 1972, 4 CCH *Consumer Credit Guide* ¶99,182; *Wilcox* v. *Commerce Bank d/b/a BankAmericard*, U.S.D.C., Ka., May 22, 1972, 4 CCH *Consumer Credit Guide* ¶99,171; *Garza* v. *Chicago Health Clubs, Inc.*, U.S.D.C., N.D. Ill., Oct. 25, 1972, 4 CCH *Consumer Credit Guide* ¶99,113; *Goldman* v. *The First National Bank of Chicago, U.S.D.C.*, N.D. Ill., Sept. 22, 1972, 4 CCH *Consumer Credit Guide* ¶99,104; *Kenney* v. *Landis Financial Group, Inc.*, U.S.D.C., N.D. Ia., Mar. 30, 1972, 4 CCH *Consumer Credit Guide* ¶99,105; *Kriger* v. *European Health Spa, Inc. of Milwaukee, Wisconsin*, U.S.D.C., E.D. Wis., July 18, 1972, 4 CCH *Consumer Credit Guide* ¶99,106. Class actions have been permitted in the following reported cases: *Le Mar* v. *H & B. Novelty & Loan Company d/b/a H & B Loan Company et al.*, U.S.D.C., D. Ore., Jan. 27, 1972, 4 CCH *Consumer Credit Guide* ¶99,239; *Smith* v. *International Magazine Service of Mid Atlantic, Inc.*, U.S.D.C., N.D.W.Va., Oct 29, 1971, 4 CCH *Consumer Credit Guide*. ¶99,249; *Martin and Alexander* v. *Family Publications Service, Inc.*, U.S.D.A., D. Vt., June 30, 1970, 4 CCH *Consumer Credit Guide* ¶99,267; *Katz* v. *Carte Blanche*, U.S.D.C., W.D. Pa., Nov. 17, 1971, 4 CCH *Consumer Credit Guide* ¶99,268; *Berkman* v. *Westinghouse Electric Corporation*, U.S.D.C., N.D. Ill., June 25, 1971, 4 CCH *Consumer Credit Guide* ¶99,270; *Richardson* v. *Time Premium Company*, U.S.D.C., S.D. Fla., Feb. 4, 1971, 4 CCH *Consumer Credit Guide* ¶99,273; *Joseph* v. *Norman's Health Club, Inc.*, U.S.D.C., E.D., Mo., Dec. 5, 1971, 4 CCH *Consumer Credit Guide* ¶99,274; *Douglas* v. *Beneficial Finance Co. of Anchorage et al.*, U.S.D.C., D. Ak., Sept. 2, 1971, 4 CCH *Consumer Credit Guide* ¶99,295.

[14] 449 F 2d 235 (5th Cir. 1971).

[15] *Strompolos v. Premium Readers Service*, 326 F. Supp. 1100 (N.D. Ill., 1971); *Castaneda v. Family Publications Service*, U.S.D.C., D. Col., Feb. 5, 1971, 4 CCH *Consumer Credit Guide* ¶99, 564.

[16] *Gardner and North Roofing and Siding Corporation v. Board of Governors of the Federal Reserve System*, D.C., Cir., July 14, 1972, 4 CCH *Consumer Credit Guide* ¶99, 159.

[17] *N.C. Feed Company Inc., et al. v. Board of Governors of the Federal Reserve System,*

U.S.D.C., W.D. N.Y., Sept. 29, 1971, 4 CCH *Consumer Credit Guide* ¶99,356. The opinion spoke only in terms of liens which may come into existence by operation of law after midnight of the third business day following the date of consummation of the credit transaction. A subsequent order date December 22, 1971, broadened the application of the opinion to all liens which may come into existence by operation of law.

[18] U.S.D.C. N.D. Ill., Ea. Div., No. 69–C–2321.

[19] U.S.D.C., S.D. Fla., Feb. 4, 1971, 4 CCH *Consumer Credit Guide* ¶ 99,273.

[20] D.C. Cir., Dec. 29, 1971, 4 CCH *Consumer Credit Guide* ¶ 99,256.

[21] U.S.D.C., S.D. Fla., Feb. 17, 1972, 4 CCH *Consumer Credit Guide* ¶ 99,205.

[22] National Association of Regulatory Utility Commissioners, 1972 Report of the Ad Hoc Committee on Utility Billing Practices, 9.

[23] Section 128(a)(7) of the Act exempts from the disclosure of the annual percentage rate those transactions in which the finance charge is $5.00 or less (or transactions in which the finance charge is $7.50 or less, when the amount financed exceeds $75). Many utility bills would probably fall within this exemption with the result that annual percentage rates would be disclosed on only a relatively few utility bills.

[24] See cases cited in note 13.

[25] Judge Frankel in *Ratner v. Chemical Bank New York Trust Company* (U.S.D.C., S.D.N.Y., Feb. 14, 1972, 4 CCH *Consumer Credit Guide* ¶99,238) found defendant's argument "cogent and persuasive" that "the proposed recovery of $100 each for some 130,000 class members would be a horrendous, possibly annihilating punishment, unrelated to any damage to the purported class or to any benefit to defendant." See also *Shields v. The Valley National Bank of Arizona*, U.S.D.C., D. Ar., Apr. 24, 1972, 4 CCH *Consumer Credit Guide* ¶99,195, *Rogers v. Coburn Finance Corp. of DeKalb*, U.S.D.C., N.D. Ga., Feb. 18, 1972, 4 CCH *Consumer Credit Guide* ¶99,234, and *Kriger v. European Health Spa Inc. of Milwaukee, Wisconsin*, U.S.D.C., E.D. Wis., July 18, 1972, 4 CCH *Consumer Credit Guide* ¶99,106.

[26] See notes 16 and 17.

[27] See the discussion of *Bissette v. Colonial Mortgage Corporation* on page 2.

Appendix A: Informational and Educational Materials on Truth in Lending [1]

What You Ought to Know About Truth in Lending—A pamphlet containing the Truth in Lending Act, Regulation Z, all amendments and interpretations issued through September 11, 1969, questions and answers, and sample disclosure forms—free.

Amendments to the Truth in Lending Act and Amendments and Interpretations of Regulation Z—Issued periodically supplementing the pamphlet above. The latest issue contains amendments and interpretations issued from September 12, 1969, to November 30, 1972—Free.

Annual Percentage Rate Tables—Volume I—For use in computing annual percentage rates in single advance transactions repayable in equal payments at equal intervals—Cost: $1.00 each or $.85 each for orders of 10 or more.

Annual Percentage Rate Tables—Volume II—For use in computing annual percentage rates in irregular transactions for which Volume I cannot be used—Cost: $1.00 each or $.85 each for orders of 10 or more.

Annual Report to Congress on Truth in Lending—For the Years 1969–1971—Reports on the Board's administrative responsibilities under the Act, the extent of compliance and recommendations—Free.

[1] Prepared by the Board of Governors of the Federal Reserve System. Available from the Board or any Federal Reserve Bank or branch.

What Truth in Lending Means to You—A leaflet explaining in simple terms the basic facts about Truth in Lending—Free.

Lo Que "Truth in Lending" Significa Para Usted—A leaflet printed in Spanish explaining in simple terms the basic facts about Truth in Lending—Free.

Consumer Filmstrip—An audio-visual presentation of about 15 minutes designed to explain Truth in Lending—Cost: $10.00 each, but may be borrowed free.

Creditor Filmstrip—An audio-visual presentation of a creditor's responsibilities under Truth in Lending—Cost: $10.00 each, but may be borrowed free.

Appendix B: Advisory Committee On Truth In Lending

Chairman, Dr. Richard H. Holton, Dean, School of Business Administration, University of California, Berkeley, California.

Mr. Harry D. Allen, Assistant Credit Sales Manager, Rich's Department Store, Atlanta, Georgia.

Mr. James M. Barry, Managing Director, Texas Credit Union League, Dallas Texas.

Mr. Edwin B. Brooks, Jr., President, Security Federal Savings and Loan Association, Richmond, Virginia.

Mr. O. C. Carmichael, Jr., Chairman of the Board, Associates Corporation of North America, South Bend, Indiana.

Miss Barbara A. Curran, Senior Research Attorney, American Bar Foundation, Chicago, Illinois.

Dr. Louis F. Del Duca, Professor of Law and Director of Admissions, The Dickinson School of Law, Carlisle, Pennsylvania.

Mr. John E. Eidam, Attorney and Consultant to Cooperatives, Omaha, Nebraska.

Mr. William F. James, President, James Cadillac Company, Woodbridge, Connecticut.

Mr. Robert J. Klein, Senior Editor, MONEY, New York, New York.

Mr. Robert R. Masterton, President, Maine Savings Bank, Portland, Maine.

Mr. William F. Melville, Jr., Senior Vice President, Maryland National Bank, Baltimore, Maryland.

Mrs. Faith Prior, Extension Family Economist, University of Vermont, Burlington, Vermont.

Mr. Robert W. Pullen, Chairman, Department of Economics, Colby College, Waterville, Maine.

Mrs. Doris E. Saunders, Staff Associate, Office of the Chancellor, University of Illinois, Chicago, Illinois.

Mr. Miles C. Stanley, President, West Virginia Labor Federation, AFL-CIO, Charleston, West Virginia.

Mrs. Lynnette Taylor, Executive Director, Delta Sigma Theta Sorority, Washington, D.C.

Mr. Peter R. Thompson, President, Mid-Continent Properties, Inc., Piqua, Ohio.

Mr. Harry R. Vales, Vice President, Valas Corporation, Denver, Colorado.

Miss Barbara A. Zimmelman, Consultant, Urban and Economic Development, Houston, Texas.

Appendix C: Truth In Lending Litigation

Stefanski v. Mainway Budget Plan, Inc., 5th Cir., Feb. 23, 1972, 4 CCH *Consumer Credit Guide* ¶99,230. Dismissal of a suit claiming failure to make "credit sale" disclosures held improper where seller may have "arranged" and finance company "extended" credit.

Garza v. Chicago Health Clubs, Inc., et al. U.S.D.C., N.D. Ill., Sept. 15, 1972, 4 CCH *Consumer Credit Guide* ¶99,136. Acceleration of the balance upon default of an obligation should be considered a "charge" for purposes of the disclosures associated with charges for late payment, default or delinquency required by the Regulation.

White v. Central Charge Service, Inc., Sup. Ct. D.C., June 16, 1972, 4 CCH *Consumer Credit Guide* ¶99,170. Considering proper identification of merchandise purchased under open end credit account to comply with the Act and Regulation Z.

Garland v. Mobil Oil Corporation, U.S.D.C. N.D. Ill., Mar. 28, 1972, 4 CCH *Consumer Credit Guide* ¶99,193. A credit card issuer who imposes late payment charge not a "creditor."

Douglas v. Beneficial Finance Co. of Anchorage, et al., 9th Cir., Nov. 7, 1972, 4 CCH *Consumer Credit Guide* ¶99,112. Reversing district court holding that Alaskan confession of judgment clause is a "security interest" under Regulation Z.

Young v. Tri-City Remodeling Enterprises, Inc., City Ct. Albany, N.Y., July 18, 1972, 4 CCH *Consumer Credit Guide* ¶99,120. Right of rescission not applicable since no finance charge imposed in the transaction (following *Mourning v. Family Publications Service Inc.* at note 14).

Engle v. The Union Savings Association, U.S.D.C., N.D. Oh., Apr. 23, 1972, 4 CCH *Consumer Credit Guide* ¶99,178. Construing the disclosure required of any prepayment penalty.

Sosa v. Fite, 5th Cir., Aug. 4, 1972, 4 CCH *Consumer Credit Guide* ¶99,148. Reversing district court decision that Texas transaction was exempt from the Federal Act on the basis of there being similar State provisions and that the Federal court was without jurisdiction to hear the case.

Chrysler Credit Corporation, et al. v. Barnes, Ga. Ct. App., May 25, 1972, 4 CCH *Consumer Credit Guide* ¶99,144. Construing § 130 of the Act.

Pitkin Furniture Company v. Jackson, N.Y. Cir. Ct., Sp. term, Pt. 1, Kings County, Feb. 9, 1972, 4 CCH *Consumer Credit Guide* ¶99,231. Considering the ability of a party to raise the defenses of § 130(b) and (c) to liability.

Kenney v. Landis Financial Group Inc., U.S.D.C., N.D. Ia., Mar. 30, 1972, 4 CCH *Consumer Credit Guide* ¶99,105. Use of Rule of 78's computation under Iowa law imposes a penalty which should have been disclosed under § 226.8(b)(6) but not as a default charge under § 226.8(b)(4) of Regulation Z.

Wachtel v. West, U.S.D.C., E.D. Tenn., 4 CCH *Consumer Credit Guide* ¶99,107. The one-year statute of limitations begins to run on the date consumer credit is extended.

Appendix D: Suggested Legislative Language To Implement Recommendations for Changes in the Truth in Lending Act [1]

Class action and civil liability

The following amendment of section 130 (a) is suggested to set a maximum liability under a class action:

§ 130(a) Except as otherwise provided in this section, any creditor who fails to comply with any requirement imposed under this chapter with respect to any person is liable to such person in an amount equal to the sum of

(1) any actual damages sustained by such person as a result of the failure; and

(2) in the case of an individual action twice the amount of any finance charge in connection with the transaction, except that the liability under this subparagraph shall not be less than $100 nor greater than $1,000; or

(3) in the case of a class action, such amount as the court may allow, except that as to each member of the class no minimum recovery shall be applicable, and the total recovery in such action shall not be more than the greater of $50,000 or 1 per centum of the net worth of the creditor; and

(4) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

[1] Where language has been added to existing provisions, it has been underlined and deletions are shown.

(b) In determining the amount of award in any class action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional.

To provide for a "good faith" defense, it is suggested that section 130(d) be redesignated section 130(e) and a new section 130 (d) inserted as follows:

§ 130(d) No provision of this section or section 112 imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation or interpretation thereof by the Board, notwithstanding that such rule, regulation or interpretation may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

To resolve the problem of uncertainty about the scope of the definition of "transaction" under section 130(a), to which the $100 minimum recovery of that section applies, it is suggested that the present section 130(e) should be redesignated section 130(g) and a new section 130(f) added as follows:

§ 130(f) The multiple failure to disclose to any person any information required under this chapter to be disclosed in connection with a single account under an open and consumer credit plan, other single consumer credit sale, consumer loan or other extension of consumer credit, shall entitle the person to a single recovery under this section, but continued failure to disclose after a recovery has been granted shall give rise to rights to additional recoveries.

RIGHT OF RESCISSION

The following addition to section 125 is suggested to set an outside limit on the time the right of rescission may run:

§ 125(f) An obligor's right of rescission shall expire three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs earlier, notwithstanding the fact that the disclosures required under this section or any other material disclosures required under this chapter have not been delivered to the obligor.

To clarify the fact that the right of rescission is applicable to cases in which customers may lose their homes through foreclosure under lien rights as well as under mortgages or deeds of trust, the following indicated additions to the first sentences of sections 125(a) and (b) are suggested:

§ 125(a) Except as otherwise provided in this section, in the case of any consumer credit transaction in which a security interest, *including any such interest arising by operation of law,* is *or will be* retained or acquired. . ." etc.

(b) When an obligor exercises his right to rescind under subsection (a), he is not liable for any finance or other charge, and any security interest given by the obligor, *including any such interest arising by operation of law,* becomes void upon such a rescission.

"MORE-THAN-FOUR-INSTALLMENT RULE"

To clarify the Act's application to transactions involving more than four installments where no separately identifiable finance charges are shown, the following indicated amendments to sections 103(f) and 121(a) are suggested:

§ 103(f) The term "creditor" refers only to creditors who regularly extend, or arrange for the extension of credit *which is payable by agreement in more than four installments or* for which the payment of a finance charge is required, whether in connection with loans, sales of property or services, or otherwise. The provisions of this title apply to any such creditor, irrespective of his or its status as a natural person or any type of organization.

§ 121(a) Each creditor shall disclose clearly and conspicuously, in accordance with the regulations of the Board, to each person to whom consumer credit is extended the information required under this chapter, *where*

(1) a finance charge is or may be imposed, or

(2) the extension of credit is payable by agreement in more than four installments.

AGRICULTURAL CREDIT

To exempt agricultural credit over a certain amount from the Act's coverage, the Board recommends the following addition to section 104. While the Board believes an exclusion of transactions above $25,000 would alleviate the problem, it is aware that opinions legitimately may vary about the appropriate amount.

§ 104(5) Credit transactions primarily for agricultural purposes in which the total amount to be financed exceeds $25,000.

IDENTIFICATION OF GOODS OR SERVICES PURCHASED

To change the requirements relating to identification of goods and services purchased, it is suggested that section 127(b)(2) be amended as follows:

§ 127(b)(2) The amount and date of each extension of credit during the period and a brief identification on or accompanying the statement of each extension of credit in a form prescribed by regulations of the Board sufficient to enable the obligor to identify the transaction, or relate it to copies of sales vouchers or similar instruments previously furnished.

CREDIT CARDS—BUSINESS OR COMMERCIAL USE

To remove any possible uncertainty relating to the coverage of all credit cards under the Act's credit card amendments, section 135 should be added as follows:

§ 135 The provisions of section 104(1) shall not apply to sections 132, 133 and 134.

DISCLOSURE OF CLOSING COSTS

To require that certain charges involved in real estate transactions must be itemized and disclosed to the customer to be eligible for the finance charge exemption, section 106 (e) should be amended as follows:

§ 106(e) The following items, when charged in connection with any extension of credit secured by an interest in real property, and when itemized and disclosed in accordance with regulations of the Board, shall not be included in the computation of the finance charge with respect to that transaction: • • •

ADMINISTRATIVE ENFORCEMENT

To implement its recommendation for the transfer of certain enforcement jurisdiction from the Federal Trade Commission to the Farm Credit Administration, the Board suggests the following addition to section 108:

§ 108(a)(7) The Farm Credit Act of 1971, by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association.

To remove the enforcement responsibility of the Interstate Commerce Commission, section 108(a)(4) should be deleted and sections 108(a)(5) and (6) should be redesignated (4) and (5) respectively.

STATE OF WISCONSIN, DEPARTMENT OF VETERAN' AFFAIRS,

January 30, 1973.

Hon. WILLIAM PROXMIRE,
U.S. Senate,
Washington, D.C.

DEAR BILL: State Representative Gervase Hephner has advised me that you have agreed to review the Truth-in-Lending Act as it applies to Wisconsin's second-mortgage home loan program for veterans.

Because delays resulting from our compliance with the rescission provisions in the act have added to our many problems in meeting the housing needs of state veterans, I would like to add my fervent plea for action to exempt our program from those rescission provisions as quickly as possible.

The Rescission Provisions of the Truth-in-Lending Act of the Federal Consumer Credit Protection Act have caused real hardship for veterans applying for loans from the State Department of Veterans Affairs because of the added delays involved.

The Department of Veterans Affairs is the only governmental agency which regularly makes second mortgage loans on housing accommodations as a regular part of its function. At 3% interest, these loans are strictly non-competitive and are a privilege available only to qualified Wisconsin veterans.

Every county in Wisconsin has a County Veterans Service Officer, and all applications for benefits from the Department of Veterans Affairs are initially processed through the County Veterans Service office of the county in which the veteran applicant resides. The veterans service officer is usually located in the Court House in the county seat.

Therefore, the Department of Veterans Affairs is a mail order lender and, as such, has special problems in fully complying with the specific requirements of the Federal Reserve Board's regulation Z pertaining to the Notice of Right of Rescission. It fully complies by sending out the Notice of Right of Recission only after the disclosure forms have been acknowledged by both the borrower and his spouse and only after they have acknowledged that the loan transaction has been consumated.

The department has established uniform procedures for handling the Notice of Right of Rescission and, under these procedures, it is necessary for the veteran and his wife to wait 6 days from the date of signing the first rescission form until they may sign the second rescission form and return it to the department. This uniform waiting period covers cases where a Sunday and holiday intervene between the date of signing of the first rescission form and the confirmation that the loan will not be rescinded.

Veterans are never pressured to obtain loans from the department but, rather, they must complete a series of forms to establish their eligibility as veterans and to qualify themselves for such loans and have ample opportunity between the completion of these forms and the approval of their loans to reconsider their applications.

The Department of Veterans Affairs has an appreciable backlog of applications and, by the time the applications are ultimately approved, many veterans find it an extreme hardship to wait for the rescission period to elapse before the department can disburse funds or give absolute assurance to the third parties who are contacted at the request of prospective veteran borrowers that loan proceeds will be forthcoming. This additional waiting period has forced some veterans to obtain short-term, high-interest-rate loans to provide interim financing until the department's second-mortgage loans become available and has caused some veterans to lose opportunities to purchase homes.

State Department of Veterans Affairs' second mortgage loans for the purchase and construction of homes are "piggy back" loans—that is, they are an integral part of financing packages obtained by borrowers to enable them to purchase or construct homes, and they complement first mortgage loans. The first mortgage loans are usually made by banks or savings and loan associations, and these banks or savings and loan associations supervise disbursement of Department of Veterans Affairs funds at the time of the closing of the real estate transaction involving such funds. These "piggy back" loans constitute over 85% of the total mortgage loans made by the department.

Only a minority of Department of Veterans Affairs loans are made for improvements and, where improvement loans are made,

department funds will be disbursed only upon receipt of bills approved for payment over the veteran borrower's signature. This means that if a veteran does not chcose to complete improvements, no funds will be disbursed and no obligations will be incurred by the veteran as a result of the approval of a department's housing improvement loan.

The department has a policy under which any veteran may cancel his loan at any time after it has been approved without penalty. Further, if a veteran cancels his loan before cashing his department check and returns the department check, the return of the check is accepted in full satisfaction of his loan liability even though the department loses interest on the amount of his loan from the date his check is initially vouchered. This cancellation policy has always been and still is the policy of the department.

The Department of Veterans Affairs is not attempting to obtain exemption from the disclosure provisions of the Truth-in-Lending Act which only highlight the sizable interest break veterans are receiving with their department loans. We are, however, requesting that we be exempt from the rescission provisions of the Act in the interest of lending institutions, who give first mortgages to veteran borrowers who obtain second mortgages from the Department of Veterans Affairs to purchase or construct homes with the combination of both such mortgages, in the interest of veteran borrowers, and in the interests of cutting governmental operation costs for the state of Wisconsin.

Sincerely,

JOHN R. MOSES,
Secretary.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM,
Washington, D.C., November 15, 1972.

HON. WILLIAM PROXMIRE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR PROXMIRE: I am responding to your letter of October 24, 1972, relating to the application of the right of rescission under the Truth in Lending Act to loans made by the State Department of Veterans Affairs in Wisconsin. Your letter transmitted the October 16 letter of Wisconsin State Representative Gervase A. Hephner who points out the difficulty encountered by the application of the right of rescission to such loans. You suggest that the Board use its authority under the Truth in Lending Act to exempt second mortgage loans made by State agencies from the rescission requirements. You indicate that if administrative exemption is not feasible, we should provide draft legislation for introduction in the 93rd Congress.

While we can sympathize with the problems created by application of the right of rescission for both the State agency and the veterans obtaining loans from the agency, we believe that the specific statutory directives in the Act relating to second mortgage loans may preclude the Board from administratively exempting such loans from the right of rescission. Consequently, it appears that your second suggestion is preferable that we provide wording to amend the Act to allow exemption from the right of rescission for loans made by State agencies. We believe this could be accomplished by amending section 125(e) of the Act to read as follows: "This section does not apply to the creation or retention of a first lien against a dwelling to finance the acquisition of that dwelling or to a consumer credit transaction in which an agency of a State is the creditor."

I hope this information will be of assistance to you.

Sincerely,

J. L. ROBERTSON

OCTOBER 24, 1972.

Hon. J. L. ROBERTSON,
Vice Chairman, Board of Governors of the Federal Reserve System, Washington, D.C.

DEAR GOVERNOR ROBERTSON: I am enclosing a letter from a member of the Wisconsin Legislature who makes a compelling case that second mortgage loans made by the State Department of Veterans Affairs in Wisconsin should be exempt from the three-day rescission requirements of the Truth-in-Lending Act. As the letter indicates, these loans are quite beneficial to homebuyers. They are made at an interest rate of 3% and the borrower has the option to repay the full amount without penalty. In my opinion, the three-day rescission requirements were never intended by the Congress to cover this type of situation.

I would hope you could use your authority under the Truth-in-Lending Act to exempt second mortgage loans made by State agencies from the three-day rescission requirements. If this administrative exemption proves infeasible, I would most appreciate your preparing draft legislation for introduction in the 93rd Congress. I hope to hear from you soon on this matter.

With best wishes, I am

Sincerely,

WILLIAM PROXMIRE,
U.S. Senator.

OCTOBER 24, 1972.

Hon. GERVASE A. HEPHNER,
State Representative,
State Capitol,
Madison, Wis.

DEAR MR. HEPHNER: Thank you for your recent letter concerning the three-day rescission provisions of the Truth-in-Lending Act. This section of the Act was added as an amendment on the floor of the House of Representatives and was intended to regulate the abusive practices of home improvement contractors and similar lenders. In my opinion, it was never intended to cover the legitimate operations of State lending agencies such as the Wisconsin State Department of Veterans Affairs. As you point out in your letter, these loans are at 3% interest and the borrower may cancel them at any time without penalty.

I would be happy to sponsor legislation to exempt State agencies such as the Wisconsin State Department of Veterans Affairs from the three-day rescission requirements under Truth-in-Lending. However, the Truth-in-Lending Act does authorize the Federal Reserve Board to make exemptions to the requirements of the Act when such exemptions will facilitate compliance and are consistent with the purposes of the Act. Accordingly, I am writing to the Federal Reserve Board urging that an administrative exemption be made in the case of State lending agencies. Should this exemption prove infeasible, I will be glad to introduce a bill in the 93rd Congress to accomplish the same by legislation.

I am enclosing for your information a copy of my letter to the Federal Reserve Board requesting an exemption. I will be in further touch with you when I hear from the Board.

With best wishes, I am

Sincerely,

WILLIAM PROXMIRE,
U.S. Senator.

WISCONSIN LEGISLATURE,
ASSEMBLY CHAMBER,
Madison, October 16, 1972.

Hon. WILLIAM PROXMIRE,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: It has been brought to my attention that the Rescission Provisions of the Truth-in-Lending Act of the Federal Consumer Credit Protection Act have caused hardships for veterans applying for loans from the State Department of Veterans Affairs.

To my knowledge, the Department of Veterans Affairs is the only governmental agency which regularly makes second mortgage loans on housing accommodations as a regular part of its functions. At 3% interest, these loans are strictly noncompetitive and are a privilege available only to qualified Wisconsin veterans.

Every county in Wisconsin has a County Veterans Service Officer and all applications for benefits from the Department of Veterans Affairs are initially processed through the County Veterans Service office of the county in which the veteran resides. The veterans service officer is usually located in the Court House in the county seat.

Therefore, the Department of Veterans Affairs is a mail order lender and as such, has special problems in fully complying with the specific requirements of the Federal Reserve Board's regulation Z pertaining to the Notice of Right of Rescission. It fully complies by sending out the Notice of Right of Rescission only after the disclosures forms have been acknowledged by both the borrower and his spouse and only after they have acknowledged that the loan transaction has been consummated.

The department has established uniform procedures for handling the Notice of Right of Rescission and, under these procedures, it is necessary for the veteran and his wife to wait 6 days from the date of signing the first rescission form until they may sign the second rescission form and return it to the department. This uniform waiting period covers cases where a Sunday and holiday intervene between the date of signing of the first rescission form and the confirmation that the loan will not be rescinded.

Veterans are never pressured to otbain loans from the department but, rather, they must complete a series of forms to establish their eligibility as veterans and to qualify themselves for such loans and have ample opportunity between the completion of these forms and the approval of their loans to reconsider their applications.

The Department of Veterans Affairs has an appreciable backlog of applications and, by the time the applications are ultimately approved, many veterans find it an extreme hardship to wait for the rescission period to elapse before the department can disburse funds or give absolute assurance to the third parties who were contacted at the request of prospective veteran borrowers that loan proceeds will be forthcoming. I have been informed by Mr. Robert J. Veeser, County Veterans Service Officer for Calumet County, that this has forced some veterans to obtain short-term, high interest rate loans to provide interim financing until the department's second mortgage loans become available and has caused some veterans to lose opportunities to purchase homes.

State Department of Veterans Affairs' second mortgage loans for the purchase and construction of homes are "piggy back" loans—that is, they are an integral part of financing packages obtained by borrowers to enable them to purchase or construct homes and complement first mortgage loans. The first mortgage loans are usually made by banks or savings and loan associations and these banks or savings and loan associations supervise disbursement of Department of Veterans Affairs funds. These "piggy back" loans constitute over 85% of the total mortgage loans made by the Department.

Only a minority of Department of Veterans Affairs loans are made for improvements and, where improvement loans are made, department funds will be disbursed only upon

receipt of bills approved for payment over the veteran borrower's signature. This means that if a veteran does not choose to complete improvements, no funds will be disbursed and no obligations will be incurred by the veteran as a result of the approval of a Department's housing improvement loan.

The department has a policy under which any veteran may cancel his loan at any time after it has been approved without penalty. Further, if a veteran cancels his loan before cashing his department's check and returns the department check, the return of the check is accepted in full satisfaction of his loan liability even though the department loses interest on the amount of his loan from the date his check is initially vouchered.

Mr. John R. Moses, Secretary of the Department of Veterans Affairs, has submitted assurance to Mr. Veeser that this cancellation policy has always been and still is the policy of the Department of Veterans Affairs.

Mr. Veeser assures me that the Department of Veterans Affairs is not attempting to obtain exemption from the disclosure provisions of the Truth-in-Lending Act which only highlight the sizable interest break veteran's are receiving with their department loans. It is, however, requesting that it be exempt from the rescission provisions of the Act in the interests of lending institutions who give first mortgages to veteran borrowers who obtained second mortgages from the Department of Veterans Affairs to purchase or construct homes with the combination of both such mortgages, in the intrests of veteran borrowers, and in the intersts of cutting government operation costs for the state of Wisconsin.

I am certain that your sponsorship of this very desirable legislation will meet with the wholehearted approval of Wisconsin County Veterans Service Officers, real estate brokers, savings and loan officials. Passages of this legislation will also benefit Wisconsin veterans and save time and money for the Department of Veterans Affairs.

Sincerely,

GERVASE A. HEPHNER,
State Representative.

P.S. This is the information that we talked about in my wheat field.

S. 914

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 "Truth in Lending Act Amendments of 1973".

TITLE I—FAIR CREDIT BILLING

§ 101. Short title

This title may be cited as the "Fair Credit Billing Act".

§ 102. Declaration of purpose

The last sentence of section 102 of the Truth in Lending Act (15 U.S.C. 1601) is amended by striking out the period and inserting in lieu thereof a comma and the following: "and to protect the consumer against inaccurate and unfair credit billing and credit card practices."

§ 103. Definition of creditor

Section 103(f) of the Truth in Lending Act (15 U.S.C. 1602(f)) is amended by adding at the end thereof the following: "Notwithstanding the foregoing, for the purposes of the requirements imposed under sections 127(a)(6), 127(a)(7), 127(a)(8), 127(b)(1), 127(b)(2), 127(b)(3), 127(b)(11), and chapter 4 of this title, the term 'creditor' means any person who regularly extends credit or arranges for the extension of credit in connection with loans, sales of property or services, or otherwise."

§ 104. Disclosure of fair credit billing rights

(a) Section 127(a) of the Truth in Lending Act (15 U.S.C. 1637) is amended by adding at the end thereof a new paragraph as follows:

"(8) A statement, in a form prescribed by regulations of the Board, of the protection provided by section 161 to an obligor and the creditor's responsibilities under section 162. Such statement shall be provided to the obligor at least semiannually."

(b) Section 127(c) of the Truth in Lending Act (15 U.S.C. 1637(c)) is amended to read:

"(c) In the case of any existing account under an open-end consumer credit plan having an outstanding balance of more than $1 at or after the close of the creditor's first full billing cycle under the plan after the effective date of subsection (a) or any amendments thereto, the items described in subsection (a), to the extent applicable and not previously disclosed, shall be disclosed in a notice mailed or delivered to the obligor not later than the time of mailing the periodic billing statement required by subsection (b)."

§ 105. Disclosure of billing contact

Section 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b)) is amended by adding at the end thereof a new paragraph as follows:

"(11) The address to be used by the creditor for the purpose of receiving billing inquiries from the obligor."

§ 106. Billing practices

The Truth in Lending Act (15 U.S.C. 1601–1665) is amended by adding at the end thereof a new chapter as follows:

"Chapter 4.—CREDIT BILLING

"Sec.
"161. Correction of billing errors.
"162. Regulation of credit reports.
"163. Length of billing period.
"164. Prompt crediting of payments.
"165. Crediting excess payments.
"166. Prompt notification of returns.
"167. Prohibition of retroactive finance charges.
"168. Prohibition of minimum finance charges.
"169. Use of cash discounts.
"170. Prohibition of tie-in services.
"171. Prohibition of offsets.
"172. Rights of credit card customers.
"173. Relation to State laws.

§ 161. Correction of billing errors

"(a) If a creditor, within sixty days after having transmitted to an obligor a statement of the obligor's account in connection with an extension of consumer credit, receives at the address disclosed under section 127(b)(11) a written notice (other than notice on a payment stub or other payment medium supplied by the creditor if the creditor so stipulates with the disclosure required under section 127(b)(11)) from the obligor in which the obligor—

"(1) sets forth or otherwise enables the creditor to identify the name and account number (if any) of the obligor,

"(2) indicates the obligor's belief that the statement contains a billing error and the amount of such billing errors, and

"(3) sets forth the reasons for the obligor's belief (to the extent applicable) that the statement contains a billing error,

the creditor shall, unless the obligor has, after giving such written notice and before the expiration of the time limits herein specified, agreed that the statement was correct—

"(A) not later than thirty days after receipt of the notice, send a written acknowledgement thereof to the obligor, unless the action required in subparagraph (B) is taken within such thirty-day period, and

"(B) not later than two complete billing cycles of the creditor (in no event later than ninety days) after the receipt of the notice and prior to taking any action to collect the amount, or any part thereof, indicated by the obligor under paragraph (2) either—

"(i) make appropriate corrections in the account of the obligor, including the crediting of any finance charges on accounts erroneously billed, and transmit to the obligor a notification of such corrections and the creditor's explanation of any change in the amount indicated by the obligor under paragraph (2) and, if any such change is made and the obligor so requests, copies of documentary evidence of the obligor's indebtedness; or

"(ii) send a written explanation or clarification to the obligor, after having conduced an investigation, setting forth to the extent applicable the reasons why the creditor believes the account of the obligor was correctly shown in the statement and, upon request of the obligor, provide copies of documentary evidence of the obligor's indebtedness. In the case of a billing error where where the obligor alleges that the creditor's billing statement reflects goods not delivered to the obligor or his designee in accordance with the agreement made at the time of the transaction, a creditor may not construe such amount to be correctly shown unless he determines that such goods were actually delivered, mailed, or otherwise sent to the obligor and provides the obligor with copies of documentary evidence thereof.

"(b) For the purpose of this section, a 'billing error' consists of any of the following:

"(1) A reflection on a statement of an extension of credit which was not made to the obligor or, if made, was not in the amount reflected on such statement.

"(2) A reflection on a statement of an extension of credit for which the obligor requests additional clarification including documentary evidence thereof.

"(3) A reflection on a statement of goods or services not accepted by the obligor or his designee or not delivered to the obligor or his designee in accordance with the agreement made at the time of a transaction.

"(4) The creditors failure to reflect properly on a statement a payment made by the obligor or a credit issued to the obligor.

"(5) A computation error or similar error of an accounting nature of the creditor on a statement.

"(6) Any other error described in regulations of the Board.

"(c) For the purpose of this section, 'action to collect the amount, or any part thereof, indicated by an obligor under paragraph (2)' does not include the sending of statements of account to the obligor following written notice from the obligor as specified under subsection (a), if

"(1) the obligor's account is not restricted or closed because of the failure of the obligor to pay the amount indicated under paragraph (2) of subsection (a), and

"(2) the creditor indicates the payment of such amount is not required pending the creditor's compliance with section 161.

Nothing in this section shall be construed to prohibit any action by a creditor to collect any amount which has not been indicated by the obligor to contain a billing error.

"(d) Any creditor who fails to comply with the requirements of section 161 or 162 forfeits any right to collect from the obligor the amount indicated by the obligor under paragraph (2) of subsection (a) of section 161, and any finance charges thereon, except that the amount required to be forfeited under this subsection may not exceed $100.

"§ 162. Regulation of credit reports

"(a) After receiving a notice from an obligor as provided in section 161(a), a

creditor or his agent may not directly or indirectly threaten to report to any person adversely on the obligor's credit rating or credit standing because of the obligor's failure to pay the amount indicated by the obligor under section 161(a)(2), and such amount may not be reported as delinquent to any third party until the creditor has met the requirements of section 161 and has allowed the obligor the same number of days (not less than ten) thereafter to make payment as is provided under the credit agreement with the obligor for the payment of undisputed amounts.

"(b) If a creditor receives a further written notice from an obligor that an amount is still in dispute within the time allowed for payment under subsection (a) of this section, a creditor may not report to any third party that the amount of the obligor is delinquent because the obligor has failed to pay an amount which he has indicated under section 161(a)(2), unless the creditor also reports that the amount is in dispute and, at the same time, notifies the obligor of the name and address of each party to whom the creditor is reporting information concerning the delinquency.

"(c) A creditor shall report any subsequent resolution of any delinquencies reported pursuant to subsection (b) to the parties to whom such delinquencies were initially rereported.

"§ 163. Length of billing period

"If an open-end consumer credit plan provides a time period within which an obligor may repay any portion of the credit extended without incurring an additional finance charge, such additional finance charge may not be imposed with respect to such portion of the credit extended for the billing cycle of which such period is a part unless a statement which includes the amount upon which the finance charge for that period is based was mailed at least fourteen days prior to the date specified in the statement by which payment must be made in order to avoid imposition of that finance charge.

"§ 164. Prompt crediting of payments

"Payments received from an obligor under an open-end consumer credit plan by the creditor shall be posted promptly to the obligor's account as specified in regulations of the Board. Such regulations shall prevent a finance charge from being imposed on any obligor if the creditor has received the obligor's payment prior to the time indicated by the creditor by which such payment must be received to avoid the imposition of a finance charge.

"§ 165. Crediting excess payments

"Whenever an obligor transmits funds to a creditor in excess of the total balance due on an open-end consumer credit account, the creditor shall promptly (1) upon request of the obligor refund the amount of the overpayment, or (2) credit such amount to the obligor's account.

"§ 166. Prompt notification of returns

"With respect to any sales transaction where a credit card has been used to obtain credit, where the seller is a person other than the card issuer, and where the seller accepts or allows a return of the goods or forgiveness of a debit for services which were the subject of such sale, the seller shall, unless otherwise requested by the buyer, promptly transmit to the credit card issuer a credit statement with respect thereto and the credit card issuer shall credit the account of the obligor for the amount of the transaction.

"§ 167. Prohibition of retroactive finance charges

"Any creditor who operates an open-end consumer credit plan under the terms of which the obligor has the option of avoiding the imposition of a finance charge by paying his outstanding balance in full within a specified period of time shall not retroactively assess a finance charge against any balance outstanding in the obligor's account prior to the time when such payment is due.

"§ 168. Prohibition of minimum finance charges

"(a) No creditor who operates an open-end consumer credit plan may impose a minimum finance charge on any consumer account unless such charge is—

"(1) in the nature of a fixed finance charge for the purpose of recovering billing expenses and is imposed uniformly on all accounts without regard to the amount of credit outstanding or the amount of repayment; or

"(2) imposed uniformly on all accounts in which the minimum periodic payment required by the terms of the plan has not been received during the two preceding billing periods.

"(b) The exceptions granted under paragraphs (1) and (2) of subsection (a) shall not be construed to authorize the imposition of such charges where they are not otherwise authorized under State law and no creditor imposing such charges shall state or infer that such charges are required or authorized by Federal law.

"§ 169. Use of cash discounts

"(a) With respect to a credit card which may be used for extensions of credit in sales transactions in which the seller is a person other than the card issuer, the card issuer may not, by contract or otherwise, prohibit any such seller from offering a discount to a cardholder to induce the cardholder to pay by cash, check, or similar means rather than use a credit card.

"(b) With respect to any sales transaction, any discount not in excess of 5 per centum offered by the seller for the purpose of inducing payment by cash, check, or other means not involving the use of a credit card shall not constitute a finance charge as determined under section 106, if such discount is offered to all prospective buyers and its availability is disclosed to all prospective buyers clearly and conspicuously in accordance with regulations of the Board.

"§ 170. Prohibition of tie-in services

"Notwithstanding any agreement to the contrary, no card issuer shall require a seller, as a condition to participating in a credit card plan, to open an account with or procure any other service from the card issuer or its subsidiary or agent.

"§ 171. Prohibition of offsets

"(a) A credit card issuer may not take any action to offset a cardholder's indebtedness arising in connection with a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer unless—

"(1) such action was previously authorized in writing by the cardholder, and

"(2) such action with respect to any disputed amount will be rescinded by the card issuer upon request of the cardholder made within ten days after such action is taken.

In case of any credit card account in existence on the effective date of this section, the previous written authorization referred to in clause (1) shall not be required until the date (after such effective date) when such account is renewed, but in no case later than one year after such effective date.

"(b) This section does not alter or affect the right under State law of a card issuer to attach or otherwise levy upon funds of a cardholder held on deposit with the card issuer if that remedy is constitutionally available to creditors generally.

"§ 172. Rights of credit card customers

"A card issuer who has issued a credit card to a cardholder pursuant to an open-end consumer credit plan shall be subject to all claims (other than tort claims) and defenses arising out of any transaction in which the credit card is used as a method of payment or extension of credit if (1) the obligor has made a good faith attempt to obtain satisfactory resolution of a disagreement or problem relative to the transaction from the person honoring the credit card; (2) the amount of such initial transaction exceeds $50; (3) the place where the initial transaction occurred was in the same State as the State in which the card issuer maintained a place of business; and (4) the amount of claims or defenses asserted by the cardholder does not exceed: (a) the initial amount of credit extended in connection with the initial transaction giving rise to the claim or defense provided the cardholder notifies the card issuer or person honoring the card of such claim or defense within three months from the date of such transaction; or (b) if the cardholder notifies the card issuer or person honoring the card of such claims or defense later than six months following the date of such transaction, the amount outstanding with respect to such transaction at the time of such notification. For the purpose of determining such amount outstanding in the preceding sentence, the payments and credits to the cardholder's account are deemed to have been applied, in the order indicated, to the payment of: (i) late charges in the order of their entry to the account; (ii) finance charges in order of their entry to the account; and (iii) debits to the account other than those set forth above, in the order in which each debit entry to the account was made.

"§ 173. Relation to State laws

"This chapter does not annul, alter, affect, or exempt any person subject to the provisions of this chapter from complying with the laws of any State with respect to credit billing practices, except to the extent that those laws are inconsistent with any provision of this chapter, and then only to the extent of the inconsistency. No State law which provides greater protection for consumers than the protection provided by this law shall be preempted by this law to the extent of the greater protection.

§ 108. Conforming amendments

(a) The table of chapters of the Truth in Lending Act is amended by adding immediately under item 3 the following:

"4. CREDIT BILLING ..... 161".

(b) Section 111(d) of such Act (15 U.S.C. 1610(d)) is amended by striking out "and 130" and inserting in lieu thereof a comma and the following: "130, 166, 167, and 168".

§ 109. Effective date

This title takes effect upon the expiration of one year after the date of its enactment.

TITLE II—AMENDMENTS TO THE TRUTH IN LENDING ACT

§ 201. More-than-four-installment rule

(a) The first sentence of section 103(f) of the Truth in Lending Act (15 U.S.C. 1602(f)) is amended by inserting "which is payable by agreement in more than four installments or" after "credit".

(b) Section 121(a) of the Truth in Lending Act (15 U.S.C. 1631(a)) is amended by striking out all after "extended" and inserting "the information required under this chapter, where—

"(1) a finance charge is or may be imposed, or

"(2) the extension of credit is payable by agreement in more than four installments."

§ 202. Agricultural credit exemption

Section 104 of the Truth in Lending Act (15 U.S.C. 1603) is amended by adding at the end thereof a new paragraph as follows:

"(5) Credit transactions primarily for agricultural purposes in which the total amount to be financed exceeds $25,000."

§ 203. Administrative enforcement

(a) Section 108(a) of the Truth in Lending Act (15 U.S.C. 1607(a)) is amended by striking out paragraph (4) and by redesig-

nating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

(b) Section 108(a) of the Truth in Lending Act (15 U.S.C. 1607(a)) is amended by adding at the end thereof a new paragraph as follows:

"(7) the Farm Credit Act of 1971, by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit associaton."

§ 204. Liens arising by operation of State law

Section 125 of the Truth in Lending Act (15 U.S.C. 1635) is amended—

(1) by striking out "is" the first time it appears in the first sentence of subsection (a) and inserting in lieu thereof ", including any such interest arising by operation of law, is or will be"; and

(2) by inserting after "obligor" the second time it appears in the first sentence of subsection (b) the following: ", including any such interest arising by operation of law,".

§ 205. Time limit for right of rescission

Section 125 of the Truth in Lending Act (15 U.S.C. 1635) is amended by adding at the end thereof a new subsection as follows:

"(f) An obligor's right of rescission shall expire three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs earlier, notwithstanding the fact that the disclosures required under this section or any other material disclosures required under this chapter have not been delivered to the obligor."

§ 206. Good faith compliance

Section 130 of the Truth in Lending Act (15 U.S.C. 1640) is amended by adding at the end thereof a new subsection as follows:

"(f) No provision of this section or section 112 imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board, notwithstanding that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason."

§ 207. Liability for multiple disclosures

Section 130 of the Truth in Lending Act (15 U.S.C. 1640) is amended by adding at the end thereof a new subsection as follows:

"(g) The multiple failure to disclose to any person any information required under this chapter to be disclosed in connection with a single account under an open-end consumer credit plan, other single consumer credit sale, consumer loan, or other extension of consumer credit, shall entitle the person to a single recovery under this section but continued failure to disclose after a recovery has been granted shall give rise to rights to additional recoveries."

§ 208. Limitation on class action liability

(a) Section 130(a) of the Truth in Lending Act (15 U.S.C. 1640(a)) is amended to read as follows:

"(a) Except as otherwise provided in this section, any creditor who fails to comply with any requirement imposed under this chapter or chapter 4 of this title with respect to any person is liable to such person in an amount equal to the sum of—

"(1) any actual damages sustained by such person as a result of the failure;

"(2) in the case of an individual action twice the amount of any finance charge in connection with the transaction, except that the liability under this subparagraph shall not be less than $100 nor greater than $1,000; or

"(3) in the case of a class action, such amount as the court may allow, except that as to each member of the class no minimum recovery shall be applicable, and the total recovery in such action shall not be more than the greater of $50,000 or 1 per centum of the net worth of the creditor; and

"(4) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

"(b) In determining the amount of the award in any class action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional."

(b) Section 130(b) of such Act (15 U.S.C. 1640(b)) is amended by inserting after "this section" the first place it appears the following: "for any failure to comply with any requirement imposed under this chapter,".

(c) Section 130(c) of such Act (15 U.S.C. 1640(c)) is amended by striking out "chapter" and inserting in lieu thereof "title".

(d) Section 130 of such Act (15 U.S.C. 1640) is amended by adding at the end thereof a new subsection as follows:

"(h) A person may not take any action to offset any amount for which a creditor is potentially liable to such person under subsection (a)(2) against any amount owing to such creditor by such person, unless the amount of the creditor's liability to such person has been determined by judgment of a court of competent jurisdiction in an action to which such person was a party."

(e) The amendments made by section 206, 207, and 208 shall apply in determining the liability of any person under chapter 2 or 4 of the Truth in Lending Act, unless prior to the date of enactment of this Act such liability has been determined by final judgment of a court of competent jurisdiction and no further review of such judgment may be had by appeal or otherwise.

§ 209. Disclosure of closing costs

Section 106(e) of the Truth in Lending Act (15 U.S.C. 1605(e) is amended by inserting after "real property," the following: "and when itemized and disclosed in accordance with regulations of the Board,".

§ 210. Business use of credit cards

Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631–1644) is amended by adding the following new section at the end thereof:

"§ 135. Business credit cards

"The provisions of section 104(1) shall not apply to sections 132, 133, and 134.

§ 211. Identification of transaction

Section 127(b)(2) of the Truth in Lending Act (15 U.S.C. 1637(b)(2)) is amended to read as follows:

"(2) The amount and date of each extension of credit during the period and a brief identification on or accompanying the statement of each extension of credit in a form prescribed by regulations of the Board insufficient to enable the obligor to identify the transaction, or relate it to copies of sales vouchers or similar instruments previously furnished."

§ 212. Exemption for State lending agencies

Section 125(e) of the Truth in Lending Act (15 U.S.C. 1635(e)) is amended by striking the period at the end thereof and adding the following: "or to a consumer credit transaction in which an agency of a State is the creditor."

§ 213. Effective date

This title takes effect upon the date of its enactment.

By Mr. JAVITS:

S. 915. A bill to provide a national health insurance program by extending the benefits, enlarging the coverage, expanding the role of private carriers, and otherwise improving the health insurance program established by title XVIII of the Social Security Act, by establishing a new title XX to such act to provide comparable health insurance benefits to individuals not covered therefor under the program established by such title XVIII, by providing Federal assistance to develop local comprehensive health service systems, and by authorizing the establishment of federally chartered national health insurance corporations. Referred to the Committee on Finance.

NATIONAL HEALTH INSURANCE AND HEALTH SERVICES IMPROVEMENT ACT

Mr. JAVITS. Mr. President, I introduce for appropriate reference the National Health Insurance and Health Services Improvement Act, and I refer to a number of amendments to deal with developments in the subject which I will incorporate into the bill.

My bill, and other health bills which will be introduced, mark the beginning of journeys to fulfill one of the great needs of our people—the equal right to health care, whether rich or poor. Only justice should determine whether one lives or dies, not economic circumstances, which is the situation presently. I predict that a national health care program will be enacted in this Congress.

Mr. President, we must deal with the health of all the people:

First, on an equal basis, that is a basis of opportunity for gaining equal access to our health care system;

Second, for preventive care instead of illness care;

Third, to attain the economy by the way in which that health care can be delivered; and

Fourth, to pay for the service on the insurance principle.

To achieve these objectives, I am introducing the National Health Insurance and Health Services Improvement Act. A summary of its provisions are contained in the appended comparability tables.

The bill I introduce today is essentially the national health insurance bill I introduced in the 92d Congress. It reflects a commitment to providing an acceptable form of mandatory prepaid health care for all Americans and, at the same time, to change the dangerously haphazard organization of health delivery services in America. To accomplish this desired goal, the bill is based on the following premise:

First. Different segments of our population—with a priority to the disabled and the poor—are phased into the system. A massive expansion of health insurance cannot be imposed at one time upon our present health care system. The system must be given time to gear up for the greatly increased demand and allow for the vast reorganization of health care delivery services which other parts of this bill would stimulate.

Second. The basic medicare package—parts A and B—is established as a solid minimal criterion for every person. Additional benefits are phased in, for example, annual physical examinations, prescription drugs, dental care. At the same time, we must also assure that health benefits are not limited by inap-

propriate and arbitrary administrative flat, for example, increased deductibles, copayments and coinsurance—these do not actually confront the problem of overutilization of hospital services; they merely transfer the incurred costs onto already financially overburdened shoulders. It is the providers of health care who determine whether a hospital admission and length of stay is reasonable, necessary, or appropriate, and that is the point at which the matter should be attacked.

Third. Private sector—private and nonprofit—would have the first opportunity to provide the health care services by contracts with the Secretary of Health, Education, and Welfare, and if they will not and cannot do it in any region, than an autonomous U.S. Government corporation or corporations would do the job.

If the promise of adequate quality health care for all Americans is to become a reality, the various legislative proposals, including my bill, which recognize the national responsibility for the health of the people, and other ideas which seek that deserved goal need the cooperation of the professional and technical experts in the private sector.

Mr. President, an amendment to the Public Health Services Act—Public Law 91–515—directed the Secretary of the Department of Health, Education and Welfare to conduct a study which would evaluate, analyze and provide cost data on national health insurance legislative proposals.

I commend the initial report and the supplementary updating reports to all concerned with national health insurance. Because they are voluminous I will not ask to have them reprinted here. However, the summary comparison of the various bills would be helpful to all and I shall ask that it, along with the respective cost estimates, be printed in the RECORD at the conclusion of my remarks.

Mr. President, although I have reintroduced my national health insurance bill in the same form as originally introduced, in the 91st Congress, I believe it would be helpful to discuss at this time certain contemplated amendments:

First. The drug coverage benefit in the bill which would begin 2 years after the start of the program—maintenance drugs for the treatment of chronic diabetes, cardiovascular diseases, kidney conditions and respiratory conditions with a $1 charge per prescription and this amount adjusted in future years according to changes in the per capita cost for drugs—will be replaced with the drug coverage benefit in the Senate passed H.R. 1 which was dropped in conference.

This latter coverage would cover the costs of certain specified drugs, purchased on an outpatient basis, which are necessary in the treatment of the most common, crippling or life-threatening chronic disease conditions of the aged. Beneficiaries would pay $1 toward the cost of each prescribed drug included in the reasonable cost range for the drug involved.

Covered would be specific drugs used in the treatment of the following conditions: arthritis, cancer, chronic respiratory disease, diabetes, epilepsy, gout, glaucoma, high blood pressure, myasthenia gravis, Parkinson's disease, rheumatism, thyroid disease and tuberculosis.

The Finance Committee estimated the cost at $740 million with a $1 co-payment per prescription. There would be an offsetting of some $100 million from medicaid as a result of this drug coverage.

The costs of outpatient prescription drugs represent a major item of medical expense for many older people, especially for those suffering from chronic and serious illness conditions. The costs of such drugs are not presently covered.

Second. The benefit package would be revised in order specifically to provide coverage for prenatal and postpartum care, well-child care and family planning services. All such benefits would not be subject to deductibles or coinsurance. These are preventive services and on a long term cost benefit ratio, preventive care should be stimulated.

Within the context of the bill's "annual physical check ups" provision, there is adequate flexible authority for the Secretary to provide and emphasize such preventive care. However, I am concerned—after careful reading of the previously mentioned HEW reports—that HEW may not give its flexible authority such interpretation and, therefore, believe the bill may have to be specific on the matter of the provision of medically accepted preventive care procedures.

Third. The cost control provisions of the bill should specifically protect the patient from responsibility for payment of disallowed services—deemed unnecessary, unreasonable or inappropriate—unless the provider and patient have previously entered into a written agreement to the contrary. I can understand the concern that has been regularly brought to my attention by medicare patients that exclusive of deductibles and coinsurance, for example, when only $300 was allowed for an operation and the bill was $500, the elderly citizen with his limited finances must pay nonetheless. While I can readily understand that an individual surgeon would evaluate his services at a $500 fee, at the same time, it may exceed what is deemed reasonable, and it is unfair for the unknowing patient to bear the financial burden for the disallowed charges unless he has previously agreed to pay the higher charge.

Fourth. The recently enacted Public Law 92–603, with its establishment of Professional Standards Review Organizations—PSRO's—are complementary to the several cost control provisions of my bill. However, I believe there is a meaningful role which consumers should play in these peer and utilization review procedures and I will author amendments to assure consumers their appropriate input into PSRO's. At the same time, I will offer amendments to assure that while PSRO's consider "cost" factors, equal consideration be given to the development of quality of care assurance standards.

Fifth. As the author of the Local Comprehensive Health Services Systems Act of 1971 (S. 837 in the 92d Congress and its predecessor, S. 3712, in the 91st Congress) and the sponsor of the administration's Health Maintenance Organization Assistance Act of 1971 (S. 1182), I want my colleagues to know that my continued strong support for the development of HMO's has not abated because of failure to substitute the provisions of the Health Maintenance Organization and Resources Development Act of 1973 (S. 14) for title IV of this bill. I intend to so amend this bill to reflect my support for the stimulation and development of financially viable prepaid group practice units—now commonly known as HMO's.

Sixth. When national health insurance becomes a reality and all Americans have available to them a good basic benefits package covering most acute care problems and designed to promote early diagnosis and treatment—as contemplated by my bill—then catastrophic coverage should be provided.

Americans must be protected against the dread impact of the cost of catastrophic illness care and, although national health insurance assures that most illness does not become unbearable financially, also we must see families through the financial burden of sudden medical catastrophes. We must assure that illness does not result in bankruptcy.

To achieve that goal, I will propose catastrophic coverage that is income-related and related to a proportion of out-of-pocket expenditures for specialized services, for a catastrophe is as much economic as medical. At the same time, such legislation must assure that our health care resources are not driven toward highly expensive esoteric and "experimental" care.

My bill, and the other national health insurance bills that have been and will be introduced, mark the beginning of a journey toward the fulfillment of one of the great social needs of our people—the equal right to quality health care. I predict such a measure will be enacted in this Congress.

Mr. President, I ask unanimous consent that the text of the bill, a summary of the bill, and certain other pertinent material to which I have previously referred be printed at this point in the RECORD.

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

S. 915

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

SHORT TITLE

SECTION 1. This Act, with the following table of contents, may be cited as the "National Health Insurance and Health Services Improvement Act of 1973".

TABLE OF CONTENTS

Sec. 2. Findings and declaration of purpose.

TITLE I—AMENDMENTS RELATED TO HEALTH INSURANCE PROVIDED BY TITLE XVIII OF THE SOCIAL SECURITY ACT

Sec. 101–105. PART A—COVERAGE OF ALL AGED AND DISABLED; EXTENSION, WITHOUT PREMIUM, OF SUPPLEMENTARY BENEFITS TO ALL COVERED INDIVIDUALS.

Sec. 110–112. PART B—COVERAGE OF DRUGS.

Sec. 120. PART C—ANNUAL PHYSICAL CHECK-UPS.

Sec. 130. PART D—DENTAL SERVICES.

Sec. 140–141. Part E—Limitations on Certain Charges for Services, Physicians' Qualifications.
Sec. 150. Part F—Agreements With States for Administration.
Sec. 160–162. Part G—Improvement in Organization of Health Care.
Sec. 201. TITLE II—HEALTH BENEFITS FOR THE GENERAL PUBLIC.
Sec. 301–305. TITLE III—FINANCING OF HEALTH INSURANCE.
TITLE IV—FEDERAL AID TO ESTABLISH LOCAL COMPREHENSIVE HEALTH SERVICE SYSTEMS.
Sec. 401. Findings and declaration of purpose.
Sec. 402. Basic authority.
Sec. 403. Eligibility for assistance.
Sec. 404. Financial and technical assistance for planning comprehensive health service systems.
Sec. 405. Financial and technical assistance for the operation of approved comprehensive health service systems.
Sec. 406. Appropriations.
Sec. 407. Definitions.
Sec. 501. TITLE V—FEDERALLY CHARTERED HEALTH INSURANCE CORPORATIONS.

FINDINGS AND DECLARATION OF PURPOSE

SEC. 2. The Congress hereby finds and declares that:

(1) the ability to deliver basic health protection is impaired as the result of the inadequate allocation of health resources and less than optimum management and rapidly escalating health care costs. An anachronistic national health care system often operates to provide priority to patients on the basis of ability to pay rather than most pressing need for services. The inequities and hardships which result from such a system are further aggravated by duplication, waste, overlap, and poor coordination in the system at a time when health manpower and resources are in short supply.

(2) the right to quality health care has become a national objective and a right for all Americans. The removal of financial barriers to health care services, and improvement of the present system of delivery of health services, are matters of vital concern affecting the public health, safety, and welfare.

(3) every American regardless of economic status, should be enabled to obtain basic health benefits and a national system should be established which will allocate sufficient resources to bring about the needed changes in the system of health care.

(4) we should develop a system of health insurance benefits which will be financed by employer-employee contributions and from general revenues, and which will provide benefits to all Americans including the aged, the indigent, the disabled and the unemployed.

(5) we should encourage the development of a system of health care under Federal standard which utilizes a wide diversity of care and benefit mechanisms, including the valuable management skills of the commercial and nonprofit insurance industry, the nonprofit health care community and cooperative agencies and group practice units, and maximizes consumer choice between such competing mechanisms.

(6) we should encourage the development of systems of continuing and comprehensive health care which emphasize preventive, diagnostic, ambulatory, and rehabilitative services, as well as physicians' and hospital care, and which stimulate physicians and providers to enter into group practice and other arrangements and into relationships with other providers, under which the delivery of quality health care will be facilitated.

TITLE I—AMENDMENTS RELATING TO HEALTH INSURANCE PROVIDED BY TITLE XVIII OF THE SOCIAL SECURITY ACT

PART A—COVERAGE OF ALL AGED AND DISABLED; EXTENSION, WITHOUT PREMIUM, OF SUPPLEMENTARY BENEFITS TO ALL COVERED INDIVIDUALS

SEC. 101. (a) Section 226(a) of the Social Security Act is amended to read as follows:

"(a)(1) Every individual who—

"(A) has attained age 65, and

"(B) is—

"(i)(I) entitled to monthly insurance benefits under section 202, or (II) a qualified railroad retirement beneficiary, or

"(ii) a resident of the United States (as defined in section 210(i)) and—

"(I) a citizen of the United States (as so defined), or

"(II) an alien lawfully admitted for permanent residence who, after being so admitted, has resided in the United States (as so defined) continuously for a period of not less than 5 years,

shall be entitled to hospital insurance benefits under part A of title XVIII for each month for which he meets the conditions specified in subparagraph (B), beginning with the first month after June 1974 for which he meets the conditions specified in subparagraphs (A) and (B).

"(2) Every individual who—

"(A) has not attained age 65, but

"(B)(i) is entitled to disability insurance benefits under section 223, or (ii) has attained the age of 18 and is entitled to child's insurance benefits under section 202(d) and is under a disability (as defined in section 223(d)) which began before he attained age 18, or (iii) has not attained age 60 and is entitled to widow's insurance benefits, or (iv) has not attained age 62 and is entitled to widower's insurance benefits, or (v) is a qualified railroad retirement beneficiary.

shall be entitled to hospital insurance benefits under part A of title XVIII for each month beginning with the later of (I) July 1974 or (II) the first month he satisfies the applicable conditions of subparagraph (B), and ending with the second month after the first month in which he ceases to meet the applicable conditions of subparagraph (B) or, if earlier, with the month before the month in which he attains age 65.

"(3) Notwithstanding clauses (iii) and (iv) of subparagraph (B) of paragraph (2)—

"(A) a widow or surviving divorced wife who has attained age 60 shall be deemed to have satisfied the applicable conditions of such subparagraph (B) in any month in which (i) she is entitled to benefits under section 202(e) (or would be entitled to benefits under section 202(e) but for paragraph (1)(E) thereof), and (ii) she would be entitled to such benefits without regard to such paragraphs (1)(E) and section 202(e)(1)(B)(i)) had the period specified in section 202(e)(5) ended in the month in which she attains age 65 instead of in the month in which she attains age 60, and had the reference to age 60 in section 202(e)(1)(B)(ii) been a reference to age 65; and the first month in which she shall be deemed not to have satisfied such applicable conditions shall be the second month following the first month in which such benefits would have been terminated on the basis of the occurrence of an event specified in section 202(e)(1); and

"(B) a widower who has attained age 62 shall be deemed to have satisfied the applicable conditions of such subparagraph (B) in any month in which (i) he is entitled to benefits under section 202(f) (or would be entitled to benefits under section 202(f) but for paragraph (1)(E) thereof, and (ii) he would be entitled to such benefits without regard to such paragraph (1)(E) and section 202(f)(1)(B)(i)) had the period specified in section 202(f)(6) ended in the month in which he attains age 62, and had the reference to age 62 in section 202(f)(B)(ii) been a reference to age 65; and the first month in which he shall be deemed not to have satisfied such applicable conditions shall be the second month following the first month in which such benefit would have been terminated on the basis of the occurrence of an event specified in section 202(f)(1)."

(b)(1) Section 226(b)(1) of such Act is amended to read as follows:

"(1) entitlement of an individual to hospital insurance benefits for a month shall consist of entitlement to the benefits provided under part A of title XVIII (subject to the limitations, conditions, and procedures provided in such title for the provision of such services) furnished to him in the United States (or outside the United States in the case of inpatient hospital services furnished under the conditions described in section 1814(f)) during such month; and".

(2) Section 226(b)(2) of such Act is amended by striking out "under section 202" and inserting in lieu thereof "under section 202 or 223".

(c) Section 226(d) of such Act is hereby repealed.

(d) Section 103 of the Social Security Amendments of 1965 is hereby repealed.

SEC. 102. (a) The heading of title XVIII of the Social Security Act is amended by striking out "FOR THE AGED".

(b) The heading of part A of title XVIII of such act is amended by striking out "FOR THE AGED".

(c) Section 1811 of such Act is amended by inserting immediately before the period at the end thereof the following: ", and for individuals who are disabled and are entitled to benefits based on disability under title II of this Act or under such system".

SEC. 103. (a) The heading of part B of title XVIII of the Social Security Act is amended by striking out "FOR THE AGED".

(b)(1) Section 1831 of such Act is amended to read as follows:

"SEC. 1831. There is hereby established an insurance program to provide medical insurance benefits in accordance with the provisions of this part for individuals who are entitled to the hospital insurance benefits provided by part A."

(2) The heading for section 1831 of such Act is amended to read as follows: "ESTABLISHMENT OF SUPPLEMENTARY MEDICAL INSURANCE PROGRAM".

(c)(1) Section 1836 of such Act is amended to read as follows:

"SEC. 1836. Every individual who is entitled to hospital insurance benefits under part A shall be entitled to the benefits provided by the insurance program established by this part."

(2) The heading to section 1836 of such Act is amended to read as follows: "ENTITLEMENT TO BENEFITS".

(d) Sections 1837, 1838, 1839, 1840, 1841, 1843, and 1844 of such Act are repealed.

(e) Section 1815 of such Act is amended by striking out "Hospital" and inserting in lieu thereof "Health".

(f)(1) The heading to section 1817 of such Act is amended by striking out "HOSPITAL" and inserting in lieu thereof "HEALTH".

(2) Section 1817(a) of such Act is amended by striking out, in the second sentence thereof, "part" and inserting in lieu thereof "title".

(3) Section 1817(h) of such Act is amended by inserting "and part B" immediately after "this part".

(4) Section 1817 of such Act is further amended by adding at the end thereof the following new subsection:

"(i) On July 1, 1974, there shall be transferred to the Trust Fund all of the assets and liabilities of the Federal Supplementary Medical Insurance Trust Fund."

(g) The last sentence of section 1861(v)(1) of such Act is amended by striking out "Hospital" and inserting in lieu thereof "Health".

(h) Section 1864(b) of such Act is amended by striking out "Hospital" and inserting in lieu thereof "Health".

(i) Section 201(g)(1)(A) of such Act is amended—

(1) by striking out "Hospital" and inserting in lieu thereof "Health", and

(2) by striking out "and the Federal Supplementary Medical Insurance Trust Fund".

(j) Section 1875(a) of such Act is amended by striking out "health care of the aged" and inserting in lieu thereof "health care of the aged and disabled".

(k) Section 1902(a)(10) of such Act is amended by striking out "the making available of supplementary medical insurance benefits under part B of title XVIII to individuals eligible therefor (either pursuant to an agreement entered into under section 1843 or by reason of the payment of premiums under such title by the State agency on behalf of such individuals), or".

(l) Section 1902(a)(15) of such Act is amended by striking out "either or both of".

(m) Section 1903(b)(2) of such Act is repealed.

SEC. 104. (a)(1) of Section 21(a) of the Railroad Retirement Act of 1937 is amended by striking out "consisting of inpatient hospital services, posthospital extended care services, posthospital home health services, and outpatient hospital diagnostic services (all hereinafter referred to as 'services')" and inserting in lieu thereof "and other benefits and services (such benefits and services hereinafter being referred to as 'services')".

(b)(1) Section 21(d) of the Railroad Retirement Act of 1937 is amended by striking out "and sections 1840, 1843, and 1870" and inserting in lieu thereof "and section 1870".

(2) Section 21(e) of such Act is amended by striking out "Hospital" and inserting in lieu thereof "Health".

(c) The Railroad Retirement Act of 1937 is amended by adding after section 21 the following new section:

"HEALTH INSURANCE BENEFITS FOR THE DISABLED

"SEC. 22. Individuals under age sixty-five who are entitled to annuities under paragraph 4 of 5 of section 2(a) or are entitled to annuities under section 5(c) (or who have been or would be considered in applying the provisions of section 3(e)) and have attained the age of eighteen and have a disability (within the meaning of section (5)(1)(ii)) and who are in a 'period of disability' (as this term is described in section 3(e)) and, with respect to individuals entitled to annuities under paragraph 4 or 5 of section 2(a) are not in a 'waiting period' (as defined in section 223(c)(2) of the Social Security Act) shall be certified by the Board under section 21 in the same manner, for the same purposes, and subject to the same conditions, restrictions, and other provisions as individuals specifically described in such section 21, and also subject to the same conditions, restrictions, and other provisions as are disability beneficiaries under title II of the Social Security Act in connection with their eligibility for hospital insurance benefits and medical insurance benefits under title XVIII of such Act; and for the purposes of this Act and title XVIII of the Social Security Act, individuals certified as provided in this section shall be considered individuals described in and certified under such section 21."

SEC. 105. The amendments made by this part shall take effect July 1, 1974.

PART B—COVERAGE OF DRUGS

SEC. 110. (a)(1) Section 1861 of the Social Security Act is amended by adding after subsection (y) the following new subsection:

"(z)(1) The term 'maintenance drugs' means those drugs appearing on the list specified in paragraph (2) of this subsection.

"(2)(A) Subject to the provisions of subparagraph (C), the Secretary shall establish and publish a list of those legend and nonlegend drugs for which payment may be made subject to the conditions of section 1812(a)(4) under part A of this title. The Secretary shall distribute such list on a current basis to practitioners licensed by law to prescribe and administer drugs or to dispense drugs and shall make such other distribution as in his judgment will promote the purposes of this title. He shall from time to time (but at least once a year) review such list, and shall revise it or issue supplements thereto, as he may find necessary, so as to maintain insofar as practicable currency in the contents thereof and shall publish and distribute such revisions in accordance with the preceding sentence.

"(B) Each drug appearing on the list established under subparagraph (A) shall be designated by its established name and with respect to each such drug, the Secretary may include such other information (including trade names of such drug) as he finds necessary or appropriate in the administration of this title.

"(C) A drug shall not appear on the list established under subparagraph (A) unless—

"(i) such drug is lawfully available in interstate commerce for dispensing or administration to humans;

"(ii) it is determined by the Secretary that such drug is appropriate for the treatment of diabetes or of chronic cardiovascular diseases, kidney conditions, or respiratory conditions;

"(iii) such drug is usually used for treatment extending over a period of ninety days or more (but not necessarily consecutive); and

"(iv) (in the case of a nonlegend drug) it is a lifesaving drug, or a drug the withdrawal of which would be seriously harmful to the health of the individual, or a drug which the Secretary determines (under such standards and criteria as he may prescribe) is a satisfactory substitute for a legend drug appearing on the list.

"(D) For purposes of this subsection—

"(i) the term 'drug' means a drug as defined in section 201 of the Federal Food, Drug, and Cosmetic Act (including those specified in section 351 of the Public Health Service Act);

"(ii) the term 'legend drug' refers to a drug specified in section 503(b) of the Federal Food, Drug, and Cosmetic Act; and

"(iii) the term 'established name' shall have the meaning assigned to such term by section 502(e)(2) of the Federal Food, Drug, and Cosmetic Act."

(2) Section 1861(t) of such Act is amended by inserting after "subsection (m)(5)" the following: "or subsection (z)".

(b) Section 1812(a) of such Act is amended by—

(1) striking out "and" at the end of paragraph (2);

(2) striking out the period at the end and inserting in lieu thereof: "; and"; and

(3) adding at the end the following new paragraph:

"(4) maintenance drugs furnished to such individual while he is not an inpatient in a hospital."

(c) Section 1813 of such Act is amended by adding at the end the following subsection:

"(c)(1) The amount payable for a maintenance drug furnished an individual shall be reduced by an amount equal to the copayment determined under paragraph (2) or, if less, the charges imposed with respect to such individual for such maintenance drug.

"(2) The copayment specified in paragraph (1) shall be $1 during the period ending December 31, 1976, and such amount as may be determined pursuant to paragraph (3) of this subsection during any period thereafter.

"(3) The Secretary shall, between July 1 and October 1 of 1976, and of each year thereafter, determine and promulgate the copayment for purposes of the preceding paragraphs of this subsection and such copayment shall be in effect for purposes of such paragraphs for the calendar year succeeding the year in which such copayment is promulgated. Such copayment shall be equal to $1 multiplied by the ratio of (A) the average per capita costs for maintenance drugs for the calendar year preceding the year in which the determination is made to (B) the average per capita costs for such maintenance drugs for the calendar year 1973. Any amount so determined, which is not a multiple of $0.10, shall be rounded to the nearest multiple of $0.10 (or, if it is midway between two multiples of $0.10, to the next higher multiple of $0.10)."

(d) Title XVIII of the Social Security Act is amended by adding after section 1817 of such Act the following new sections:

"PAYMENT FOR MAINTENANCE DRUGS; CONDITIONS AND LIMITATIONS ON SUCH PAYMENT

"SEC. 1818. (a)(1) The amount paid to any provider of drugs with respect to maintenance drugs for which payment may be made under this part shall, subject to the provisions of this section and section 1813(c), be the reasonable drug charge with respect to such drugs.

"(2)(A) The 'reasonable drug charge' for a maintenance drug shall be the acquisition allowance plus a dispensing allowance.

"(B) The Secretary shall by regulations establish the method or methods for determining the acquisition allowance of a maintenance drug, giving consideration to the cost to providers of drugs of acquiring the drug by its established name. If the source from which any maintenance drug is available charges different prices therefor to different classes of types of providers, or if a class of providers may reasonably obtain such drug from only certain types of sources, the Secretary may, in establishing the acquisition allowance, take into account these differences.

"(C) The Secretary shall by regulations establish the methods for determining a dispensing allowance for a maintenance drug, giving consideration to such factors as cost of overhead, professional services, and a fair profit. He may provide different dispensing allowances for different classes of providers.

(b) Payment for maintenance drugs furnished to an individual may be made only to a dispenser of drugs eligible therefor under subsection (c) and only if—

"(1) written request, signed by such individual, except in cases in which the Secretary finds it impracticable for the individual to do so, is filed for such payment in such form, in such manner, within such time, and by such person or persons as the Secretary may by regulation prescribe; and

"(2) (in the case of a legend drug) a written prescription, signed by a physician, was filed with such provider of drugs, or (in the case of a nonlegend drug) a physician has certified that the covered drug furnished the individual was medically required by such individual;

except that (pursuant to such regulations as the Secretary may prescribe) no payment may be made for a maintenance drug—

"(3) to the extent that the quantity of such drug furnished an individual exceeds the quantity of such drug needed for the treatment of such individual for 90 days; or

"(4) if it fails to meet such requirements as to quality and standards of manufacture as the Secretary may prescribe; or

"(5) it fails to meet such specifications as to dosage form as the Secretary may require.

"(c) For purposes of subsection (a), a provider of drugs shall be eligible for payment if—

"(1) he is licensed or authorized to compound and dispensed rugs to humans pursuant to State law;

"(2) he agrees to comply with such rules and regulations as the Secretary may issue with respect to—

"(A) submission of bills at such frequency and on such forms as may be prescribed in such rules and regulations;

"(B) availability for audit of his records relating to drugs and prescriptions;

"(C) the maintenance and retention of such records relating to the cost of drugs as may be specified in such rules and regulations;

"(3) he meets such other conditions relating to health and safety as the Secretary may find necessary;

"(4) he agrees not to charge any individual for a drug for which such individual is entitled to have payment made under this section and section 1861(z) an amount in excess of the amount which, when added to the amount of payment made under this section and section 1813(c) for such drug, exceeds the customary charge at which such dispenser of drugs sells or offers such drug to the public at the time such drug is furnished to such individual.

"USE OF ORGANIZATIONS IN ADMINISTRATION OF PROGRAM FOR FURNISHING MAINTENANCE DRUGS TO ELIGIBLE INDIVIDUALS

"SEC. 1819 (a) The Secretary is authorized to enter into contracts with organizations to perform such functions as he may find appropriate in administering a maintenance drug benefit if he finds that the utilization of one or more of such organizations will promote the effective and efficient administration of the program provided under this part for the furnishing of maintenance drugs to eligible individuals.

"(b) Contracts with organizations under subsection (a) may be entered into without regard to section 3709 of the revised statutes or any other provision of law requiring competitive bidding.

"(c) For purposes of this section, the term 'organization' means a voluntary association, corporation, partnership, or other nongovernmental organization which is lawfully engaged in providing, paying for, or reimbursing the cost of, prescription drugs under group insurance policies or contracts, medical or hospital service agreements, membership, or subscription contracts, or similar group arrangements, in consideration of premiums or other periodic charges payable to the organization, including a health benefit plan duly sponsored or underwritten by an employee organization.

"STUDY OF DRUG UTILIZATION

"SEC. 1820. The Secretary is authorized to conduct and publish studies relating to the utilization, efficiency, and costs of maintenance drugs for which payment may be made under this part in order to encourage the proper use of such drugs."

(e) Title XVIII of the Social Security Act is further amended by adding after section 1867 of such Act the following new section:

"EXPERT COMMITTEE ON DRUG COVERAGE

"SEC. 1868. (a) There is hereby created an Expert Committee on Drug Coverage which shall consist of five persons, not otherwise in the employ of the United States, appointed by the Secretary without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. The Secretary shall from time to time appoint one of the members to serve as Chairman. The members shall include persons who are outstanding in the fields of pharmacology, geriatrics, and other branches of medicine. Members of the Expert Committee, while attending meetings or conferences thereof or otherwise serving on business of the Expert Committee shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding $100 per day, including traveltime, and while so serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently. The Expert Committee shall meet as frequently as the Secretary deems necessary.

"(b) It shall be the function of the Expert Committee to advise the Secretary on matters of general policy in the administration of the program provided under this title for furnishing maintenance drugs to eligible individuals. The Expert Committee shall also make recommendations to the Secretary as to what drugs should be included in the list established under section 1861(z)(2) and what drugs should be deleted from such list. In making any such recommendation the Expert Committee shall submit in such detail as the Secretary may request the information and data the Expert Committee considered in making such recommendation. In carrying out its work, the Expert Committee shall consult with organizations representing the aged, pharmacists, the pharmaceutical industry, and with such other organizations or individuals as the Expert Committee finds appropriate. The Expert Committee shall make an annual report to the Secretary on the performance of its function, including any recommendations it may have with respect thereto, and such report shall be transmitted promptly by the Secretary to the Congress.

"(c) The Expert Committee is authorized to engage such technical assistance as may be required to carry out its functions, and the Secretary shall, in addition, make available to the Expert Committee such secretarial, clerical, and other assistance and such pertinent data obtained and prepared by the Department of Health, Education, and Welfare as the Expert Committee may require to carry out its functions."

(f) The heading of part A of title XVIII of such Act (as amended by section 102(b) of this Act) is further amended by striking out "INSURANCE" and inserting in lieu thereof "INSURANCE AND DRUG".

(g) Section 1811 of such Act (as amended by section 102(c)(3) of this Act) is further amended by inserting after "services" the following: "and the cost of maintenance drugs".

(h) Section 1814(c) of such Act is amended by—

(1) adding at the end of the heading the following "or Federal Provider of Drugs";

(2) inserting "(1)" after "(c)"; and

(3) adding at the end the following new paragraph:

"(2) No payment may be made under this part to any Federal provider of drugs (as provided for in section 1818), except a provider of drugs which the Secretary determines is dispensing drugs to the public generally as a community institution or agency; and no such payment may be made to any provider of drugs for any drug which such provider is obligated by a law of, or a contract with, the United States to render at public expense."

(i) Section 1815 of such Act is amended by—

(1) adding at the end of the heading the following "and Provider of Drugs";

(2) adding after "provider of services with respect to the services furnished by it": ", and each provider of drugs with respect to drugs,";

(3) inserting after "provider of services" the second time it appears "and the provider of drugs, as the case may be,".

(j) Section 1861(r)(3) of such Act is amended by adding at the end before the period the following: "and, for purposes of section 1818, only with respect to drugs he is legally authorized to prescribe by the State in which he prescribes such drugs".

(k) Section 1869(c) of such Act is amended by inserting after "provider of services" the following: "or any person dissatisfied with any determination by the Secretary that he is not a provider of drugs eligible for payment under this title,".

(l) (1) Section 1870(a) of such Act is amended by—

(A) inserting ", provider of drugs," after "provider of services"; and

(B) inserting "or drugs" after "items or services".

(2) Section 1870(b) of such Act is amended by—

(A) inserting ", or provider of drugs," after "provider of services" each time it appears;

(B) inserting "or drugs" after "items or services"; and

(C) adding at the end of paragraph (2) the following: "or any payment has been made under section 1818 to a provider of drugs for drugs furnished an individual,".

(3) Section 1870(d) of such Act is amended by inserting ", or provider of drugs," after "provider of services".

(m) (1) The heading of section 226 of such Act is amended by striking out "INSURANCE" and inserting in lieu thereof "INSURANCE AND DRUG".

(2) Section 226(a) of such Act (as amended by section 101(a) of this Act) is further amended by inserting, in paragraphs (1) and (2), "and drug" immediately after "hospital insurance".

(3) Section 226(b)(1) of such Act (as amended by section 101(b)(1) of this Act) is further amended by inserting "and drug" immediately after "hospital insurance".

SEC. 111. Section 21(e) of the Railroad Retirement Act of 1937 (as amended by section 104(b)(2) of this Act) is further amended by inserting "(other than maintenance drugs)" immediately after "services" the first place it appears therein.

SEC. 112. The amendments made by this part shall be effective with respect to drugs dispensed after June 30, 1976.

PART C—ANNUAL PHYSICAL CHECKUPS

SEC. 120. (a) Section 1861 of the Social Security Act is amended by adding after subsection (z) (added by section 110(a) of this Act) the following new subsection:

"Physical Checkup

"(z–1) The term 'physical checkup' means eye examinations for the purpose of prescribing, fitting, or changing eyeglasses, procedures performed (during the course of any eye examination) to determine the refractive state of the eyes, examinations of the ears for the purpose of determining the need for hearing aids, and such diagnostic X-ray tests, diagnostic laboratory tests, and other diagnostic tests, as the Secreary may by regulations specify as being the type and kind of tests which are the most likely to reveal defects, diseases, or conditions which are susceptible to effective treatment or control. Such regulations may specify different tests, as may be appropriate, for individuals on the basis of their age or sex. Such term shall also include such physicians' services as may be appropriate for the interpretation, evaluation, and analysis of such tests."

(b) Section 1861(s)(3) of such Act is amended (1) by inserting "(A)" immediately after "(3)", and (2) by inserting before the semicolon at the end thereof the following: ", and (B) physicians' services and diagnostic tests included within a physical checkup (as defined in subsection (z–1))".

(c) Section 1862(a)(1) of such Act is amended by inserting immediately before the semicolon the following: "(except physical checkups (as defined in section 1861 (z–1))".

(d) Section 1862(a)(7) of such Act is amended by striking out all after "checkups" and inserting in lieu thereof the following: "(other than physical checkups as defined in section 1861 (z-1))".

(e) Section 1833 of such Act is amended by adding at the end thereof the following new subsection:

"(g) Notwithstanding any other provisions of this part, with respect to expenses incurred by an individual in any calendar year for a physical checkup (as defined in section 1861 (z-1))—

"(1) the provisions of subsection (a) shall be applied without regard to the provisions of subsection (b);

"(2) such expenses shall be regarded as incurred expenses for purposes of subsection (a) only if such individual has not, previously during such year, incurred expenses for a physical checkup (as so defined);

"(3) such expenses shall not be taken into account for purposes of subsection (b);

"(4) there shall be considered as incurred expenses for purposes of subsection (a) only whichever of the following amounts is the smaller—

"(A) $75, or

"(B) the amount determined by the Secretary to be equal to the charge which would be imposed for such physical checkup if it had been provided by the most efficient provider of high quality physical checkups in the area wherein such physical checkup was conducted."

(f) The amendments made by the preceding provisions of this section shall apply only in the case of physical checkups performed after June 30, 1977.

PART D—DENTAL SERVICES

SEC. 130. (a) Section 1861(r)(2) of the Social Security Act is amended (1) by striking out "or" at the end of clause (A), and by inserting at the end thereof the following: "(C) dental services for children (as defined in subsection (z-2))".

(b) Section 1861 of such Act is amended by adding after subsection (z-1) (added by section 120(a) of this Act) the following new subsection:

"Dental Services for Children

"(z-2) The term 'dental services for children' means professional services rendered to children under 8 years of age by or under the direction of a doctor of dentistry or of dental or oral surgery who is legally authorized to practice dentistry by the State in which he performs such function; such term shall include oral examinations and diagnosis, oral prophylaxis, filling, and removal of teeth, but shall not include the provision of braces or prosthetic devices."

(c) Section 1862(a)(12) of such Act is amended by inserting "(unless such services consist of dental services for children, as defined in section 1861 (z-2))" immediately after "supporting teeth".

(d) Section 1833 of such Act is amended by adding after subsection (g) (added by section 120(e) of this Act) the following new subsection:

"(h) With respect to expenses incurred by an individual for dental services for children (as defined in section 1861(z-2)), the provisions of subsection (a) shall be applied without application of the provisions of subsection (b)."

(e) The amendments made by the preceding provisions of this section shall apply only in the case of dental services for children performed after June 30, 1977.

PART E—LIMITATIONS ON CERTAIN CHARGES FOR SERVICES; PHYSICIANS' QUALIFICATIONS

SEC. 140. Section 1833(a)(1) of the Social Security Act is amended, effective January 1, 1972, by striking out "reasonable charges" each place it appears therein and inserting in lieu thereof "appropriate and reasonable charges".

SEC. 141. Section 1861(r) of the Social Security Act is amended—

(1) by striking out "The" and inserting in lieu thereof "Subject to subsection (r-1), the"; and

(2) by adding immediately thereafter the following new subsection:

"(r-1)(1) Taking into consideration standards approved by appropriate professional organizations, and upon recommendation of the Health Insurance Benefits Advisory Council, the Secretary may, after public hearings, prescribe for physicians (as defined in subsection (r)) providing services under this title—

"(A) standards of continuing professional education,

"(B) national minimum standards of licensure, applicable to any individual first licensed as a physician after the effective date of such standards, or

"(C) standards of qualification for the performance of major surgery or of other specialty services designated by the Secretary.

"(2) After the effective date of standards issued under clause (A) or (B) of paragraph (1), an individual who fails to meet such standards shall not be deemed to be a physician for purposes of this title; except that a failure to meet standards issued under clause (A) of paragraph (1) shall not be found until the Secretary has notified the individual involved of the deficiency and afforded him a reasonable opportunity to correct it. After the effective date of standards issued under clause (C) of paragraph (1), an individual who fails to meet such standards shall not be deemed, for purposes of this title, to be a physician in connection with any services to which such standards are applicable.

"(3) The provisions of section 553 of title 5, United States Code, shall be applicable to the promulgation of standards under this subsection.

PART F—AGREEMENTS WITH STATES FOR ADMINISTRATION

SEC. 150. Section 1874 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(c) The Secretary may enter into an agreement with any State under which such State will administer, on behalf of the Secretary, the health insurance programs established by this title (or such part thereof as may be specified in the agreement) with respect to individuals in such State. The costs of carrying out any such agreement shall be paid to the State by the Secretary in advance or by way of reimbursement and in such installments as may be agreed upon."

PART G—IMPROVEMENT IN ORGANIZATION OF HEALTH CARE

SEC. 160. Title XVIII of the Social Security Act is amended by adding after part C thereof the following new parts:

"PART D—IMPROVEMENT IN ORGANIZATION OF HEALTH CARE

"PURPOSE

"SEC. 1881. The purpose of this part is (a) to encourage the rational organization of health care services and facilities so as to provide greater continuity and comprehensiveness of care of the individual, to provide greater consumer education and participation, and to emphasize preventive, diagnostic, and early therapeutic services, (b) to control the costs of services paid for under this title, and (c) to stimulate diversity and innovation in the provision of health insurance protection.

"USE OF CARRIERS AND OTHER AGENCIES AND ORGANIZATIONS

"SEC. 1882. No agreement or contract shall be entered into under section 1816 or section 1842, or continued in force after the effective date of this section, unless the agency, organization, or carrier agrees to use its best effort to carry out the purposes of section 1881(a), and agrees—

"(a) to make (alone or in conjunction with other appropriate public or private agencies) a continuing study of the organization and methods of delivery of health services in the geographic area in which it operates, and of potential improvement of such organization and methods with a view to the effectuation of those purposes;

"(b) to review periodically patterns of utilization of the services paid for under this title and the effectiveness of existing procedures for the control of unnecessary utilization, to develop programs for the strengthening of such procedures, and to perform the functions specified in section 1816(b)(1)(B) or section 1842(a)(2), as the case may be; and

"(c) to take such action within its own authority, and to recommend such action by the Secretary authorized by part E (or by section 402 of the Social Security Act Amendments of 1967), as it finds calculated to further the objectives of section 1881(a) and to strengthen the control of unnecessary utilization.

"CONTRACTS WITH COMPREHENSIVE HEALTH SERVICE SYSTEMS

"SEC. 1883. (a) The Secretary is authorized to contract with a comprehensive health service system which meets the conditions set forth in subsection (b), for the provision, to the members of the system, of all services for which payment may be made under this title. In lieu of payment otherwise prescribed by this title, he shall pay to such system, at its election, either (1) the reasonable cost of all such services, or (2) a periodically predetermined capitation amount for each member, equal to the estimated average reasonable cost of such services per member; and if he finds (A) that the average cost of such services in any fiscal year is less than the average cost of services (for which payment is made under this title to comparable population groups under comparable circumstances, and (B) that services provided by the system have been of high quality and adequate to the needs of its members, he may in addition make an incentive payment to the system equal to not more than two-thirds of such difference of cost per member. The amount of an incentive payment may be used by the system for any of its purposes, including application to the cost of services for which payment is not made under this title, whether or not such services are otherwise provided by the system. Expenditure of funds received as an incentive payment, for whatever purpose, shall not be deemed a cost of services under the contract.

"(b) No contract shall be made under this section with a comprehensive health service system unless—

"(1) such system assures the provision of health services to all its members by a contract or contracts with the Secretary, or by such a contract and subcontracts, entered into by one or more providers of services and other persons furnishing health services, or by a health insurance carrier or nonprofit prepayment plan, or by a combination of the foregoing;

"(2) such system is designed, to the maximum extent feasible, to make all health services readily accessible to persons residing in a specified primary service area and will pay for transportation where reasonable accessibility to persons in that area cannot otherwise be assured;

"(3) all persons, whether or not residing within the primary service area, are eligible to become members of such system, except that (A) the number of members may be limited, with or without giving preference to persons living within the primary service area, to avoid overtaxing the resources of the system, and (B) such restrictions upon enrollment may be imposed as are approved by the Secretary as necessary to prevent

undue adverse selection; and the system is so designed and operated as to encourage enrollment from as broad as practicable a range of income and social groups;

"(4) all health services are provided by providers or other persons who meet the standards imposed by or pursuant to this title for the respective services;

"(5) such system encouraging increased health education of its members and the development and use of preventive health services, and provides for a group of physicians (such as a committee of a medical school faculty, of a hospital medical staff, or of a group practice organization), approved by the Secretary for this purpose, which group shall consult periodically with representatives of the membership, fix the professional policies of the system, oversee the professional aspects of the delivery of services, and review the utilization of all health services, drugs, and supplies;

"(6) such system, to the extent practicable and consistent with good medical practice, trains and employs allied health personnel and subprofessional and lay persons in the rendering of services;

"(7) any participating extended care facility under such system is affiliated with a hospital or with a group practice or similar organization, and the medical staff of the hospital or the group practice organization assumes responsibility for rendering or supervising professional services in the facility;

"(8) premiums charged by such system for services not paid for under this title are reasonable; and

"(9) the establishment of such system is consistent with any comprehensive State health plan developed pursuant to section 314(a) of the Public Health Service Act, as amended, and has been approved by the State planning agency designated or established pursuant to that section, and, where appropriate, is in accord with areawide health planning carried out pursuant to section 314(b) of that Act.

"(c) In administering this section the Secretary shall emphasize consumer and community involvement in the operation of comprehensive health service systems, and shall seek to insure prompt response to local initiative and maximum flexibility in such operation.

"(d) For the purposes of this section, 'comprehensive health service system' means a system of providing health care to an identified population in a primary service area and its environs, enrolled as members, on the basis of contractual arrangements (which embody group practice, or similar arrangements established by a medical school, a hospital medical staff or a medical center) among participating providers of services and other persons so as (1) to assure continuity of care and ready referral and transfer of patients where medically appropriate, and (2) to provide comprehensive health services, which shall include at least all services for which payment may be made under this title (such services to be provided, except as authorized by the Secretary without deductibles, coinsurance, or copayment), drugs prescribed for ambulatory patients, one hundred days of extended care services (which are not post-hospital extended care services) in any spell of illness, and necessary immunizations, and may include other health services approved by the Secretary as appropriate to the particular comprehensive health services system.

"CONTRACTS FOR EQUIVALENT HEALTH INSURANCE PROTECTION

"SEC. 1884. The Secretary is authorized to contract with any carrier (as defined in section 1842(f)(1)) to provide, to individuals electing insurance by such carrier in lieu of other rights under this title, health benefits equivalent to those for which payment would be made under this title. No such contract shall be made unless the Secretary is satisfied (a) that the carrier will make such insurance available to all individuals (or to all individuals who reside in a specified area), subject to such restrictions on enrollment as he has approved as necessary to avoid undue adverse selection, (b) that the benefits to be provided by the carrier under the contract will furnish health protection which the Secretary determines (under national standards prescribed by him) to be equivalent to, and at no greater cost than, the protection furnished by the benefits for which payment is made under this title, and (c) that premiums for any health insurance to be sold by the carrier to supplement the benefits provided under the contract will be reasonable. A contract under this section shall require the carrier to perform such of the functions specified in section 1882 as the Secretary finds appropriate.

"PROVISIONS RELATING TO CONTRACTS FOR ALTERNATIVE HEALTH SERVICE PLANS

"SEC. 1885. (a) The Secretary shall by regulation prescribe the manner of making an election (including the manner in which an election may be made on behalf of a legally incompetent individual) to become a member of a comprehensive health service system with which the Secretary has contracted under section 1883, or an election to be insured by a carrier with which the Secretary has contracted under section 1884; the manner in which the election may be revoked; and the frequency with which election and revocation may be made.

"(b) Notwithstanding other provisions of this title, an individual with respect to whom an election made in accordance with subsection (a) is in effect shall not, except in such cases and to such extent as may be provided in regulations, be entitled to have payment made to him or on his behalf for services other than those provided, or to be paid for, in accordance with such election.

"(c) Contracts under section 1883 or section 1884 may be entered into by the Secretary without regard to section 3709 of the Revised Statutes or any other provision of law requiring competitive bidding.

"(d) Each such contract shall provide that the comprehensive health service system or the carrier, as the case may be, shall—

"(1) establish and maintain procedures pursuant to which an individual, with respect to whom an election in accordance with subsection (a) is in effect, will be granted an opportunity for a fair hearing by the system or carrier when any claim by or on account of such individual is denied (in whole or in part) or not acted upon with reasonable promptness;

"(2) will furnish the Secretary such timely information and reports as he may find necessary in performing his functions under this title; and

"(3) will maintain such records and afford such access thereto as the Secretary finds necessary to assure the correctness and verification of such information and reports and otherwise to carry out the purposes of this title;

and shall contain such other terms and conditions (including, in the case of contracts entered into pursuant to section 1884 or this section, provisions relating to the methods of payment to be used in paying for health services provided under any such contract) not inconsistent with this section as the Secretary may find necessary, appropriate, and practicable.

"(e) Each such contract shall be for a term of at least one year, and may be made automatically renewable from term to term in the absence of notice by either party of intention to terminate at the end of the current term; except that the Secretary may terminate any such contract at any time (after such reasonable notice and opportunity for hearing to the system or carrier involved as he may provide in regulations) if he finds that the system or carrier has failed substantially to carry out the contract.

"EMPLOYER-EMPLOYEE HEALTH PLAN OPTION

"SEC. 1886. (a) The Secretary may authorize under appropriate regulations promulgated by him agreements or arrangements with any employer who, in agreement with his employees or their representatives, provides for his employees health care benefits under a qualified plan (as specified in subsection (b)) in lieu of the benefits provided under other provisions of this title.

"(b) For purposes of subsection (a), a qualified plan is a health benefits plan—

"(1) which is provided through or in conjunction with an insurance carrier or similar organization or a union-management health or health and welfare plan;

"(2) not less than 75 per centum of the cost of which is paid by the employer offering such plan;

"(3) covers the employees of the employer offering such plan, and the dependents of such employees;

"(4) provides benefits of a type and level which, in terms of actuarial and health care considerations, is superior to the health benefits provided under other provisions of this title;

"(5) which contains provision for a fair hearing to any individual covered thereunder who is dissatisfied with the disposition of any claim he may have for benefits provided thereunder; and

"(6) which employs methods of payment determined by the Secretary to carry out the objectives of part E.

"(c) Any agreement entered into under this section with an employer shall provide that the employer shall supply to the Secretary such information and data as may be necessary to keep the Secretary currently advised as to the identification of the particular employees covered by such plan as well as such other information and data as the Secretary may reasonably require in carrying out the purposes of this title.

"(d) Any agreement entered into pursuant to this section shall be for a term of at least one year, and may be made automatically renewable from term to term in the absence of notice by either party of intention to terminate at the end of the current term; except that the Secretary may terminate any such agreement at any time (after such reasonable notice and opportunity for hearing to the employer involved as he may provide in regulations), if he finds that the employer has substantially failed to carry out the agreement, or that the agreement is not carrying out the purpose of this title.

"(e) The Secretary shall provide to the Secretary of the Treasury such information regarding employees covered by qualified plans covered under agreements under this section as may be necessary or appropriate to enable the Secretary properly to administer the provisions of chapter 21 of the Internal Revenue Code of 1954.

"PART E—METHODS OF COMPENSATION FOR HEALTH SERVICES

"MODIFICATION OF METHODS OF COMPENSATION FOR HEALTH SERVICES

"SEC. 1891. (a) The Secretary, with the approval of the President, is authorized in accordance with this section to modify, effective July 1, 1976, the methods prescribed in this title for determining the amounts of payments to providers of services and other persons furnishing services to individuals entitled to benefits under this title. If any such action requires modification of the provisions of section 1813 or section 1833 relating to deductibles, coinsurance, and copayment, it shall contain provisions imposing equivalent requirements as nearly as may be.

"(b) The Secretary shall forthwith undertake a comprehensive study of methods of determining and paying compensation to providers of services and other persons furnishing health services, with a view to ascertaining what methods are, for the purposes of this title, best calculated to further the following objectives:

"(1) to control the cost of services paid for under this title, to reduce costs wherever possible, and to assure that costs will not in any event increase more rapidly than average wage levels;

"(2) to control the utilization of services paid for under this title, so that to the greatest extent possible unnecessary utilization will be eliminated;

"(3) to improve the organization of health services and the manner of their delivery, in order (A) to increase their accessibility to all individuals wherever resident in the United States, (B) to provide continuous and comprehensive care, and (C) to emphasize the maintenance of health as well as the treatment of illness; and

"(4) to assure, through improved organization and methods of delivery, that control of the aggregate cost of health services will not deprive providers of services and other persons furnishing health services of fair and reasonable compensation therefor.

"(c) Such study shall include (1) alternative methods of compensating hospitals and other providers of services (such as negotiated charges, capitation payments, or annual budgets), (2) alternative methods of compensating professional practitioners (such as fee schedules or unit value scales with or without proration, capitation payments, or salaries or per session allowances), (3) alternative methods of paying for drugs and other supplies, (4) the use of specific financial incentives and disincentives as means to further the objectives set forth in subsection (b), and (5) methods of compensation designed to encourage assumption of responsibility, by local or State medical societies or other professional organizations or organizations or providers of services, for maintaining and improving (through peer review and otherwise) the quality and efficiency of care provided by their members, for the avoidance of unnecessary utilization and for the continuing education of professional and paramedical personnel.

"(d) In making such study the Secretary shall solicit the widest possible expression of views from interested organizations and their members and from the public. To this end he shall appoint such advisory committees, hold such conferences and hearings, and publish such proposals, as he finds appropriate to obtain the views of providers of services and other persons furnishing health services, of health insurance carriers of qualified students of the health care system, and of users of health services.

"(e) Not later than December 1, 1975, the Secretary, with the approval of the President, shall publish in the Federal Register a proposed regulation prescribing the methods of payment for services for which payment may be made under this title. Such proposed regulation shall be subject to the provisions of title 5, section 553, United States Code.

"(f) Not later than March 1, 1976, the Secretary, with the approval of the President, shall issue and publish in the Federal Register his final regulation. Such regulation shall be effective on and after July 1, 1976, and shall supersede all inconsistent provisions of this title.

"(g) The regulations of the Secretary under this part with respect to the methods of payment for services for which payment may be made under this title may be amended or modified by the Secretary, with the approval of the President, from time to time, in accordance with the provisions of section 553 of title 5, United States Code.

"STATE AND LOCAL ADVISORY COMMITTEES

"SEC. 1892. (a) The Secretary, in carrying out the provisions of this part, shall consult with and seek the advice of the State committees representative of consumers and professional health personnel, and such local committees of like character as he may deem appropriate.

"(b) If in any State, or in any local area in which he decides to utilize such a committee, there is not in existence an appropriate State or local consumer-physician committee, the Secretary is authorized to encourage and assist in the establishment of such a committee, or appoint such a committee."

PROCEDURES REQUIRED OF SECRETARY IN ESTABLISHING STANDARDS

SEC. 161. Standards promulgated by the Secretary with respect to qualifications of institutional providers of service under section 1861(e)(8), section 1861(f)(3) and (4), section 1861(g)(3) and (4), section 1861(j)(10), section 1861(p)(4)(A)(v) and (B) shall be promulgated in accordance with the provisions of section 553 of title 5, United States Code.

EFFECTIVE DATE

SEC. 162. That part of the amendments made by section 160 which, added new sections 1881 through 1885 to title XVIII of the Social Security Act shall take effect July 1, 1974.

TITLE II—HEALTH BENEFITS FOR THE GENERAL PUBLIC

SEC. 201. (a) The Social Security Act, as amended by the preceding provisions of this Act, is further amended by adding after title XIX the following new title:

"TITLE XX—HEALTH BENEFITS FOR THE GENERAL PUBLIC

"PURPOSE

"SEC. 2001. It is the purpose of this title to secure to every individual who—

(1) is a resident of the United States, and

(2) is a citizen of the United States or an alien lawfully admitted for permanent residence in the United States,

coverage for all the benefits provided under parts A and B of title XVIII of this Act.

"ENTITLEMENT TO BENEFITS

"SEC. 2002. (a) Every individual who—

"(1) is not entitled or deemed to be entitled (and upon the filing of appropriate application or applications could not become entitled or deemed to be entitled) under section 226 to hospital insurance benefits under part A of title XVIII;

"(2) is a resident of the United States (as defined in section 210(i));

"(3) is (i) a citizen of the United States, or (ii) an alien lawfully admitted for permanent residence; and

"(4) has filed application under this section in such manner and in accordance with such other requirements as may be prescribed in regulations of the Secretary,

shall be entitled to hospital insurance benefits under part A of title XVIII (and consequently to the benefits provided by part B thereof) for each month that he meets the conditions specified in paragraphs (1) through (3), beginning with the first month after June 1976 for which he has filed application for such benefits and meets the conditions specified in paragraphs (1) through (3). An individual who met the conditions specified in paragraphs (1) through (3) for any month shall be deemed to be entitled to such benefits for such month if he files application in accordance with the requirements imposed pursuant to paragraph (4) prior to the end of the twelfth month following such month.

"(b) Except as otherwise provided in this title or by regulations of the Secretary, individuals entitled to hospital insurance benefits under part A of title XVIII by reason of the provisions of this title shall receive such benefits in like manner and under the same conditions as obtained in the case of individuals who are entitled to such benefits by reason of the provisions of section 226.

"TRUST FUND ACCOUNT FOR PERSONS COVERED UNDER TITLE XX

"SEC. 2003. (a) There is hereby established in the Federal Health Insurance Trust Fund a special account to be known as the 'Special Account for Persons Covered Under Title XX' (hereinafter in this section referred to as the 'Special Account').

"(b) Notwithstanding any provision of XVIII, all benefits to which individuals are entitled under such title by reason of the provisions of this title, and all administrative expenses attributable to the providing of such benefits, shall be paid from and only from the Special Account.

"(c) Moneys in the Federal Health Insurance Trust Fund which are not transferred to the Special Account shall be regarded as being held in the General Account of such Fund and moneys in such General Account shall be available for the purposes for which moneys in such Fund were available prior to the establishment of the Special Account.

"(d)(1) The Secretary shall prior to each fiscal year, estimate the total amounts which will be necessary—

"(A) to pay the total of the benefits payable from the General Account for such fiscal year, together with the administrative expenses attributable to the payment of such benefits, and

"(B) to pay the total of the benefits payable from the Special Account for such fiscal year, together with the administrative expenses attributable to the payment of such benefits.

"(2) The Board of Trustees of the Federal Health Insurance Trust Fund, shall, on the basis of estimates of the Secretary with respect to any fiscal year, apportion moneys which will be appropriated to the Trust Fund for such year between the General Account and the Special Account; except that, if, on the basis of estimates of the Secretary of the Treasury as to the total amounts which will be so appropriated, such total amounts will be less than the aggregate of the estimates of the Secretary for the General Account and for the Special Account, there shall be apportioned to the General Account the full amount estimated under paragraph (1) for the General Account and the balance shall be apportioned to the Special Account."

TITLE III—FINANCING OF HEALTH INSURANCE

SEC. 301. (a)(1) Section 3121 of the Internal Revenue Code of 1954 (relating to definitions for purposes of the Federal Insurance Contributions Act) is amended by adding at the end thereof the following new subsection:

"(r) WAGE BASE FOR PURPOSES OF HEALTH INSURANCE.—For purposes of the tax imposed by section 3101(b) only, the term 'wages' (as defined in subsection (a)) shall have the same meaning as that set forth in such subsection, except that the amount '$7,800', wherever it appears therein, shall be deemed to be '$15,000'; and, for purposes of the tax imposed by section 3111(b) only, the term 'wages' (as defined in subsection (a)) shall have the same meaning as that set forth in such subsection, except that the provisions of paragraph (1) of such subsection shall be deemed to be inapplicable."

(2) The second sentence of section 3122 of such Code (relating to Federal service) is amended by striking out "section 3111" wherever it appears therein and inserting in lieu thereof "section 3111(a)".

(3) Section 3125 of such Code (relating to returns in case of governmental employees

in Guam, American Samoa, and the District of Columbia) is amended—

(A) by striking out (in the second sentence of subsection (a) thereof) "section 3111" and inserting in lieu thereof "section 3111(a)";

(B) by striking out (in the second sentence of subsection (b) thereof) "section 3111" and inserting in lieu thereof "section 3111(a)"; and

(C) by striking out (in the second sentence of subsection (c) thereof) "section 3111" and inserting in lieu thereof "section 3111(a)".

(4) Section 6413(c)(1)(D) of such Code (relating to special refunds) is amended—

(A) by inserting "(ii)" immediately after "(D)";

(B) by striking out "section 3101" and inserting in lieu thereof "section 3101(a)"; and

(C) by inserting immediately before the period at the end thereof the following: "; and (ii) during any calendar year after the calendar year 1973, the wages received by him during such year exceed $15,000, the employee shall be entitled (subject to the provisions of section 31(b)) to a credit or refund of any amount of tax, with respect to such wages, imposed by section 3101(b) and deducted from the employee's wages (whether or not paid to the Secretary or his delegate), which exceeds the tax with respect to the first $15,000 of such wages received in such calendar year".

(5) The amendment made by paragraph (1) shall be effective only with respect to remuneration paid after December 1973; the amendments made by paragraphs (2) and (3) shall be effective only with respect to taxes imposed by chapter 21 of the Internal Revenue Code of 1954 with respect to service performed after December 1973; and the amendments made by paragraph (4) shall be effective only in the case of wages received during calendar years after the calendar year 1973.

(b)(1) Section 1402 of the Internal Revenue Code of 1954 (relating to definition for purposes of the Self-Employment Contributions Act of 1954) is amended by adding at the end thereof the following new subsection:

"(i) SELF-EMPLOYMENT INCOME BASE FOR PURPOSES OF HEALTH INSURANCE.—For purposes of the tax imposed by section 1401(b) only, the term 'self-employment income' (as defined in subsection (b)) shall have the same meaning as that set forth in such subsection, except that the amount '$7,800' contained in paragraph (1)(E) thereof shall be deemed to be '$15,000'.".

(2) The amendment made by paragraph (1) shall be effective only with respect to taxable years ending after December 1973.

SEC. 302. (a) Section 3121 of the Internal Revenue Code of 1954 (relating to definitions for purposes of the Federal Insurance Contributions Act), as amended by section 301(a)(1) of this Act, is further amended by adding after subsection (r) thereof (as added by such section 301(a)(1)) the following new subsection:

"(s) EMPLOYMENT FOR PURPOSES OF HEALTH INSURANCE.—For purposes of the tax imposed by section 3101(b) only, the term 'employment' (as defined in subsection (b)) shall have the same meaning as that set forth in such subsection, except that the provisions of paragraphs (3), (5), (6), (7), (8), (9), (10), and (17) of such subsection shall be deemed to be inapplicable; and, for purposes of the tax imposed by section 3111(b) only, the term 'employment' (as defined in subsection (b)) shall have the same meaning as that set forth in such section, except that the provisions of paragraphs (3), (5), (6), (9), (10), and (17) of such subsection shall be deemed to be inapplicable."

(b)(1)(A) Section 218(e)(1)(A) of the Social Security Act is amended by striking out "sections 3101 and 3111 of the Internal Revenue Code of 1954" and inserting in lieu thereof "sections 3101(a) and 3111(a) of the Internal Revenue Code of 1954".

(B) Section 218(e) of such Act is further amended by adding at the end thereof the following new paragraph:

"(3) Notwithstanding the provisions of any agreement entered into under this section prior to January 1, 1974, no State shall be required to pay or be under any obligation to pay to the Secretary of the Treasury, with respect to service covered under the agreement and performed after December 31, 1973, amounts equivalent to the taxes which would have been imposed by sections 3101(b) and 3111(b) of the Internal Revenue Code of 1954 if such service constituted employment as defined in section 3121 of such Code."

(2) Section 218(h)(1) of such Act is amended—

(A) by striking out "and the Federal Hospital Insurance Trust Fund", and

(B) by striking out "subsection (a)(3) of section 201, subsection (b)(1) of such section, and subsection (a)(1) of section 1817, respectively" and inserting in lieu thereof "subsection (a)(3) and (b)(1) of section 201".

(c) The amendment made by subsections (a) and (b)(2) of this section shall be applicable only with respect to service performed after December 31, 1973; and the amendment made by subsection (b)(1)(A) shall apply with respect to agreements under section 218 of the Social Security Act which are entered into after December 31, 1973, or which are entered into prior to such date but which first become effective on or after January 1, 1974.

SEC. 303. Section 3121 of the Internal Revenue Code of 1954 (relating to definitions for purposes of the Federal Insurance Contributions Act), as amended by sections 301(a)(1) and 302(a) of this Act, is further amended by adding after subsection (s) thereof (as added by such section 302(a)) the following new subsection:

"(t) EXCLUSION FROM EMPLOYMENT OF CERTAIN SERVICES FOR PURPOSES OF HEALTH INSURANCE.—For purposes of the taxes imposed by sections 3101(b) and 3111(b) only, the term 'employment' shall not include performance of service by an employee of an employer who has in effect an agreement entered into between such employer and the Secretary of Health, Education, and Welfare pursuant to section 1886 of the Social Security Act for the provision of health care benefits for the employees of such employer, if such employee is, at the time such service is performed, entitled to the health care benefits provided pursuant to such contract."

SEC. 304. (a)(1) Section 3101(b) of the Internal Revenue Code of 1954 (relating to rate of tax on employees) is amended by striking out paragraphs (1) through (5) and inserting in lieu thereof the following:

"(1) with respect to wages paid during the calendar year 1974, the rate shall be 0.7 percent;

"(2) with respect to wages paid during the calendar year 1975, the rate shall be 0.9 percent;

"(3) with respect to wages paid during the calendar year 1976, the rate shall be 2.0 percent;

"(4) with respect to wages paid during the calendar year 1977, the rate shall be 3.1 percent; and

"(5) with respect to wages paid during the calendar year 1978, or any calendar year thereafter, the rate shall be 3.3 percent."

(2) The amendment made by paragraph (1) shall be effective only with respect to remuneration paid after December 31, 1973.

(b)(1) Section 3111(b) of such Code (relating to tax on employers) is amended by striking out paragraphs (1) through (5) and inserting in lieu thereof the following:

"(1) with respect to wages paid during the calendar year 1974, the rate shall be 0.7 percent;

"(2) with respect to wages paid during the calendar year 1975, the rate shall be 0.9 percent;

"(3) with respect to wages paid during the calendar year 1976, the rate shall be 2.0 percent;

"(4) with respect to wages paid during the calendar year 1977, the rate shall be 3.1 percent; and

"(5) with respect to wages paid during the calendar year 1978, or any calendar year thereafter, the rate shall be 3.3 percent."

(2) The amendment made by paragraph (1) shall be effective only with respect to remuneration paid after December 31, 1973.

(c)(1) Section 1401(b) of such Code (relating to rate of tax on self-employment income) is amended by striking out paragraphs (1) through (5) and inserting in lieu thereof the following:

"(1) in the case of any taxable year beginning after December 31, 1973, and before January 1, 1975, the tax shall be equal to 0.7 percent of the amount of the self-employment income for such taxable year;

"(2) in the case of any taxable year beginning after December 31, 1974, and before January 1, 1976, the tax shall be equal to 0.9 percent of the amount of the self-employment income for such taxable year;

"(3) in the case of any taxable year beginning after December 31, 1975, and before January 1, 1977, the tax shall be equal to 2.0 percent of the amount of the self-employment income for such taxable year;

"(4) in the case of any taxable year beginning after December 31, 1976, and before January 1, 1978, the tax shall be equal to 3.1 percent of the amount of the self-employment income for such taxable year; and

"(5) in the case of any taxable year beginning after December 31, 1977, the tax shall be equal to 3.3 percent of the self-employment income for such taxable year."

(2) The amendment made by paragraph (1) shall apply only with respect to taxable years beginning after December 31, 1973.

SEC. 305. Section 1817 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(i) In addition to the funds appropriated for each fiscal year to the Federal Health Insurance Fund pursuant to subsection (a), there is authorized to be appropriated for each fiscal year, beginning with the fiscal year ending June 30, 1957, an amount which is equal to 50 per centum of the amount appropriated to such Fund for such year pursuant to such subsection, and such additional amount as the Secretary estimates would have been so appropriated if he had not entered into any agreements pursuant to section 1886."

TITLE IV—FEDERAL AID TO ESTABLISH LOCAL COMPREHENSIVE HEALTH SERVICES SYSTEMS

FINDINGS AND DECLARATION OF PURPOSE

SEC. 401. (a)(1) The Congress hereby finds and declares that improving the provision and the delivery of health care is of critical importance and of the highest national priority and that present programs of health services do not provide for continuing, efficient, and comprehensive health care, and lead to an unnecessary duplication of facilities, equipment, and personnel.

(2) The Congress further finds and declares that the establishment of a system of health insurance for every American must not only increase purchasing power and equalize access to quality health care but must also

bring about significant change in the health care system.

(b) It is the purpose of this title to provide financial and technical assistance through loans, grants, supplementary financing and otherwise to health service institutions and organizations which will stimulate and enable such institutions and organizations to plan, develop, and implement comprehensive systems for the delivery and provision of health care.

BASIC AUTHORITY

SEC. 402. The Secretary of Health, Education, and Welfare (hereinafter in this title referred to as the "Secretary") is authorized to make loans and grants and to provide technical assistance, as provided by this title, to enable comprehensive health-service systems (as defined in section 407) to plan and develop comprehensive health care programs in accordance with the purpose of this title, and to assist them to become self-supporting.

ELIGIBILITY FOR ASSISTANCE

SEC. 403. (a) A comprehensive health service system (as defined in section 407 of this title) is eligible for assistance under section 405 of this title if—

(1) such system assures the provision of health services to all its members by a contract or contracts with the Secretary, or by such a contract and subcontracts, entered into by one or more providers of services (as defined in section 1861(u) of the Social Security Act) and other persons furnishing health services, or by a health insurance carrier or nonprofit prepayment plan, or by a combination of the foregoing;

(2) such system is designed, to the maximum extent feasible, to make all health services readily accessible to persons residing in the specified primary service area and will pay for transportation where reasonable accessibility to persons in that area cannot otherwise be assured;

(3) all persons, whether or not residing within the primary service area, are eligible to become members of such system, except that (A) the number of members may be limited, with or without giving preference to persons living within the primary service area, to avoid overtaxing the resources of the system, and (B) such restrictions upon enrollment may be imposed as are approved by the Secretary as necessary to prevent undue adverse selection; and the system is so designed and operated as to encourage enrollment from as broad a practicable a range of income and social groups;

(4) all health services are provided by providers or other persons who meet the standards imposed by or pursuant to title XVIII of the Social Security Act for the respective services;

(5) such system encourages increased health education of its members and the development and use of preventive health services, and provides for a group of physicians (such as a committee of medical school faculty, of a hospital medical staff, or of a group practice organization), approved by the Secretary for this purpose, consulting periodically with representatives of the membership, to fix the professional policies of the system, to oversee the professional aspects of the delivery of services, and to review the utilization of all health services, drugs, and supplies;

(6) such system shall, to the extent practicable and consistent with good medical practice, train and employ allied health personnel and subprofessional and lay persons in the rendering of services;

(7) any participating extended care facility is affiliated with a hospital or with a group practice or similar organization and the medical staff of the hospital or the group practice organization assumes responsibility for rendering or supervising professional services in the facility;

(8) premiums charged by such system for services not paid for under title XVIII of the Social Security Act are reasonable; and

(9) the establishment of such system shall be consistent with any comprehensive State health plan developed pursuant to section 314(a) of the Public Health Service Act, as amended, and shall be approved by the State planning agency designated or established pursuant to that section, and, where appropriate, shall be in accord with areawide health planning carried out pursuant to section 314(b) of that Act;

(b) In administering this title, the Secretary shall emphasize local initiative and consumer and community involvement of the planning, development, and operation of such comprehensive health service systems, and shall seek to insure prompt response to local initiative, and maximum flexibility in the planning, development, and operation of such systems. Appropriate Federal departments and agencies shall provide maximum coordination of other Federal assistance with the operation of this title.

FINANCIAL AND TECHNICAL ASSISTANCE FOR PLANNING COMPREHENSIVE HEALTH SERVICE SYSTEMS

SEC. 404. (a) The Secretary is authorized to make grants to, and to contract with, any public or nonprofit hospital, or any medical school or other institution of higher education, or any insurance carrier or nonprofit prepayment plan providing health coverage, or any nonprofit community organization, or any community group organized for this purpose in a geographically defined primary service area and representing a broad range of income and social groups, or any combination of two or more such entities, to pay 80 percent of the cost of planning and developing a plan for a comprehensive health service system (as defined in section 407) which will meet the requirements of section 403. The Secretary is also authorized to undertake such activities as he determines to be desirable to provide, either directly or by contracts or other arrangements, technical assistance to such entities for the development of plans for such comprehensive health service systems.

(b) Financial and technical assistance for planning such a system will be provided under this section only if the application for such assistance has been approved by the State health planning agency designated or established pursuant to section 314(a) of the Public Health Service Act, as amended.

FINANCIAL AND TECHNICAL ASSISTANCE FOR THE OPERATION OF APPROVED COMPREHENSIVE HEALTH SYSTEMS

SEC. 405. (a) The Secretary is authorized to approve a plan for a comprehensive health service system (as defined in section 407) if, after review of the plan, he determines that such plan satisfies the criteria set forth in section 403.

(b) The Secretary is authorized to contract, in accordance with section 403(a)(1), with a comprehensive health service system, if he has approved the plan for such system, to pay so much of the administrative, operating, and maintenance costs of such system as exceed its income for the first five years of operation after approval under this section. Any such contract shall require the system to make all reasonable efforts to enroll members, to control costs and the utilization of services, facilities, and supplies, and otherwise to maximize its income and minimize its costs. If at any time the Secretary finds that the system is not making reasonable progress toward becoming self-supporting, he may, after hearing, terminate the contract on not less than six months' notice.

(c) To assist a comprehensive health service system to carry out programs of capital development which the Secretary finds necessary for the purposes of this title, the Secretary is authorized to make a grant to such system of not to exceed 80 percent of the amount of non-Federal contribution otherwise required for the construction or modernization of hospitals and other medical facilities assisted under title VI of the Public Health Service, as amended: *Provided*, That such project has been approved by the State agency under that title and is consistent with the approved State plan, other than the provisions thereof respecting priorities.

(d) In connection with any project of an approved comprehensive health service system for the modernization, rehabilitation, or construction of ambulatory care facilities which the Secretary finds necessary for the purposes of this title, the Secretary is authorized, in lieu of assistance under any other Federal program or under subsection (c) of this section, to make a grant for up to 50 percent of the cost of such project and to make a loan, on such terms as he shall prescribe, except that the rate shall not exceed 3 percent per annum, for the remaining cost of the project.

(e) The Secretary is authorized to contract to make periodic interest reduction payments on behalf of any group practice or other ambulatory care facility, nonprofit hospital or nursing home which is operated or to be operated as part of an approved comprehensive health service system, such interest reduction to be accomplished through payments to the holder of a mortgage insured under title XI, or section 232, or section 242, of the National Housing Act. Interest reduction payments with respect to a facility shall be made during such time as the facility is operated as part of the approved comprehensive health service system. The interest reduction payments shall be in an amount not exceeding the difference between the monthly payment for principal, interest, and mortgage insurance premium which the owner of the facility is obliged to pay under the mortgage, and the monthly payment for such purposes which the owner would be obliged to pay if the mortgage bore interest at the rate of 1 per centum per annum.

(f) Of the sums appropriated pursuant to section 406 for any fiscal year, 2 per centum shall be available for grants by the Secretary to pay 100 per centum of the costs (but in no case to exceed $100,000) of projects, in areas designated by the Secretary as urban or rural poverty areas, for assessing local needs for comprehensive health service systems, obtaining local financial and professional assistance and support for local comprehensive health service systems, projects which, in his judgment, are of national significance because they will assist in meeting the needs of the disadvantaged for comprehensive health services systems or demonstrate new or particularly effective or efficient methods of delivery of health care through comprehensive health service systems.

APPROPRIATIONS

SEC. 406. There are authorized to be appropriated for the purposes of this title $——— for the fiscal year ending June 30, 1973, $——— for the fiscal years endings June 30, 1974, and June 30, 1975, $——— for each of the three fiscal years thereafter, and for succeeding fiscal years sums sufficient to carry out contracts entered into pursuant to this title.

DEFINITIONS

SEC. 407. As used in this title, the term "comprehensive service system" means a system providing health care to an identified population group in a primary service area and its environs enrolled as members, on the basis of contractual arrangements (which embody group practice, are established by a medical school, a hospital medical staff or a

medical center, or similar arrangements) among participating providers of service and other persons organized so as to—

(1) assure continuity of care and the ready referral and transfer of patients where medically appropriate;

(2) provide comprehensive health services, which shall include at least all services specified in title XVIII of the Social Security Act, as amended by this Act (such services to be provided except as authorized by the Secretary, without deductibles, coinsurance, or copayment), drugs prescribed for ambulatory patients, one hundred days of extended care services (which are not post-hospital extended care services) in any spell of illness, and necessary immunization, and may include other health services which are approved by the Secretary as appropriate to the particular comprehensive health service system.

TITLE V—FEDERALLY CHARTERED HEALTH INSURANCE CORPORATIONS

SEC. 501. Title VII of the Social Security Act is amended by adding at the end thereof the following new sections:

"SEC. 708. In order to assure maximum availability of a variety of techniques for the administration of benefits and services under title XVIII, the Secretary of Health, Education, and Welfare is hereby authorized to organize and establish one or more national health insurance corporations, each of which shall be an agency of the United States under the policy guidance of the Secretary, and shall have such organization and such powers as the Secretary finds necessary for the effectuation of title XVIII.

"SEC. 709. The Secretary shall be authorized to contract with, or enter into arrangements with, the corporation or corporations organized and established under section 708 to the same extent as he is authorized to contract with carriers and other agencies and organizations under part G of title XVIII and to enter into agreements with States under part F of such title."

A STUDY OF NATIONAL HEALTH INSURANCE PROPOSALS INTRODUCED IN THE 91ST CONGRESS—A SUPPLEMENTARY REPORT TO THE CONGRESS, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, JULY 1971

TABLE 1.—NATIONAL HEALTH EXPENDITURES AFTER TAX ADJUSTMENT BY PROPOSAL, FISCAL YEAR 1974

[In billions]

Proposal	Total	Private sector				Governmental sector		
		Total	Individual direct payments	Health insurance	Other	Total	State and local	Federal
None (Health expenditure without NHI)	$105.4	$62.3	$32.0	$26.4	$3.9	$43.1	$11.1	$32.0
Javits	113.0	31.3	19.9	8.2	3.2	81.7	8.1	73.6
Burleson	110.2	62.3	21.7	36.7	3.9	47.9	8.6	39.3
Pell-Mondale	114.9	67.3	17.3	46.1	3.9	47.6	10.7	36.9
Dingell	116.8	13.9	6.9	3.1	3.9	102.9	9.6	93.3
Griffiths	115.0	11.7	9.1	.5	2.1	103.3	3.1	100.2
Kennedy	114.0	15.9	11.2	1.9	2.8	98.1	6.7	91.4
Yarborough	112.4	15.9	11.2	1.9	2.8	96.5	6.7	89.8
Fulton	107.6	52.7	30.3	18.5	3.9	54.9	9.8	45.1
Fulton-Broyhill	109.1	58.1	27.5	26.7	3.9	51.0	8.7	42.3
Fannin	107.3	53.4	29.6	19.9	3.9	53.9	12.7	41.2
Hogan	107.7	59.0	27.8	27.3	3.9	48.7	13.4	35.3
Hall	107.6	59.0	28.5	26.6	3.9	48.6	13.4	35.2
Long	106.5	60.3	30.0	26.4	3.9	46.2	11.1	35.1

NATIONAL HEALTH INSURANCE PROPOSALS

(Introduced in 92d Cong., May 1971, Office of Research and Statistics, Social Security Administration)

GENERAL CONCEPT AND APPROACH

S. 1623

Two-part national health insurance plan covering most of the population under age 65: (1) required employer plan under private insurance for employees and their families and (2) federally operated family health insurance plan (FHIP) for low-income families with children. Provisions to encourage use of health maintenance organizations. Endorsed by Nixon Administration.

H.R. 7741

Same as Bennett bill (S. 1623).

S. 1598

Two health insurance programs: (1) inpatient health care plan administered by Federal Government and financed by payroll taxes and general revenues, (2) voluntary outpatient care plan through private insurance, with Government subsidizing premiums for low-income families.

COVERAGE OF THE POPULATION

S. 1623

Employer plan.—Employers required to provide coverage for his employees and their families. Special group plans for small employers, self-employed and other individuals.

FHIP.—Low-income families with children who meet specified income levels could voluntarily enroll. Mandatory coverage for families under (proposed) Family Assistance Plan.

H.R. 7741

Same as Bennett bill (S. 1623).

S. 1598

Inpatient plan.—All U.S. residents.

Outpatient plan.—All U.S. residents on voluntary enrollment basis.

BENEFIT STRUCTURE

S. 1623

Employer plan.—Broad benefits with cost sharing of $100 annual deductible per person and 25% coinsurance for most services.

Hospital: 2-day deductible and 25% coinsurance for room and board per year. Other services subject to annual deductible and coinsurance.

Physicians: Annual deductible and coinsurance. Well-baby care up to age 5 without cost sharing.

Laboratory and X-ray: Annual deductible and coinsurance.

Medical appliances: Annual deductible and coinsurance.

FHIP.—Broad specified benefits. Some cost sharing depending on annual income, but none for lowest income group. Benefits include 30 days of hospital care; nursing home care: 3-day substitution for 1 day of hospital care; all physicians' services while receiving hospital, nursing home or home health services; 8 home or office physician visits; well-baby care up to age 5; home health services: 7-day substitution for 1 day of hospital care.

H.R. 7741

Same as Bennett bill (S. 1623).

S. 1598

Inpatient plan.—*Hospital, nursing home* and *home health services.* Benefit payments begin after family has paid an amount (family health cost ceiling), varying according to family income and size.

Outpatient plan.—*Physicians* and hospital outpatient.

Dentists: For children under 12.

Other health professional: Optometrists and podiatrists.

Laboratory and X-ray.

Medical appliances.

Prescription drugs: For chronic illnesses.

Medical benefits subject to annual deductible of $10 to $50 a year, depending on family income and size. (Additional deductible of $10 to $25 for dental benefits.)

ADMINISTRATION

S. 1623

Employer plan.—Private insurance carriers under Federal supervision.

FHIP.—Administered by DHEW, similar to Medicare program.

H.R. 7741

Same as Bennett bill (S. 1623).

S. 1598

Inpatient plan.—Administered by DHEW through regional offices.

Outpatient plan.—Private insurance carriers under supervision of DHEW.

RELATIONSHIP TO OTHER GOVERNMENT PROGRAMS

S. 1623

Medicare: Continues to operate.

Medicaid: Limited to aged, blind, and disabled.

Other programs. Most not affected.

S. 1598

Medicare: Abolished.

Medicaid: Would not pay for services under program.

Other programs: Most not affected.

FINANCING

S. 1623

Employer plan.—Financed by employee-employer premium payments. Employer pays 75% (65% for first 2½ years of program).

FHIP.—Financed in part by premiums paid by enrollees, graduated according to income; no premium for lowest income group. Balance of costs paid from Federal general revenues.

H.R. 7741

Same as Bennett bill (S. 1623). Also employers with high premium costs get subsidy payments for up to 10 employees.

S. 1598

Inpatient plan.—Medicare (hospital insurance) payroll taxes diverted to new program, plus Federal general revenues if needed.

Outpatient plan.—Premium payments by enrolled family, with premium subsidized by government for low-income families, depending on family income and size.

STANDARDS FOR PROVIDERS OF SERVICES

S. 1623

Same as Medicare. Professional Standards Review Organizations (PSRO) to review services provided under all plans.

H.R. 7741

Same as Bennett bill (S. 1623).

S. 1598

Similar to Medicare with additional requirements:

Physicians and other health personnel: Must meet standards set by DHEW and may practice in any State.

Health Services Organizations, corporations and associations: Must meet standards set by DHEW. Can be federally incorporated if incorporation prohibited by State.

Utilization review: Local, regional and national boards to review and study utilization.

REIMBURSEMENT OF PROVIDERS OF SERVICES

S. 1623

Hospitals and other institutions: Reasonable cost of services, same as Medicare.

Physicians: Reasonable charges, same as Medicare.

Health Maintenance Organizations: Per capita rate.

H.R. 7741

Same as Bennett bill (S. 1623).

S. 1598

Inpatient plan.—To be determined by regulation.

Outpatient plan. Reasonable cost as under Medicare.

DELIVERY AND RESOURCES

S. 1623

Health Maintenance Oranization: Must be made available as an option for all plans. Must provide comprehensive services efficiently and economically. Under related bill (S. 1182), grants and loans for development, construction and payment to meet initial operating costs. Under S. 1183, grants and loans to schools for education of health professionals in short supply and improvement of health delivery.

H.R. 7741

Same as Bennett bill (S. 1623).

S. 1598

Health Delivery Committee: Committee to study health needs and make recommendations.

Health Maintenance Organizations: Grants and loans for development and construction.

Health Manpower: Would liberalize PHS programs for loans to medical and nursing students and provide special grants to medical schools.

NATIONAL HEALTH INSURANCE PROPOSALS

GENERAL CONCEPT AND APPROACH

S. 836

National health insurance program, based on expansion of Medicare program to general population. Administered by Federal Government and financed by payroll taxes and Federal general revenues. Includes option for alternative coverage under private insurance plans.

H.R. 4349

Three voluntary health insurance plans to make coverage available to all U.S. residents: (1) an employee-employer plan, (2) plan for individuals, and (3) a State plan for the poor. All plans administered through private insurance and provide broad range of benefits. Endorsed by Health Insurance Association of America.

S. 703

Employers required to provide specified health benefits for their employees and families, at no cost to the employee. Authorizes creation of health services corporations to furnish comprehensive health care and operate facilities.

COVERAGE OF THE POPULATION

S. 836

All U.S. residents.

H.R. 4349

Private plans.—Employee-employer plan includes employees (and their families) of employers who voluntarily elect coverage. Individual plan includes persons who voluntarily elect.

State plans.—Voluntary enrollment for poor and uninsurable persons.

S. 703

Employees (and their families) of businesses in interstate commerce, and government agencies.

BENEFIT STRUCTURE

S. 836

Benefits same as Medicare, plus dental care, and drugs. Some services subject to present Medicare Part B cost sharing of a $50 annual deductible per person and 20% coinsurance.

Hospital: 90 days of care; with $60 deductible, $15 co-payment per day after 60th day.

Nursing home: 100 days of care; $7.50 co-payment per day after 20th day.

Physicians: Part B cost sharing.

Dentists: For children under 8; 20% coinsurance.

Home health services: 100 post-hospital visits, plus 100 additional visits subject to Part B cost sharing.

Laboratory and X-ray: Part B cost sharing.

Other health professionals: Podiatrists, psychologists, physical therapy; Part B cost sharing.

Medical applicances: Part B cost sharing.

Prescription drugs: For chronic conditions. $1 charge per prescription.

H.R. 4349

Broad range of benefits, with cost sharing. Benefits phased-in over 6-year period for private plans and 4 years for State plan.

Hospital: 300 days of care; $10 co-payment for first day, then $5 per day.

Nursing home: 180 days of care; $2.50 co-payment per day.

Physicians: $2 per visit.

Dentists: 1 examination each year; most other services 20% coinsurance.

Home health services: 270 days of care; $2.50 co-payment per day.

Laboratory and X-ray: No cost sharing.

Other health professionals: 20% coinsurance.

Medical appliances: 20% coinsurance.

Eyeglasses: 50% coinsurance.

Prescription drugs: $1 per prescription.

Private plans.—20% coinsurance can be substituted for dollar co-payments. For employee-employer plan, annual limit for all cost sharing of $1,000 per family.

State plan.—Amount of cost sharing limited, according to family income.

S. 703

Required benefits, with no cost sharing or limitations, except as noted:

Hospital: 12 days a year after first 2 days.

Nursing home: 10 days a year.

Physicians.

Laboratory and X-ray.

Other health professionals:

Podiatrists and chiropractors.

Medical appliances.

Prescription drugs.

Catastrophic: Coverage of medical costs of an amount that exceeds 25% of family income.

ADMINISTRATION

S. 836

Federal Government: Similar to Medicare. DHEW would have general administrative responsibility. Private insurance carriers (or quasi-governmental corporations) would handle claims and pay providers.

Employer-employee plans: Employers may elect out of the government program by establishing an approved private insurance plan providing superior benefits.

Carrier plans: Individuals may elect out by purchasing approved private insurance providing equivalent benefits.

H.R. 4349

Private plans.—Administered by private insurance carriers, under State supervision. Treasury Department determines tax status of plan.

State plan.—Administered by private carrier under State supervision. Regulations for program established by DHEW.

S. 703

Health plans: Benefits administered through prepaid health plans, health services corporations, or other approved methods.

Federal Government: DHEW established standards and regulations for program.

RELATIONSHIP TO OTHER GOVERNMENT PROGRAMS

S. 836

Medicare: Absorbed by program.

Medicaid and other assistance programs: Would not pay for services under program.

Other programs: Most not affected.

H.R. 4349

Medicare: Continues to operate.

Medicaid and other assistance programs: Would not pay for services under program.

Other programs: Most not affected.

S. 703

Medicare and Medicaid: Continue to operate.

Other programs: Most not affected.

FINANCING

S. 836

General: Tax on payroll and self-employment income, and Federal general revenues.

Tax rates: (a) 3.3% of earnings for employers, employees, and self-employed, (b) general revenue contribution equal to ½ of total tax receipts.

Earnings subject to tax: First $15,000 of earnings for employee and self-employed; total payroll for employers.

Employment subject to tax: Workers under social security, plus Federal, State and local government employees.

Employer-employee plans: Employers and employees exempt from regular insurance tax. Employer pays at least 75% of cost of private plan.

H.R. 4349

Private plans.—For employee-employer plan premium paid by employers and employees, as arranged between them. Individual plan, policyholder pays entire premium. Employees and individuals who itemize deductions can take entire premium contribution as deduction on income tax return. Employers can take their entire contribution as business expense.

State plan.—No premium contribution required for lowest income group; for others, part of premium paid by enrollees, with amount varying according to family income. Federal and State governments pay balance of costs from their general revenues.

S. 703

Employers pay for health benefits as cost of doing business. No charge to employees.

STANDARDS FOR PROVIDERS OF SERVICES

S. 836

Same as Medicare. Additional standards may be established for physicians concerning continuing education, national licensing and qualifications for major surgery and other specialists' services.

H.R. 4349

Same as Medicare.

S. 703

DHEW establishes regulations regarding facilities, quality standards, and necessity of services.

REIMBURSEMENT OF PROVIDERS OF SERVICES

S. 836

Similar to Medicare for first 2 years of program. Afterward, new payment methods may be established, based on a study required under bill. The following payment methods used in interim:

Hospitals and nursing homes: Reasonable costs of services.

Physicians, dentists, and suppliers: Appropriate and reasonable charges.

Comprehensive health service system: Reasonable cost of services or per capita rate for enrolled members.

H.R. 4349

Hospitals and other institutions: Reasonable cost of services, based on prospectively approved rates. Hospitals prepare budgets and schedule of charges which are reviewed by a State Commission responsible for establishing charges, subject to DHEW approval.

Physicians and dentists: Reasonable charges, based on customary and prevailing rates.

S. 703

As arranged by employers with providers.

DELIVERY AND RESOURCES

S. 836

Comprehensive health service systems: DHEW can contract with comprehensive systems to provide health care to enrolled population. System must provide preventive services and health education and must train paramedical health personnel. Loans, grants, and technical assistance provided for the development, operation, and construction of comprehensive systems.

H.R. 4349

Health planning: Increased funding and authority given to State and local planning agencies. Approval of planning agency required before projects can receive funds under Federal programs. Also, Presidential advisory council on health is created.

Health maintenance organizations: Must be made available as an option to persons enrolled in State plan and employee-employer plans.

Ambulatory health centers: Grants, loans, and loan guarantees to encourage construction and operation of centers.

Health manpower: Loans and grants for students and educational institutions, with priority given to shortage areas.

S. 703

Health services corporations: For-profit organizations to be established in an area to provide comprehensive health services (including required benefits), and operate health facilities and medical schools. Would purchase health facilities and/or make arrangements with providers of services. Funded mainly by sale of stock to State and local government, and health organizations and personnel affiliated with corporation. Corporation facilities and staff must meet national standards. Federal grants, loans and guarantees would be available for construction, staffing and operation.

Regional planning councils: Develop plans for comprehensive health services. Would approve the budgets of health service corporations and all projects involving Federal funds.

NATIONAL HEALTH INSURANCE PROPOSALS

GENERAL CONCEPT AND APPROACH

H.R. 48

National health insurance program providing broad benefits, administered at Federal, State, and local levels, and financed by payroll taxes.

S. 3

National health insurance program providing broad benefits, administered by Federal Government and financed by payroll taxes and Federal general revenues. Endorsed by Committee for National Health Insurance and AFL–CIO.

COVERAGE OF THE POPULATION

H.R. 48

All U.S. residents.

S. 3

All U.S. residents.

BENEFIT STRUCTURE

H.R. 48

Broad benefits with no cost sharing or limitations, except as noted:

Hospital: 60 days of care.

Nursing home: No benefit.

Physicians.

Dentists.

Home health services.

Laboratory and X-ray.

Other health professionals.

Medical appliances and eyeglasses.

Prescription drugs: Unusually expensive drugs.

Specified benefits may be delayed in a State if resources are inadequate.

S. 3

Broad benefits with no cost sharing or limitations, except as noted:

Hospital.

Nursing home: 120 days of care.

Physicians.

Dentists: For children under age 15; later extended to age 25.

Other health professionals.

Laboratory and X-ray.

Medical appliances and eyeglasses.

Prescription drugs: For chronic and other specified illness.

ADMINISTRATION

H.R. 48

Federal Government: Special board in DHEW with overall supervision of program.

State: Under contract with Federal Government, would establish State plan and arrange to operate program at the local level.

S. 3

Federal Government: Special board in DHEW, with regional and local offices to operate program.

RELATIONSHIP TO OTHER GOVERNMENT PROGRAMS

H.R. 48

Medicare: Continues to operate, but study to be made of methods of incorporating it into the national plan.

Medicaid and other assistance programs: Would not pay for services under the national plan.

Other programs: Most not affected.

S. 3

Medicare: Abolished.

Medicaid and other assistance programs: Would not pay for covered services.

Other programs: Most not affected.

FINANCING

H.R. 48

Tax on wage and self-employment income, similar to social security tax. Total tax for employers and employeees combined would be 4%.

S. 3

General: Tax on payroll, self-employed, and unearned income, and Federal general revenues.

Tax rates: (a) 1.0% on employees wages and unearned income, (b) 3.5% for employers, (c) 2.5% for self-employed, and (d) Federal general revenues equal to total receipts from taxes.

Earnings subject to tax: First $15,000 of earnings and income of individuals; total payroll for employers.

Employment subject to tax: Workers under Social Security, plus Federal, State, and local government employment. State and local governments do not pay employer tax.

STANDARDS FOR PROVIDERS OF SERVICE

H.R. 48

Must meet State standards. If no State standards, they would be established by National Board.

S. 3

Same as Medicare, with additional requirements:

Hospitals: Cannot refuse staff privileges to physicians.

Nursing homes: Must be affiliated with hospital which is responsible for medical services in home.

Physicians: National standards would be established; major surgery performed only by qualified specialists.

All providers: Records subject to review by regional office. Also, can be directed to add or reduce services, and to establish linkages.

REIMBURSEMENT OF PROVIDERS OF SERVICES

H.R. 48

Hospitals and other institutions: Reasonable cost of services, but subject to a maximum rate.

Physicians and other professionals: Fee for service (based on fee schedule), per capita (for persons enrolled with a practitioner), or salary.

S. 3

National health budget established and funds allocated, by type of service, to regions and local areas.

Hospitals and nursing homes: Would receive annual predetermined budget based on reasonable cost.

Physicians, dentists, and professionals: Methods available are: Fee-for-service based on fee schedule, per capita payment for persons enrolled, and (by agreement) full- or part-time salary. Payments for fee-for-service may be reduced if payments exceed estimates.

Comprehensive health service organizations and medical society foundations: Per capita payment for all services (or budget for institutional services). Can retain all or part of savings.

DELIVERY AND RESOURCES

H.R. 48

Grants to students and educational institutions for training in health occupations.

S. 3

Health planning: DHEW responsible for health planning, in cooperation with State planning agencies. Priority to be given to development of comprehensive care on ambulatory basis.

Health resources development fund: Will receive, ultimately 5% of total income of programs, to be used for improving delivery of health care and increasing health resources.

Comprehensive health service system: Could receive grants for development, loans for constructions, and payments to offset operating deficit.

Manpower training: Grants to schools and allowances to students for training of physicians for general practice and shortage specialties, other health occupations, and development of new kinds of health personnel.

NATIONAL HEALTH INSURANCE PROPOSALS

GENERAL CONCEPT AND APPROACH

H.R. 1283

Credits against personal income taxes would be granted to offset the premium cost of qualified private health insurance providing specified benefits.

H.R. 4960

Credits against personal income taxes would be granted to offset the premium cost of qualified private health insurance providing specified benefits. Endorsed by American Medical Association.

COVERAGE OF THE POPULATION

H.R. 1283

All U.S. residents, on voluntary basis.

H.R. 4960

All U.S. residents, on voluntary basis.

BENEFIT STRUCTURE

H.R. 1283

Tax credits of 10 to 100% of cost of qualified health insurance policy, depending on annual tax payments. Voucher certificates issued to persons with little or no tax liability. Policy must provide basic coverage and one or more supplemental benefits. Low-income families exempt from cost sharing; for others, limited to $100 annually per person.

Hospital: 60 days of care: $50 deductible per stay.

Nursing home: May be substituted for hospital days on 2 for 1; $50 deductible per stay.

Physicians: 20% coinsurance.

Dentists: No benefit.

Laboratory and X-ray: 20% coinsurance.

Other health professionals: 20% coinsurance.

Medical appliances: No benefit.

Prescription drugs: 20% coinsurance.

Catastrophic coverage: $300 deductible per family.

Other health professionals, prescription drugs, additional hospital days (beyond 60) and catastrophic coverage are the supplemental benefits available at an additional premium.

H.R. 4960

Tax credits of 10 to 100% of cost of qualified health insurance policy, depending on annual tax payments. Voucher certificates issued to persons with little or no tax liability. Policy provides basic and catastrophic benefits.

Hospital: 60 days of care: $50 deductible per stay.

Nursing home: May be substituted for hospital days on 2 for 1; $50 deductible per stay.

Physicians: 20% coinsurance.

Dentists: No benefit.

Laboratory and X-ray: 20% coinsurance.

Prescription drugs: 20% coinsurance.

Catastrophic coverage: Additional hospital days and medical appliances covered after "corridor deductible" (out-of-pocket payment) which varies according to income.

Total cost sharing for physicians, laboratory and X-ray limited to $100 per family.

ADMINISTRATION

H.R. 1283

Private insurance carriers issue policies.

State insurance departments certify carriers and qualified policies. Federal board establishes standard for program. Treasury Department processes tax credits. DHEW issue voucher certificates.

H.R. 4960

Private insurance carriers issue policies.

State insurance departments certify carriers and qualified policies.

Federal board establishes standards for program. Treasury Department processes tax credits.

DHEW issues voucher certificates.

RELATIONSHIP TO OTHER GOVERNMENT PROGRAMS

H.R. 1283

Medicare: Continues to operate.

Medicaid and other assistance programs: Would not pay for services under program.

Other programs: Most not affected.

H.R. 4960

Medicare: Continues to operate.

Medicaid and other assistance programs: Would not pay for services under program.

Other programs: Most not affected.

FINANCING

H.R. 1283

Financed from Federal general revenues.

H.R. 4960

Financed from Federal general revenues.

STANDARDS FOR PROVIDERS OF SERVICES

H.R. 1283

By contract between DHEW and State medical societies, review boards (PRO) established to review charges, utilization, and quality of services for this program and other Federal programs; provisions for hearings and appeals, disciplinary action, and recourse to courts. DHEW reviews and implements decisions.

H.R. 4960

No provision.

REIMBURSEMENT OF PROVIDERS OF SERVICES

H.R. 1283

PRO boards review charges (see above).

H.R. 4960

No provision.

DELIVERY AND RESOURCES

H.R. 1283

The Federal board is directed to develop programs for effective use of manpower and resources.

H.R. 4960

The Federal board is directed to develop programs for effective use of manpower and resources.

NATIONAL HEALTH INSURANCE PROPOSALS

GENERAL CONCEPT AND APPROACH

H.R. 18008

Program for coverage of catastrophic illness which would pay medical expenses above a specified amount, depending on family income. Administered by private insurance companies under State supervision and financed by premium payments and Federal subsidy.

H.R. 177

Two-part national health insurance program: (1) State plan of health insurance for the poor providing basic and catastrophic coverage and (2) Federal program of catastrophic protection for the rest of the population.

S. 1376

Federal program for coverage of catastrophic illness which would pay expenses for hospital and medical care above a specified amount. Program would be administered through Medicare program and financed by special payroll taxes.

COVERAGE OF THE POPULATION

H.R. 18008

All U.S. residents, on voluntary basis.

H.R. 177

Poor.—All medically indigent persons.

General population.—All persons not medically indigent.

S. 1376

Persons under age 65 insured or entitled under social security, and their families.

State and local governments may cover their employees under special arrangements.

BENEFIT STRUCTURE

H.R. 18008

All services eligible as medical expense deductions under the income tax law may be covered, after family expenses exceed a specified amount (deductible), which varies according to family income and size. There is no deductible for low income families but the deductible rises rapidly as income increases. Expenses paid by other private insurance or government programs can be counted toward the deductible.

H.R. 177

All services eligible as medical expense deductions under the income tax law may be covered.

Poor.—Insurance providing basic coverage of medical care, with value equal to average health care costs, and catastrophic protection of additional costs. No cost sharing.

General population.—Coverage of 90% of family health care costs after the first $5,000 of expenses ($1,000 for the aged). Expenses paid by private insurance or public programs can be counted toward this deductible amount.

S. 1376

Covers same types of benefits as Medicare. Hospital and nursing-home expenses covered after 60 days of hospital care; subject to copayment of $15 per day for hospital and $7.50 for nursing home. Other medical expenses covered after first $2,000 incurred by family, subject to 20% coinsurance.

ADMINISTRATION

H.R. 18008

Private insurance carriers would issue and administer the catastrophic insurance policies.

State insurance department would design and establish the plan.

Federal Government: DHEW would establish regulations for program.

H.R. 177

Poor.—Private insurance companies would issue insurance policies and administer claims. DHEW would establish plan if State does not.

General population.—Administered by DHEW, using same procedures and requirements as Medicare, if possible.

S. 1376

Federal Government: Administered through Medicare program (by DHEW) under which private carriers handle claims and pay providers of services, and State agencies determine whether providers of services meet standards.

RELATIONSHIP TO OTHER GOVERNMENT PROGRAMS

H.R. 18008

Medicare: Continues to operate.

Medicaid and other assistance programs: Would not pay for services covered under the program.

Other programs: Most not affected.

H.R. 177

Poor.—Would replace Medicaid program.

General population.—No specific reference.

DHEW to report on laws that need to be changed.

S. 1376

Medicare: Not affected.

Medicaid and other government programs: Same effect as Medicare program.

FINANCING

H.R. 18008

General: Policyholders would pay premium for insurance with subsidy from Federal general revenues.

Premium rate: DHEW would determine actuarial value of policies and could establish a premium rate lower than the actuarial value, to encourage widespread enrollment. Federal Government would pay carriers, from general revenues, the difference between the actuarial value and the premium rate.

Reinsurance: Federal Government would arrange to reinsure the insurance risk; carriers would pay the reinsurance premiums.

H.R. 177

Poor.—Federal and State general revenues. Federal pays 85% of cost of basic coverage. State pays remaining costs and cost of catastrophic protection.

General population.—Financed by special tax on wages, self-employment income, and other income of individuals.

Tax rate: 0.4%.

Earnings subject to tax: Sum of an individual's wages, self-employment income, and other earned or unearned income over $2,000, up to a maximum of $7,800.

Employment subject to tax: Same as social security.

S. 1376

General: Financed by payroll taxes, similar to Medicare.

Tax rates for employers, employees, and self-employed: 0.3% initially, rising to 0.4% ultimately.

Earnings subject to tax: First $9,000 of earnings.

Employment subject to tax: Workers under social security.

STANDARDS FOR PROVIDERS OF SERVICE

H.R. 18008

No provision.

H.R. 177

Poor.—No provision.

General population.—Same as Medicare, as much as feasible.

S. 1376

Same requirements and standards as Medicare.

REIMBURSEMENT OF PROVIDERS OF SERVICES

H.R. 18008

No provisions.

H.R. 177

Poor.—No provision.

General population.—Same as Medicare, as much as feasible.

S. 1376

General: Same as Medicare.

Hospitals and other institutions: Reasonsonable costs of services.

Physicians and suppliers: Reasonable charges.

DELIVERY AND RESOURCES

H.R. 18008

No provision.

H.R. 177

No provision.

S. 1376

No provision.

By Mr. JAVITS (for himself, Mr. PELL, Mr. EAGLETON, Mr. MONDALE, and Mr. TAFT):

S. 916. A bill to amend the National Foundation on the Arts and the Humanities Act of 1965, as amended. Referred to the Committee on Labor and Public Welfare.

EXTENSION OF THE NATIONAL FOUNDATION OF THE ARTS AND THE HUMANITIES ACT

Mr. JAVITS. Mr. President, I introduce for myself and Senators PELL, EAGLETON, MONDALE, and TAFT, my colleagues on the Subcommittee on the Arts and Humanities, the administration's bill to authorize appropriations for the National Foundation on the Arts and the Humanities for the next 3 fiscal years. This measure also provides for a number of technical changes in the present law; I ask unanimous consent that a list of these technical changes together with an analysis of the proposed bill and its text be printed in the RECORD as a part of my remarks.

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

(See exhibits 1, 2, and 3.)

Mr. JAVITS. Mr. President, at the beginning of our Republic, President George Washington recognized the arts as central to our national well-being. The passage of almost two centuries has not dimmed this concept and, as the 200th anniversary of our independence approaches, our Nation should now be in the position of being especially recognized for its achievements in the realm of ideas and of the arts.

There is a growing appreciation of the fact that our cultural resources are a national treasure, as much to be nurtured as our natural resources. In this the Federal Government has a vital role. As the President pointed out in an article appearing in the September 1972 issue of Equity magazine:

> The Federal Government has been a vital catalyst in supporting this Nation's unique tradition of generous private initiative in the arts. I believe the Federal Government must continue to play this role.

In each of the past 2 years, despite budgetary restrictions, Federal funding for the arts and the humanities has increased substantially. The fiscal year 1974 budget provides further increases. And progress has been made on other fronts in response to the Federal stimulus. In 1960, only 14 States had State arts councils and State arts programs; today, all 50 States have such councils and programs. A Federal dollar goes to the State, which must match it, and those $2 in turn go to the ultimate recipient who again must match. Thus, one Federal dollar results in a $4 expenditure on the arts.

But all is not sweet music and progress on the arts front. Consider, for instance, the plight of the Nation's over 1,000 symphony orchestras located in every State of the Union. Twenty-eight of these have budgets of more than $1 million annually. In the past 10 years they report an increase of 62 percent in concerts and an increase of 76 percent in attendance; they also report an increase in operating costs of 87 percent as contrasted with an increase in earned income of 60 percent. Put another way, in 1962 symphony orchestras earnings covered 58 percent of expenditures; in 1971 their earnings covered only 47 percent of expenditures, making for a $35 million gap—deficit—in 1971.

How is this deficit met? Mostly from private contributions, a source which is increasingly hard put to meet the demands upon it by deserving cultural, educational, and social service institutions. Federal, State, and local governments in 1971 contributed 9 percent of symphony costs—the Federal contribution, however, was the smaller part of this, at 3.5 percent. This is contrasted to the situation abroad where European local and national governments generally fund up to between 80 and 90 percent of symphony orchestra costs.

A final observation. With this growing governmental support is the continued recognition of the necessary limits of governmental control. The words of President Nixon symbolize this:

> Art is the most profound and ultimately the most sacred form of freedom of expression that we have. Within its depths and its mysteries is the source of new ways of looking at the world and at ourselves. Nothing we do to foster artistic creativity should tend to directly or indirectly influence artistic content; everything we do to aid the artist and his art should be done to enlarge, not restrict, the area of freedom which is the essence of the artistic experience.

The nurturing of Federal encouragement of the arts and the nurturing of such encouragement in all the States signals a Federal-State-local partnership in developing our cultural resources which must continue to be encouraged so that it might achieve its full and true growth. This bill seeks to provide that nourishment and encouragement.

EXHIBIT 1

TECHNICAL CHANGES

1. The bill would revise existing language to allow the high standards enumerated in Section 5(c) to apply equally to both "projects" and "productions" supported by the Endowment for the Arts.

2. It would authorize the Arts Endowment to provide for publications related to the purposes of its enabling legislation without regard to the provisions of 44 USC 501.

3. It would delete a requirement that the Chairman of an Endowment receive the advice of the Federal Council on the Arts and the Humanities in connection with the support of research and other programs, the award of fellowships, the interchange of information in the humanities, etc.

4. It would delete a requirement that State applications for financial assistance be received by the Arts Endowment prior to the first day of the fiscal year in which such assistance is being provided.

5. It would add a requirement that State art agencies include an advisory group which would advise the State agencies much in the same manner as the National Council on the Arts presently advises the National Endowment for the Arts.

6. It would, for purposes of updating, delete reference to the District of Columbia Recreation Board which has been succeeded by the D.C. Arts Commission.

7. It would delete a provision allowing Federal funds provided to the States to be expended for purposes of establishing State arts agencies, since all States now have State agencies.

8. It would increase the basic State arts grants authorized by the act from $65,000 to $150,000, reflecting increased authorization of appropriations, with the remainder of such appropriated funds being available to the States or Regional groups serving the States.

9. It would authorize a State to expend up to 20 per centum of its federal assistance 5(g) funds without regard to the general requirement that such dollars be matched one for one.

10. It would add a statement reflecting Congressional intent that Federal funds are intended to provide improved State arts programs, and not supplant state, local, or private funds.

11. It would authorize the National Council on the Arts to review projects proposed for financial assistance, rather than applications in every case, when it is impractical to review individual applications.

12. The National Councils are presently authorized to delegate to the Chairman authority to approve or disapprove applications without a Council recommendation in the case of an application involving $10,000 or less. The bill would raise this $10,000 maximum to $25,000.

13. The bill would provide that any loans made by the National Endowment for the Humanities shall be made in accordance with terms and conditions approved by the Secretary of the Treasury. The National Endowment for the Arts does not have loan authority.

14. The bill would be revised so as to include a complete list of current membership of the Federal Council on the Arts and the Humanities.

15. The bill would authorize the Chairmen of both Endowments to accept smaller gifts without a prior recommendation from the Council when those gifts are to be used to finance grants which the Chairmen are authorized to make without a prior Council recommendation.

16. General program funds and funds to match gifts would be authorized for the next three fiscal years in such amounts as Congress may deem necessary.

17. Two obsolete sections of the National Foundation on the Arts and the Humanities Act would be deleted and certain statutory references would be updated.

EXHIBIT 2

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES ANALYSIS OF BILL TO AMEND THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES ACT OF 1965

There is set forth below an analysis of each section of the National Foundation on the Arts and the Humanities Act of 1965 which would be amended by the proposed legislation. At the end of each section analysis the section itself is quoted, with omitted material indicated by [ ] and new material indicated by italics.

SEC. 1. If Section 13 of the Act is to be deleted as provided in Sec. 7 of the draft bill, no mention of the Office of Education will remain in the body of the Act. Therefore, the reference to strengthening the responsibilities of that Office should also be deleted from the preamble. (Sec. 2, clause 7) The language of the subsection follows:

"(7) that, in order to implement these findings, it is desirable to establish a National Foundation on the Arts and the Humanities [and to strengthen the responsibilities of the Office of Education with respect to education in the arts and the humanities].

SEC. 2. The changes proposed in Section 5 relating to the National Endowment for the Arts are several and involve different purposes. First, the deletion in Section 5(c) (and in Sections 5(g) and 7(c) below) of the phrase referring to the *Federal Council on the Arts and the Humanities* appears to be appropriate. While the Federal Council does perform the important functions described in Section 9(c) of the Act, the Council does not, nor can it as a practical matter, provide the kind of guidance and assistance which appears to be called for in Sections 5(c), 5(g), and 7(c). Also, it is felt that more informed advice is in fact available from the National Councils. The relevant language of subsection 5(c) follows:

"(c) The Chairman, with the advice of the [Federal Council on the Arts and the Humanities and the] National Council on the Arts, is authorized to establish and carry out a program of contracts with, or grants-in-aid to, groups or, in appropriate cases, individuals of exceptional talent engaged in or concerned with the arts, for the purpose of enabling them to provide or support in the United States."

In Section 5(c) (1), (2), and (3) it is proposed that the word "projects", or "productions" be inserted for purposes of consistency. It would seem appropriate that the broad and high standards enumerated in this section be equally applicable to both "projects" and "productions" viz., that "projects" be required to have substantial artistic and cultural significance and give emphasis to American creativity, as is presently provided in the case of "productions."

The language of the clauses follows:

"(1) *projects and* productions which have substantial artistic and cultural significance, giving emphasis to American creativity and the maintenance and encouragement of professional excellence;

"(2) *projects and* productions, meeting professional standards or standards of authenticity, irrespective of origin, which are of significant merit and which, without such assistance, would otherwise be unavailable to our citizens in many areas of the country;

"(3) projects *and productions* that will encourage and assist artists and enable them to achieve wider distribution of their works, to work in residence at an educational or cultural institution, or to achieve standards of professional excellence:"

Section 5(c) (5) would be amended to allow the National Endowment for the Arts much needed greater flexibility and control with respect to the Agency's highly specialized printing requirements.

It should be especially noted, in this connection, that both the National Science Foundation and National Endowment for the Humanities have such authority and that neither of those agencies has responsibilities comparable to that of the Endowment with respect to Federal publications and graphics. On May 1972, the President designated the Endowment as the lead agency in the government-wide effort to achieve and reflect standards of excellence in all federal graphic and design endeavors. As a result, the Endowment is now responsible for coordinating the efforts of all executive agencies to improve their graphics and publications, and the authority requested would help to insure that the Endowment will be able to carry out these new responsibilities, and to realize the President's goals.

While most of the Endowment's printing needs are fulfilled satisfactorily by the Government Printing Office (and will continue to be), that Office is subject to the Government Printing and Binding Regulations issued by the Joint Committee on Printing. Those regulations stress economy as a basis for decisions relating to federal printing needs. While the Endowment recognizes that economy is one essential criterion, it foresees, in its newly designated role, specialized printing needs involving multicolor processes in which quality and good design are also to be considered as essential criteria, and which require esthetic judgments based on an expertise which is unique in Government to the Endowment's specially qualified staff. Accordingly, it is felt that, if the President's Federal design and graphics goals are to be realized, such authority for the Endowment is absolutely essential. The language of the clause follows:

"(5) other relevant projects, including surveys, research, planning, *and publications relating to the purposes of this section without regard to the provisions of 44 U.S.C. 501.*"

Clause (1) of subsection 5(g) should be amended to delete the phrase referring to the Federal Council on the Arts & Humanities, for the reasons given above in reference to section 5(c). The language of the clause follows:

"(g) (1) The Chairman, with the advice of the [Federal Council on the Arts and the Humanities and the] National Council on the Arts, is authorized to establish and carry out a program of grants-in-aid to assist the several States in supporting existing projects and productions which meet the standards enumerated in section 5(c) of this Act, and in developing projects and productions in the arts in such a manner as will furnish adequate programs, facilities, and services in the arts to all the people and communities in each of the several States."

Section 5(g) (2) should be revised to relieve the States of the requirement of submitting their applications for assistance with completed state plans prior to the first day of the Federal government's fiscal year for which such assistance is requested. The States' art programming schedule is not completely coincident with the Federal government's fiscal year. Also, due to exigencies and uncertainties of arts program planning on the local level, it is frequently impossible for the State arts councils to submit reliable and fully programmed plans by the date specified. Some flexibility in this regard would be extremely helpful to the States in the development of more realistic State plans which the National Endowment for the Arts could better rely on as being capable of fulfillment, with fewer changes likely to be made.

Section 5(g) (2) (A) presently provides that the States, in order to receive Federal assistance, must submit an application designating an official State agency for the administration of the State arts plan. The bill would add a requirement that the State agency include a state arts "advisory group", the role of which with respect to the State agencies would be analogous to the advisory role played by the National Council on the Arts with respect to the National Endowment for the Arts. The members of such groups would be selected in a manner that would insure broad state artistic representation in the implementation of the State's programming. The purpose of this revision would be to insure high quality in the programming of all state arts agencies. Most States already have such Councils, and it is the Endowment's view that the cultural needs of the nation would be better served if the arts programs of all states would employ and could benefit from such procedures.

Also, section 5(g) (2) (A) should be amended to delete the "except" clause, since the District of Columbia now has a duly established arts commission.

The language of the clause follows:

"(2) In order to receive such assistance in any fiscal year, a State shall submit an application for such grants [prior to the first day of such fiscal year] *by such time as shall be specified by the Chairman* and accompany such applications with a plan which the Chairman finds—

"(A) designates or provides for the establishment of a State agency (hereinafter in this section referred to as the 'State agency') as the sole agency for the administration of the State plan, *such agency to include an advisory group which (1) shall be composed of private citizens who are widely recognized for their broad knowledge of, or expertise in, or for their profound interest in, the arts; and (2) shall advise the State agency on the development of programs and projects, and on policy matters arising in the administration of the State plan, including matters relating to procedures for review of applications for financial assistance under the State's plan.* [except that in the case of the District of Columbia the Recreation Board, or any successor designated for the purpose of this Act by the Commissioner of

the District of Columbia, shall be the 'State agency']

Section 5(g)(2)(B) should be amended to delete the "except" sentence. There is no longer any need for providing that $25,000 of federal money granted to the states under 5(g) to be expended to conduct studies for the development of a state agency, since all States have now duly established State arts agencies. The language of the subclause follows:

"(B) provides that funds paid to the State under this subsection will be expended solely on projects and productions approved by the State agency which carry out one or more of the objectives of subsection (c); [except that in the case of the first fiscal year in which the State is allotted funds after the enactment of this Act, a plan may provide that not to exceed $25,000 of such funds will be expended to conduct a study to plan the development of a State agency in the State and to establish such an agency;]"

It is proposed that Section 5(g)(3) be changed in several respects. First, the amount of each basic state allotment should be changed to reflect increased appropriations for the Federal-State partnership program. It is anticipated that the program will level off with a basic allotment to each state of $150,000. Second, it is felt that Guam and American Samoa, which have arts programs equal in quality to many of the States, should not be discriminated against by the statute with respect to funding in excess of the basic allotments of $150,000. Third, it is felt that the allotment of sums remaining after the basic allotments, consistent with the legislative history of the Act, should be made not only to State agencies acting independently, but also to regional interstate groups. See Senate Report No. 300, 89th Congress, First Session, p. 18, which states as follows: "... the committee believes that cooperation among the States in their activities to benefit the arts can significantly serve the purposes of the act." These supplementary grants would be made to the States or regional groups, upon application, and would be based on such factors as quality of proposed programs, and special regional or State needs. It is felt that the regional approach would better serve the cultural needs of the people in many areas by allowing the full utilization of the resources of several States to be brought to bear where special needs exist. The language of the clause follows:

"(3) From the sums appropriated to carry out the purposes of this subsection for any fiscal year, not less than [$65,000 shall be allotted to each State. That part of such sums as may remain after such allotment shall be allotted among the States in equal amounts, except that for the purposes of this sentence the term 'State' shall not include Guam and American Samoa.] *$150,000 shall be allotted to each officially designated State agency. That part of such sums as may remain after such allotment shall be available to the States or Regional groups.* If the sums appropriated for any fiscal year to carry out the purpose of this subsection are insufficient to satisfy allotments under the first sentence of this paragraph, such sums shall be allotted among the States in equal amounts."

The deletions recommended in Section 5(g)(4) should be made for reasons of consistency. The requirement that the state plan be in effect on the first day of the federal fiscal year should be deleted consistent with the proposed change recommended above for Section 5(g)(2). The clause allowing Federal funds to be used to pay 100 per centum of the costs of establishing a state agency under paragraph (2)(b) should be deleted consistent with the change proposed above with respect to Section 5(g)(2)(B). Also, new language is proposed for Section 5(g)(4), which would allow the States the same kind of flexibility with respect to the matching of 5(g) funds as the Endowment presently has with respect to the matching of 5(c) funds. Thus, in appropriate cases such as where a locality has difficulty raising funds due to adverse economic conditions or other factors, the States could utilize up to 20% of 5(g) monies on a non-matching basis to finance worthy projects, rather than to allow such projects to be cancelled and thus lost to the people who may need them most. The language of the subsection follows:

"(4) The amount of each allotment to a State for any fiscal year under this subsection shall be available to each State [,] which has a plan approved by the Chairman [in effect on the first day of such fiscal year,] to pay not more than 50 per centum of the total cost of any project or production described in paragraph (1), [and to pay up to 100 per centum of the cost of conducting a study and establishing a State agency under paragraph (2)(B) of this subsection.] *except that not more than 20 per centum of the funds allotted to each State by the National Endowment for the Arts for purposes of subsection (g) for any fiscal year may, in the discretion of the State agency, be available for programs in that fiscal year without regard to such limitation for projects or productions which otherwise would be unavailable to residents of the State.*"

A new Section 5(g)(5) is proposed, which is similar to provisions commonly found in the enabling legislation of other grant-making federal agencies, and which is designed to discourage the states from cutting back their contribution to the federal state partnership program as the federal contribution grows.

The language of the proposed new clause follows:

"(5) *Federal funds made available under this section are intended to provide improved state arts programs, and should not supplant state, local, or private funds.*"

The changes proposed for Section 5(j) are technical, and are required to bring the Act up-to-date with respect to the United States Code citations contained therein. The language of the subsection follows:

"(j) It shall be a condition of the receipt of any grant under this section that the group or individual of exceptional talent or the State or State agency receiving such grant furnish adequate assurances to the Secretary of Labor that all laborers and mechanics employed by contractors or subcontractors on construction projects assisted under this section shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended [(40 U.S.C. 276–276a–5)]. The Secretary of Labor shall have with respect to the labor standards specified in this subsection the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 [(15 F.R. 3176; 5 U.S.C. 133z–15)] (*5 U.S.C. 913*) and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c)."

The changes proposed in Section 6(f) relate to the functions of the National Council on the Arts. It is proposed that Section 6(f) be revised to: (1) allow the Council, when it is impractical to review individual applications, to review "projects" rather than individual applications in every case; and (2) to raise the dollar limit on the grant amount that can be acted upon by the Chairman without prior Council recommendation on a specific application. There are two basic justifications for the first of these proposed changes: (1) increasingly, the National Council on the Arts feels that its deliberations should focus more on general policy issues, both programmatic and administrative; and (2) certain program areas (e.g. Touring) experience administrative difficulties when all relevant application information must be in the hands of Endowment staff prior to both the beginning of the touring season and the next Council meeting preceding that season. This amendment would allow the Council, in such circumstances, to review, for example, touring programs as a general project proposed by the staff based on past experience and anticipated current fiscal year needs, and to approve the general concept on a broad policy basis without having to examine in detail the financial and other arrangements to be made. Also, with the substantial increase in grant applications in recent years, the Council feels that it can depend in cases of special necessity on the Advisory Panels to review in detail each application for federal assistance that falls within approved council projects (e.g., Orchestra assistance etc.). In this way, the Council would have more time to fulfill its responsibilities with respect to recognizing the changing cultural needs and priorities of the nation.

Regarding the second proposed change in Section 6(f), it is the view of the National Council on the Arts that, in view of generally increasing costs and the fact that the amount of the average Endowment grant has grown considerably since the creation of the Foundation, the Chairman should have greater flexibility with respect to applications that may be approved prior to a recommendation by the Council and that the amount of such applications be raised to $25,000. The National Council on the Arts on August 17, 1972, strongly recommended that the Foundation request such a statutory revision. It should be noted that the National Science Foundation has, under its present statutory authority, delegated to the Director authority to make individual grants in amounts up to $500,000 for a given fiscal year. The language of the subsection follows:

"(f) The Council shall (1) advise the Chairman with respect to policies, programs, and procedures for carrying out his functions, duties, or responsibilities under this Act, and (2) review applications *or, when it is impractical to review individual applications, projects proposed* for financial assistance under this Act and make recommendations thereon to the Chairman. The Chairman shall not approve or disapprove any such application *or project* [until he has received] *for funding until receiving* the recommendation of the Council on such application *or project,* unless the Council fails to make a recommendation thereon within a reasonable time. In the case of an application involving [$10,000] *$25,000* or less, the Chairman may approve or disapprove such request if such action is taken pursuant to the terms of a delegation of authority from the Council to the Chairman, and provided that each such action by the Chairman shall be reviewed by the Council."

SEC. 4. The bill would delete the words "the Federal Council on the Arts and the Humanities and" from subsection (c) of Section 7 of the Act. Although the Act presently provides that the Federal Council advise the Chairman on grants on the establishment and administration of programs, such advice has been given in only the most general way, and it is felt that more informed advice is in fact available from the National Council on the Humanities.

Furthermore, clause (2) of subsection (c) would be amended to provide that any loans made by the Endowment shall be made in accordance with terms and conditions approved by the Secretary of the Treasury. This amendment is intended to assure that loan programs of the Endowment are in accord with the fiscal policies of the United States.

The language of the subsection follows:

"(c) The Chairman, with the advice of [the Federal Council on the Arts and the Humanities and] the National Council on the Humanities (hereinafter established), is authorized to—

"(1) develop and encourage the pursuit of a national policy for the promotion of progress and scholarship in the humanities;

"(2) initiate and support research and programs to strengthen the research and teaching potential of the United States in the humanities by making arrangements (including contracts, grants, loans, and other forms of assistance) with individuals or groups to support such activities; *any loans made by the Endowment shall be made in accordance with terms and conditions approved by the Secretary of the Treasury;*

"(3) award fellowships and grants to institutions or individuals for training and workshops in the humanities. Fellowships awarded to individuals under this authority may be for the purpose of study or research at appropriate nonprofit institutions selected by the recipient of such aid, for stated periods of time;

"(4) foster the interchange of information in the humanities;

"(5) foster, through grants or other arrangements with groups, education in, and public understanding and appreciation of the humanities; and

(6) support the publication of scholarly works in the humanities without regard to the provisions of [section 87 of the Act of January 12, 1895 (28 Stat. 622), and section 11 of the Act of March 1, 1919 (40 Stat. 1270);] 44 U.S.C. [111] *501.*"

SEC. 5. The bill would amend the Act to permit the Chairman to make grants involving $25,000 or less without first receiving a recommendation from the National Council on the Humanities. The National Foundation on the Arts and the Humanities Act of 1965 required a Council recommendation on every application, but the 1968 amendments permitted the Chairman to make grants to $10,000, under a delegation of authority from the Council, his actions being subject to subsequent review by the Council. This has been interpreted to mean that the Council, if dissatisfied might wish to withdraw its delegation to the Chairman, not that they would have authority to nullify a grant after it had actually been made. In fact, the Council has never revoked the delegation made under the 1968 amendments, and it is now considered desirable to permit the Council to delegate authority to make grants for $25,000 or less without a prior recommendation. Because of the increasing number of applications such a delegation would improve the administration of the Endowment by permitting the Council more time to carry out their important function of advising on national policies and programs.

SEC. 6. Under authority of Section 9(b) of the Act the President added a representative of the Department of the Interior to the Federal Council on the Arts and the Humanities on December 20, 1971, and on November 2, 1972, the Commissioner of the Public Buildings Service of the General Services Administration. Section 6 of the Bill would include these members in the statute so that it will contain a complete list of the current membership.

The language of the subsection follows:

"(b) The Council shall be composed of the Chairman of the National Endowment for the Arts, the Chairman of the National Endowment for the Humanities, the United States Commissioner of Education, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation, the Librarian of Congress, the Director of the National Gallery of Art, the Chairman of the Commission of Fine Arts, the Archivist of the United States, *the Commissioner, Public Buildings Service, General Services Administration,* [and] a member designated by the Secretary of State [.], *and a member designated by the Secretary of the Interior.* The President shall designate the Chairman of the Council from among the members. The President is authorized to change the membership of the Council from time to time as he deems necessary to meet changes in Federal programs or executive branch organization."

SEC. 7. The Bill would amend clause (2) of subsection (a) to provided that a Chairman may accept a gift without a Council recommendation in either of two circumstances:

(i) When the gift is to be used to fund an application which he can approve without prior Council action under Section 8(f) of the Act, or

(ii) When the Council fails to make a recommendation within a reasonable time. (In this case, the Chairman could accept any gift of $25,000 or less.)

The purpose of this amendment is to give a Chairman substantially the same authority with respect to a grant that is financed partly with private and partly with Federal funds that he has with a grant financed entirely with Federal funds but at the same time limit his authority to accept very large gifts because the Council has failed to act within a reasonable time.

The language of the clause follows:

"(2) in the discretion of the Chairman of an Endowment after receiving the recommendation of the National Council of that Endowment to receive money and other property donated, bequeathed, or devised to that Endowment with or without a condition or restriction including a condition that the Chairman use other funds of that Endowment for the purposes of the gift; *except that a Chairman may receive a gift without a recommendation from the Council to provide support for any application or project which can be approved without Council recommendation under the provisions of Sections 6(f) and 8(f) of this Act and may receive a gift of $25,000 or less without Council recommendation in the event the Council fails to provide such recommendation within a reasonable period of time;* and to use, sell, or otherwise dispose of such property for the purpose of carrying out Sections 5(c) and 7(c)."

SEC. 8. This amendment would omit from the current act authorizations of past appropriations which are now of historic interest only, and authorize such appropriations as Congress may deem necessary for the next three fiscal years.

The language of subsections (a) and (b) of Section 11 follow:

"(a) [For the purpose of carrying out section 5(c) there is hereby authorized to be appropriated to the National Endowment for the Arts $6,000,000 for the fiscal year ending June 30, 1969, $6,500,000 for the fiscal year ending June 30, 1970, $12,875,000 for the fiscal year ending June 30, 1971, $21,000,000 for the fiscal year ending June 30, 1972, and $28,625,000 for the fiscal year ending June 30, 1973, for the purpose of carrying out section 7(c) of this Act there is hereby authorized to be appropriated to the National Endowment for the Humanities $8,000,000 for the fiscal year ending June 30, 1969, $9,000,000 for the fiscal year ending June 30, 1970, $17,000,000 for the fiscal year ending June 30, 1971, $26,500,000 for the fiscal year ending June 30, 1972, and $35,500,000 for the fiscal year ending June 30, 1973. In addition, there is hereby authorized to be appropriated to the National Endowment for the Arts for the purposes of section 5(g) the sum of $2,000,000 for the fiscal year ending June 30, 1969, $2,500,000 for the fiscal year ending June 30, 1970, $4,125,000 for the fiscal year ending June 3, 1971, $5,500,000 for the fiscal year ending June 30, 1972, and $6,875,000 for the fiscal year ending June 30, 1973.] *There is hereby authorized to be appropriated to the National Endowment for the Arts such sums as the Congress may deem necessary to carry out the purposes of sections 5(c) and 5(g) of this act for each of the fiscal years ending June 30, 1974, June 30, 1975, and June 30, 1976. In addition, there is hereby authorized to be appropriated to the National Endowment for the Humanities such sums as the Congress may deem necessary to carry out the purposes of section 7(c), for each of the fiscal years ending June 30, 1974, June 30, 1975, and June 30, 1976.* Sums appropriated under the authority of this subsection shall remain available until expended. For each subsequent fiscal year such sums may be appropriated as the Congress may hereafter authorize by law to carry out the provisions of this subsection.

(b) In addition to the sums authorized by subsection (a), there is authorized to be appropriated to each Endowment an amount equal to the total of amounts received by that Endowment under section 10(a)(2) of this Act, [, except that the amounts so appropriated for the fiscal year ending June 30, 1969, and the amounts so appropriated for the fiscal year ending June 30, 1970, shall not aggregate more than $13,500,000, and the amounts so appropriated for the fiscal year ending June 30, 1971, shall not exceed $6,000,000, the amounts so appropriated for the fiscal year ending June 30, 1972, shall not exceed $7,000,000, and the amounts so appropriated for the fiscal year ending June 30, 1973, shall not exceed $9,000,000.]

SEC. 9. This amendment would delete two provisions of the original Act which are no longer operative. Section 13 authorizes the Commissioner of Education to arrange for teacher training institutes, but no appropriations have been authorized for this purpose since June 30, 1968. Section 14 requested the President to make certain appointments by December 29, 1965; the appointments have long since been made, and the section is of historical interest only. The language of the sections to be deleted follows:

"[SEC. 13. (a) There is authorized to be appropriated to the Commissioner of Education for the fiscal year ending June 30, 1966, and each of the two succeeding years the sum of $500,000 but for the fiscal year ending on June 30, 1969, and each subsequent fiscal year, only such sums may be appropriated as the Congress may hereafter authorize by law. Such sums shall be used to enable the Commission of Education to arrange, through grants or contracts with institutions of higher education for the operation by them within the United States of short term or regular session institutes for advanced study, including study in the use of new materials, to improve the qualification of individuals who are engaged in or preparing to engage in the teaching or supervising or training of teachers, of such subjects are will, in the judgment of the Commissioner, after consultation with the Chairman of the National Endowment for the Humanities, strengthen the teaching of the humanities and the arts in elementary and secondary schools.

(b) Each individual who attends an institute operated under the provisions of this part shall be eligible (after application therefor) to receive a stipend at the rate of $75 per week for the period of his attendance at such institute, and each such individual with one or more dependents shall receive an additional stipend at the rate of $15 per week for each such dependent.]

[SEC. 14. The President is requested to make such appointments (including any nomination) as are provided for in this Act within ninety days after the enactment of this Act.]"

The Bill would also update statutory references in Sections 7(c)(6), 10(a)(4) and 10(a)(5) of the Act.

Clause (6) of subsection 7(c) is reproduced above under the comments on Section 4 of the proposed legislation.

The language of clauses (4) and (5) of subsection 10(a) follows:

"(4) to utilize from time to time, as appropriate, experts and consultants, including

panels of experts, who may be employed as authorized by [section 15 of the Administrative Expenses Act of 1946, as amended] (5 U.S.C. [55(a)]; *3109*)

(5) to accept and utilize the services of voluntary and uncompensated personnel and reimburse them for travel expenses, including per diem, as authorized by law (5 U.S.C. [73b–2]*5703*) for persons in the Government service employed without compensation;"

EXHIBIT 3

S. 916

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

SECTION 1. Section 2, clause (7) of the National Foundation on the Arts and the Humanities Act of 1965, as amended, is amended by inserting a period after "a National Foundation on the Arts and the Humanities" and striking out all that follows.

SEC. 2. Section 5, subsections (c), (g), and (j) of the National Foundation on the Arts and the Humanities Act of 1965, as amended, is amended:

(a) by amending the text of subsection (c) to read as follows—

"(c) The Chairman, with the advice of the National Council on the Arts, is authorized to establish and carry out a program of contracts with, or grants-in-aid to, groups or, in appropriate cases, individuals of exceptional talent engaged in or concerned with the arts, for the purpose of enabling them to provide or support in the United States.

"(1) projects and productions which have substantial artistic and cultural significance, giving emphasis to American creativity and the maintenance and encouragement of professional excellence;

"(2) projects and productions, meeting professional standards or standards of authenticity, irrespective of origin, which are of significant merit and which, without such assistance, would otherwise be unavailable to our citizens in many areas of the country;

"(3) projects and productions that will encourage and assist artists and enable them to achieve wider distribution of their works, to work in residence at an educational or cultural institution, or to achieve standards of professional excellence;

"(4) workshops that will encourage and develop the appreciation and enjoyment of the arts by our citizens;

"(5) other relevant projects, including surveys, research, planning, and publications relating to the purposes of this section without regard to the provisions of 44 U.S.C. 501."

(b) by amending the text of subsection (g) to read as follows—

"(g) (1) The Chairman, with the advice of the National Council on the Arts, is authorized to establish and carry out a program of grants-in-aid to assist the several States in supporting existing projects and productions which meet the standards enumerated in section 5(c) of this Act, and in developing projects and productions in the arts in such a manner as will furnish adequate programs, facilities, and services in the arts to all the people and communities in each of the several States.

"(2) In order to receive such assistance in any fiscal year, a State shall submit an application for such grants by such time as shall be specified by the Chairman and accompany such application with a plan which the Chairman finds—

"(A) designates or provides for the establishment of a State agency (hereinafter in this section referred to as the 'State agency') as the sole agency for the administration of the State plan, such agency to include an advisory group which (1) shall be composed of private citizens who are widely recognized for their broad knowledge of, or expertise in, or for their profound interest in, the arts; and (2) shall advise the State agency on the development of programs and projects, and on policy matters arising in the administration of the State plan, including matters relating to procedures for review of applications for financial assistance under the State plan.

"(B) provides that funds paid to the State under this subsection will be expended solely on projects and productions approved by the State agency which carry out one or more of the objectives of subsection (c);

"(C) provides that the State agency will make such reports, in such form and containing such information, as the Chairman may from time to time require.

"(3) From the sums appropriated to carry out the purposes of this subsection for any fiscal year, not less than $150,000 shall be allotted to each officially designated State agency. That part of such sums as may remain after such allotment shall be available to the States or regional groups. If the sums appropriated for any fiscal year to carry out the purposes of this subsection are insufficient to satisfy allotments under the first sentence of this paragraph, such sums shall be allotted among the States in equal amounts.

"(4) The amount of each allotment to a State for any fiscal year under this subsection shall be available to each State which has a plan approved by the Chairman to pay not more than 50 per centum of the total cost of any project or production described in paragraph (1), except that not more than 20 per centum of the funds allotted to each State by the National Endowment for the Arts for purposes of subsection (g) for any fiscal year may, in the discretion of the State agency, be available for programs in that fiscal year without regard to such limitation for projects or productions which otherwise would be unavailable to residents of the State.

"(5) Federal funds made available under this section are intended to provide improved State arts programs, and should not supplant State, local, or private funds.

"(6) All amounts allotted under paragraph (3) for a fiscal year which are not granted to a State during such year shall be available at the end of such year to the National Endowment for the Arts for the purpose of carrying out section 5(c)."

(c) by amending the text of subsection (j) to read as follows—

"(j) It shall be a condition of the receipt of any grant under this section that the group or individual of exceptional talent or the State or State agency receiving such grant furnish adequate assurances to the Secretary of Labor that all laborers and mechanics employed by contractors or subcontractors on construction projects assisted under this section shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended. The Secretary of Labor shall have with respect to the labor standards specified in this subsection the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (5 U.S.C. 913) and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c)."

SEC. 3. Section 6, subsection (f) of the National Foundation on the Arts and the Humanities Act of 1965, as amended, is amended to read as follows—

"(f) The Council shall (1) advise the Chairman with respect to policies, programs, and procedures for carrying out his functions, duties, or responsibilities under this Act, and (2) review applications or, when it is impractical to review individual applications, projects proposed for financial assistance under this Act and make recommendations thereon to the Chairman. The Chairman shall not approve or disapprove any such application or project for funding until receiving the recommendation of the Council on such application or project, unless the Council fails to make a recommendation thereon within a reasonable time. In the case of an application involving $25,000 or less, the Chairman may approve or disapprove such request if such action is taken pursuant to the terms of a delegation of authority from the Council to the Chairman, and provided that each such action by the Chairman shall be reviewed by the Council."

SEC. 4. Section 7, subsection (c) of the National Foundation on the Arts and the Humanities Act of 1965, as amended, is amended as follows—

(a) The initial paragraph is amended by deleting the words "the Federal Council on the Arts and the Humanities and";

(b) Clause (2) is amended by adding at the end thereof "any loans made by the Endowment shall be made in accordance with terms and conditions approved by the Secretary of the Treasury;"

(c) Clause (6) is amended to read as follows—

"(6) support the publication of scholarly works in the humanities without regard to the provisions of 44 U.S.C. 501."

SEC. 5. Section 8, subsection (f) of the National Foundation on the Arts and the Humanities Act of 1965, as amended, is amended by striking out "$10,000" and inserting in lieu thereof "$25,000".

SEC. 6. Section 9, subsection (b) of the National Foundation on the Arts and the Humanities Act of 1965, as amended, is amended to read as follows:

"(b) The Council shall be composed of the Chairman of the National Endowment for the Arts, the Chairman of the National Endowment for the Humanities, the United States Commissioner of Education, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation, the Librarian of Congress, the Director of the National Gallery of Art, the Chairman of the Commission of Fine Arts, the Archivist of the United States, the Commissioner, Public Buildings Service, General Services Administration, a member designated by the Secretary of State, and a member designated by the Secretary of the Interior. The President shall designate the Chairman of the Council from among the members. The President is authorized to change the membership of the Council from time to time as he deems necessary to meet changes in Federal programs or executive branch organization."

SEC. 7. Section 10, subsection (a) of the National Foundation on the Arts and the Humanities Act of 1965, as amended, is amended as follows:

(a) Clause (2) is amended by inserting between the word "gift" and the following semicolon the words "except that a Chairman may receive a gift without a recommendation from the Council to provide support for any application or project which can be approved without Council recommendation under the provisions of sections 6(f) and 8(f) of this Act, and may receive a gift of $25,000 or less without Council recommendation in the event the Council fails to provide such recommendation within a reasonable period of time".

(b) Clause (4) is amended by deleting the words "section 15 of the Administrative Expenses Act of 1946, as amended" and by substituting 3109" for "55a".

(c) Clause (5) is amended by substituting "5703" for "73b–2".

SEC. 8. Section 11, subsections (a) and (b) of the National Foundation on the Arts and the Humanities Act of 1965, as amended, are amended to read as follows:

SEC. 11. (a) There is hereby authorized to be appropriated to the National Endowment for the Arts such sums as the Congress may deem necessary to carry out the purposes of sections 5(c) and 5(g) of this Act for each of the fiscal years ending

June 30, 1974, June 30, 1975, and June 30, 1976. In addition, there is hereby authorized to be appropriated to the National Endowment for the Humanities such sums as the Congress may deem necessary to carry out the purposes of section 7(c), for each of the fiscal years ending June 30, 1974, June 30, 1975, and June 30, 1976. Sums appropriated under the authority of this subsection shall remain available until expended. For each subsequent fiscal year such sums may be appropriated as the Congress may hereafter authorize by law to carry out the provisions of this subsection.

"(b) In addition to the sums authorized by subsection (a), there is authorized to be appropriated to each Endowment an amount equal to the total of amounts received by that Endowment under section 10(a)(2) of this Act."

SEC. 9. Sections 13 and 14 of the National Foundation on the Arts and the Humanities Act of 1965, as amended, are hereby repealed.

By Mr. ERVIN (for himself, Mr. PEARSON, and Mr. JACKSON):

S. 917. A bill to protect the people's right to know by regulating the testimony of newsmen. Referred to the Committee on the Judiciary.

Mr. ERVIN. Mr. President, on behalf of Mr. PEARSON, Mr. JACKSON, and myself, I am introducing today for appropriate reference a bill to protect the people's right to know by regulating the testimony of newsmen.

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

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

S. 917

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

SECTION 1. Within the purview of this statute, a newsman is any person who is regularly engaged in the occupation of collecting information or making pictures for dissemination to the public by means of a newspaper, a magazine, or a radio or television broadcast.

SEC. 2. No newsman shall be compelled to testify as a witness in any criminal action, criminal proceeding, or criminal investigation before a court of the United States or a grand jury acting under its authority concerning any information collected by him or any picture or negative made by him in the exercise of his occupation, unless it affirmatively appears that he has thereby acquired actual personal knowledge which tends to prove or disprove the commission of the crime charged or being investigated. As used in the preceding sentence, the term "actual personal knowledge" includes, but is not limited to, a voluntary admission or confession of guilt made to the newsman by any person in respect to the crime alleged or being investigated.

SEC. 3. Whenever he is subpoenaed to testify as a witness in any criminal action, criminal proceeding, or criminal investigation before a court of the United States or a grand jury acting under its authority, a newsman may appear in obedience to the subpoena and invoke the provisions of section 2 of this statute by interposing an oral objection to testifying at the time he is actually called upon to testify. Instead of doing so, however, the newsman may forthwith move before the judge of the court to quash the subpoena, and the judge shall thereupon hear the motion *in camera*, and enter an order quashing the subpoena unless the party seeking the testimony of the newsman affirmatively shows that the newsman is compellable to testify under the provision of section 2 of this statute.

SEC. 4. Within the purview of this statute, the term "documentary evidence" means any memorandum, note, picture, negative, recording, tape, or other record made by a newsman in the exercise of his occupation.

SEC. 5. Neither a newsman nor any other person having the custody or control of the same shall be compelled by a subpoena *duces tecum* or order to produce in any criminal action, criminal proceeding, or criminal investigation before any court of the United States or any grand jury acting under its authority any documentary evidence, unless such documentary evidence tends to corroborate or contradict testimony actually given by the newsman pursuant to the provision of section 2 of this statute.

SEC. 6. Whenever he is ordered by subpoena *duces tecum* or order to produce any documentary evidence in any criminal action; criminal proceeding, or criminal investigation before any court of the United States or any grand jury acting under its authority, a newsman or any other person having custody or control of such documentary evidence may appear at the time designated in the subpoena or order, and invoke the provisions of section 5 of this statute by orally objecting to the production of such documentary evidence. Instead of so doing, however, the newsman or the other person having the custody or control of the documentary evidence may move to quash the subpoena *duces tecum* or nullify the order before a judge of the court; and the judge shall thereupon proceed to hear such motion *in camera* and enter an order quashing the subpoena duces tecum or nullifying the order unless the party seeking the production of the documentary evidence affirmatively shows that the documentary evidence is relevant to either of the purposes specified in section 5 of this statute.

SEC. 7. This statute shall become effective upon ratification.

By Mr. GURNEY (for himself, Mr. BIBLE, Mr. PASTORE, Mr. THURMOND, and Mr. EASTLAND):

S. 918. A bill to require the imposition of a life sentence in connection with the unlawful distribution of certain narcotic drugs. Referred to the Committee on the Judiciary.

Mr. GURNEY. Mr. President, I am sending to the desk for appropriate reference a bill which will provide an effective method for dealing with one of this Nation's most serious problems—drug abuse. Joining me in sponsoring this proposal are my distinguished colleagues, Senator BIBLE, PASTORE, THURMOND, and EASTLAND.

In his message to the New York State Legislature on January 3, 1973, Gov. Nelson Rockefeller addressed this problem of drug abuse:

Frankly, all the laws we now have on the books won't work to deter the pusher of drugs.

The police are frustrated by suspended sentences and plea bargaining in the courts for those they have arrested and therefore are discouraged from effectively enforcing the law.

The prosecutors are overwhelmed by the backlog of cases and settle for pleas of guilty on reduced charges—rather than press for a conviction on more serious charges that would have a real deterrent effect—because the latter would result in long drawn-out jury trials.

And the judges, weighed down by calendars running months and years behind, hand out suspended sentences or go along with pleas of guilty to minor offenses that result in sentences of only six months to a year.

We have this choice:

Either we can go on as we have been, with little real hope of changing the present trend;

Or we must take those stern measures that, I have become convinced, common sense demands.

We must create an effective deterrent to the pushing of the broad spectrum of hard drugs.

In my opinion, society has no alternatives.

In connection with this message, Governor Rockefeller offered a strong anti-drug abuse proposal, and it is this proposal upon which I have based by own bill to deal with this problem at the national level.

My bill would amend the controlled substances act to provide increased criminal penalties for the distribution of "hard drugs" and increased penalties for the commission of crimes of violence while under the influence of such drugs.

Specifically, the bill sets the penalty for distribution of hard drugs at life imprisonment for persons aged 16 or over. For those 19 or over, this sentence cannot be suspended or probated. Those 16 through 18 would be eligible for parole after serving 15 years of their life sentence. No plea of guilty to a lesser crime can be accepted in lieu of prosecution for the indicted crime.

Also, the bill makes it unlawful to commit a major, violent Federal crime after knowingly and unlawfully taking "hard drugs." For the purposes of this act, "hard drugs" are those narcotics listed under schedules I and II of the controlled substances act, which excludes such substances as marihuana and amphetamines. The violent crimes referred to are arson, murder, manslaughter, rape, kidnapping, serious robberies and burglaries, and air piracy.

The bill also provides specific procedures to be followed in ascertaining the involvement of drugs in commission of a violent crime. A person arrested within 48 hours of commission of a listed crime must undergo appropriate testing at a designated medical facility if there is reason to believe that the person had a narcotic drug in his body when the crime was committed.

There is no doubt on the part of anyone here in this Chamber, I am sure, about the serious nature of our drug abuse problems. In spite of the fact that most Americans are generally aware of the drug problem, I think a good many people would be shocked to know the extent of drug abuse, and the tragic toll it takes each year.

For example, the U.S. delegation to the Commission on Narcotic Drugs, meeting in Geneva, January 22 to February 9, 1973, stated that in 1973 over 500,000 Americans are estimated to be addicted to heroin—more than double any figure of this nature ever reported before. This same source estimates the cost of this addiction at thousands of millions of dollars. Put into a local perspective, it is estimated that in one Florida county—Dade County—hard core drug addiction may run as high as one out of every 137 residents.

Of particular concern is the ease and nonchalance with which our young people are obtaining and using drugs. The House Select Committee on Crime conducted extensive hearings last year, in six major cities, on the problem of

drugs in our schools. One of those cities was Miami, Fla. According to my colleague from Florida, Congressman CLAUDE PEPPER, who chairs this select committee on crime:

The drug abuse situation has already assumed deadly proportions in the Miami area. Over the last 5 years, more than 450 people have died of drug overdose or drug-related causes. In that period more than 70 teenagers have died as a result of drug abuse. In the last 2 years school-age children's drug deaths have more than doubled—increasing more than 200 percent.

A recent New York Times article quotes testimony before the Joint Legislative Committee on Crime in New York to the effect that some 375 board of education employees and more than 100 teachers have been arrested in the last 6½ years for possession or sale of drugs.

A survey for the National Commission on Marijuana and Drug Abuse places the number of young people who have tried heroin at 1½ million between the ages of 12 and 18, and 700,000 over 18. Is it any wonder that our schools are becoming merchandise marts for drug sales?

Equally sobering to the number of drug abusers are the tremendous costs this places on society. The addict himself spends an average of $50 per day to support a habit. This works out to an annual cost of $18,250 per addict. In view of the fact that the average annual earnings in this country in 1971 were $8,061, it is obvious that a good deal of "outside funding" is needed to pay for drugs.

Based on addiction rates and drug costs, the total annual expenditure for drugs in this country mounts to a whopping $10 billion. That is a rate of $25 million per day. And this is where the "social" cost comes in.

Much if not most heroin financing comes from illegal activity of one sort or another, ranging from petty larceny and shoplifting to armed robbery and murder. Some estimates suggest that in New York City alone, between $2 billion and $5 billion worth of property is stolen annually to support the heroin traffic. Nationally, the estimate runs as high as $8 billion.

And then there is also the direct taxpayers' cost. The estimated obligations summary for Federal drug abuse programs is placed at $532.3 million for fiscal year 1972, $783.6 million for fiscal year 1973, and $784.7 million for fiscal year 1974. These Federal funds—provided by the taxpaying public—have increased nearly 11 times over the 1969 expenditure.

These figures represent the financial costs of drug abuse—the money spent on drugs and the cost of drug-related crimes. Unfortunately, there is also a tragic human cost involved—a cost which cannot be defined in any currency. We simply cannot measure the destroyed lives and personal tragedies suffered by the addict, his family, his friends, and his fellow workers. Nor can we ignore the fear and frustration of communities threatened by crime and corruption because of drugs.

The physical effects of drug abuse are demonstrated in a table which I ask unanimous consent to have printed in the RECORD at this point.

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

PART III.—APPENDIX

CHART LISTING DRUGS, MEDICAL USES, SYMPTOMS PRODUCED AND THEIR DEPENDENCE POTENTIALS

[Question marks indicate conflict of opinion]

Name	Slang name	Chemical or trade name	Source	Classification	Medical use	How taken	Usual Dose	Duration of effect	Effects sought	Long-term symptoms	Physical dependence potential	Mental dependence potential	Organic damage potential
Heroin	H., horse, scat, junk, smack, scag, stuff, harry.	Diacetylmorphine.	Semi-synthetic (from morphine).	Narcotic	Pain relief	Injected or sniffed.	Varies	4 hours	Euphoria, prevent withdrawal discomfort.	Addiction, constipation, loss of appetite.	Yes	Yes	No.
Morphine	White stuff, M.	Morphine sulphate.	Natural (from opium).	do	do	Swallowed or injected.	15 milligrams.	6 hours	do	do	Yes	Yes	No.
Codeine	Schoolboy	Methylmorphine.	Natural (from opium), semisynthetic (from morphine).	do	Ease pain and coughing.	Swallowed	30 milligrams.	4 hours	do	do	Yes	Yes	No.
Methadone	Dolly	Dolophine amidone.	Synthetic	do	Pain relief	Swallowed or injected.	10 milligrams.	4–6 hours.	Prevent withdrawal discomfort.	do	Yes	Yes	No.
Cocaine	Corrine, gold dust, coke, bernice, flake, star dust, snow.	Methylester of benzoylecgonine.	Natural (from coca, not cacao).	Stimulant, local anesthesia.	Local anesthesia.	Sniffed, injected or swallowed.	Varies	Varies, short.	Excitation, talkativeness.	Depression, convulsions.	No	Yes	Yes?.
Marihuana	Pot, grass, hashish, tea, gage, reefers.	Cannabis sativa.	Natural	Relaxant, euphoriant, in high doses hallucinogen.	None in United States.	Smoked, swallowed, or sniffed.	1–2 cigarettes.	4 hours	Relaxation, increased euphoria, perceptions, sociability.	?	No	Yes?	No.
Barbiturates	Barbs, blue devils, candy, yellow jackets, phennies, peanuts, blue heavens.	Phenoharbital nembutal, seconal, amytal.	Synthetic	Sedative-hypnotic	Sedation, relieve high blood pressure, epilepsy, hyperthyroidism.	Swallowed or injected.	50–100 milligrams.	4 hours	Anxiety reduction, Euphoria.	Addiction w/ severe withdrawal symptoms, possible convulsions, toxic psychosis.	Yes	Yes	Yes.
Amphetamines	Bennies, dexies, speed, wake-ups, lid propers, hearts, pep pills.	Benzedrine, dexedrine, desoxyn, methamphetamine, methedrine.	do	Sympathomimetic.	Relieve mild depression, control appetite and narcolepsy.	do	2.5–5 milligrams.	4 hours	Alertness, activeness.	Loss of appetite, delusions, hallucinations, toxic psychosis.	No?	Yes	Yes?.
LSD	Acid, sugar, big D, cubes, trips.	d-lysergic acid diethylamide.	Semi-synthetic (from ergot alkaloids).	Hallucinogen.	Experimental study of mental function, alcoholism.	Swallowed	100–500 micrograms.	10 hours	Insightful experiences, exhilaration, distortion of senses.	May intensify existing psychosis, panic reactions.	No	No?	No?.
DMT	AMT, businessman's high.	Dimethyltriptamine.	Synthetic	do	None	Injected	1–3 milligrams.	Less than 1 hour.	do	?	No	No?	No?.
Mescaline	Mesc	3,4,5-trimethoxyphenethylamine.	Natural (from peyote).	do	do	Swallowed	350 micrograms.	12 hours	do	?	No	No?	No?.
Psilocybin		3 (2-dimethylamino) ethylin-, dol-4-oldihydrogen phosphate.	Natural (from psilocybe).	do	do	do	25 milligrams.	6–8 hours.	do	?	No	No?	No.?

Source: Guidelines for drug abuse prevention education. BNDD.

Mr. GURNEY. Mr. President, the gravity of this problem has elicited numerous responses. At local and State levels, many organizations—both public and private—have undertaken extensive drug education and rehabilitation programs. At the Federal level, Congress and the administration have set up a number of programs to deal with drug abuse.

For example, just over a year ago, President Nixon established the Office of Drug Abuse Law Enforcement in the Department of Justice. This office serves as an information processing agent to assist law enforcement agencies in tracking drug pushers. In September of 1971, the Cabinet Committee on International Narcotics Control was established for the purpose of attacking the international trafficking of illegal drugs.

We have created the Special Action Office for Drug Abuse Prevention, and we have expanded drug treatment and rehabilitation programs in the Department of Defense and the Veterans' Administration to assist our veterans in combating drug dependence. Congress enacted the Comprehensive Drug Abuse Prevention and Control Act of 1970, and the national drug education training program.

At the interagency level, we have the Federal Drug Abuse Prevention Coordinating Committee, and a number of White House conferences on drug abuse have been conducted.

As far as information dissemination is concerned, we have set up a national clearinghouse for drug abuse information. The Federal Government has distributed nearly 26 million pieces of drug education information, in addition to setting up a special hotline number for telephone responses. Just recently I requested a general sample of available information on drug abuse from just two of the several agencies dealing with this problem. The result was a stack of bulletins, pamphlets, and booklets nearly 2 feet high.

It is only not sensible, but imperative, that our drug abuse programs be a comprehensive, balanced effort to educate those who have not become hard drug users, to rehabilitate those who have suffered from drug abuse, and to prevent those who deal in illegal drug trafficking from furthering this menace.

The fact of the matter is that in spite of measures I mentioned above—and I think these are commendable attempts to stop drug abuse—we have yet to stem the flow of illicit drugs.

The United States consumes between six and 10 tons of heroin annually—that is roughly 65 to 100 tons of crude opium. A brief look at reports from agencies charged with anti-drug abuse operations will illustrate the dimensions of this task.

For example, a summary of the 1972 record by the Justice Department Narcotics Bureau shows a 49-percent increase in Federal arrests.

The total street value of all illicit drugs removed by the Bureau is $1,720 million. The Bureau seized 29 laboratories with a production capacity of millions of dosage units. They also seized $4,425,000 in cash.

In its foreign operations it opened 12 new offices for a total of 44, assisted in establishing task forces in Germany, Italy, Thailand, and Laos, was involved in action plans in 57 host countries, and conducted training courses in 21 countries.

In its domestic assistance program on a State and local level, the Bureau trained 3,636 police officers and established prevention programs in 132 communities.

The Director's summary of 1971 for the Bureau of Narcotics reports the following statistics:

Special agents of the bureau removed $920 million worth of narcotics and dangerous drugs from the worldwide illicit market.

A record equivalent 3,784 pounds of heroin was seized with a street value in the United States of $740 million.

Seizures of dangerous drugs soared 2,164 percent. Hashish seizures jumped 344 percent. Marijuana seizures registered a 200 percent increase. Cocaine seizures were up 82 percent.

An additional 1,109 pounds of heroin seized at the ports and harbors was reported to the Narcotics Bureau by U.S. Customs. The illicit street value was placed at $2.7 million.

Domestic arrests rose by 98 percent in 1971; cooperative arrests with state and local authorities rose 71 percent, and foreign cooperative arrests rose 110 percent.

The Treasury Department's Bureau of Customs registered a record number of drug seizures and arrests in 1972. Drug seizures totaled 18,107 for the year, a 69-percent increase. Arrests for drug and narcotic violations rose by 16 percent. The estimated street sale value of all Customs confiscated drugs in 1972 was almost $400 million.

In the United States, seizures of heroin during 1972 amounted to 470 kilos; seizures of cocaine totaled 415 kilos; and seizures of dangerous drugs—by gross weight of stimulants, depressants, and hallucinogens—amounted to 5,191 kilos.

The retail street price of these drugs varies from $5,000 to $10,000 per kilogram.

During this past year U.S. authorities made one seizure totaling 174 kilos, the largest heroin seizure in the U.S. to date.

The retail value of this seizure alone, according to the above figures, was as high as $1¾ billion.

The FBI annual report on crime in the United States, issued in August, lists an 11-percent nationwide increase over the year before on arrests for narcotic drug law violations. From 1966 to 1971, arrests increased 469 percent.

For those arrested on narcotics violations in 1971, the FBI report listed 63 percent of them as repeaters. The number of arrests for the year is placed close to 500,000 by the FBI figures. They showed an increase of over 3,000 percent for violators under 18 years of age from 1960 to 1971, and a 764-percent increase from 1966 to 1971. For those over 18, the increases were, respectively, 431 percent and 419 percent. Increases were in the cities, suburban, and rural areas.

Unfortunately, current laws have not stopped the spread of drugs into the hands of more users. Year after year, in spite of the increase in time, money, energy, talent, and laws applied to its solution, the trend continues to worsen. The weakness of this effort to bring the drug problem under control is the fact that so many violators are freed after apprehension or arrest to commit more violations. According to a report on post-arrest drug trafficking issued by the Bureau of Narcotics and Dangerous Drugs:

Shortly after its creation in 1968, the bureau of narcotics and dangerous drugs launched a new strategic enforcement concept which sought to identify "drug trafficking organizations" and immobilize them through systematic investigation. Notable successes have been achieved; however, it was soon learned that the almost immediate release of the arrested individuals on bond made possible the organization's continued functioning. Moreover, since such investigations involve great expenditure of agent manpower and resources, it is extremely difficult to again arrest the individuals; and they are, therefore, able to resume their illicit operation. Even though they are subsequently convicted, the organization may not be disrupted since the time of their departure for prison will vary and ample opportunity will exist to incorporate new criminal associates in their place. Finally, it was suspected that a substantial number of major violators often sought to prolong the period beween arrest and conviction through legal delays or by fleeing the jurisdiction to continue their activity.

This same report shows that 71 percent of those arrested for drug trafficking were at large for 3 months to a year or more; and nearly 65 percent were repeaters. As a matter of fact, 20 percent had prior drug convictions. And 65 percent were dealing in multiple ounce quantities or above.

There has been a lot of improvement in dealing with this serious problem, but until this specific weakness is dealt with in an effective way, it will not be brought under control. What must be remembered is that the drug criminal is not the same as other law violators.

Whereas a robber, or an embezzler, or even an accused murderer might be freed on bail under the pretension that his arrest will deter him from repeating the crime, the drug dealer operates in another sphere of criminal activity. His crime is continuous: From hour to hour, day to day, and month to month. He is in the constant steady business of crime. Frequently he is himself addicted as well, and his sense of judgment by consequence may not be of the best. Like a dangerous animal, he is a menace if he remains at large.

One example from the BNDD report is indicative of this situation:

On June 28, 1971, Albert Bennett was arrested in Gary, Indiana, after the execution of a search warrant resulted in the seizure of several ounces of 100% pure heroin, $15,000 in cash, and several weapons. The search warrant was obtained as a result of previous undercover purchases from members of Bennett's gang. Bond was originally set at $100,000, but was subsequently reduced to $25,000 which was posted several days later. BNDD continued to receive information that Bennett was selling multi-ounce quantities of heroin in the Gary area. On August 15, 1971, Bennett was arrested by U.S. Marshals in New York City while attempting to board a plane for Chicago in possession of approximately one pound of heroin. Bennett and a companion subdued the marshal, took his service revolver and theatented his life. The subjects fled with the heroin but were apprehended a short time later. He was then

charged with assault on a Federal officer. But on August 19, posted bond of $10,000 and continued to engage in the heroin traffic, until his conviction. A Federal search warrant was executed at his residence and 178 grams of heroin, 8 loaded weapons and $11,000 in cash were seized.

The Controlled Substances Act, passed by Congress in 1970, updated all previous drug control laws. Although it has greatly improved the situation, there are two areas of criticism: Postarrest violations and sentencing. These two criticisms can be regarded as the missing links which will really make a difference in our drug control program, and it is these same two criticisms which would be answered by the bill I am offering today.

The effect of a mandatory life sentence will be twofold:

First, we will finally be able to get these pushers and violent criminals off the street—for good. As I mentioned earlier, recidivism among drug offenders is extremely high, and I am convinced that the ease with which these people avoid sentencing and continue their criminal habits is the major flaw in our present drug control efforts.

Second, I think this will provide an effective deterrent to would-be pushers and criminals. The knowledge that "beating the rap" is relatively easy is certainly no incentive to curbing illicit drug trafficking.

In reading through the Select Committee on Crime's drug hearings, I came across a most disturbing statement by one witness who stated that:

> Where once we vehemently condemned the pusher, dealer, supplier and financier, we now must pause—before the law severely condemns them, because now the pusher, dealer, supplier and financier may either be in school, a teenage drop-out, a member of the college intellectual community at the post-graduate level, or, most alarmingly, among the young professional set.

Amazing—particularly in view of the fact that this witness, the Honorable Alfonso C. Sepe, is a judge of the criminal court in Dade County, Fla. The judge goes on to infer that the justice system is torn between vigorous punishment to deter pushers and rehabilitation when often such an individual is really the fellow next door or the clean-cut high school or college graduate, the Ph. D., or master of arts student, or even the young lawyer, accountant, or doctor.

Are we to infer then, that if all drug pushers were truck drivers, or night watchmen, or poor, or uneducated, the justice system would have no hesistation about "vigorous punishment"— but that because this criminal activity involves members of certain social or economic status, we should hesitate to demand strict penalties? I hope not, because regardless of whether or not a potential defendant lived next door to me, or wore a Phi Beta Kappa key, or carried a stethoscope, he should be prosecuted to the fullest extent of the law. The fact that well respected people should take advantage of their positions to corrupt people with these insidious hard drugs makes their crime all the more despicable.

Most Americans, I am convinced, agree on that. In fact, a recent nationwide Gallup poll states that 67 percent of those interviewed favor mandatory life sentences for drug pushers. The poll was conducted in response to Governor Rockefeller's drug proposal, and I think this is a noteworthy indication of public sentiment.

Mr. President, I feel strongly that Congress must act to put an effective halt to drug abuse. The bill I am introducing today will work toward this end, and I ask unanimous consent to have the text of this legislation, as well as the recent Gallup poll article printed in the RECORD at this point.

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

S. 918

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Controlled Substances Act (84 Stat. 1242) is amended by adding immediately after section 405 thereof the following new sections:

"DISTRIBUTION OF CERTAIN NARCOTIC DRUGS

"SEC. 405A. (a) Notwithstanding any other provision of this Act or of any other law, any person at least sixteen years of age who violates section 401(a)(1) by distributing any controlled substance classified in Schedule I or II which is a narcotic drug shall be imprisoned for life.

"(b) In the case of any person sentenced to life imprisonment under this section for a violation referred to in subsection (a) of this section, if such person, at the time of such violation, was at least nineteen years of age, imposition or execution of such sentence shall not be suspended, probation shall not be granted, and section 4202 and chapter 309 of title 18, United States Code, and the Act of July 15, 1932 (D.C. Code, secs. 24–203–24–207), shall not apply. If in the case of any person so sentenced for such violation such person was, at the time of that violation, not less than sixteen years of age or more than eighteen years of age, the foregoing provisions of this subsection shall apply to the sentence so imposed for such violation, except that such person may be eligible for parole after having served not less than fifteen years of such sentence.

"(c) In any case in which a person is indicted for a violation of section 401(a)(1) by reason of having distributed any controlled substance classified in Schedule I or II which is a narcotic drug, such person, if he was sixteen years of age or older at the time of such violation, shall not be permitted to plead guilty to a lesser offense in lieu of such violation for which he was so indicted.

"COMMISSION OF FELONY WHILE UNDER THE INFLUENCE OF CERTAIN NARCOTIC DRUGS

"SEC. 405B. (a) It shall be unlawful for any person at least sixteen years of age, after having knowingly caused any unlawfully possessed controlled substance classified in Schedule I or II which is a narcotic drug to be introduced into his body and while such substance is present in his body, to commit any offense in violation of section 81, 1111, 1112, 1114, 1201, 2031, 2032, or subsection (a), (b), (c) or (d) of section 1751, or chapter 103, of title 18, United States Code, or section 902(1) of the Federal Aviation Act of 1958 (49 U.S.C. 1472).

"(b) Any person at least sixteen years of age who violates subsection (a) of this section shall be sentenced to life imprisonment. If such person, at the time of such violation, was at least nineteen years of age, the imposition or execution of such sentence shall not be suspended, probation shall not be granted, and section 4202 and chapter 309 of title 18, United States Code, and the Act of July 15, 1932 (D.C. Code, secs. 24–202–24–207), shall not apply. If, in the case of any person so sentenced for such violation, such person was, at the time of that violation, not less than sixteen years of age or more than eighteen years of age, the foregoing provisions of this subsection shall apply to the sentence so imposed for such violation, except that such person may be eligible for parole after having served not less than fifteen years of such sentence.

"(c) The presence of any amount of a controlled substance classified in Schedule I or II which is a narcotic drug in the body of any person within forty-eight hours after such person has allegedly committed any offense referred to in subsection (a) of this section shall be presumptive evidence that such person knowingly caused such substance while unlawfully possessed to be introduced into his body and that such substance was present in his body at the time of the commission of such offense.

"(d) (1) Where there is any cause to believe that a person arrested for, and within forty-eight hours of, the alleged commission of any such offense referred to in subsection (a) of this section had present in his body at the time of the commission of that offense any such substance referred to in subsection (a) of this section, the arresting officer or appropriate attorney for the government or appropriate judicial officer, promptly after such arrest, shall require and cause such person to undergo a medical examination at such facility, and in accordance with such procedures, as shall be designated and established in accordance with subsection (e) of this section to determine whether any such substance is present in such person's body.

"(2) Where the arrest for any such offense occurs more than forty-eight hours following the alleged commission of such offense, the appropriate attorney for the government or an appropriate judicial officer, if there is any cause to believe that such person so arrested had present in his body at the time of the commission of such offense any such substance referred to in subsection (a) of this section, may require and cause the person so arrested to undergo such a medical examination.

"(3) No person who is required or ordered to undergo a medical examination pursuant to this section shall be released from custody on his own recognizance or bail within forty-eight hours of the time of his arrest unless and until he has undergone such medical examination.

"(4) Upon conclusion of any such medical examination, the person conducting such examination shall promptly transmit to the defendant, the appropriate attorney for the government, and the court a report of such medical examination, certified by such person as a report made by him or as a true copy thereof. Any communications by a person undergoing such an examination pursuant to this section to any person conducting such examination shall not be legally privileged.

"(e)(1) The Attorney General of the United States shall designate facilities and establish procedures for the conduct of medical examination required by this section and shall provide for the use in connection with such examinations of accepted medical procedures and tests, which may include, but shall not be limited to, blood tests and thin layer chromatography, as well as any necessary treatment.

"(2) Any records or observations concerning such arrested person as may have been made by law enforcement officers or other custodial personnel and as are relevant for purposes of such medical examinations shall be made available to the person conducting such examinations.".

[From the Washington Post, Feb. 11, 1973]

SIXTY-SEVEN PERCENT BACK LIFE TERMS FOR HARD DRUG SELLERS

(By George Gallup)

PRINCETON, N.J.—A large majority of persons interviewed in a recent nationwide Gallup survey support the proposal of New York Gov. Nelson Rockefeller that all sellers of hard drugs be given life imprisonment without the possibility of a parole.

Rockefeller's proposal wins majority support among both black and whites and in all levels of society.

The heavy support given Rockefeller's proposal—from 67 percent of adults interviewed—undoubtedly reflects in considerable measure the growing and widespread fear of crime in communities of all sizes across the nation and a corresponding desire for immediate solutions.

In his "State of the State" message in early January, Rockefeller asked for "drastic measures" to deal with the drug problem, calling for mandatory life imprisonment for all sellers of hard drugs. He would "close all avenues for escaping the full force of this sentencing."

Rockefeller's proposal for mandatory life sentences for hard-drug dealers has drawn both criticism and praise from public officials. Critics have contended there would be no room in either the courts or the prisons for the great numbers of drug pushers who would have to be tried if the system went into effect.

Critics also feel that a distinction should be made between members of organized crime who control the supply of illegal drugs and the "street pusher" who is often an addict himself.

Others think Rockefeller should have made a sharp distinction between the youthful offender who may not be fully aware of the consequences of what he is doing and the criminal pusher who makes the selling of drugs a business.

The following question was asked in the survey:

"The governor of a state has proposed that all sellers of hard drugs such as heroin be given life imprisonment without the possibility of a parole. Do you approve or disapprove of this proposal?"

	Percent		
	Approve	Disapprove	No opinion
National	67	29	4
Man	68	29	3
Women	66	29	5
Whites	68	23	4
Nonwhites	59	36	5
Colleges	62	33	5
High school	69	28	3
Grade school	67	26	7
Under 30 years	62	36	2
30 to 49 years	68	28	4
50 and over	69	24	7
Community/city size:			
1,000,000 and over	73	24	3
500,000 to 999,999	64	30	6
50,000 to 499,999	70	27	3
2,500 to 49,999	62	33	5
Under 2,500	64	30	6
East	62	34	4
Midwest	70	27	3
South	68	26	6
West	70	26	4

Another of Rockefeller's proposals dealing with drugs is one to give $1,000 to persons whose confidential information to the police results in the arrest and conviction of a seller of hard drugs.

"It has been proposed that a reward of $1,000 be given to any person whose confidential information to the police results in the arrest and conviction of a seller of hard drugs. Would you favor or oppose such a reward being given in this state?"

	Percent
Favor	71
Oppose	27
No opinion	2

To obtain the results reported today, personal interviews were conducted Jan 12–15 with 1,549 adults, 18 and older, in more than 300 scientifically selected localities across the nation.

By Mr. GURNEY (for himself and Mr. CRANSTON):

S. 919. A bill to amend title XVIII of the Social Security Act to permit certain individuals, who have attained age 60 but not age 65 and who are entitled to widow's or widower's insurance benefits or are the wives or husbands of persons entitled to hospital insurance benefits, to obtain, in consideration of the payment of insurance premiums, coverage under the insurance programs established by such title. Referred to the Committee on Finance.

Mr. GURNEY. Mr. President, today my good friend, the distinguished senior Senator from California (Mr. CRANSTON), and I join in introducing a bill which will allow some 3 million people between 60 and 65 who are members of retirement families to purchase badly needed medicare coverage. These people are either the widows or widowers—aged 60–65—of social security retirees, or the spouses or persons retired under social security.

Many of these wives and widows live on limited retirement income and, as retirees, are more vulnerable than most people to economic hardship resulting from serious illness. The most reasonable solution to their problem, we feel, is to bring them under the umbrella of medicare, while adding as little cost as possible to the medicare program.

Our bill would do just that. The first group—the spouses—must have a mate over 65 already enrolled in the medicare program. The partner—who would have to be at least 60 to be eligible—could then enroll in the program and receive equivalent benefits at cost. The second group—the widows or widowers—would simply have to have social security eligibility in order to qualify for the right to purchase benefits.

The cost of the benefits to the newly eligible spouses or widows should be reasonable enough to attract enrollees, yet comprehensive enough to provide the necessary coverage. For an estimated $31 per month, spouses and widows would get the same hospital insurance and insurance to cover physicians' charges that anyone else enrolled in medicare gets.

Our bill also contains a provision to discourage people from waiting until they are sick to enroll. It provides a 10 percent per year increase in premium cost for each year they delay enrollment. Thus, the potential enrollee has an incentive to sign up when he or she is 60. Such a provision will keep the program on a sound financial basis. In summary, our bill will provide the spouse of a medicare beneficiary or his widow with adequate medical insurance at reasonable rates during a 5-year period when getting a policy from a private company is either impossible or prohibitively expensive. Once these people reach age 65, regular medicare—with its high Federal contribution—will take over and the $31 a month charge will then drop to the regular level of $5.80 or so a month.

Since the subscribers to this proposal will bear the financial burden, and since its implementation will utilize already existing administrative services, this seems to be the most efficient and economical way to reduce one of the major problems faced by retirement families. They have worked hard for their retirement and they deserve a chance to live it in peace and contentment. Senator CRANSTON and I join in the hope that our colleagues will help give these retirees that chance without depriving them of their dignity or overburdening the already hard-pressed American taxpayer.

By Mr. JACKSON (for himself, Mr. FANNIN, Mr. GURNEY, and Mr. CHILES) (by request):

S. 920. A bill to authorize the acquisition of the Big Cypress National Fresh Water Reserve in the State of Florida, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

Mr. JACKSON. Mr. President, by request, I send to the desk on behalf of myself and the Senator from Arizona (Mr. FANNIN) and the Senators from Florida (Mr. GURNEY and Mr. CHILES) a bill to authorize the acquisition of the Big Cypress National Fresh Water Reserve in the State of Florida, and for other purposes.

Mr. President, this draft legislation was submitted by the Secretary of the Interior and recommended by the President in his environmental program, and I ask unanimous consent that the executive communication accompanying the proposal from the Secretary be printed in the RECORD at this point in my remarks.

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

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., Feb. 15, 1973.

Hon. SPIRO T. AGNEW,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed is a draft of a bill "To authorize the acquisition of the Big Cypress National Fresh Water Reserve in the State of Florida, and for other purposes", to which the President refers in his Environment and Natural Resources State of the Union Message transmitted to you today.

We recommend that the bill be referred to the appropriate committee for consideration, and we recommend that it be enacted.

The bill authorizes the Secretary of the Interior to acquire lands, waters, and interests therein within an area depicted on a map on file with the Department. The area to be acquired, consisting of not to exceed 522,000 acres of private land and approximately 48,000 acres of publicly owned land, is to be known as the Big Cypress National Fresh Water Reserve.

The reserve is to be administered by the Secretary of the Interior in accordance with the laws applicable to the National Park System. However, the bill authorizes the Secretary to enter into an agreement with the State of Florida or a local government, pursuant to which it may manage and administer the lands acquired for the reserve, subject to the provisions and limitations of the bill. The Secretary is directed to permit

hunting, fishing, and trapping within the reserve in accordance with applicable State and Federal laws. Section 5 of the bill authorizes the appropriation of such sums as may be necessary, but not to exceed $156 million for the acquisition of lands and interests therein.

Everglades National Park, authorized in 1934, represents one of the most unique ecosystems in the world. The biological values of the park however depend on fresh water supplies, and considerably more than half of the 1,400,533 acres within the authorized boundaries is dependent upon the Big Cypress for its supply of fresh water.

A vital factor in the Big Cypress-Everglades ecosystem is the almost imperceptible slope of the land. This results in exceedingly slow drainage, which extends the "wet months" well beyond the period of actual rainfall. A water level change of only a few inches ofttimes affects thousands of acres, and can seriously disrupt the food chain on which the larger animals in the park depend.

The Big Cypress Watershed serves as a natural water storage area, and supplements the man-made storage areas in conservation areas one, two, and three, that are considered vital for the protection of an adequate fresh water supply for south Florida.

Aside from its water supply benefits, Big Cypress is a highly significant resource in itself. The Big Cypress is a wilderness of sloughs, tree islands (or hammocks), and bay and cypress heads. Cypress dominates, and gives the area its name. Large portions of Big Cypress have so far experienced little man-made disturbance. Nearly all the wildlife species native to semitropical Florida are contained within the watershed. Big Cypress provides important feeding, nesting, and wintering areas, as well as a resting place for migrating birds. Acquisition of the Big Cypress Swamp would preserve important habitat for at least nine species of wildlife determined by the Secretary of the Interior to be threatened with extinction. To species that have far wider ranges, Big Cypress, along with the adjacent Everglades National Park, serves as a stronghold or retreat.

We urge the Congress to take early and favorable action to authorize the Big Cypress National Fresh Water Reserve, as proposed herein.

A draft of an environmental impact statement, prepared in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, was forwarded to your Committee during the 92d Congress, by letter dated February 4, 1972.

The Office of Management and Budget has advised that the enactment of the enclosed bill would be in accord with the Administration's program.

Sincerely yours,

ROGERS C. B. MORTON,
Secretary of the Interior.

By Mr. JACKSON (for himself and Mr. FANNIN) (by request):

S. 921. A bill to amend the Wild and Scenic Rivers Act. Referred to the Committee on Interior and Insular Affairs.

Mr. JACKSON. Mr. President, by request, I send to the desk on behalf of myself and the Senator from Arizona (Mr. FANNIN) a bill to amend the Wild and Scenic Rivers Act.

Mr. President, this draft legislation was submitted by the Secretary of the Interior and recommended by the President in his environmental program, and I ask unanimous consent that the executive communication accompanying the proposal from the Secretary be printed in the RECORD at this point in my remarks.

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

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., February 15, 1973.

Hon. SPIRO T. AGNEW,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed is a draft of a proposed bill "To amend the Wild and Scenic Rivers Act", to which the President refers in his Environment and Natural Resources State of the Union Message transmitted to you today.

We recommend that the bill be referred to the appropriate committee for consideration, and we recommend that it be enacted.

The draft bill amends sections 7(b) and 16 of the Wild and Scenic Rivers Act of October 2, 1968 (82 Stat. 906, 914 and 918; 16 U.S.C. 1278(a) and 1287).

The enclosed draft bill would extend the 5-year moratorium contained in section 7(b) of the Act for an additional 5-year period, by which time we expect to complete studies on all of the 27 river areas. Completion of these studies and implementation of resulting management plans would assure the wise use of these rivers and their immediate environments for this and future generations of Americans.

The enclosed draft bill also amends section 16 of the Wild and Scenic Rivers Act. Section 16 authorizes the appropriation of not more than $17,000,000 for the acquisition of the initial components of the National Wild and Scenic Rivers System, of which some $16.9 million have been appropriated. The draft bill would raise the appropriation authorization to $37,600,000, the amount we estimate will be needed to complete acquisitions at the river areas.

Our experience with the initial authorization tends to confirm projections of the conferees on the original Act, who recognized that the ceiling imposed by section 16 might well be inadequate.

The Office of Management and Budget has advised that this legislative proposal is in accord with the program of the President.

Sincerely yours,

ROGERS C. B. MORTON,
Secretary of the Interior.

By Mr. JACKSON (for himself and Mr. FANNIN) (by request):

S. 922. A bill to amend the Land and Water Conservation Fund Act of 1965, as amended. Referred to the Committee on Interior and Insular Affairs.

Mr. JACKSON. Mr. President, by request, I send to the desk on behalf of myself and the Senator from Arizona (Mr. FANNIN) a bill to amend the Land and Water Conservation Fund Act of 1965, as amended.

Mr. President, this draft legislation was submitted by the Secretary of the Interior and recommended by the President in his environmental program, and I ask unanimous consent that the executive communication accompanying the proposal from the Secretary be printed in the RECORD at this point in my remarks.

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

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., February 15, 1973.

Hon. SPIRO T. AGNEW,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed is a draft of a proposed bill "To amend the Land and Water Conservation Fund Act of 1965, as amended," to which the President refers in his Environmental and Natural Resources State of the Union Message, transmitted to you today.

We recommend that this bill be referred to the appropriate committee for consideration, and we recommend that it be enacted.

The proposed legislation will accomplish several reforms in the administration of the Land and Water Conservation Fund, designed to increase the effectiveness of the expenditures in providing public recreation opportunities and open spaces where the unmet demands are greatest. The formula for apportionment of assistance among the States would be altered to give increased emphasis to the demands for additional recreation opportunities and open spaces in and near heavily populated urban areas. The Secretary of the Interior will be given added authority to review State implementation plans in order to assure compliance with this goal.

The bill will also authorize a State to use up to 25% of its total annual allocation to develop indoor recreation facilities within areas where the unavailability of land or climatic conditions provide no other feasible or prudent alternative to serve identified unmet demands for recreation resources.

The Office of Management and Budget has advised that enactment of this proposed legislation would be in accord with the program of the President.

Sincerely yours,

ROGERS C. B. MORTON,
Secretary of the Interior.

By Mr. JACKSON (for himself and Mr. FANNIN) (by request):

S. 923. A bill to provide for the cooperation between the Federal Government and the States with respect to environmental regulations for mining operations, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

Mr. JACKSON. Mr. President, by request, I send to the desk on behalf of myself and the Senator from Arizona (Mr. FANNIN) a bill to provide for the cooperation between the Federal Government and States with respect to environmental regulations for mining operations.

Mr. President, this draft legislation was submitted by the Secretary of the Interior and recommended by the President in his environmental program, and I ask unanimous consent that the executive communication accompanying the proposal from the Secretary be printed in the RECORD at this point in my remarks.

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

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., Feb. 15, 1973.

Hon. SPIRO T. AGNEW,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: There is enclosed a draft bill "To provide for the cooperation between the Federal government and the States with respect to environmental regulations for mining operations, and for other purposes".

We recommend that this bill, a part of the environmental program announced February 15, 1973, by the President in his Environment and Natural Resources State of the Union Message, be referred to the appropriate committee for consideration and that it be enacted.

The adverse environmental effects that can result from mining operations have been a subject of growing national concern in recent years. The ever increasing demand for minerals, coupled with dramatic developments in our ability to recover them has led to an increase in mining activity. These activities will continue to be an important part of the American economy.

Mining operations, however, also pose a serious threat to the environment. In varying degrees State legislatures and mining companies have responded to the problem, but this effort suffers from lack of uniformity and unanimity.

The proposed bill would require that all ongoing and future mining activities be conducted in a way as to minimize their adverse environmental effects. The legislation provides for the development of State regulations based on minimum Federal performance standards which will require environmental consideration to be built into the mining operation.

The Administration's bill recognizes that the responsibility for developing and enforcing regulations rests with the States, while also recognizing that the effort must be nationwide with minimum standards enforced to protect the environment, and to the extent possible, place industry on an equal level in every State. The bill gives the States the opportunity to develop and submit regulations, in accordance with specific minimum performance standards, for approval by the Secretary of the Interior. If the State fails to develop an acceptable program within two years after enactment or if the State fails to enforce effectively its approved program at any time, the bill authorizes the Secretary to administer and enforce a mining and reclamation program within the State.

This legislation is long overdue. The longer it is put off, the larger the ultimate cost will be.

The Office of Management and Budget has advised that this legislative proposal is in accord with the program of the President.

Sincerely yours,

ROGERS C. B. MORTON,
Secretary of the Interior.

By Mr. JACKSON (for himself and Mr. FANNIN) (by request):

S. 924. A bill to establish a national policy encouraging States to develop and implement land use programs. Referred to the Committee on Interior and Insular Affairs.

Mr. JACKSON. Mr. President, by request, I send to the desk on behalf of myself and the Senator from Arizona (Mr. FANNIN) a bill to establish a national policy encouraging States to develop and implement land use programs—land use planning.

Mr. President, this draft legislation was submitted by the Secretary of the Interior and recommended by the President in his environmental program, and I ask unanimous consent that the executive communication accompanying the proposal from the Secretary be printed in the RECORD at this point in my remarks.

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

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., February 15, 1973.

Hon. SPIRO T. AGNEW,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: The President announced today in his Environment and Natural Resources State of the Union Message to Congress his intention to propose legislation "To establish a national policy encouraging States to develop and implement land uses programs." Enclosed is that proposed bill.

We recommend that the bill be referred to the appropriate committee and that it be promptly considered and enacted.

Land use reform has received increasing public attention in recent years. President Nixon made it a keystone of his environmental program in his February 8, 1971, message to Congress in which he discussed the profound effect of land use decisions on our daily lives and "the institutional reform so badly needed."

The 92nd Congress made real progress toward developing sound Federal legislation on land use reform. Hearings held by the Interior Committees of both houses captured wide public interest and fostered extensive public debate on a variety of issues and proposals. The Senate Interior Committee reported out a bill, S. 632, which passed the Senate on September 19, 1972.

S. 632 as it passed the Senate was the product of the public debate and of a constructive dialogue between the legislative and executive branches. It incorporated, in our view, the principal features of the Administration's proposal which the President outlined in his February 8, 1971, message.

The progress which the 92nd Congress made in this field should be the springboard for the 93rd Congress, so that this important bill can be speedily enacted. The enclosed bill, therefore, is patterned on S. 632 as it passed the Senate. It incorporates the concept stressed by President Nixon two years ago that a principal thrust of the bill should be to encourage States to exercise their basic authority to deal with land use issues which spill over local jurisdictional boundaries. It leaves local jurisdictions in full control of local land use issues and carefully defines the Federal role to preserve the basic authority of the State to establish land use priorities.

The importance of the legislation forwarded herewith is to establish, at the State level, a framework within which specific programs to meet particular problems can be carried out in a fully coordinated manner and against a background of a comprehensive land use program which covers all the States' land and water resources. The point was repeatedly stressed in the hearings on this legislation that most of our present land use problems stem from a piecemeal, fragmented, and uncoordinated approach to land use decision-making. Unless we can reverse this pattern, we will not be able to meet the challenge which lies ahead of us of planning for the future growth of this country.

The Office of Management and Budget has advised that the enactment of the attached proposed legislation would be in accord with the program of the President.

Sincerely yours,

ROGERS C. B. MORTON,
Secretary of the Interior.

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

S. 925. A bill to establish a Federal Financing Bank, to provide for coordinated and more efficient financing of Federal and federally assisted borrowings from the public, and for other purposes. Referred to the Committee on Banking, Housing and Urban Affairs.

Mr. SPARKMAN. Mr. President, I introduce for myself and for Senator TOWER a bill to establish a Federal Financing Bank, to provide for coordinated and more efficient financing of Federal and federally assisted borrowings from the public, and for other purposes.

It will be recalled that a similar bill, S. 3001, was passed by the Senate during the last session of the Congress, but it was never considered by the House of Representatives although it was reported to the House by the committee having jurisdiction of the matter.

Last year our committee made some amendments to the bill as it was proposed by the administration, as well as did the House committee. It is my understanding that some of the provisions added by our committee and the House committee last year have been incorporated in the bill being introduced today.

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

S. 926. A bill to amend the Social Security Act to assure that whenever there is a general increase in social security benefits there will be a corresponding increase in the standard of payments used to determine eligibility for aid or assistance under State plans approved under title I, X, XIV, XVI of such act. Referred to the Committee on Finance.

PASSALONG OF SOCIAL SECURITY INCREASES TO AGED, BLIND, AND DISABLED ASSISTANCE RECIPIENTS

Mr. CRANSTON. Mr. President, I introduce today, along with my colleague, Senator TUNNEY, legislation to enable these needy individuals who are recipients of grants for the aged, blind, or disabled to receive automatic increases in this assistance commensurate with certain increases in social security or railroad retirement benefits. This would be achieved by requiring States to increase, by a rate corresponding to the rate of any social security or railroad retirement increase—including the October 1, 1972, 20-percent increase adopted last year—the standard level of payment used under these programs.

I originally introduced this measure with Senator TUNNEY during the last Congress as S. 3328. The bill was referred to the Senate Finance Committee during its consideration of H.R. 1, the Social Security Amendments of 1972, but was not incorporated into the Senate Finance Committee version of the bill. I then offered this legislation as a floor amendment to H.R. 1 during the lengthy Senate debate which preceded the bill's passage. The amendment was adopted and included in the Senate version of the bill. Unfortunately, this provision was deleted from the conference committee report, now Public Law 92–603.

Consequently, I am today reintroducing this measure to enable those needy individuals who are aged, blind or disabled to receive the increase in benefits intended for them by the Congress. This provision would take retroactive effect from October, 1972—the effective date of the 20-percent social and railroad retirement increases—and continue through December of 1973—when the adult assistance categories will be federalized.

As well as having been adopted by the Senate last year, this concept, in a somewhat different form, was recommended in 1970 by the Senate Finance Committee in its consideration of H.R. 17550, the proposed Social Security Amendments of 1970. The committee report (No. 91–1431, page 43) said:

PASS ALONG OF SOCIAL SECURITY INCREASES TO WELFARE RECIPIENTS

Under other provisions of the bill, Social Security benefits would be increased by 10 percent, with the minimum basic Social Security benefit increased to $100 from its present $64 level. If no modification were made in the present welfare law, however, many needy aged, blind and disabled persons would get no benefit from these substantial increases in Social Security since offsetting re-

ductions would be made in their welfare grants. To assure that such individuals would enjoy at least some benefit from the Social Security increases, the Committee bill requires States to raise their standards of need for those in the aged, blind, and disabled categories by $10 per month for a single individual and $15 per month for a couple. As a result of this provision, recipients of aid to the aged, blind, or disabled, who are also Social Security beneficiaries would enjoy an increase in total monthly income of at least $10 ($15 in the case of a couple).

Mr. President, the method I am proposing to assure that the aged, blind and disabled enjoy the benefits from social security or railroad retirement benefit increases eliminates the discriminatory effect of the traditional so-called pass-along provisions, which have granted cost-of-living increases only to those public assistance recipients who are also beneficiaries of social security or railroad retirement benefits.

Mr. President, it is important to note, as well, that even those individuals benefiting from pass-along provisions almost never have been granted the full benefit of the social security, or railroad retirement increase—as evidenced by the pass-along concept contained in H.R. 1 of $4, which compares quite unfavorably with the $15 average monthly benefit increase for individuals receiving only social security or railroad retirement benefits.

Additionally, several States, including California, have a system of determining eligibility for public assistance whereby the standard of need differs from the actual payment allotted recipients. The benefit increase can, therefore, be added to the standard of need without actually affecting the amount of assistance received by an individual. The language "standard of need" was used in my bill of last year, S. 3328, and I have been advised that the use of the terminology "standard of payment" rather than "standard of need" in the bill, will preclude the possibility of a State merely increasing the standard of need used to determine eligibility in order to avoid passing on the social security or railroad retirement increase.

The original pass-along provisions, included in the 1965 and 1967 social security amendments permitted States, in determining an individual's need for public assistance payments, to exclude $5 and $7.50 per month, respectively, from any source—although these provisions were designed with the 1965 and 1967 social security increases in mind. Later pass-along provisions, however, limited their applicability to social security and railroad retirement beneficiaries.

The bill I am introducing today would rectify this situation by substituting the increases in the standard of payment concept for the pass-along concept.

It is important to point out that a $50 disregard of outside income was included in H.R. 1. This provision will not take effect, however, until the federalization of the aged, blind, and disabled assistance programs in January of 1974. Thus, the recent 20-percent increase in benefits will not be received by adult assistance recipients unless we adopt a measure to deal with this interim period. The legislation I have offered would assure that every aged, blind, and disabled person receiving social security or railroad retirement will receive the increase in benefits intended by Congress, and that those who have no other source of income other than their assistance payments—surely the most needy individuals—will also receive an increase in these benefits.

Throughout the last year I have received thousands of letters from elderly persons—persons who rely on old-age-assistance grants and social security or railroad retirement annuities for their very existence—relating to their despair upon receiving from the California State Department of Social Welfare a notice that their public assistance check would be reduced by the amount of their social security or railroad retirement increase. It is a cruel blow to deal so many of the more than 2 million recipients of old-age assistance in the United States, 60 percent of whom are also recipients of social security benefits.

In California 362,000 recipients of aid to the aged, blind, and disabled also receive social security benefits. An additional 159,000 individuals in California receive no other income than adult assistance payments.

The State legislature in California has attempted to deal responsibly with the effects of the 20-percent increase by enacting legislation raising adult assistance benefits by $12. Though the State action is to be applauded, it by no means mitigates the need for this measure nationally. In fact, in many instances the net result of the $12 California increase, and the subsequent decrease resulting from the State practice of decreasing benefits commensurate with the social security increase, is a very minimal increase in benefits for California recipients.

Mr. President, I urge my colleagues to join with me in support of this measure to assure that all social security recipients receive the full benefit increase enacted by Congress—and which mandates an increase for recipients of aid to the aged, blind, and disabled in equal proportion to the increase Congress has provided for social security and railroad retirement recipients. There is clear precedent for this legislation in the action by the Senate during the concluding days of the 92d Congress. It was a necessary action then—it is a necessary action now.

Mr. President, I ask unanimous consent that the full text of my 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. 926

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title XI of the Social Security Act is amended by adding immediately after section 1123 thereof the following new section:

"AUTOMATIC INCREASE IN STANDARDS OF NEED UNDER ADULT PUBLIC ASSISTANCE PROGRAMS

"SEC. 1124. (a) (1) In addition to the requirements imposed by other provisions of law as a condition of approval of a State plan of any State (other than the Commonwealth of Puerto Rico, Guam, or the Virgin Islands) to provide aid or assistance to individuals under title I, X, XIV, or XVI, there is hereby imposed the requirement (and the plan shall be deemed to require) that the standard of payment (as defined in paragraph (2)) applicable under any such plan shall be increased by the amounts certified in the certifications of the Secretary made pursuant to subsection (b).

"(2) For purposes of this section, the term 'standard of payment', when used in connection with any approved plan referred to in paragraph (1), means the amount payable thereunder to applicants or recipients or aid or assistance thereunder who have no income (other than income which is disregarded under the plan) other than such aid or assistance.

"(b) (1) Whenever there is enacted any provision of law providing a general increase in monthly benefits payable to individuals under title II, the Secretary shall (at the earliest practicable date after the enactment of such provision) determine the average rate of such increase, and in the determination of such average rate, the Secretary shall take into account any increase in pensions or annuities under the Railroad Retirement Act of 1937 or the Railroad Retirement Act of 1935, which is intended to be commensurate with such general increase in monthly benefits payable to individuals under title II of this Act, and shall certify to each State agency administering or supervising the administration of any State plan approved under title I, X, XIV, or XVI, the average so determined.

"(2) Any such certification shall be effective, in the case of the standard of payment applicable under any approved State plan referred to in subsection (a), for months beginning more than 30 days after such certification is made to the State agency administering or supervising the administration of such State plan, or, if the general increase (referred to in paragraph (1)) on the basis of which such certification is made will not be effective by such date, then it shall be effective on the first month for which such general increase will be effective."

"(c) Any increase in any standard of payment required under this section shall be based on such standard of payment which was in effect for the month preceding the first month in which such increase is effective."

SEC. 2. (a) Subject to subsection (b), the amendment made by the first section of this Act shall be effective in the case of general increases in monthly benefits payable to individuals under title II of the Social Security Act resulting from the enactment of provisions of law enacted on or after July 1, 1972.

(b) (1) For purposes of section 1124 of the Social Security Act (as added by the first section of this Act), any certification under subsection (b) of such section on account of the general increase in monthly benefits payable to individuals under title II of the Social Security Act resulting from the enactment of Public Law 92-336 shall be made at the earliest practicable date after the date of enactment of this Act and shall be effective with respect to months beginning after September 1972. Any increase under such section 1124 in any standard of payment on account of the enactment of Public Law 92-336 shall be based on such standard of payment as in effect for the month of August 1972.

SEC. 3. Section 1124 of the Social Security Act is repealed effective January 1, 1974.

By Mr. ROTH (for himself, Mr. BEALL, Mr. BROCK, Mr. BUCKLEY, Mr. GURNEY, Mr. PERCY, Mr. RIBICOFF, Mr. SCOTT of Pennsylvania, Mr. STEVENSON, Mr. TAFT, and Mr. TOWER):

S. 928. A bill to create a catalog of Federal assistance, and for other purposes. Referred to the Committee on Government Operations.

THE PROGRAM INFORMATION ACT IS STILL NEEDED TO PROVIDE A LEGISLATIVE MANDATE FOR USER-ORIENTED FEDERAL DOMESTIC ASSISTANCE INFORMATION

Mr. ROTH. Mr. President, today I rise to reintroduce S. 928, the Program Information Act, which has been passed by the Senate during the last two Congresses. S. 928 is cosponsored by Senators BEALL, BROCK, BUCKLEY, GURNEY, PERCY, RIBICOFF, SCOTT of Pennsylvania, STEVENSON, TAFT, TOWER.

The Program Information Act grew out of the 8-month study of the Federal domestic grant system which my staff and I conducted while I served in the House of Representatives. This project culminated in 1969 with the publication as a House document of the first comprehensive catalog of Federal domestic assistance programs.

Senators are undoubtedly aware of the Catalog of Domestic Assistance currently published by the Office of Management and Budget. Since conclusion of my 1969 study, OMB has provided a catalog much improved over the one then in existence. The 1971 and 1972 OMB reporting instructions to the agencies have sought improvements in the quality of financial information; improved accomplishment data; increased uniformity and clarity in reporting State, local, and regional office contacts; and more careful identification of those programs which are covered by OMB circulars A–95 and A–98. OMB officials during 1972 further began work on a Regional Management Information System with the intention of providing adequate program data to Federal Regional Councils.

At the beginning of this month the Office of Management and Budget circulated among the agencies its instructions for the 1973 Catalog of Federal Domestic Assistance. These instructions call for an improved compendium in the following areas: better indexing; current program status; the applicability of OMB Circular A–102, relating to standardized application forms; and whether environmental impact coordination or a statement on such is required under a particular program. Those involved in putting out the catalog at OMB are to be commended for all of these advances over the past several years.

There are, however, areas where improvements can be made to make a catalog of even greater use to program users, Congress, and the Executive. To my way of thinking it is most important that OMB update program information quarterly, rather than just twice annually; provide more precise financial data; exercise continuing vigilance in eliminating inactive programs and adding new programs to the listing; and encourage fuller reporting of program accomplishments. The provisions of S. 928 would help to affect these ends. Additionally, this legislation would help to guarantee that a single governmentwide compendium of domestic assistance programs is available at a reasonable price to State and local governments and other possible beneficiaries of the grant system. Practical experience has shown that catalog cost and the proliferation of narrow-purpose catalogs can be roadblocks in the effort to provide adequate program user oriented information.

As the Senate Committee on Government Operations last year concluded:

It has been shown that Congressional guidelines are needed to obtain a catalog of federal domestic assistance which is both readily usable and current.

It may be that the goal set by the committee will only be truly attained when current information, especially financial information on Federal programs, is daily fed into computers at OMB and made available over the telephone to applicants. Senators may be interested to know that the National Institute of Technical Services at the Commerce Department makes computer tapes of the OMB Catalog available at a cost of $95.

The Program Information Act which I am introducing today is the same, with the exception of five relatively minor changes, as S. 718 which was approved by the Senate last year. Several of these changes resulted from suggestions made by agencies when the bill was circulated among them by the Government Operations Committee.

I do not think that I need call to the attention of my colleagues at this point in time to the importance of improving the program data available to potential program users, Congress, and the executive branch. The informational problem for the user is, of course, familiar to all of us. The case of the small town mayor attempting, with little staff assistance, to sift through a number of sewer and water programs administered by several agencies is repeated over and over.

However, I would maintain further that if we are going to make our vast and expensive Federal domestic program apparatus serve the goal it was created for, we must have improved program information here in Congress. There also needs to be increased attention given during the current Congress to other aspects of grant reform including: grant consolidation and joint funding simplification; better evaluation of accomplishments; simplification of requirements; and the proper amount of decentralization needed for a successful system of intergovernmental assistance.

In conclusion, I urge Senators to join me in cosponsoring the Program Information Act. I hope that it will pass both Houses during the 93d Congress so we can finally have the proper statutory framework for a current and easily usable Catalog of Federal Domestic Assistance.

Mr. President, I ask unanimous consent that a copy of S. 928 be printed in the RECORD at the conclusion of my remarks.

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

S. 928

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

SHORT TITLE

SECTION 1. This Act may be cited as the "Program Information Act".

DEFINITIONS

SEC. 2. For the purposes of this Act—

(a) The term "Federal domestic assistance program" means any activity of a Federal agency which provides assistance or benefits, whether in the United States or abroad, that can be requested or applied for by a State or local government, or any instrumentality thereof, any domestic profit or nonprofit corporation, institution, or individual, other than an agency of the Federal Government.

(b) A "Federal domestic assistance program" may in practice be called a program, an activity, a service, a project, or some other name regardless of whether it is identified as a separate program by statute or regulation. A program shall be identified in terms of differing legal authority, administering office, funding, financial outlays, purpose, benefits, and beneficiaries.

(c) "Assistance or benefits" include but is not limited to grants, loans, loan guarantees, scholarships, mortgage loans and insurance or other types of financial assistance; assistance in the form of provision of Federal facilities, goods, or services, donation or provision of surplus real and personal property; technical assistance and counseling; statistical and other expert information; and service activities of regulatory agencies. "Assistance or benefits" does not include conventional public information services.

(d) "Requested or applied for" means that the potential applicant or beneficiary must initiate the process which will eventually result in the provision of assistance or benefits.

(e) "Administering office" means the lowest subdivision of any Federal agency that has direct operational responsibility for managing a Federal domestic assistance program.

EXCLUSION

SEC. 3. This Act does not apply to information specifically required by law or Executive Order to be kept secret in the interest of national defense or foreign policy.

CATALOG OF FEDERAL DOMESTIC ASSISTANCE PROGRAMS

SEC. 4. The President shall transmit to Congress no later than May 1 of each regular session a catalog of Federal domestic assistance programs, referred to in this Act as "the catalog", in accordance with this Act.

PURPOSE OF CATALOG

SEC. 5. The catalog shall be designed to assist the potential beneficiary to identify all existing Federal domestic assistance programs wherever administered, and shall supply information for each program so that the potential beneficiary can determine whether particular assistance or benefits might be available to him for the purposes he wishes.

REQUIRED PROGRAM INFORMATION

SEC. 6. For each Federal domestic assistance program, the catalog shall—

(1) identify the program, including the name of the program, the authorizing statute, the specific administering office, and a brief description of the program and its objectives;

(2) describe the program structure, including eligibility requirements, formulas governing the distribution of funds, types of assistance or benefits, uses and restrictions on the use of assistance or benefits and obligations and duties of recipients or beneficiaries;

(3) provide financial information, including current authorizations and appropriations of funds, the obligations incurred for past years, the current amount of unob-

ligated balances, and other pertinent financial information;

(4) identify the appropriate administering office to contact, both in central and field offices, including address and telephone number;

(5) provide a general description of the application process, including application deadlines, coordination requirements, processing time requirements, and other pertinent procedural explanations; and

(6) identify closely related programs.

FORM OF CATALOG

SEC. 7. (a) The program information may be set forth in such form as the President may determine, and the catalog may include such other program information and data as in his opinion are necessary or desirable in order to assist the potential program beneficiary to understand and take advantage of each Federal domestic assistance program.

(b) The catalog shall contain a detailed index designed to assist the potential beneficiary to identify all Federal domestic assistance programs related to a particular need.

(c) The catalog shall be in all respects concise, clear, understandable, and such that it can be easily understood by the potential beneficiary.

QUARTERLY REVISION

SEC. 8. The President shall revise the catalog at no less than quarterly intervals. Each revision—

(1) shall reflect any changes in the program information listed in section 6;

(2) shall further reflect the addition, consolidation, reorganization, or cessation of Federal domestic assistance programs;

(3) shall include such other program information as will provide the most current information on changes in financial information, on changes in organizations administering the Federal domestic assistance programs, and on other changes of direct, immediate relevance to potential program beneficiaries as will most accurately reflect the full scope of Federal domestic assistance programs;

(4) may include such other program information and data as in the President's opinion are necessary or desirable in order to assist the potential program beneficiary to understand and take advantage of each Federal domestic assistance program.

PUBLICATION AND DISTRIBUTION OF THE CATALOG

SEC. 9. (a) The President (or an official to whom such function is delegated pursuant to section 10 of this Act) shall prepare, publish, and maintain the catalog and shall make such catalog and revisions thereof available to the public at prices approximately equal to the cost in quantities adequate to meet public demand.

(b) There is authorized to be distributed without cost to Members of Congress and Resident Commissioners not to exceed five thousand copies of catalogs and revisions.

(c) There is authorized to be distributed without cost to Federal agencies, State and local units of government and local repositories not to exceed thirty-five thousand copies of catalogs and revisions as determined by the President or his delegated representative.

(d) The catalog shall be the single authoritative, Government-wide compendium of Federal domestic assistance program information produced by the Government. Specialized catalogs for specific ad hoc purposes may be developed within the framework of, or as a supplement to, the Government-wide compendium and shall be allowed only when specifically authorized and developed within guidelines and criteria to be determined by the President. Federal departments or agencies shall not reprint or reproduce for distribution portions of the catalog without specific permission from the President or his delegate.

(e) Any existing provisions of law requiring the preparation or publication of catalogs are superseded to the extent they may be in conflict with the provisions of this Act.

DELEGATION OF FUNCTIONS

SEC. 10. The President may delegate any function conferred upon him by this Act, including preparation and distribution of the catalog, to the head of any Federal agency, with authority for redelegation as he may deem appropriate.

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

S. 929. A bill to amend the Par Value Modification Act. Referred to the Committee on Banking, Housing and Urban Affairs.

Mr. SPARKMAN. Mr. President, I introduce for myself and the Senator from Texas (Mr. TOWER) a bill to amend the Par Value Modification Act.

On February 12 the Secretary of the Treasury, on behalf of the President, announced the intention to propose legislation to implement a revaluation of the dollar by 10 percent. This step was proposed in combination with other actions taken in Europe and Japan to amend the structure of exchange rates agreed at the Smithsonian Institution in December 1971.

The bill which I am introducing today proposes to give congressional approval to the change in the dollar exchange rate. It amends the Par Value Modification Act, Public Law 92–268, approved on March 31, 1972, by providing for the establishment of a new par value of $1 equals 0.828948 special drawing right, or in terms of gold, of $1 equals 0.023684 of a fine troy ounce of gold.

Since it has been indicated to us that early action on this measure is needed, I would like to announce now that hearings will be held on this matter by the Committee on Banking, Housing and Urban Affairs commencing at 10 a.m., February 27, in room 5302 in the Dirksen Building. Anyone wishing to present testimony or statements for the record concerning this matter should contact Mr. Reginal Barnes, area code 202, 225–7391, as early as possible.

By Mr. ABOUREZK:

S. 932. A bill to discourage experimentation on animals by elementary and secondary school children. Referred to the Committee on Labor and Public Welfare.

Mr. ABOUREZK. Mr. President, today I introduce a bill to discourage the experimentation on animals in elementary and secondary schools. Perhaps the best explanation for the need for this legislation can be found in excerpts from the letters of two young people to the Friends of Animals, a national humane organization.

A boy named "Bruce" wrote:

I am writing because I am failing biology. I am failing because I have refused to disect the animals they have for me. Disection is cruel and unnecessary and I refuse to endorse the raising of thousands of animals to be killed. My school system is failing me because of this. Mind you I like biology but, I cannot understand why if man can create synthetic organs for his body; why can't he show me a plastic frog?

And a girl named "Veronica" wrote:

This being my second year of high school my science is biology, which, among other studies, includes disection. It seems like such a waste of life. Wouldn't it be possible for schools to supply plastic models of specimens that could be taken apart—making the viewing of each organ more discernable? I've spoke to a number of sophomores, and approximately 50 agree with me.Why should we be taught in schools to treat life so cheaply? I plan on writing a few more letters and would appreciate your looking into this terrible injustice. Please help save our animals and our own by bringing to an immediate halt this cruelty.

Nothing could be more eloquent than the words of these sensitive students.

The bill I introduce today recognizes that there are other methods to teach science and kindle medical and scientific interest in our youth. It calls for the Secretary of Health, Education, and Welfare to encourage the use of illustrations, models, manuals, films, and other alternative methods to live experimentation.

At the same time this bill would encourage these alternatives, it would also withhold National Defense Education funds from science programs in elementary and secondary schools where live vertebrate animals or dead animals killed and collected for such purposes are used in surgical, scientific, quasi-scientific, medical, or quasi-medical experimentations.

For children to watch or participate in the inflicting of pain and suffering on animals, as well as their death in most cases, is brutalizing. Our youth need more examples of our love for life rather than our often misused power and control over the life or death of so many inhabitants of this earth.

As a parent of three kind and sensitive children and as an elected official who owes much to the youth who worked so long and hard for my election, I want to pledge my help to help stop the brutality which has become a way of life in this world. If we can stop the torturing of animals, maybe we can stop brutalizing our fellow men on this earth.

How will this Senate answer Bruce and Veronica? I hope, Mr. President, that the leadership and my colleagues will join with me to end this needless, senseless practice now.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 59

At the request of Mr. CRANSTON, the Senator from Idaho (Mr. MCCLURE), the Senator from Vermont (Mr. STAFFORD), and the Senator from Wyoming (Mr. HANSEN) were added as cosponsors of S. 59, a bill to amend title 38 of the United States Code to provide improved medical care to veterans; to provide hospital and medical care to certain dependents and survivors of veterans; to improve recruitment and retention of career personnel in the Department of Medicine and Surgery.

S. 275

At the request of Mr. HARTKE, the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of S. 275, a bill

to amend title 38 of the United States Code, increasing income limitations relating to payment of disability and death pension, and dependency and indemnity compensation.

S. 284

At the request of Mr. CRANSTON, the Senator from Idaho (Mr. MCCLURE) was added as a cosponsor of S. 284, a bill to require the availability of comprehensive treatment and rehabilitative services and programs for certain disabled veterans suffering from alcoholism, drug dependence, or alcohol or drug abuse disabilities, and for other purposes.

S. 316

At the request of Mr. JACKSON, the Senator from Florida (Mr. GURNEY) was added as a cosponsor of S. 316, a bill to further the purposes of the Wilderness Act of 1964 by designating certain lands for inclusion in the national wilderness preservation system, and for other purposes.

S. 394

At the request of Mr. HUMPHREY, the Senator from Pennsylvania (Mr. SCHWEIKER) and the Senator from Indiana (Mr. BAYH) were added as a cosponsor of S. 394, a bill to amend the Rural Electrification Act of 1936, as amended, to reaffirm that such funds made available for each fiscal year to carry out the programs provided for in such act be fully obligated in said year, and for other purposes.

S. 413

At the request of Mr. HATFIELD, the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of S. 413, a bill to permit American citizens to hold gold.

S. 458

At the request of Mr. JAVITS, the Senator from Minnesota (Mr. MONDALE) was added as a cosponsor of S. 458, the "Bill of Rights for the Mentally Retarded."

S. 485

At the request of Mr. GURNEY, the Senator from Illinois (Mr. STEVENSON) was added as a cosponsor of S. 485, the Safe Schools Act.

S. 514

At the request of Mr. Moss, the Senator from North Dakota (Mr. BURDICK) was added as a cosponsor of S. 514, a bill to amend the act of June 27, 1960 (74 Stat. 220), relating to the preservation of historical and archeological data.

S. 548

At the request of Mr. HUMPHREY, the Senator from Idaho (Mr. CHURCH) was added as a cosponsor of S. 548, a bill to provide price support for milk at not less than 85 percent of the parity price therefor.

S. 631

At the request of Mr. CHURCH, the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. 631, a bill to amend the Social Security Act to provide for the coverage of certain drugs under part A of the health insurance program established by title XVIII of such act.

S. 632

At the request of Mr. CHURCH, the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. 632, a bill to amend title II of the Social Security Act to increase the amount which individuals may earn without suffering deductions from benefits on account of excess earnings, and for other purposes.

S. 649

At the request of Mr. JAVITS, the Senator from Montana (Mr. METCALF) was added as a cosponsor of the Japan-United States Friendship Act.

S. 704

At the request of Mr. METCALF, the Senator from Missouri (Mr. EAGLETON), and the Senator from Nevada (Mr. CANNON) were added as cosponsors of S. 704, a bill to restore the independence of certain regulatory agencies of the Federal Government.

S. 749

At the request of Mr. GURNEY, the Senator from Rhode Island (Mr. PASTORE) and the Senator from South Dakota (Mr. ABOUREZK) were added as cosponsors of S. 749, the Civil Service Retirement Recomputation bill.

S. 762

At the request of Mr. HARTKE, the Senator from Washington (Mr. JACKSON), the Senator from Alabama (Mr. SPARKMAN), and the Senator from Maryland (Mr. MATHIAS) were added as cosponsors of S. 762, the military retirement recomputation bill.

S. 882

At the request of Mr. HARTKE, the Senator from Georgia (Mr. NUNN), the Senator from Indiana (Mr. BAYH), and the Senator from Maine (Mr. HATHAWAY) were added as cosponsors of S. 882, a bill to amend section 355 of title 38, United States Code, relating to the authority of the Administrator of Veterans Affairs to readjust the schedule of ratings for the disabilities of veterans.

SENATE RESOLUTION 67—SUBMISSION OF A RESOLUTION CALLING ON THE PRESIDENT TO PROMOTE NEGOTIATIONS FOR A COMPREHENSIVE TEST BAN TREATY

(Referred to the Committee on Foreign Relations.)

Mr. KENNEDY (for himself, Mr. MATHIAS, Mr. HART, Mr. HUMPHREY, Mr. MUSKIE, Mr. CASE, Mr. ABOUREZK, Mr. BAYH, Mr. BROOKE, Mr. BURDICK, Mr. CHURCH, Mr. CLARK, Mr. CRANSTON, Mr. FULBRIGHT, Mr. GRAVEL, Mr. HASKELL, Mr. HATFIELD, Mr. HATHAWAY, Mr. HUGHES, Mr. INOUYE, Mr. JAVITS, Mr. MAGNUSON, Mr. MCGOVERN, Mr. MONDALE, Mr. NELSON, Mr. PELL, Mr. PROXMIRE, Mr. RIBICOFF, Mr. STEVENSON, Mr. TUNNEY, Mr. WILLIAMS, and Mr. BIDEN) submitted the following resolution:

S. RES. 67

Whereas the United States is committed in the Partial Test Ban Treaty of 1963 and the Non-Proliferation of Nuclear Weapons Treaty of 1968 to negotiate a comprehensive test ban treaty;

Whereas the conclusion of a comprehensive test ban treaty will reinforce the Non-Proliferation of Nuclear Weapons Treaty, and will fulfill our pledge in the Partial Test Ban Treaty;

Whereas there has been signficant progress in the detection and identification of underground nuclear tests by seismological and other means; and

Whereas the SALT accords of 1972 have placed quantitative limitations on offensive and defensive strategic weapons and have established important precedents for arms control verification procedures; and

Whereas early achievement of total nuclear test cessation would have many beneficial consequences: creating a more favorable international arms control climate; imposing further finite limits on the nuclear arms race; releasing resources for domestic needs; protecting our environment from growing testing dangers; making more stable existing arms limitations agreements; and complementing the on-going strategic arms limitation talks; Now, therefore, be it

Resolved, That it is the sense of the Senate that the President of the United States (1) should propose an immediate suspension on underground nuclear testing to remain in effect so long as the Soviet Union abstains from underground testing, and (2) should set forth promptly a new proposal to the Government of the Union of Soviet Socialists Republics and other nations for a permanent treaty to ban all nuclear tests.

(The remarks of Senator KENNEDY when he submitted Senate Resolution 67 and the ensuing debate are printed earlier in the RECORD under the appropriate heading.)

NATIONAL INSTITUTE OF MARKETING AND HEALTH ACT—AMENDMENT

AMENDMENT NO. 12

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

Mr. MOSS submitted an amendment intended to be proposed by him to the bill (S. 805) to establish a National Institute of Marketing and Health.

FOREIGN ASSISTANCE AUTHORIZATION ACT—AMENDMENTS

AMENDMENTS NOS. 13, 14, AND 15

(Ordered to be printed and referred to the Committee on Foreign Relations).

Mr. KENNEDY. Mr. President, I am submitting today three amendments to S. 837, the administration's pending foreign assistance authorization bill for the current fiscal year. The amendments concern postwar assistance to Indochina and our country's continuing humanitarian responsibilities to the people and the nations of the entire area.

The amendments are similar to those which I introduced last year—and which were adopted by the Senate in its previous consideration of the current foreign aid authorization bill. The distinguished Senator from Vermont (Mr. AIKEN) cosponsored two of last year's amendments. The distinguished Senator from Maryland (Mr. MATHIAS) cosponsored one of them.

Mr. President, with the anticipated cease-fire agreements in Laos and Cambodia, we are relieved today that the second Indochina war is at last coming to an end. We are grateful that our servicemen are coming home. And all Americans share the special joy of those families who are experiencing the homecoming of sons and husbands and fathers who were prisoners of war.

But we must temper our sense of relief and joy with the realization that

many difficult problems remain—for individuals and families in this country, for our Nation as a whole, and for the people and governments of Indochina.

Many thousands of young Americans have died in the long war—and we must not forget their sacrifice, and the special sorrow it has brought to their families and friends. Many other young Americans are still missing in action—and a full accounting of their fate must be pursued with every possible effort. Meanwhile, their relatives and friends still need our help and concern. So do the thousands of young men, and their families, who chose not to participate in the war—and the tens of thousands of Vietnam veterans who have served their country, but who now find themselves shunted around by an ungrateful administration. We have an obligation to these men—and with the support of the American people, I know the Congress will help to meet it.

And let us not forget, Mr. President, that despite a cease-fire agreement in Vietnam—and the administration's current emphasis on the peaceful development of Indochina—conflict and battle and bombing continue, even in South Vietnam. Let us not forget the many young Americans who are still involved in the conflict—especially in the bombing missions over Laos and Cambodia, and in the other activities supporting the battle in these countries. For even as our prisoners are being repatriated from North and South Vietnam, additional numbers of our young men are joining the ranks of the captured or missing in other areas of Indochina. And this continuing waste of American lives and effort and funds—and the continuing violence in Indochina—should be cause for great concern on the part of all Americans.

The problems that remain in Indochina are not only the diplomatic problems in concluding or implementing cease-fire agreements, but also the people problems in really building the peace. The amendments I am introducing today are concerned with the people problems, and the kind of effort our country should make in helping to resolve them.

I shall not burden the record at this time with any lengthy discussion of the people problems in Indochina—for the devastation war has brought to all the countries of the area is painfully clear to all Americans.

But I strongly believe that our country bears a heavy responsibility in helping to resolve the crisis of people in Indochina—in helping to restore the lives of refugees and orphans and crippled thousands, who bore the brunt of mortars and bombs and battle from all sides. We cannot wash our hands of their tragic plight, simply because the last American soldiers are leaving their shores. Clearly, our major responsibility remaining in Indochina, is to the people who live there—to those who suffered so much, for so long.

The Subcommittee on Refugees, which I serve as chairman, conservatively estimates that up to 15 million war victims need some kind of relief and rehabilitation. In South Vietnam, nearly half the population of 18 million has been displaced, orphaned or maimed since the war began. Official estimates put the number of orphans at close to 1 million. Some 20,000 to 30,000 Amer-Asian children—those fathered by Americans—need a special concern—for their plight has long been neglected by Saigon and Washington. Tens of thousands of people—a good share of them children—need prosthetic devices. A large proportion of the 8 million refugees still exist in the swollen slums of Saigon and other urban areas, or in the squalid refugee camps maintained by the government—millions of people torn for years, from their homes and lands and source of livelihood. And even in the aftermath of the cease-fire agreement for Vietnam, many people still have no peace. The Agency for International Development—AID—informs me that new refugee and civilian war casualty numbers continue to mount—adding heavily to the nearly 2 million refugees and 200,000 civilian war casualties of 1972.

Similar conditions exist in Cambodia and Laos, where the battle and bombing continue, and the number of war victims escalates daily. And in North Vietnam all available indicators also suggest that humanitarian needs exist among a significant proportion of the population.

In addition to the purely human toll of the war, Mr. President, there is the physical devastation of cities and towns and hamlets—of religious shrines and markets and livestock and housing—of schools and clinics and hospitals. And there is the impact of herbicides on the land and forests—and bomb craters by the tens of thousands—and tons of mines and explosives which lie sunken in the fields and rice paddies over much of Indochina.

The human suffering and pain in Indochina staggers the imagination. It is difficult to comprehend the aggregate available statistics of war victims. It is even more difficult to comprehend the implication of these statistics on the family structure, traditions and social fabric of nations that have confronted massive upheaval and total war. But there can be no mistake, that millions of men and women and children in Indochina are crying out for relief, as the hopeful aftermath of conflict slowly approaches. And we must join with others in answering their cries for help. An international humanitarian alliance must help the people of Indochina.

Mr. President, the first amendment I introduce today, affirms the willingness of the United States to share the burden of providing for the humanitarian relief, rehabilitation, and reconstruction of the people and nations of Indochina. The amendment declares that—

> Assistance for such purposes shall be distributed to the maximum extent practicable under the auspices of and by the United Nations, other international organizations, multilateral institutions, and private voluntary agencies with a minimum presence and activity of United States Government personnel.

The amendment also urges the President to work with other governments—and to solicit their cooperation "in encouraging the United Nations Secretary General to establish immediately an autonomous United Nations fund for Indochina, or other appropriate institutional arrangements, to receive humanitarian and developmental contributions to support the humanitarian relief, rehabilitation, and reconstruction of the people and nations of Indochina under international auspices." And finally, as an expression of American support for creating an international fund, the amendment would make available to the President, from supporting assistance, the necessary funds "to make an initial humanitarian contribution" to the international effort.

The second amendment earmarks $70 million—from supporting assistance—"to provide humanitarian assistance to refugees, civilian war casualties, war orphans, and other persons disadvantaged by hostilities in South Vietnam." The third amendment earmarks $2 million for similar purposes in Cambodia. Both amendments stress the use of international organizations and private voluntary agencies for the channeling of this emergency relief—and that the assistance "shall be distributed with a minimum presence and activity of U.S. Government personnel."

Mr. President, the first amendment is the result of extensive discussion in many quarters, and with many experts—and is an effort to establish what I firmly believe broadly represents the long-term will of Congress and the American people on the issue of postwar assistance to Indochina. Very simply, the amendment recognizes our responsibility toward all the countries of Indochina, categorizes various kinds of assistance, places priority on basically humanitarian objectives, channels the bulk of American assistance through international channels, and minimizes the presence and activity of U.S. Government personnel in the implementation of assistance programs.

In terms of funding, the three amendments combined represent a very modest beginning—in the remaining quarter of the fiscal year—to help in providing for the relief, rehabilitation, and reconstruction of the people and nations of Indochina. Only $72 million is earmarked for humanitarian purposes in South Vietnam and Cambodia—and I understand that a good share of this amount has already been obligated under the continuing resolution which expires next week. The first of the three amendments, however, proposes that additional sums, for humanitarian purposes, shall be made available for South Vietnam and Cambodia—as well as for Laos and North Vietnam—from the overall total foreign military and security assistance finally made available to the President. In light of the present uncertainties over this total amount—as well as over the total assistance already obligated under the continuing resolution—it is difficult to earmark a specific sum, which the amendment calls an "initial humanitarian contribution" to an international fund for Indochina. I am extremely hopeful, nevertheless, that the appropriate committees will carefully consider this proposal—and that significant funds will be made available to the President, during the current fiscal year, from the sources

and for the purposes anticipated in the amendment.

I am also hopeful, Mr. President, that the committees—and the Congress—will place priority on people concerns, on basically humanitarian objectives, and will strongly support the distribution of our aid mainly under international auspices.

An investment for peace in Indochina does not lie, first of all, in grandiose schemes for economic reconstruction. It does not lie first of all, in roads and bridges and harbors. For if we really mean what we say about healing the wounds of war, our first concern will be for the victims of war—for those millions of people scattered over the face of Indochina by powerful forces over which they had so little control.

The time is long overdue for all of us to pause and open our eyes to the plight of the children in Indochina—especially the orphans and those fathered by Americans. Year after year the problem of children, the most pitiful of war victims—has gone unattended. And so today, field reports to the Subcommittee on Refugees tell again of many appalling conditions involving malnutrition and disease and death.

The time is long overdue for a truly viable program to fit the lame with prosthetic devices. The waiting time today for a prosthetic device is many years. This is deplorable when many countries, including our own, can manufacture thousands of devices in a matter of days or weeks.

And there is the urgent need to restore the livelihood of millions of refugees by providing for their return to the villages and ancestral lands they left so long ago. Many of these villages have been destroyed. So there is need for simple housing, the rebuilding of the marketplace, of schools, and religious shrines and temples. There is a need to restore agricultural productivity.

And there is a need to renew the village health system in the countryside, and to rebuild devastated medical facilities.

And there are many other human needs that must be met to put the people back on the road to a life of health and normalcy, which they were forced to abandon during the long years of war. Surely there can never be a peace with honor if America now walks away from the human debris of the war and neglects the urgent humanitarian needs of all the people in Indochina. Only then will our country truly be building the peace.

To this end, I introduce the amendments today. Mr. President, I ask unanimous consent that the text of the amendments be printed in the RECORD at this point.

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

AMENDMENT No. 13

Section 4 is amended—

(1) by inserting "(a)" immediately after "Sec. 4."; and

(2) by adding at the end thereof the following:

(b) Such chapter 4 is further amended by adding at the end thereof the following new section:

"SEC. 534. Humanitarian Relief, Rehabilitation, and Reconstruction in Indochina.—(a) the Congress affirms the willingness of the United States to share the burden of providing for the humanitarian relief, rehabilitation, and reconstruction of the people and nations of Indochina, including South Vietnam, North Vietnam, Laos, and the Khmer Republic.

"(b) Assistance for such purposes shall be distributed to the maximum extent practicable under the auspices of and by the United Nations, other international organizations, multilateral institutions, and private voluntary agencies with a minimum presence and activity of United States Government personnel. The Congress urges the President to solicit the cooperation of other governments to support and participate in the humanitarian relief, rehabilitation, and reconstruction of the people and nations of Indochina under international auspices.

"(c) The Congress further urges the President to solicit the cooperation of other governments in encouraging the United Nations Secretary General to establish immediately an autonomous United Nations Fund for Indochina, or other appropirate institutional arrangements, to receive humanitarian and developmental contributions to support the humanitarian relief, rehabilitation, and reconstruction of the people and nations of Indochina, or other apropriate institutional an expression of the United States support for the establishing and maintenance of a United Nations Fund for Indochina, or other appropriate institutional arrangements, any of the funds appropriated under section 532 of this Act for fiscal year 1973, are hereby made available, until expended, as the President considers appropriate, to make an initial humanitarian contribution to such Fund or pursuant to such arrangements."

AMENDMENT No. 14

Section 4 is amended—

(1) by inserting "(a)" immediately after "Sec. 4."; and

(2) by adding at the end thereof the following:

(b) Such chapter 4 is further amended by adding at the end thereof the following new section:

"Sec. 534. Humanitarian Assistance in South Vietnam—The President is authorized to provide humanitarian assistance to refugees, civilian war casualties, war orphans, and other persons disadvantaged by hostilities or conditions related to those hostilities in South Vietnam. Of the funds appropriated pursuant to section 532 for the fiscal year 1973, not less than $70,000,000 shall be available, until expended, solely to carry out this section. Of the funds appropriated under section 532 of this Act, including any such funds made available to carry out this section, not less than $20,000,000 shall be allocated for project assistance in South Vietnam for public health services and war victims. Such assistance shall be distributed to the maximum extent practicable under the auspices of and by the United Nations and international humanitarian organizations or United States voluntary agencies, with minimum presence and activity of United States Government personnel with respect to such distributors."

AMENDMENT No. 15

Section 4 is amended—

(1) by inserting "(a)" immediately after "Sec. 4."; and

(2) by adding at the end thereof the following:

(b) Such chapter 4 is further amended by adding at the end thereof the following new section:

"SEC. 534. Humanitarian Assistance in the Khmer Republic.—The President is authorized to provide humanitarian assistance to refugees, civilian war casualties, war orphans, and other persons disadvantaged by hostilities or conditions related to those hostilities in the Khmer Republic. Of the funds appropriated under section 532 for the fiscal year 1973, not less than $2,000,000 shall be available, until expended, solely to carry out this section. Such assistance shall be distributed to the maximum extent practicable under the auspices of and by the United Nations and international humanitarian organizations or United States voluntary agencies, with a minimum presence and activity of United States Government personnel with respect to such distribution."

NOTICE OF HEARINGS ON S. 880

Mr. MOSS. Mr. President, I wish to announce to Senators and other interested persons that the Committee on Aeronautical and Space Sciences will begin hearings on S. 880, a bill to authorize appropriations to the National Aeronautics and Space Administration for research and development, construction of facilities, and research and program management, and for other purposes, on February 28 beginning at 9:30 a.m. in room 235. The remaining schedule of hearing dates, witnesses and subject matter are set out below. All hearings will begin at 9:30 a.m.

DATE, WITNESS, AND SUBJECT

February 28, Dr. James Fletcher, fiscal year 197x budget overview.

Astronauts from the Skylab and Apollo/Soyuz missions will also present testimony.

March 6, Dr. James Fletcher, long-term aeronautics and space objectives.

March 8, Mr. Dale Myers, Associate Administrator, Skylab, Apollo/Soyuz, Space Shuttle.

March 9, Prof. Maurice Levy, president, European Span Research Organization, European "Space Lab" project.

Mr. Dale Myers, Mr. Robert Curtin, Director of Facilities, Space Shuttle—including shuttle facilities construction.

March 12, Dr. John Naugle, Associate Administrator, space science programs.

Mr. Charles Mathews, Associate Administrator, applications programs.

March 14, Mr. Charles Mathews, applications programs—continued.

March 15, witnesses from Departments of Agriculture, Commerce, and Interior, National Science Foundation, Environmental Protection Agency, earth resources and environmental programs.

March 21, Mr. Roy Jackson, Associate Administrator, advanced science and technology programs.

Witness from Department of Transportation on NASA/DOT programs in aeronautics.

March 22, Mr. Gerald Truszynski, Associate Administrator, tracking and data acquisition.

Other NASA witnesses, Research and Program, Management Budget, Technology Utilization, International Programs Construction Budget.

April 4, additional witnesses.*

April 5, Department of Defense witness—classified session.

April 10, additional witnesses.*

* Witness list to be released at a later date. Other persons wishing to testify or to submit statements for the record should contact the Committee. Several additional witnesses have been scheduled; others will be accommodated to the extent the schedule permits.

ANNOUNCEMENT OF HEARINGS ON TAXPAYER SERVICE ASSISTANCE

Mr. MONTOYA. Mr. President, I wish to announce that the Appropriations Subcommittee on Treasury, Post Office, and General Government, of which I have the honor to be chairman, will hold hearings on February 27, 28, and March 1 to:

First, review the Internal Revenue Service's efforts in the areas of taxpayer service assistance and compliance programs.

Second, hear public testimony concerning the scope and range of public concern with IRS efforts in these areas and to insure that the Treasury, as well as IRS, is aware of the criticism of these current programs and the recommendations being made as to how the public may be better served.

Appearing before the subcommittee to discuss these issues will be some noted authorities on the policies and procedures of IRS, including former Commissioners Sheldon Cohen, Mortimer Coplan, and Randolph Thrower. Public testimony will also be received from such tax reform advocates as Ralph Nader and Tom Stanton of the Tax Research Group; Jeff Gold, president of Community Tax Aid; and Tom Fields of Tax Analyst Advocates.

Several distinguished Members of Congress have requested time to appear and testify on the specific issue of the Freedom of Information Act as it applies to IRS.

Mr. President, I am convinced that these hearings will provide the vehicle to a better understanding for the public of current IRS practices with regard to taxpayer services, while at the same time permit the public to apprise IRS of the specific nature of their concern with IRS practices and procedures.

I ask unanimous consent to have printed after my remarks a tentative agenda and list of witnesses for the hearings, which are scheduled for 10 a.m. and 2 p.m. in room 1114 of the New Senate Office Building on the above dates.

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

SENATE HEARINGS BEFORE COMMITTEE ON APPROPRIATIONS: TREASURY, U.S. POSTAL SERVICE, AND GENERAL GOVERNMENT

Subject: Problems Encountered By The Internal Revenue Service In The Administration of Taxpayer Service Assistance and Compliance Programs.

TENTATIVE AGENDA FOR HEARINGS

Date: February 27, 28, March 1, 1973.

Place: NSOB 1114, First Floor (10:00 a.m.–2:00 p.m.).

Purpose of Hearings is to:

1. Review the Internal Revenue Service's efforts in the area of Taxpayer Service and Assistance programs.

2. Hear Public Testimony concerning the scope and range of the Internal Revenue Service's efforts in these areas and to make sure that the Treasury as well as the Service is aware and understands the nature of both criticism of current programs and recommendations as to how the public might be better served.

3. To communicate both to the Treasury and the Internal Revenue Service the apparent erosion of public confidence in the administration of the Tax Code and the Subcommittee's concern that efforts be made to sustain public faith in the administration of our Tax System.

I. Tuesday, February 27, 1973. Opening Statements. 10:00 a.m. to 12:00 noon.

A. Chairman Montoya—Context, scope and range of Subcommittee's purpose.

B. Deputy Secretary of the Treasury—Opening comments.

C. Commissioner of Internal Revenue Service—Inventory of Service's efforts.

D. Professor L. Hart Wright—University of Michigan Law School. 2:00 p.m. to 4:00 p.m.

E. House Subcommittee on Legal and Monetary Affairs—Testimony.

F. Ralph Nader—Opening Testimony of Public Interest Groups.

G. Mr. Jeff Gold—President of Community Tax Aid (CPA).

H. National Association of Certified Public Accountants—Mr. Yosinoff, Chairman, Tax Committee.

I. President Vincent Connery—National Association of Internal Revenue Employees.

II. Wednesday, February 28, 1973. 10:00 a.m. to 12:00 noon.

A. Professor L. Hart Wright—Testimony.

B. Chairman Moorhead (Rep.) Subcommittee on Foreign Operations and Government Information, House Government Operations Committee.

C. Mr. and Mrs. Phillip Long—Taxpayers, Bellevue, Washington. 2:00 p.m. to 4:00 p.m.

D. Mr. Thomas Field—Tax Analyst and Advocates Lawyer.

E. Mr. George Zeitlin—New York State Bar.

F. Mr. Thomas H. Stanton—Director, Tax Research Group, Lawyer.

III. Thursday, March 1, 1973. Panel of Former Internal Revenue Service Commissioners.

A. Mr. Mortimer Caplin.

B. Mr. Sheldon Cohen.

C. Mr. Randolph Thrower.

D. Mr. Johnnie Walters.

E. Mr. William H. Smith, Former Deputy Commissioner.

NOTICE OF HEARINGS ON CURRENT FUEL SHORTAGES

Mr. JACKSON. Mr. President, as many Senators are aware, in recent weeks, significant shortages have occurred in available supplies of natural gas, diesel oil, and fuel oil. There has been an apparent breakdown in our national energy system.

To date, these shortages have caused serious economic disruptions and public inconvenience. They have led to the closing of factories and schools, and the disruption of trucking and airline transportation. In light of these circumstances, it is imperative that Congress understand the dimensions of the shortage and what has caused this apparent breakdown in our energy distribution system.

The Congress needs to know why it has not been possible to anticipate and meet the demand for various fuels. The Interior Committee is particularly interested in what role Government policies have played in creating the present situation.

At the initial fuel shortage hearing on February 1, 1973, the Interior Committee received testimony from officials of the Federal Power Commission and Office of Emergency Preparedness, from representatives of independent refiners and oil jobbers, and from other major fuel users.

On Thursday, February 22, 1973, testimony will be received from selected major energy refiners and suppliers.

The hearing which will begin at 10 a.m. in room 3110 of the New Senate Office Building, is being held pursuant to the Senate's National Fuels and Energy Policy Study authorized by Senate Resolution 45, 92d Congress. The invited witnesses are:

10 a.m.: Mr. Randall Meyer, president, Exxon Co.—U.S.A., Houston, Tex.; Mr. Oscar Wyatt, chairman of the board, Coastal States Gas Producing Co., Houston, Tex.

2 p.m.: Mr. Annon Card, senior vice president, Texaco, Inc., Washington, D.C.; Mr. Robert Yancey, president, Ashland Oil, Inc., Washington, D.C.

Interested and affected parties are invited to submit statements for the record in 10 copies by March 5, 1973.

NOTICE OF HEARINGS ON THE LAND USE POLICY AND PLANNING ASSISTANCE ACT OF 1973

Mr. JACKSON. Mr. President, I wish to announce to Senators and other interested persons that the Committee on Interior and Insular Affairs—full committee—plans to continue its open hearings on S. 268—the Land Use Policy and Planning Assistance Act of 1973—on February 26 and to schedule another day of hearings on February 27.

The hearings will be held in the committee room, 3110 Dirksen Senate Office Building. The hearing on February 26 will commence at 10 a.m. and the hearing on February 27 at 10:30 a.m. Persons wishing to testify should advise the staff of the Interior Committee and submit 100 copies of their statement at least 24 hours prior to the hearing date.

ADDITIONAL STATEMENTS

MILITARY MEN TRAINED AS SERVANTS

Mr. PROXMIRE. Mr. President, I have introduced S. 850, a bill to prohibit the use of enlisted men as personal servants to certain generals and admirals. The public response has been overwhelming. It is more than clear to me that the Nation's taxpayers will not tolerate such a misuse of their tax dollars.

As further evidence of the squandering of Federal resources in this program, today I submit excerpts from the course program at U.S. Army Quartermaster School at Fort Lee, Va. As I have explained before, Fort Lee is the facility where the Army teaches volunteer enlisted men in the fine arts of general pampering.

I do not exaggerate. If there are those who doubt that there is a gross misuse of public funds in the program, let them examine the course program at Fort Lee.

PROGRAM OF INSTRUCTION FOR MILITARY SERVANTS

As of July 1972, the Quartermaster School at Fort Lee planned to provide the following hours of "formal training

in the duties and responsibilities of enlisted personnel assigned to public quarters occupied by General Officers." The students receive 288 hours of instruction in academic subjects and 32 hours in nonacademic subjects for a total of 320. Of this 320 hours 173.5 hours is in practical exercise hardware with the rest being distributed among lecture, conference, demonstration, film, television, and examinations.

EXAMPLES OF SUBJECTS TAUGHT

Among the courses for the enlisted men are the following: 1 hour in personal conduct including evaluation of moral standing, sobriety, personal appearance and financial reliability; 1 hour in conduct including courtesy to family and guests and telephone courtesy; 1 hour in daily work schedule including domestic responsibilities in an officer's quarters. The enlisted aides are provided the book, "The Army Wife" as a reference; 3 hours in pet care including instruction in care of such family pets as dogs, cats, fish, and birds; 13 hours in care of officers' uniforms and equipment with a performance examination; 25 hours in care and cleaning of a general's quarters including care of private household, appliances, and serving apparatus.

Examination: 1 hour in care and use of domestic style appliances; 1 hour in insect and rodent control; 1 hour in gourmet menus and recipes; 7 hours in selection and purchase of meats, poultry, and seafood items; 1 hour in placement of flags; 8 hours in selection of table service for informal functions.

Examination: 12 hours in selection of table service for formal functions; aides are provided the book, "The Correct Waitress," for reference; 16 hours in preparation of centerpieces such as floral arrangements and ice carvings. Book supplied: "Ice Carving Made Easy."

Thirteen hours in preparation and dispensing of beverages both alcoholic and nonalcoholic served either formally or informally in general officers quarters; 16 hours in cake baking and decorating. Examination; 16 hours in danish puff and pie pastry and cookies; 7 hours in dinner rolls and quick bread. Examination; 7 hours in preparation of hot and cold appetizers ,hors d'oeuvers, and canapes. Examination; 4 hours in garnishing, cold meats and cheese trays; 34 hours in preparation of gourmet meat dishes for formal and informal occasions in the officers quarters; 10 hours in preparation and serving of brunch including choice of linen; 10 hours in preparation and serving of standup buffet including attention to color combinations and "harmonious consistency;" 11 hours in preparation and serving of informal meals and 16 hours in preparation and serving of formal meals.

Mr. President, I ask Senators: Is this necessary? Does this contribute to the national defense? Will the Nation be stronger because of this program at Fort Lee? What public official in the Department of Defense will come to the defense of this program? Let us hear in a public forum just how this program is justified. Let the American public be told by a Defense Department spokesman that taking care of a general's birds, cats, dogs, and fish is in the national interest. Why should our enlisted men be trained in gourmet meat preparation for generals and admirals when our soldiers are eating hamburger?

It is past time when good sense should have prevailed. This program must be stopped immediately.

THE HIGH COST OF THE CLEAN AIR ACT

Mr. SAXBE. Mr. President, "We have met the enemy and he is us." These words from Walt Kelly's Pogo have been used many times to describe American dilemma. However, they are most appropriate to sketch the limitless frustration we feel in regard to tempering our modern life styles to the preservation of our environment. No one wants to return to a nuts and berries existence, but at the same time most of us are deeply concerned about ecology.

Ecological frustration is not new to Americans. Many a pioneer admired the majesty of the mountains before stripping the minerals and resources from them. Rivers became convenient dumping grounds and clean air gave way to emissions from automobiles and other stationary sources of power. But, while mother nature herself emits large amounts of pollutants, it is the automobile that bore and continues to bear the brunt of the blame for air pollution. Congress must not blindly require that the driving consumer indiscriminately bow to the extra costs imposed by the noncost effective provisions of legislation passed in 1970.

Under the Clean Air Act, three individual and very complex and closely interrelated issues have been dealt with by essentially independent actions. The legislation developed ambient air quality standards. It set automotive emission standards, and, most important, it imposed time limits for the achievement of these standards. I emphasize the cost of compliance.

This fact sets the basic tone of my remarks. Increased cost is most important to the consumer and to the automotive industry. Presently, the 1973 standards require an additional expenditure of $100 per vehicle. It is estimated that this cost will increase up to $375 per vehicle to comply with the 1975 standards, and be even higher to control nitrogen oxides in 1976. The consumer must bear the cost of the installation of this pollution control equipment. And, we must look long and hard to justify this expenditure.

Air pollution caused by automobile emission is decreasing. The 1973 models, properly adjusted, are reducing automotive emission by seven times over the 1966 models. In other words, one 1966 car emits pollutants at the same rate as seven 1973 cars. If all automobiles on the road today were 1973 models, the air pollution caused by automotive emission would return to approximately that level experienced in 1943.

Increased costs to consumer will also include an estimated 15-percent hike in fuel consumption. This added fuel consumption will strike the consumer in two ways; first, fuels for the new emission controls will be higher priced because of their complicated chemical structure. And, the increased fuel consumption will expand the likelihood of an energy crisis, whether imposed by nature or fixed by collusion. This fuel cost penalty could be as much as $10 billion a year.

Another hidden cost to the consumer will result from unknown problems with driveability and maintenance on cars carrying the sophisticated emission devices While no field for experience in this area is available, automobile manufacturers have built a substantial number of vehicles that will meet the 1975 emission levels and work. However, they do not know from this grouping whether they have the capacity to make millions of cars and trucks performing precisely to the standards for 5 years or 50,000 miles.

If there is a chance of compliance with the high Federal standards it depends, according to the National Academy of Sciences, upon these three conclusions: First, catalyst replacement, second, averaging of emissions during testing and, third, general availability of unleaded gasoline. The Academy made this conclusion in January of last year. Since then, administrative actions have been taken which point to the fact that two of these conditions will be met. Late last year the Administrator of the Environmental Protection Agency decided to allow the replacement of catalysts, and last month he confirmed regulations designed to assure the general availability of gasoline by the summer of 1974 that will not poison the catalyst. The third condition is vital. And, it's significance is clear to automobile manufacturers.

The objectives of the Clean Air Act will be satisfied when the average car meets the standards. In other words, the accomplishment of the legislative intent of Congress does not require that each and every car meet the standards but that average automotive emission is below that set by the Congress.

Mr. Richard C. Gerstenberg, chairman, General Motors, explained the concept of averaging before the International Automotive Engineering Congress recently in Detroit, Mich. He said:

> The atmosphere may be considered a container. Into it are mixed the exhaust constituents from all cars. Thus the atmosphere in effect averages everything that goes into it, including the exhausts from all vehicles. This concept of the effect of exhaust emissions on ambient air quality was recognized in the early procedures which based vehicle certification on the average emission level for a particular type. The amendments of 1970 call for a 90 percent reduction in emissions from the level of the 1970 and 1971 vehicles, and the certification procedures for these vehicles recognized this averaging concept. It is clearly logical then that administration of the more stringent 1975 and 1976 levels should also recognize this concept. This is a simple matter . . . further type certification cars are individually constructed to represent the intended mean limit of the production car. The interacting effects of many variables, each controlled within close tolerances, make it impossible to obtain exactly the same emission level from each production car. These small individual component and adjustment tolerances are an inherent characteristic of mass produced products. Unnecessarily close limits add to costs without compensating value.

Further economic discussion of the problem illustrates the questionable feasibility of meeting the levels set by the act by 1976. This standard rejects 89-percent removal and penalizes a successful emission achievement at any date beyond the 1976 cutoff. This economic situation is almost as bad as the scientific phenomenon that is brought about by the act. The Clean Air Act requires that carbon monoxide and nitrogen oxides be eliminated. However, to eliminate carbon monoxide, heat is added to produce carbon dioxide which produces an increase of nitrogen oxides. At this point the problem becomes circuitous. And if the industry comes close to meeting the Federal standards the contribution to air pollution by automobiles becomes nil.

The effect of higher priced cars results in decreased demand for them. This means less employment and productivity for the country. Experts have estimated that the construction of automobiles in 1980 would be approximately 11 million automobiles rather than 15 million. Therefore, extra cars and extra expected employment would not be generated by the automobile industry.

After consideration of most points bearing on automobile emissions, the crucial questions become the danger or lack of it, to public health and the economical wisdom of imposing the 1975–76 automobile emissions control provisions of the Clean Air Act. In those terms, I am convinced that the Federal automotive emissions standards are more restrictive than necessary.

California has recommended standards which are more realistic than the Federal standards, which are tough enough to meet the requirements of a State with the worst automotive emission problem in the country. The California standard provides for a 9-percent reduction in hydrocarbons, an 81-percent reduction in carbon monoxide, and a 75-percent reduction in oxides of nitrogen.

Most citizens are convinced that simply by driving their car they contribute to an inordinate amount of pollution to the air. The fact is that each vehicle with present controls contributes extremely small amounts. And, if the 1976 standards are applied to other activities of the average American, he would be forced to cease burning fireplace logs and limit himself to three gallons of oil each day or be in violations of the statute pertaining to oxides of nitrogen.

The cost of the automotive emission standards in the Clean Air Act are much greater than the benefits. A 1972 EPA report to Congress estimated that in 1977, when all controls on motor vehicles are in effect, the annual cost of those controls will be more than $8 billion. The projected national annual benefit to material and vegetation will be less than $1 billion. Health benefits cannot be measured at the present time, because any problems which have occurred have taken place in small areas of extremely high concentrations of pollutants.

Other solutions have been posed to meet the high cost of abatement devices. One discusses forcing the American public to drive smaller cars. This solution is a complete fiction. A small engine pollutes as much or usually more than a big one because it is turning at maximum speed, forcing more pollutants into the air. Of course, the small car does conserve fuel and may have other attributes in regard to this conservation.

One viable alternative seems to be to designate high concentration areas of automobile emissions and require people driving in these areas to pay for additional pollution control devices. To penalize the entire population of the country to clean up a relatively few high density pollution areas seems unfair. It is discriminatory to ask an Ohio or midwestern farmer to pay to clean the air of New York City. In this regard, the farmer may have to be inconvenienced by parking his rural car on the perimeter of a high density urban area, but at least he would not have to bear the brunt of legislative overkill in the Federal air quality legislation.

After consideration of the progress the automobile industry has made toward meeting the standards, automotive experts made the decision that no other power source but the internal combustion engine could meet the requirements for driveability, durability, fuel consumption and cost on the schedule set by Congress. Add-on emission control devices leave a lot to be desired. Substantial steps have also been made to continue to improve the internal combustion engine. The industry has made a great deal of progress at a reasonable cost to the consumer. To require the additional cost of meeting the provisions of the Clean Air Acts 1975 and 76 requirements is unfair to auto manufacturers and to the public who must ultimately pay the bill.

The improvement made by the automotive industry seems adequately summed up by Dr. A. J. Haagen-Smit, head of California Air Resources Board, and the man who first discovered the automobile's role in photochemical smog. Dr. Haagen-Smit recently observed:

> The problem is so far over the hump that I am beginning to lose interest.

Because of remarks like Dr. Haagen-Smit's and the lack of cost effectiveness in meeting the 1975–76 standards, I feel that the effective dates of the Clean Air Act should be extended to allow a more economically viable approach to automobile emission abatement.

We have come a long way in removing most of the harmful emissions from the atmosphere. And, we in Congress feel that the act is a great stimulus to cleaner cars and cleaner air. However, we must not penalize the automotive industry for their advancement or discourage consumers from cooperating in cleaning up automotive emissions. Rather, we should allow more time to make removal of the small percentages of harmful emissions in the air cost effective. Such extensions would allow automotive engineers and manufacturers to eventually remove these pollutants but without devastating cost to the industry and the public.

If the Congress will not extend the time necessary to properly develop the existing Federal standards we should revise them to the level of the 1975 California standards. Not only are these California standards tough enough to protect the State with the most severe automobile air quality problem in the Nation, but they could save the car buyer several hundreds of dollars in original purchase cost and in operating costs. The new car buyer would not have to pay for catalytic systems, and he would not have to buy expensive replacement catalysts. He would not have to pay extra for lead-free fuel, or suffer severe mileage loss. And such a motorist would still have pollution abatement controls necessary to protect the Nation's environment.

The Clean Air Act was passed at a time when the Congress as well as their constituents feared that the country was already at a point of asphyxiation and the automobile was indeed the major source. At the time of the act, I, along with a majority of my colleagues, supported that viewpoint. However, additional facts and evidence uncovered since the passage of the act in September of 1970, have convinced me that the automobile emission standards should be revised or time extended to allow companies to meet them. There has been a marked improvement in the air quality of communities of all sizes. In my own State of Ohio, Montgomery County had about 750 tons of carbon monoxide in the air in 1967. This area includes Metropolitan Dayton, and is now down to 550 tons, and with the present controls it should drop to about 200 tons in 1980. This is well within safe limits.

Further, motor vehicles account for only 10 percent of the total problem of potentially harmful emission produced by man. Each passenger car with present controls—that is, 1973 equipment—contribute extremely small amounts of pollutants. Considering all these facts, California, the State most susceptible to air pollution problems, believes the Federal standards are more restrictive than necessary. I agree, and hope that the restrictions will be revised or more time allowed to meet the 1975–76 structure of the Clean Air Act.

SOVIET MOON VEHICLE

Mr. MOSS. Mr. President, the Soviet Union fired the imagination of millions of earth citizens with its accomplishments in space in the 1950's, and it has continued a very extensive program which contributes to an understanding of the universe.

Concurrent with our own program of manned space missions, the Soviet Union has had two successful moon landings. A release from Moscow quoted in the New York Times on February 13 gives us a short report of the activities of its robot moon vehicle Lunokhod 2 which I ask unanimous consent to have printed in the RECORD.

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

SOVIET MOON VEHICLE HEADS TOWARD A MOUNTAIN RANGE

Moscow, February 12.—The Soviet Union's robot moon vehicle, Lunokhod 2, has been heading toward a nearby lunar mountain

range during its latest communications sessions with ground control, Tass, the Soviet press agency, reported today.

The eight-wheeled vehicle covered more than one and a quarter miles yesterday and Saturday as it headed toward the Taurus mountain range, Tass said. Along its route, the vehicle tested the lunar soil and took television pictures.

Lunokhod 2 was landed on the moon's Sea of Serenity four weeks ago, about 120 miles north of the Taurus Littrow highlands area explored by the Apollo 17 astronauts last December.

LITHUANIAN INDEPENDENCE

Mr. CURTIS. Mr. President, today marks the 55th anniversary of the independence of the Republic of Lithuania. A small nation which lies in North Central Europe, extending from the Baltic to the Black Sea, which declared itself independent from its over 100 years of Russian domination on February 16, 1918. Lithuania adopted its permanent Constitution on August 1, 1922, a Constitution which accorded freedom of speech, freedom of assembly and freedom of communication; which vested the power of legislation with a parliament and the executive in the President and Cabinet of Ministers.

In 1976, our Nation will commemorate the 200th anniversary of its birth as a nation; a nation comprised of once fiercely independent and autonomous States which, by their own free choice, banded together to form a nation; a nation which has become the symbol and defender of freedom throughout the world; whose Constitution also guarantees freedom of speech, freedom of assembly and freedom of the press, and which vests the power of legislation with the Congress, the executive authority with the President, and the judicial authority with the Supreme Court.

The independence of Lithuania was short lived, for it again fell under Russian domination when the Red Army occupied Lithuania during World War II. One might conjecture that when the Red Army "liberated" Lithuania from German hands during the early stages of World War II, the long Russian dominance of this area had developed an "appetite for those latitudes" which the Russian Bear satiated by declaring Lithuania a "constituent republic" on August 3, 1940.

Lithuanians whose Constitution, like ours, had granted them the freedom of choice had no choice in their "constituent republic" status. Those who protested were "relocated" in Siberia—80,000 Lithuanians fled their own homeland seeking sanctuary—60,000 were found in East Germany and were deported to Siberia. During the period 1945 to 1946, 145,000 Lithuanians were deported to Siberia and in March 1949 in answer to a passive resistance to collectivization of their farmlands, 60,000 more Lithuanians were deported.

It is difficult to ascertain the specific fate of Lithuania during the time of Soviet domination, for the first Western observer was allowed into Lithuania in 1959—more than 19 years after the Russians had declared the country a "constituent republic." One could assume that because of the strategic location of Lithuania, which makes it a nearly perfect missile site, the country was kept off limits to Western observers; but is it not also possible that the Russian Bear has been hiding beneath its dark shadow something more terrible than weapons of war, an enslaved people—a captive nation?

On July 27, 1922, the United States of America recognized the independent Republic of Lithuania and has never recognized that nation's domination and engulfment by the Soviet Union.

Mr. President, I speak today not only to commemorate the 55th anniversary of a once independent nation and to pay tribute to those peoples who have declared that "we have not accepted and will never accept Soviet slavery," but to enjoin the Congress to remember carefully the lesson which we should have learned at Yalta when the time presents itself for us to ratify any treaties, resolutions, or agreements which may come before us that emanate from the European Security Conference in which we are engaged with the Soviet Union. Let us also recall that whereas security and slavery begin with the same letter of our alphabet they are not synonymous, and if one must enslave and feed off the carrion of dead nations and peoples to achieve security then the sense of direction has been lost and well may a world be lost.

We have all heard of the "Peter principle." I now want to introduce Senators to the "pebble principle." A pebble thrown into the water makes a small circle where it enters, but the shock waves which it creates make circles to infinity. So, too, the Soviet monolith thrown into the waters of today's time may produce a tidal wave that will engulf this Nation and remove for all time the last bastion of freedom.

Security and slavery, Yalta and Helsinki—will they be synonymous?

SENSE OF THE CONGRESS RESOLUTION THAT THE PRESIDENT CONTINUE OEO AND ITS ACTIVITIES OR OBTAIN APPROVAL FOR CHANGES UNDER LAW ENACTED BY THE CONGRESS

Mr. JAVITS. Mr. President, this Thursday, February 22, 1973, with the Senator from Wisconsin (Mr. NELSON), the chairman of the Subcommittee on Employment, Manpower and Poverty, I plan to submit a "Sense of the Congress" resolution that the President continue OEO and its programs, in the absence of changes made pursuant to law enacted by the Congress.

A similar resolution is to be introduced this week in the House of Representatives by Representative WILLIAM STEIGER, of Wisconsin, the ranking minority member of the Subcommittee on Equal Opportunity and Representative AUGUSTUS F. HAWKINS, of California, chairman of the subcommittee, which is a part of the House Committee on Education and Labor.

THE RESOLUTION

The resolution calls upon the President to carry out the provisions of the Economic Opportunity Act of 1964, which provides general authority for the continuation of the Office of Economic Opportunity and its activities, including community action agencies and programs through fiscal year 1974.

The resolution, in material part, provides as follows:

Whereas the policy of the United States established by law enacted by the Congress should be changed only by law enacted by Congress; now, therefore, be it resolved by the Senate (the House of Representatives concurring), that it is the sense of the Congress that the President should—

(1) continue in operation the Office of Economic Opportunity administering and supervising the important programs and activities entrusted to the Office under the provisions of the Economic Opportunity Act of 1964 utilizing fully funds appropriated by the Congress for such purposes; and

(2) submit a revised budget request for the fiscal year ending June 30, 1974, requesting appropriations for the Office of Economic Opportunity and its administration of programs and activities entrusted to it under and in accordance with the provisions of the Economic Opportunity Act of 1964.

Our purpose in seeking support for this resolution is to indicate to the President that the Congress would hold him to the law with respect to the antipoverty program, in the absence of further action by the Congress.

THE LAW

The Economic Opportunity Amendments of 1972, Public Law 92–424, signed by President Nixon on September 19, 1972, provided for a 2-year extension, through fiscal year 1974, of the authorization of appropriations for the Office of Economic Opportunity and programs conducted by the Office under the Economic Opportunity Act of 1964, first proposed and signed by the late President Lyndon B. Johnson.

The act of 1964 provides specifically for the establishment of the Office of Economic Opportunity in the Executive Office of the President to be headed by a Director appointed by the President by and with the advice and consent of the Senate and for the establishment of community action agencies and programs.

Moreover, the 1972 amendments continued through fiscal 1975 each of the duration of program authorities contained in the Economic Opportunity Act.

The duration of program authority for title II—under which community action agencies and basic programs are funded—contained in section 245, as amended, reads:

The Director *shall* carry out the programs provided for in this title during the fiscal year ending June 30, 1967 and the eight succeeding fiscal years. For each such fiscal year only such sums may be appropriated as the Congress may authorize by law. (emphasis added.)

Similar language is now contained in each of the other titles of the act which authorize programs administered by the Office of Economic Opportunity, including that under which that office itself is established.

For programs under title II and certain other titles, the Economic Opportunity Amendments of 1972 authorized $840 million for fiscal year 1973 and $870 million for fiscal year 1974. Of these amounts the amendments expressly reserved for each fiscal year $328.9 million for community action—local-initiative—activities and $71.5 million for the legal service program conducted by OEO.

Section 3(c)(3) of the 1972 amendments then provides:

The Director shall allocate *and make available* the remainder of the amounts appropriated for carrying out the . . . Act (emphasis added.)

On October 31, 1972, the President signed into law, Public Law 92–607, the supplemental appropriations bill, appropriating pursuant to the 1972 amendments a total of $790.2 million for fiscal year 1973, the current fiscal year, for the programs administered by the Office of Economic Opportunity under title II and the other appropriate titles of the act.

THE ADMINISTRATION'S PROPOSALS AND ACTIONS

The administration's budget submission for fiscal year 1974 contains no requests for funding of the Office of Economic Opportunity or for its conduct of programs which it currently administers under the act. The budget submission states that beginning July 1, 1973, the existence of OEO as a separate Federal agency is no longer necessary and indicates generally that programs now conducted by OEO are to be delegated or transferred to or "assumed" or funded by other agencies.

Almost simultaneously with the budget submission, board chairman and executive directors of community action agencies and other grantees received a directive from the Office of Economic Opportunity announcing phase-out grants. One such notice, dated January 29, 1973, states:

Grantees whose current funding expires after June 30, 1973, will not receive additional phase-out grants, and should *start promptly* to adjust their affairs so as to close down all activities supported with Section 221 funds (local initiative) prior to the expenditure of currently available funds (emphasis added.)

This directive has been coupled with or followed by many programs being placed on a month-to-month funding basis, the discharge on February 12 of the acting director of the legal services program, Mr. Tetzlaff, and personnel shakeups throughout the Office of Economic Opportunity.

In short, rather than carrying out the programs during this fiscal year as directed under the statute, the Acting Director, Mr. Howard Phillips, is proceeding to liquidate them during this fiscal year in order to implement a plan for next fiscal year yet to be approved by the Congress and contrary to law previously enacted.

ALTERNATIVES UNDER THE LAW

Mr. President, on February 6, 1973, in a speech before this body, while indicating my general opposition to the administration's plan, I stated:

I will be open-minded to any changes that may be made, we must seek better ways to progress and needs to phase in the new while we do not retreat from the responsibilities assumed by the Congress and the Executive 4½ months ago in enacting the two-year extension, and what the poor themselves have given life under the Economic Opportunity Act of 1964 and the recent amendments.

The Administration's proposal at this point it only that—a proposal; it is not enacted into law and is subject to action by the Congress.

It is my fervent hope—and one to which I shall give all my efforts as ranking minority member of the committee—that we will in time avoid a confrontation on this issue.

However, as I have indicated, even as I spoke those words and now apparently continuing at accelerated speed, the Acting Director of the Office of Economic Opportunity has been proceeding step by step—more like a trustee in bankruptcy—to dismantle the agency and its programs.

Mr. President, I submit that the policy of the United States established by law enacted by the Congress should be changed only by law enacted by the Congress.

If the administration has changed its policy concerning the continuation of the OEO and its programs since he signed the Economic Opportunity Act Amendments of 1972 and the appropriations bill for fiscal year 1973, then let the administration proceed under law and those of us in the Congress will give it every consideration.

Of course, he may choose to pursue again his programs for special revenue sharing and perhaps the Congress will be more receptive in this session.

Moreover, the Economic Opportunity Act of 1964, as amended, and the Executive Reorganization Act specifically permit the President of the United States to transfer or eliminate the Office of Economic Opportunity by following the procedures of the Executive Reorganization Act, under which a reorganization plan must be submitted to the Congress; however, the President has yet to come forward with a specific plan to be submitted to the Congress or even indicate that he intends to proceed in that manner.

Furthermore, the Economic Opportunity Act, as amended, specifically permits the Director of the OEO, with the exception of certain programs, to delegate all or a part of his functions to another agency; although these authorities have been relied upon in the past, for example in the case of the delegation of manpower training programs to the Department of Labor and the Head-Start program to the Department of Health, Education, and Welfare, no delegation documents have been executed.

Mr. President, what has been established as the policy of the United States by law enacted by the Congress, and extended twice with the approval of this administration since 1964, cannot be undone by executive action alone.

It is my hope that a substantial number of Members of the Congress will join with us in a further expression of our determination to have the law carried out and that hearings will be held upon this resolution soon after its introduction so that the actions of the administration can be judged in accordance with the provisions of the law.

I ask unanimous consent that there be printed at this point in the RECORD the full text of the resolution, together with the cosponsorship letter distributed to Members on Friday, an excerpt from page 122 of the administration's budget submission setting forth the administration's proposals, and the directive to community action agencies dated January 29, 1973, to which I referred earlier along with an article contained in the New York Times for February 17, 1973, entitled "Plan To Dismantle OEO Devised To Foil Congress."

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

SENATE CONCURRENT RESOLUTION ——

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that the President, in accordance with the policy of the United States established by law, should continue the Office of Economic Opportunity administering and supervising the important activities entrusted to that Office under the provisions of the Economic Opportunity Act of 1964 and submit a revised budget request for such activities for fiscal year 1974.

Whereas the Economic Opportunity Act of 1964 declared that the policy of the United States is "to eliminate the paradox of poverty in the midst of plenty in this Nation by opening to everyone the opportunity for education and training, the opportunity to work and the opportunity to live in decency and dignity."

Whereas, in furtherance of that policy, the Economic Opportunity Act of 1964, established in the Executive Office of the President an Office of Economic Opportunity and provided specifically for the establishment of community action agencies, organizations and programs to be administered by said Office under the provisions of the Act "in order to stimulate a better focusing of all available local, State, private, and Federal resources upon the goal of enabling low-income families and individuals to secure the opportunities needed for them to become fully self-sufficient".

Whereas the Office of Economic Opportunity has served as a valuable advocate for the poor in the Federal Government, community action agencies and organizations established under that Act have been effective in mobilizing resources on behalf of the poor, and community action programs have been vital in achieving the purposes of the Economic Opportunity Act of 1964.

Whereas, on September 19, 1972, the President signed into law the Economic Opportunity Amendments of 1972 providing for an extension, through fiscal year 1974, of the Office of Economic Opportunity, community action agencies and other programs established under that Act.

Whereas the President's budget submission for fiscal year 1974 contains no requests under the Economic Opportunity Act of 1964 for federal funds for the continuation of the Office of Economic Opportunity or for its administration of the important programs and activities entrusted to it under the provision of that Act, and indicates that the functions of the Office of Economic Opportunity are to be delegated or transferred to or assumed by other agencies of the Federal Government.

Whereas 25.6 million of the Nation's citizens—more than 12 percent of the population—continue to live in poverty and many additional millions of Americans are at the edge of poverty, with resulting individual and societal hardship and costs.

Whereas the policy of the United States established by law enacted by the Congress should be changed only by law enacted by the Congress; now, therefore, be it

Resolved by the Senate (the House of Representatives concurring) That it is the sense of the Congress that the President should—

(1) continue in operation the Office of Economic Opportunity administering and supervising the important programs and activities entrusted to that Office under the provisions of the Economic Opportunity Act of 1964 utilizing fully funds appropriated by the Congress for such purposes; and

(2) submit a revised budget request for the fiscal year ending June 30, 1974, re-

questing appropriations for the Office of Economic Opportunity and its administration of programs and activities entrusted to it under and in accordance with the provisions of the Economic Opportunity Act of 1964.

[From the New York Times, Feb. 17, 1973]

PLAN TO DISMANTLE OEO DEVISED TO FOIL CONGRESS

WASHINGTON, Feb. 16.—The Administration has devised a detailed plan that calls for dismantling the Office of Economic Opportunity before Congress can come to its rescue, according to a paper prepared by the antipoverty agency's technical staff.

The paper, listing the arguments the Administration should use to support its case, the people in Congress it should work with and the obstacles it can expect to face, urges "completing the disagreeable business as soon as possible."

"The more delay, the more opportunity for Congressional opposition to gather and develop a legislative counter-strategy," says the paper.

Entitled "Congressional Strategy on O.E.O.," the paper advises against a clash over constitutional powers with Congress, which last year extended the agency and its many programs through the fiscal year 1974.

President Nixon's budget for the 1974 fiscal year calls for ending Federal support for Community Action—the main OEO-sponsored antipoverty program—and scattering its remaining programs among other agencies.

"A constitutional confrontation may be where the Administration is most vulnerable," the staff paper says. "The opposition can claim that there is clear law and intent that there be an O.E.O. and a Community Action Program."

Instead, the paper advises, the Administration should try to get support for cutting off poverty agency funds in the House and Senate Appropriations Committee, "whose interests most closely align with the President's, and, which have few members with strong feelings for the O.E.O."

At the same time, the paper says, the Administration should try to delay Congressional action on the over-all budget for the departments of Labor and Health, Education and Welfare, forcing them to be financed by special resolutions in which the poverty agency could be isolated.

The paper lists the Senators and Representatives who can be considered friendly to the Administration plan and suggests that Senators Bill Brock, Republican of Tennessee, or Roman L. Hruska, Republican of Nebraska, lead the effort in the Senate. Two other members of the Senate Appropriations Committee, Edward W. Brooke, Republican of Massachusetts, and Clifford P. Case, Republican of New Jersey are described as "classic Senate liberals."

OPPOSITION IS CITED

The paper warns that opposition—"highly vocal, threatening and derogatory"—can be expected from Senators Alan Cranston, Democrat of California; Jacob K. Javits, Republican of New York; Gaylord Nelson, Democrat of Wisconsin; Walter F. Mondale, Democrat of Minnesota, and Robert Taft Jr., Republican of Ohio.

"However," it adds, "the depth of expressed concerns can be questioned because primary interest lie elsewhere now."

The Administration can also expect protest demonstrations by Community Action workers and their supporters, the paper says, and should begin now to develop adverse reactions to them.

To deal with the expected criticism from such groups and Congress, the paper says, the Administration should portray Community Action that has failed to help the poor in the eight years of its existence.

"The argument would stress, instead, a picture of agitation, destructive unrest, diversion of Federal funds to support partisan political activity, administrative waste, criminal misuse of funds and a program structure which exacerbated rather than resolved racial problems," the paper says.

The authors of the paper apparently recognize that there might not be justification for such an argument, for they add: "Just as the Administration understands or should understand the hyperbole of its criticisms, it should not underestimate the strength of support acquired with local leaders."

There is one possible soft spot in the Administration's case. It is the fact that in 1969 when President Nixon disclosed his intention to transfer most O.E.O. programs to other agencies, he praised the original purpose of the agency in studying and combating the problems of the poor, and promised to preserve it.

No suggestion is offered for dealing with that problem.

OFFICE OF ECONOMIC OPPORTUNITY

In 1974 responsibility for certain programs now funded through the Office of Economic Opportunity will be assumed by other agencies, as follows: the migrant program will be delegated to the Department of Labor; Indian programs will be assumed by HEW; Community Economic Development program grantees will be funded by the Office of Minority Business Enterprise at Commerce; health projects will be transferred to HEW; research and development functions will be transferred to the agencies which have statutory responsibility in the fields of current OEO activity. In addition, legislation will be submitted to establish a Legal Services Corporation.

No funds are requested for the Office of Economic Opportunity for 1974. Effective July 1, 1973, new funding for Community Action agencies will be at the discretion of local communities. After more than 7 years of existence, Community Action has had an adequate opportunity to demonstrate its value. In addition to private funds, State and local governments may, of course, use general and special revenue sharing funds for these purposes. With Community Action concepts now incorporated into ongoing programs and local agencies, the continued existence of OEO as a separate Federal agency is no longer necessary.

U.S. SENATE,
COMMITTEE ON LABOR AND
PUBLIC WELFARE,
Washington, D.C., February 16, 1973.

DEAR COLLEAGUE: On Thursday, February 22, we propose to introduce a concurrent resolution that it is the sense of the Congress that the President should continue in operation the Office of Economic Opportunity and programs conducted by the agency under the Economic Opportunity Act of 1964 and submit a revised budget request for such activities for fiscal year 1974. A similar resolution is expected to be introduced in the House of Representatives.

The Economic Opportunity Amendments of 1972, P.L. 92-424, signed by the President on September 19, 1972, provides for a two-year extension, through fiscal year 1974, of the Office of Economic Opportunity and programs conducted by that Office under the Economic Opportunity Act of 1964, first proposed and signed by the late President Lyndon B. Johnson. The two year extension originally passed the Senate on June 29, 1972, by a vote of 75–13.

However, the Administration's budget submission for fiscal year 1974 contains no requests for funding of the Office of Economic Opportunity or for its conduct of programs which it currently administers under the Act. The budget submission states that beginning July 1, 1973, the "existence of OEO as a separate Federal agency is no longer necessary" and indicates generally that programs now conducted by OEO are to be delegated or transferred to or "assumed" or funded by other agencies.

Although these proposals relating to fiscal year 1974 have not been approved by the Congress, and funds for the continuation of programs during fiscal year 1973 have been appropriated under P.L. 92–607, signed by the President on October 31, 1972, we are advised that the Administration is now ordering "phase-out" actions in anticipation of implementation of the Administration's budget submission.

We submit that the policy of the United States established by law enacted by the Congress should be changed only by law enacted by the Congress.

We believe also that the Office of Economic Opportunity has served and may continue to serve a vital function within the Federal establishment in mobilizing resources on behalf of the poor.

Enclosed is a copy of the resolution. It is our hope that hearings can be held on the resolution in the near future by the Subcommittee on Employment, Manpower and Poverty.

We hope that you will join with us in cosponsoring this resolution.

If you wish to do so, or have any questions, please contact John K. Scales (57686) for Senator Javits or William Spring (53968) for Senator Nelson before the close of business, Wednesday, February 21, 1973.

Sincerely,

JACOB K. JAVITS.
GAYLORD NELSON.

Reply to Attn. of Office of Economic Opportunity

EXECUTIVE OFFICE OF THE PRESIDENT,
Washington, D.C., January 29, 1973.

Subject: Termination of Section 221 Funding

To: Board Chairmen and Executive Directors, Community Action Agencies and Other Grantees Funded Under Section 221 of the Economic Opportunity Act

This memorandum is issued in order to give formal notice of funding changes under Section 221 of the Economic Opportunity Act. Supplemental guidance will be provided shortly regarding programs funded by Regional Offices and OEO Headquarters under other Sections of the Act.

A summary of the provisions made for OEO programs in the President's budget for Fiscal Year 1974 is attached for your information.

Section 221 funds are available to OEO, as described below, for awarding Community Action Section 221 grants during the remainder of Fiscal Year 1973 (ending June 30, 1973). Grantees which are scheduled for refunding between now and June 30, 1973, and otherwise qualified for funding, may receive phase-out grants of up to six months.

The Fiscal Year 1974 budget does not provide funds for any Section 221 grants during the Fiscal Year beginning July 1, 1973. Grantees whose current funding expires after June 30, 1973, will not receive additional phase-out grants, and should start promptly to adjust their affairs so as to close down all activities supported with Section 221 funds prior to expenditure of currently available funds.

Under either funding situation, difficult problems will be faced by grantees. We desire to be as cooperative as possible with grantees in planning and carrying out phase-down activities.

Your attention should be directed to the interests of program personnel and program beneficiaries, to provide such advance notice as is reasonably possible. Timing and foresight are the keys. Planning should begin at once to provide a smooth phase-out.

The remaining period of any current grant and any phase-out grant must be conducted with full compliance with OEO Instructions

and in a manner consistent with sound fiscal and property management. OEO will not tolerate any departure from responsible management nor will it permit grantee conduct which might jeopardize an efficient close-down of activities.

Close-down procedures include the requirement of a final audit. Arrangements should be made now to provide for this in accordance with OEO audit requirements. (See OEO Instruction 6801–1 and Changes 1 and 2). Funds should be reserved sufficient to pay the costs of such final audit.

Income taxes and social security withholdings must be paid. Officers and directors have special responsibilities to assure full payment of taxes and payroll deductions. It is vital also that grantees assure that their unemployment insurance coverage is current.

Personnel should generally be progressively reduced in force. Appropriate reserves should be made for payment of all accrued leave if payable in cash and for appropriate terminal pay provided by approved personnel policies. No increases in pay, leave or terminal pay rights or other fringe benefits shall be made without written approval of persons authorized by the Director of OEO.

Provision should be made for transfer, wherever appropriate and permissible, of authorized group insurance or other authorized fringe benefits to individual policies or in other ways for the protection of the employees' interests in the best possible manner. Reasonable assistance in finding other employment should be provided to employees who are to be terminated.

Property must be inventoried and disposed of in accordance with OEO property regulations. (See OEO Instruction 7001–01). The grantee should prepare and submit to OEO for approval a plan for the disposition of all property.

Where authorized loans are outstanding, reasonable efforts should be made to liquidate them. Unliquidated loans should be reported to OEO with recommendations concerning appropriate action. The grantee's interest as creditor shall be transferred, when OEO so instructs, to an officer or agency designated by OEO as trustee to collect (or, when appropriate, to waive collection) such remaining outstanding loans and to pay over net balances collected to OEO.

Residual grant funds, including non-Federal share, and funds resulting from program income may be applied to the phase-out activity. This does not include interest earned by CAA's on deposits of grant funds prior to their employment in the program. Such interest must be returned to OEO by check made payable to the Treasurer of the United States. (See OEO Instruction 6806–03).

Profits, if any, resulting from authorized conduct of profitmaking activities and any capital investments must be accounted for and may also be applied to the phase-out activity. Economic development projects funded under Section 221 will be reported through the Regional offices to the Assistant Director for Operations for advice as to appropriate disposition.

Balances remaining, upon conclusion of the funding periods as described above, should be returned to the Controller of OEO by check made payable to OEO accompanied by an explanatory itemized statement.

Arrangement should be made for preservation of grantee records as required by OEO grant conditions and instructions. Further guidance will be provided in the near future on this.

Where the grantee does not remain in existence to carry out other activities, local law should be consulted as to the necessity or advisability of formal dissolution proceedings.

You will be informed of OEO personnel who will be assigned to carry out applicable OEO close-out procedures and to assist and guide you in complying with close-out requirements. Assistance on legal questions may be obtained from your own attorney. Regional Counsel and OEO Headquarters General Counsel will be available to furnish appropriate assistance. Regional and Headquarters Audit staffs and Controller's Offices will be available to assist on fiscal matters. Regional Office and appropriate Headquarters personnel will be available to assist on real and personal property questions, on personnel questions and other phases of the close-out activities.

The actions described in this letter are being taken as a result of general policy decisions and are not based on circumstances related to particular grants or noncompliance with OEO directives. Procedures provided for refusal to refund on such ground (45 C.F.R. 1067.2) are not applicable. These actions do not terminate or curtail assistance prior to the time that such assistance is concluded by the terms and conditions of the grant. Procedures provided for suspension and termination (45 C.F.R. 1067.1) are also not applicable.

In the event of failure by a grantee to comply with grant requirements, however, or failure to use Federal funds effectively and properly, OEO may take appropriate action in the case of the individual grantee in accordance with any applicable procedures for refusal to refund, suspension or termination, as the case may be.

Cessation of Section 221 funding rescinds your designation as a community action agency under the authority of Title II of the Economic Opportunity Act of 1964, as amended. Accordingly, you should promptly commence discussions with other Federal agencies from which you receive funding (other than Section 221 funding) under the Economic Opportunity Act in order to clarify your status as grantee.

Section 42 U.S.C. 2703 provides criminal sanctions for certain misconduct. The section reads:

"(a) Whoever, being an officer, director, agent, or employee of, or connected in any capacity with, any agency receiving financial assistance under the Economic Opportunity Act of 1964 embezzles, willfully misapplies, steals, or obtains by fraud any of the moneys, funds, assets, or property which are the subject of a grant or contract of assistance pursuant to the Economic Opportunity Act of 1964, shall be fined not more than $10,000 or imprisoned for not more than two years, or both; but if the amount so embezzled, misapplied, stolen, or obtained by fraud does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

"(b) Whoever, by threat of procuring dismissal of any person from employment or of refusal to employ or refusal to renew a contract of employment in connection with a grant or contract of assistance under the Economic Opportunity Act of 1964 induces any person to give up any money or thing of any value to any person (including such grantee agency), shall be fined not more than $1,000 or imprisoned not more than one year, or both.'"

OEO Regional Office staff and appropriate Headquarters personnel will be available for discussions with grantees to assist in achieving orderly close-out. OEO is currently preparing a check-list which can help grantees assure that all essential matters are addressed. This will be supplied to you in the near future along with a requirement that individual close-out plans be submitted for OEO review.

OFFICE OF ECONOMIC OPPORTUNITY PROGRAMS

In view of the overall budgetary situation facing the President in fiscal 1974, a careful review of all Federal efforts has been undertaken. It is the desire of the Administration to return decision-making and the resources requisite to effective programing to elected officials at the local level. Enactment of an historic General Revenue Sharing bill has already resulted in $2.6 billion being distributed to State and local governments and $10.2 will be distributed in the remainder of FY 1973 and FY 1974. In addition, the Administration is developing for resubmission to Congress a number of broad Special Revenue Sharing proposals designed to replace cumbersome existing categorical programs. Pursuant to the President's desire to make government more accountable to elected officials and in accordance with the President's "New Federalism" proposals returning both responsibility and resources to States and localities, no funds will be provided to continue the Office of Economic Opportunity after June 30, 1973. Funding under Section 221 of the Economic Opportunity Act for the core Community Action activities will become a local option beginning in fiscal 1974, as will support for the Senior Opportunities and Services program and the State Economic Opportunity Offices, Senior Opportunities and Services program objectives will continue to be pursued Federally through the Administration on the Aging. Training and technical assistance previously afforded these programs will be discontinued. Other programs will be continued in fiscal 1974 under other auspices, as will certain research and demonstration efforts. New legislation to establish a Legal Services corporation independent of OEO will be transmitted to the Congress. Personnel slots associated with OEO programs which will be eligible for continuation by other agencies in fiscal 1974 will be shifted to those agencies along with appropriate support personnel currently located in other OEO offices. The following table lists the actual and current year funding for OEO programs and their disposition within the fiscal year 1974 Federal budget.

OFFICE OF ECONOMIC OPPORTUNITY

[Obligations in millions of dollars]

Program	1972	1973	1974	1974 responsibility
Research, demonstration, and evaluation	45.0	66.7	78.0	Various agencies.
Community action operations	351.0	285.3	.....	Local option.
Health and nutrition	157.2	[1] 165.2	146.9	Department of Health, Education, and Welfare.
Community economic development	26.8	30.7	39.3	Office of Minority Business Enterprise.
Migrant and seasonal farmworkers	36.5	36.3	40.0	Department of Labor.
Legal services	67.7	73.8	71.5	Independent corporation.
General support	18.2	18.5	.....	
Special pilot Indian programs			32.1	Department of Health, Education, and Welfare.
Liquidation activities			33.0	General Services Administration.
	702.4	676.5	.....	
Transfers to other agencies	38.3	.2	.....	
Total	740.7	676.7	440.8	

[1] Includes $20,000,000 1972 supplemental available for 1973 obligation.

Following is a program-by-program discussion of the fiscal year 1974 program requests for former OEO programs, along with program plans for the remainder of fiscal year 1973. In some cases, fiscal year 1973 programing will be adjusted effective immediately in anticipation of the fiscal year 1974 program decisions. The concluding section of this presentation addresses overall employment ceilings for OEO for fiscal year 1973 and lists employment allocations of other Federal agencies in fiscal year 1974 for activities formerly associated with OEO.

COMMUNITY ACTION—LOCAL INITIATIVE PROGRAMS (SECTION 221)

Effective immediately, all new OEO funding for Section 221 activities (except for Indian programs) will be for a period not to exceed December 31, 1973, with no grant to receive funding for a period greater than 6 months. Grants made after today will include closeout notifications; grantees previously funded on an interim basis for six months may receive up to an additional six months funding prior to their termination. Grantees already funded for a full program year will be notified in writing that their current grant is a terminal award from OEO. No new awards for program purposes will be made under this authority after June 30, 1973. Effective July 1, 1973 Federal support under this section of the Economic Opportunity Act will cease. (Funding for Indian programs of the Office of Economic Opportunity is discussed in a separate section below.)

TRAINING AND TECHNICAL ASSISTANCE

Training and technical assistance provided under Section 230 of the Economic Opportunity Act will be discontinued before the end of this fiscal year. Obligations for this support activity will total $6 million in fiscal year 1973.

SENIOR OPPORTUNITIES AND SERVICES

The Senior Opportunities and Services projects now funded by OEO will receive $8 million in fiscal year 1973 with full twelve-month grants being awarded during the remainder of the year. No new awards will be made by OEO for SOS programs after July 1, 1973. It is anticipated that by that date funds will be available to continue elderly nutrition efforts from the $99.6 million appropriation requested for that purpose by HEW. Other service projects for the elderly will be funded directly by the Administration on the Aging (AOA) beginning in fiscal year 1974. Although the $8 million SOS program will not be refunded, the AOA budget will expand from $44.7 million in 1972 to $195.6 million in 1974 and is expected to carry forward the purposes previously pursued through the SOS program.

STATE ECONOMIC OPPORTUNITY OFFICES

Consistent with the decision to make continued funding for Local Initiative programs a local option, funding for State Economic Opportunity Offices will not be provided by the Federal Government after June 30, 1973. No new awards will be made in fiscal year 1974. Existing offices may be continued at the option of State governments from State revenue sharing allocations. It is expected that $12 million will be obligated for this program during fiscal year 1973. Notification of termination of OEO funding effective with awards made during fiscal year 1973 will be forwarded to all grantees.

NATIONAL SUMMER YOUTH SPORTS PROGRAM

OEO will continue support for this program in the summer of 1973 under a delegation agreement with the Department of Health, Education, and Welfare. No funds are requested for this activity in fiscal year 1974.

SPECIAL INDIAN PROGRAMS

OEO programs serving Indian people will be continued by the Department of Health, Education, and Welfare in fiscal year 1974, and converted to a pilot effort funded directly to Indian tribal councils. A total of $32.1 million is requested for appropriation to that agency in fiscal year 1974, an increase of $9.7 million over the level to be obligated by OEO in fiscal 1973. The increase will fund a major expansion of efforts to assist in Indian self-determination, efforts designed to enable Indian people to gain control and direction of the institutions and programs which affect their daily lives through their own duly constituted instruments of self-government. In addition to this program expansion, funding will also be available to continue nutrition assistance previously afforded via the EFMS program, to support an expanded Indian urban center effort, and to continue and expand vital programs previously operated under the auspices of Indian Community Action Agencies.

MIGRANT AND SEASONAL FARMWORKERS PROGRAMS

Migrants and seasonal farmworkers programs previously funded by OEO will be eligible for continuation under the direction of the Department of Labor in fiscal year 1974. A total of $40 million is requested for direct appropriation to Labor, an increase over the current year OEO level of $36.3 million. The additional funding will provide a significant expansion in the High School Equivalency (HEP) program, permitting the establishment of 13 additional projects in 1974. Other Migrants programs providing nutritional assistance, farmworker housing, day care, educational and manpower support will be eligible for continuation at their current levels.

COMMUNITY ECONOMIC DEVELOPMENT

OEO plans to invest $36.7 million in Community Economic Development and related research and demonstration activities during the balance of fiscal 1973. Beginning July 1, 1973, OEO support for Community Development Corporations will cease. New legislation will be submitted to Congress which would authorize the Office of Minority Business Enterprise in the Department of Commerce to continue funding of Community Development Corporations, as well as current OEO research and demonstration activities in the area of economic development. This consolidation of effort with OMBE will increase the effectiveness of Federal programs designed to bring minority entrepreneurs into the mainstream of economic life. Approximately $39.3 million is requested for direct appropriation to OMBE in fiscal year 1974 for support of these OEO activities, an increase of $2.6 million over current levels. Most of the increase is anticipated to be utilized to permit concentration of funding on the more successful community development models to test their ability to accelerate the rate at which impact can be created, and will enable continued research and development.

LEGAL SERVICES

Estimated obligations for Legal Services programs during fiscal year 1973 will total $73.8 million, including a one-time obligation of $2.3 million available for special legal services experiments. New legislation will be submitted to establish a Legal Services corporation, independent of OEO, to be effective as of July 1, 1973. Consequently, $71.5 million is requested in the budget for HEW for fiscal year 1974 for subsequent assignment to the Legal Services program in its new location.

ALCOHOLIC COUNSELING AND RECOVERY

During fiscal year 1973, OEO will transfer $14.4 million to the National Institute for Alcoholism and Alcohol Abuse within HEW to sustain projects serving low income persons. Funds for these projects for fiscal year 1974 are requested as part of the HEW budget for NIAAA.

EMERGENCY FOOD AND MEDICAL SERVICES

During fiscal year 1973, $24 million is being obligated for Emergency Food and Medical Services projects from funds made available in a supplemental appropriation to the Agency in June of 1972 (and available for fiscal year 1973 utilization) in combination with new funding from the fiscal year 1973 appropriation. No funds are requested for this program in fiscal year 1974, except that projects serving Indians and Migrants will be continued from funds requested for direct appropriation to the Departments of Labor and Health, Education, and Welfare.

DRUG REHABILITATION ACTIVITIES

OEO is funding projects during fiscal year 1973 in the field of drug treatment and rehabilitation at an annual level of $23 million. In fiscal year 1974, $29.3 million is included in the budget of the National Institute of Mental Health (NIMH) for continuation of drug rehabilitation activities previously funded by OEO. As of July 1, 1973, all OEO activities will have been transferred to NIMH.

COMPREHENSIVE HEALTH SERVICES AND FAMILY PLANNING

Funding for the comprehensive health projects and family planning services will be included in HEW's health services delivery budget. This assures that all federally supported health centers are funded by the same agency and that Federal funds to finance the direct delivery of health services will be used to benefit the greatest number of recipients.

COMPREHENSIVE HEALTH SERVICES

OEO will obligate $85.5 million during fiscal year 1973 to permit full refunding of existing comprehensive health projects. This level provides support to approximately 60 large and small urban and rural projects distributed throughout the United States. These projects generally provide diagnostic, curative and preventive medical and dental care, and supportive services such as laboratory, x-ray, pharmacy, social/mental health services and outreach services. In addition to the health services delivery programs, health manpower development programs and several technical assistance grants and contracts are being continued. The fiscal year 1974 request for HEW includes $102.6 million to continue OEO activities to be transferred as of June 30, 1973. In addition, funding is provided within HEW for comprehensive health services projects transferred from OEO to HEW in prior years. Essential OEO health manpower activities will be supported within the Bureau of Health Manpower Education in the National Institutes of Health.

FAMILY PLANNING

During fiscal year 1973, $15 million is obligated for family planning, primarily to allow for continued support of 220 community and research and demonstration projects. Projects formerly funded by OEO may be continued during fiscal year 1974 through direct appropriation of $15 million to HEW. In addition, funding is provided within HEW for family planning projects transferred fom OEO to HEW in prior years.

RESEARCH AND DEMONSTRATION

Fiscal year 1974 funding for OEO research and demonstration activities will total $78 million, an increase of $11.3 million over the current year level of effort. Personnel will be eligible for transfer to operating agencies along with increased support funds. There they will be able to have more direct impact on operational programs than would have been the case had the function remained with OEO. Specifically, the fiscal year 1974 request for the

National Institute of Education includes $23.9 million to continue the educational voucher demonstration and other projects designed to test ways to provide equal educational opportunities;

Office of Child Development includes $12.6 million to continue experiments and studies of alternative approaches to day care and child development;

Office of the Secretary (HEW) includes $22.7 million to continue policy studies on the causes of poverty and develop ways to overcome environmental health problems which confront disadvantaged persons. Funding is also provided for a health insurance experiment to measure the cost to the Government and consumers of alternative plans and the resultant change in the health status of families;

Department of Labor includes $5.3 million to continue OEO research in the fields of manpower training and labor force participation;

Department of Housing and Urban Development includes $13.4 million to continue efforts to test ways to provide adequate housing for disadvantaged persons.

RURAL LOANS

The Title III–A rural loan program administered through delegation by the Farmers' Home Administration was discontinued in 1971. Although new loans have not been made since that date, several thousand outstanding loans still require service and collection. In fiscal year 1974, $2.5 million is requested for direct appropriation to FHA to cover ongoing administrative costs of this program.

APPROPRIATION TO GENERAL SERVICES ADMINISTRATION

Effective July 1, 1973 the General Services Administration will have funds to assume Federal responsibility for termination of all former OEO activities not specifically continued in fiscal year 1974 in other Federal agencies. Remaining OEO personnel not terminated or transferred to other Federal agencies, but required to liquidate Federal responsibilities with respect to terminated OEO programs, will be transferred to GSA. An appropriation of $33 million to GSA for liquidation of former OEO activities will be necessary. The requested appropriation will support the Federal personnel administering the program close-out as well as additional program liquidation requirements. (See following section for discussion of employment.)

EMPLOYMENT CEILING

The OEO ceiling for end-of-year employment (June 30) for fiscal year 1973 is 1,500 positions, including those position transferred to recipient agencies with delegated programs. Major reductions from current on-board strength (approximately 2,053 people) will occur in direct and support positions for programs to be terminated before the beginning of fiscal year 1974. Of the 1,500 on-board strength as of June 30, 1973, 834 slots will be transferred to the General Services Administration. A total of 666 direct and support slots will be shifted to the various Federal Departments and Independent Agencies which will be continuing former OEO activities in fiscal year 1974; this figure is expected to remain stable during fiscal year 1974. The personnel complement transferred to GSA will be reduced to 296 by June 30, 1974, as individual grantee liquidations are completed. Thus, total Federal employment for former OEO activities will be 839 as of the end of fiscal 1974, with an additional 123 employees scheduled for assignment at that date to the Legal Services corporation. Distribution of end of year ceilings by recipient agency are listed on the following page.

	June 30, 1972	June 30, 1973	June 30, 1974
Office of Economic Opportunity	2,271		
General Services Administration		834	296
Legal Services Corporation		123	123
Department of Labor		96	96
Department of Health, Education, and Welfare		362	[1] 362
Department of Housing and Urban Development		18	18
Department of Commerce		67	67
Total	2,271	1,500	962

[1] Health, Education, and Welfare distributed:

Office of the Secretary	125
National Institute of Education	40
Office of Child Development	22
Health Services and Mental Health Administration	136
National Institute of Mental Health	39
Total	362

THE QUESTION OF "MENTAL HARM" IN GENOCIDE

Mr. PROXMIRE. Mr. President, article II of the Genocide Convention includes as an act which constitutes genocide "causing serious mental harm" to members of a national, ethnical, racial, or religious group with intent to destroy it, in whole o rin part.

One argument often raised against ratification of the Genocide Convention is the purported vagueness of the phrase "serious mental harm." Visions of hostile foreign powers conjuring up supposed examples of American foreign involvement which somehow caused "mental harm" to a national group are likely to afflict opponents of the convention. But it should be made clear again, as it has been made clear before, that such reservations on the part of convention opponents are unfounded, since such liberal construction of the convention's language constitutes an abuse of its provisions, intent, and purpose.

To underscore the fact that the "serious mental harm" clause in the convention disallows such a liberal construction, the Committee on Foreign Relations in the Senate several years ago declared that:

> The U.S. Government understands and construes the words "mental harm" appearing in article II(b) to mean permanent impairment of mental faculties.

With such a stipulation, it should be clear that the fears of opponents of the convention about the supposed dangers of the "mental harm" clause are unfounded. Enemies of the U.S. Government, whether domestic or foreign, could not correctly charge a breach of the Genocide Convention because of alleged harassment of minority groups or religious intolerance. Such allegations would not constitute genocide since "permanent impairment of mental faculties" would not have occurred, and since the activities giving rise to the allegations would not have been part of a policy whose intent was to destroy a certain national, ethnical, racial, or religious group.

The Genocide Convention outlaws the deplorable acts of purposeful extinction of identifiable groups. It has nothing to do with such internal and political questions as discrimination. We must not let apprehensions about the latter areas weaken our resolve to act against genocide.

PORNOGRAPHY IN TIME MAGAZINE

Mr. YOUNG. Mr. President, the Minot, N. Dak., Daily News, is noted for its exceptionally good editorials.

A recent issue of Time magazine contained some exceptionally objectionable pornography, and the Minot Daily News editorial concerning that publication was very timely and appropriate.

Mr. President, I wholeheartedly support the views of the editorial, and I ask unanimous consent that it be printed in the RECORD.

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

TIME GOES OVERBOARD

There are people who contend that this era could appropriately be looked upon as a "sick society," that the art, music and much literature is drenched with sex.

The theater is a glowing example of what is going on. A picture that is decent when measured by any reasonable yardstick will starve for customers, it is contended.

With this there will be hearty disagreement, the thought being that tastes of patrons can be upgraded as well as downgraded. It may take longer, but it will be healthier. Part of the annual dividends may be in satisfaction of having contributed something to society.

Probably the most brazen display of violation of all the rules of decency came in a recent edition of Time magazine, which would have, were they alive, caused Henry Luce and Briton Hadden, founders, to cover their faces with shame.

It would appear that there are national advertisers who want their messages surrounded with filth. And Time seeks advertising. This is far from the voice of the people.

The News contends this is the thinking of the minority; that there are homes interested in magazines not drenched with sex; that the pendulum will swing back; that Congress and state legislatures will tighten laws on obscenity; and that courts will open new books in seeking to protect the rising generation against indecency.

While the public today calls for pure air and pure water, we think there will be an uprising against pollution of the mind.

THE 55TH ANNIVERSARY OF LITHUANIAN INDEPENDENCE

Mr. BEALL. Mr. President, on February 16 men and women around the world take time to join in spirit with the citizens of Lithuania, as well as the millions of people of Lithuanian descent in this and other nations, to commemorate the anniversary of the establishment of the Republic of Lithuania on February 16, 1918. Again, I rise in this body to pay tribute to these people and their relatively brief period of independence and urge them to continue their hopes for freedom, waiting for the day when Lithuanians can once again determine their own destiny.

The independence of Lithuania extended only until 1940 when Soviet troops invaded and occupied the Baltic States of Lithuania, Latvia, and Estonia, forcibly annexing these nations into the Soviet Union. Now, as we in the United States stand on the threshold of a new era in Soviet-American relations, we must still never forget the people of the Baltic States to whom self-determination is only an empty word.

Even in the face of this tyranny, however, the Lithuanian people continue their struggle. I commend them on their unquenchable thirst for freedom and ask my colleagues and my countrymen to remember, today and throughout the year, the constant desire of these brave people for liberty.

UTAH RESOLUTION ON FUND IMPOUNDMENTS

Mr. MOSS. Mr. President, the impoundment or reduction by the Nixon administration of funds voted by the Congress for specific grant-in-aid programs is having a shattering impact on State and local governments who had been led to expect such funds would be forthcoming.

These governments had planned their own programs on the basis of expected Federal assistance, and to have it cut off suddenly, with no time for making adjustments, is undermining social, economic, and physical developments of considerable importance.

The Advisory Council on Community Affairs to the Governor of Utah met recently and passed a resolution petitioning the President of the United States to reinstate Federal funds for programs which directly affect the continued growth and development of units of local and State government such as water and sewer grants, public facility loans, open space land program, model cities, urban renewal and subsidized housing programs, at least until such times as "viable alternative assistance programs" can be developed. I think this is a most reasonable request. I ask unanimous consent that the resolution be printed in the RECORD.

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

RESOLUTION

Be it resolved by the Governor's Advisory Council on Community Affairs of the State of Utah:

Whereas, through Executive Order of the President of the United States of America, a suspension or reduction in funding has been placed on certain federal grant-in-aid programs that directly affect the continued growth and development of units of local government in the State, including water and sewer grants, public facility loans, open space land programs, Model Cities, and Urban Renewal programs, administered through the Department of Housing and Urban Development; and

Whereas, under Executive Order of the President of the United States of America, a suspension has been placed on all subsidized housing programs commonly referred to as FHA 235, interest subsidy home ownership, FHA 236 and FHA 221(d)(3) interest subsidy and rent supplement, and public rent supplement housing, administered by the Department of Housing and Urban Development, which directly benefit the State's lower and middle income citizens; and

Whereas, under Executive Order of the President of the United States of America, a suspension on all water and sewer grants, and all subsidized housing programs commonly known as 502 interest subsidy, 504 repair loans, 515 cooperative housing interest subsidy, 514–516 domestic farm labor grants and loans and disaster loans, administered through Farmer's Home Administration; and

Whereas, local units of government in the State of Utah consider these programs to be vital to providing the necessary public facilities and shelter for the continued welfare of the people and the prosperity of the State;

Now, therefore, be it resolved, that the Governor's Advisory Council on Community Affairs of the State of Utah petition the President of the United States to consider the gravity of the suspension of these federal grant-in-aid programs on the further economic, social, and physical development of the State and release these suspended funds immediately until such time as viable alternative funding assistance programs can be replaced, to soften the fiscal impact placed on local units of government by the withholding of these desperately needed funds;

Be it further resolved, that this resolution be sent to the President of the United States of America and each member of the congressional delegation from the State.

FORMER GOV. ALF M. LANDON VIEWS THE 1974 ECONOMY

Mr. DOLE. Mr. President, the Honorable Alf M. Landon recently discussed the fiscal 1974 economic outlook for America. With his usual style, good sense, and an understanding based on many years of experience, Governor Landon gave the Salina, Kans., Kiwanis Club a broad outlook for the coming 18 months.

Governor Landon's emphasis on sound spending policies on the part of the Federal Government reflects his lifelong dedication to the fundamental principle that individuals, and governments as well, should live within their means, and I commend the full text of his address to the Senate.

I ask unanimous consent that Governor Landon's speech be printed in the RECORD.

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

A POLITICAL VIEW OF THE 1974 ECONOMY

Business planning is based on confidence in the future. 1973 is done and budgeted. What does it leave to look forward to in 1974?

I quote from the Kansas City Star. Sixty-five leading economists of labor unions—government agencies—industrial companies—investment firms—banks—universities and research organizations answered a year-end survey.

Here is a typical response, from a bank economist.

"I do not foresee a recession in 1973 and probably not in 1974. But I do not think we have licked the business cycle. By 1974 inflationary pressures might require the Federal Reserve Board to tighten credit. This would slow down economic growth but probably would not cause a recession." End of quote.

Of course, there are numerous factors—mostly political—that can change this fairly optimistic estimate. I think there are more that support it, however.

To me, the most interesting fact is this most informed round-up of the business outlook dealt mostly with the standard business indicators. There was little mention concerning politics, except inflation—which is ranked as the free world's top domestic problem, according to a Gallup survey of leaders in 75 nations.

While there is a lot of voodooism in politics, there is also a lot of logistics. By politics, I mean the art of governing people.

I am not qualified to discuss the business outlook for 1973 projected into 1974 as an economist. My experience qualifies me to discuss it as a politician, however. That is what I am about to do.

As far as inflation is concerned, it is clear from President Nixon's record that he knows the chaos that causes in public and individual affairs unless held to a minimum, as recommended in his detailed budget submitted to the Congress.

It is also evident, from his broad outline, that our President is going to deal with our chaotic domestic problems with the courage, vigor and perspicacity that he did in changing the world.

President Nixon is rearranging priorities in our disconnected domestic problems to fit the changing times—just as he did in international relations.

While the Congress may change some details in the President's budget—which is its prerogative—there is small chance it will oppose cutting federal government expenses and no new taxes. Senate Majority Leader Mansfield—after his conference with the President on his budget—expressed the hope that the Congress would stay within the President's over all fiscal limitations.

If so, that will leave a federal budget deficit of $12 billion in the next fiscal year starting July 1st, compared with $25 billion in the present fiscal year ending June 30th. It is generally anticipated that increasing revenues because of our expanding economy will help keep down that deficit even lower.

A chief executive looks at problems from a national viewpoint. With a congressman or senator, his district and state have priority. That is the way it is. The problems all seen from the same purview—reconciling different perspective—is the job of good political leadership. This is also true between a governor and the state legislature.

If the Congress could continue over the President's opposition to increase deficit expenditures over his recommendations without new taxes to pay for those increases, the country could be in grave inflationary trouble by the end of 1973.

President Nixon's critics, including members of the Congress and state governors, say he should go ahead and spend the money approved by Congress for such projects as pollution abatement and highways. The President has held back billions of dollars from congressional appropriations and declined to propose higher taxes.

The American economy is now expanding after nearly three years in the doldrums. We are still hitting around five per cent unemployment and some plant capacity is still idle, but we are moving toward full capacity operation and fuller employment.

If the economy does not heat up too fast, we can look forward to a period of relatively non-inflationary prosperity based on rapidly expanding foreign markets lasting at least through 1974. The one factor that may push us into an intense inflationary spiral and another recession is excessive federal government spending this year. Hence, the President's determination to curb such spending.

If in 1974 our national economy needed a boost, these unspent federal appropriations could be used. That is the Keyne's theory of economic management by a powerful central government so widely hailed by modern economists—political scientists and erudite commentators.

For the last forty years, in the United States of America—along with the rest of the world—there has grown the policy that the best government is the one that governs the most.

That requires a powerful central government with a strong chief executive. The United States is no exception to that trend. It is ironical that President Nixon—in the face of some of the press and Democrats calling him a dictator—is the first president to propose to the Congress decentralizing our federal central government—as he did in his budget.

Today in America, the seat of action is in the White House—not the Congress. For 40 years, the Congress has steadily delegated its

constitutional role in decision making to a president.

A most glaring example is the Gulf of Tonkin Resolution. As Senator Morse—and others—said at the time, "We are in effect giving the President war making powers."

The U.S. Attorney General advised the President in 1965 he had the legal authority for what he was doing in foreign policy—under the Tonkin Resolution.

I am for the Congress filling its constitutional role to decide responsibly the issues presented to it by the President and the people. Harassment of the President's new appointees in Senate committee hearings and the proposed and obstructive cutting of Vietnam funds disguise the fact that Congress no longer sets the course for the nation.

The final policy decisions are the President's—right or wrong. That is the prime subject for congressional discussion, along with the question of how to develop a responsible, constructive congress instead of an obstructive, free spending one.

We Americans have a dynamic president with a feel for fair and workable social legislation—and economic equity.

In his first term, the President concentrated on reversing—step by step—the dominating foreign policy of his four predecessors. He changed containment of Communism by force for a live-and-let-live policy in international relations. President Nixon is now concentrating on putting America's myriad unsolved domestic problems on a sound basis. These are linked in one way or another with international affairs.

All over the world, there are new governments—new men in governments—new military logistics and—most important of all—new means for widespread circulation of news. As a result of the last, new major policies affecting life everywhere are immediately generally known, and public sentiment is rapidly formed one way or another.

The personalities—the characteristics—the abilities—the forcefulness of these new leaders are as important as the soundness of their new policies.

They do not base their policies on the ideas of one world—a world court—the fellowship of man or the United Nations as the last great hope of mankind.

These new world leaders—Brezhnev—Chou En-lai—Willy Brandt—Tanaka—Golda Meir—Indira Ghandi—are a tough, realistic bunch, and they are finding out what they have to know—that our American president is as tough and realistic as any of them.

They are all facing opposition at home to their long range vision of the realistic adjustments that must be made in their national interests to conditions in the world we live in.

It is difficult for Americans to grasp the national differences—centuries old—affecting international regulations all over the world.

England is distracted by how it fits into the Common Market and by the tragic situation in Northern Ireland. Russia nervously watches China building up nuclear power. France is worried by the reconciliation of the two Germanys. China watches Japan building up economic power—leading to possible military strength. China and Japan are eyeing talks between the two Koreas. All Asia is intently watching the failure of the maneuvering of China and Russia thru North Vietnam to knit together Indo-China into a Communist bloc aligned with one or the other.

All Asia is agitated by the basic changes taking place with President Nixon's reversal of the policy President Johnson announced at the Manila Conference in 1964 when he assumed for the United States of America the guardianship of Asia under the Gulf of Tonkin Resolution.

President Nixon's first move was to abandon the United States protectorate of Japan—thus opening the door for its rapid economic development and also laying the groundwork for normalizing our relations with China. That in turn was followed by normalizing America's relations with Russia with one carefully calculated move after another.

Now the most recent—settlement of the Vietnam War—is dependent on the spirit and the desire and the skill of the Vietnamese leadership in meeting their complex problems.

Simultaneously, Marcos has set up a military dictatorship in the Philippines. Because of President Nixon's new foreign policies, China is in the midst of reversing its basic foreign policy. It is normalizing its relations with America and Japan and European governments—fearing an attack from Russia and Russia's penetration into Europe.

Guerrilla war is going on between Israel and the Arabs and, for that matter, among Arabs. The British Commonwealth is breaking up with growing antagonism. The Russian Communist bloc is showing serious strains. NATO is taking on new life. The European Economic Community is taking on the inevitable development of economic union into increased political cooperation. That is a check to the Soviets' getting a hand in European affairs.

It cannot be said that world peace is securely established as yet. It can be said that, while there is doubt, there is not the overhanging crisis nor fear of another world war that was prevalent four years ago.

Despite these old troubled waters, there is less tension—more relaxation and a higher standard of living. There is more trading throughout the world. Moreover, consumer demands are increasing the pressure throughout the Communist countries for more butter instead of more guns. President Nixon has reversed America's foreign policy of containment—Brezhnev has modified Lenin's dogma that Communist countries must all hang together regardless of national interests—and Chou En Lai has modified Mao's doctrine that political decisions are made at the mouth of the gun.

It can also be said that the American dollar is stronger today than it was when Mr. Nixon was first inaugurated and he intends to keep it so by his fiscal policies of cutting over-grown government expenses right and left, including the Pentagon. However, he is not for cutting our national defenses to the point of America becoming a second rate power militarily.

There is no greater contribution to the stability of the world than the stability of the American dollar. And there is no greater contribution that a government can make to business plans and fuller employment than a sound fiscal policy.

We are seeing for the first time a two-front attack on the reckless inflationary policy of the Congress by both the Nixon policy of a tighter budget and the Federal Reserve bank strategy of tighter money. Instead of an artificial base of subsidies, he is making a stride toward viable economic planning.

Yet, more important than our economic problems in the long run is that the government is becoming supreme and individuals naught.

President Nixon's first year recommendation for the Moynihan plan that fits mankind's need to correct this ultimate dire threat to our great popular form of government—the inextricable dependence of many Americans on social welfare—has been ignored for almost four years.

The handwriting on the wall is that the President is now going to use his ax on outmoded subsidies and obsolete government bureaus just as he did with containment of Communism by force.

He is working steadily and firmly to meet the multitude of problems involved in crash programs hastily drafted by the Congress and imperfectly administered, and all of which delegated more power to the President. Some of them he is simply slowing down—as with the space program. He is not abandoning another crash program—ecological improvements that had been neglected for years and now is being rushed. He is simply slowing it for better planning and better administration, thereby saving hard earned tax dollars as well.

The president of the Carnegie Corporation of New York, in his annual report for 1972, said some clean-up is necessary. The question is "how far down the path of pollution abatement do we go before the costs become an enormous burden on people and the benefit minimal."

We are now going through a demonstration of what small and weak states can do to the best laid plans of the great powers. North Vietnam, Cuba, Chile, and, on our side, Israel, are showing that they know there is a severe limitation on nuclear power. We who have it, dare not use it on minor wars and troubles. And the trouble makers are many. There is talk of Caribbean "unity," when there is NOT the slightest prospect for it, and they wouldn't know what to do with it if they had it. And our Latin American policy is in something of a shambles, through no fault of our own. Even the governments that are friendly to us are allowing their rich property owners to deposit their money in Switzerland. Thus, while complaining about America's economic dominance, they are inviting it, by depending on Americans to replace their fugitive capital. That is not a hot issue in the United States, but it is in all of the countries to the south of us, and, for that matter, in much of the rest of the world.

Chile's socialist president Allende is saying we are trying to destroy his beautiful revolution, while, actually, he means that we will not finance his own Marxist program.

This is the kind of politics our nuclear dominance, and Russia's cannot deal with.

A most impressive fact in today's world, to me, is the agricultural shortages of both Russia and China, and the prospect that it will continue, along with India's. That is not entirely a matter of weather.

This time a year ago, outside of the Communist countries, storage bins were full of surplus wheat. Now the surplus is gone, sold to Russia and China.

This is a major factor in both China's and Russia's modification of their militant, aggressive policies in Asia—Africa and the Middle East—and their normalization policies with the United States of America.

It can be well said that the United States is the food basket of the world. This is not only because of the size of our good farm lands. It is because of our scientific methods developed and taught by our agricultural universities.

The much higher wheat yields in Kansas in contrast to the Ukraine—the best wheat lands in Russia—are more than anything else the product of Kansas State University's agricultural research and their use by the good Kansas farmers.

Fifteen million acres of farm land have been idle from farmers participating in subsidies that President Nixon has cut back. At the same time, he released these 15 million acres to plant as they please, permitting increased participation in the expanding food markets.

These idle 15 million acres made no contribution to our national economy. Nor does it fit our expanding foreign trade policy. In production, they do. The farmers' dollar generates business activities four or five times.

Russia's and China's need for food and industrial supplies certainly is an economic boost in America—prospectively running into many billions of dollars. The Hesston Corporation—your neighbor—has shipped this month—and will again next month—a large order for farm machinery to Russia and has one pending with China.

President Nixon's new balanced domestic policies fit the changing times, just as his foreign policies do.

It is a new pattern of political and economic stability reducing inflation, by a joint effort:

1. Reducing over-grown Washington bureaucracies.

2. Leaving it to the good sense of Big labor and Big business to work out fair contracts for each and for the general public.

3. Impounding federal revenue funds for cities and states.

4. Instead of subsidies, farmers will profit more under the President's marketing and increased production program—along with his new balanced economic pattern.

5. Taking the ax to the maze of subbillions of dollars for other lines of business; impounding past congressional appropriations on already overdrawn accounts by deficit financing.

Under President Nixon's firm and vigorous leadership, a new balanced economic pattern is dawning in American domestic affairs, just as it is in foreign affairs.

In welfare, the Nixon-Moynihan family assistance plan is still waiting on congressional action after four years.

The President proposed helping state governments clean up their welfare programs by standardizing "unnecessary complexities and inequalities."

He also recommended transferring January first, 1974, three and a half million aged—blind and disabled eligible citizens to a new federalized social security system.

A possible aid to the President in his fight to control deficit spending and put the mess of welfare and social security legislation in workable order is a new committee of the House and Senate established by the last congress to inquire into congressional budgetary procedures.

Concerted action by the President and the Congress holding the proposed national budget deficit to $12 billion—less than five per cent inflationary—strengthens the American dollar. That, in turn, cuts the balance of payments deficit.

Instead of a temporary artificial prosperity based on continuing subsidies and ruinous inflation, America can provide the stability and confident leadership required in pushing normal stabilization in a world slowly adjusting to sixty years of war and the threats of war.

That is the true destiny of America to crystallize the lengthening days of glorious peace time in the world.

TOBACCO

Mr. MOSS. Mr. President, on Wednesday, February 7, the distinguished Senator from Kentucky (Mr. COOK) addressed the Senate on the problems of the tobacco industry. The distinguished Senator was disturbed by recent headlines which reported the publication by the Department of Health, Education, and Welfare of its annual report on the Health Consequences of Smoking. It is most fortunate that Congress has enacted legislation requiring this report, otherwise important public information might never see the light of day.

As for the Senator's attacks on Dr. Daniel Horn, director of the National Clearinghouse for Smoking and Health, I need not come to Dr. Horn's defense. It is in the scientific forum that Dr. Horn's qualifications and inclinations should be discussed. I am confident that he will remain an outstanding authority on smoking and health. Medics, not politicians, can decide on the accuracy of Dr. Horn's scientific assessments.

THE BALTIC STATES

Mr. PERCY. Mr. President, on February 15 in this Chamber, I spoke in commemoration of the 55th anniversary of Lithuanian independence, paying tribute to the people of Lithuania and to those in this country who pray that Lithuania may one day be free.

An editorial in the New York Times on February 16, marking this occasion, spoke eloquently of the desire for freedom in Lithuania, Latvia, and Estonia. I ask unanimous consent that the editorial be printed in the RECORD.

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

THE BALTIC STATES

Free Lithuanians everywhere—and an unknown number of Lithuanians in the Soviet Union as well—will mark today the 55th anniversary of the modern Republic of Lithuania. It was on Feb. 16, 1918, that the *Lietuvos taryba* or Council of Lithuania met in Vilnius and declared the existence of an independent state free of ties to all other sovereignties.

Observance of this anniversary—like the marking of the corresponding dates by the peoples of Latvia and Estonia—may seem purely theoretical and even fanciful to the modern realists. The Baltic States were long ago occupied by the Red Army and involuntarily incorporated into the Soviet Union.

What today's "realists", ignore, however, is that the desire for freedom and independence still burns in all three of the Baltic states and among a considerable part of their inhabitants. In Lithuania alone there have been such recent manifestations as the self-immolation of Romas Kalanta, mass street demonstrations by thousands of young Lithuanians and the petition of 17,000 Lithuanian Roman Catholics directed to the Secretary General of the United Nations.

Obviously, the chances are not bright for the Baltic peoples to regain their independence. But the conquest and elimination of these once-free republics by the Soviet Union is one of those acts of injustice by a great power toward its small neighbors that the world can never forget.

THE NEW FEDERALISM

Mr. MUSKIE. Mr. President, at a time when Congress is debating the President's proposals to create an "new federalism" through such means as decentralization, budget cuts, and special revenue sharing, there have been a number of timely and thought-provoking newspaper columns and articles discussing various aspects of the proposals. Two such articles appeared today in the Washington Post and the Wall Street Journal.

David Broder's column is entitled "Political Gain: Billing It to the Poor," and discusses the impact of the administration's decisions to shelve welfare reform and legal services for the poor.

In a related article, "Putting Strings on Federal Aid," Arlen J. Large raises many questions which the Subcommittee on Intergovernmental Relations will explore in its hearings on the new federalism that begin tomorrow.

I ask unanimous consent that the two articles be printed in the RECORD.

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

POLITICAL GAIN: BILLING IT TO THE POOR

(By David S. Broder)

Whatever its shrewdness as a political tactic, the Nixon administration's retreat from welfare reform and its willingness to abandon or dismember the program of legal services for the poor is undercutting the moral and logical base of its own design for reshaping domestic policy.

That is a sweeping statement, I realize, but it is the only conclusion one can draw from a consideration of the contradictions between the premises of the President's program and the actions he is sanctioning today.

A convenient starting point from which to see what has happened is a paragraph of Daniel P. Moynihan's new book, "The Politics of a Guaranteed Income," in which Mr. Nixon's first-term domestic counselor discusses the three "strategies" available to the government to assist the poor in America.

One was the "services strategy," the direct provision or financing of a wide variety of programs aimed at meeting the needs or improving the opportunities of the poor. As Moynihan notes, this was "quintessentially the approach of political liberalism in the middle third of the 20th Century."

The second was the "legal strategy," the use of the courts and the legal process to end discrimination and obtain equal access to all public programs and facilities. This approach, carried out by both private organizations and the government, was embodied, among other places, in the legal services program of the anti-poverty agency, the Office of Economic Opportunity.

The third was the "income strategy," the transfer of money to the poor via the simple mechanism of taxing-in-and-paying-out, with the goal of enabling the poor to obtain, through the marketplace, the goods and services they most valued for themselves.

Given this choice of options, Mr. Nixon's domestic strategy unfolded in clear and logical terms.

In his first years as President, we saw Mr. Nixon slowing the growth rate of domestic service programs, while putting increasing reliance on the income and legal strategy. His own words are worth recalling.

In his 1969 welfare reform message, he said: "I propose a new approach that will make it more attractive to work than to go on welfare, and will establish a nationwide minimum payment to dependent families with children. I propose that the federal government pay a basic income to those American families who cannot care for themselves in whatever state they live."

In his poverty program reorganization message of that same year, Mr. Nixon proposed that "the office of legal services . . . be strengthened and elevated so that . . . it will take on central responsibility for programs which help provide advocates for the poor in their dealings with social institutions. The sluggishness of many institutions at all levels of society in responding to the needs of individual citizens is one of the central problems of our time," he said. "Disadvantaged persons in particular must be assisted so that they fully understand the lawful means of making their needs known and having those needs met."

In the light of that history, what can one say about Mr. Nixon's current domestic policy? He has carried forward his campaign against the "services strategy" full blast and in his new budget is proposing not just the

slowdown, but the abolition of dozens of programs designed to provide services for the poor.

But what has happened to the other two strategies that were to substitute for it? The incomes strategy has been abandoned by Mr. Nixon. There is no welfare reform or minimum-income proposal in his budget, and none is likely to be forthcoming.

As for legal services, the outlook is equally grim. Having frustrated Congress efforts to create an independent, nonpolitical Legal Services Corporation by insisting on personal control of its board of directors, Mr. Nixon is now presiding over the destruction of the existing OEO legal services program, which has been signally successful in obtaining equal access to government benefits for its poor clients and which enjoys the strong support of the organized bar.

At the same time, he is continuing the other phases of his decentralization program by proposing to go beyond general revenue-sharing into a broad range of subsidies to local governments, for them to use as they wish.

In effect, he is telling the poor, "Don't come to Washington with your problems. Get what you need from your local government."

To do that to the poor, without giving them the financial or legal resources to wage the fight for their rights in those thousands of local communities, is not a strategy for achieving social justice and simultaneously reducing the power and influence of the central government.

It is a callous sacrifice of the minority who are poor to the political tactics of attempting to create a Republican majority from the many who are complacent and comportable.

It is a disillusioning spectacle for those of us who thought Mr. Nixon was attempting something more worthy.

PUTTING STRINGS ON FEDERAL AID

(By Arlen J. Large)

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

Well, the governors and mayors and local folks will drink to that. So will such good Nixon Republicans as Caspar Weinberger, the new Secretary of Health, Education and Welfare; Sen. John Tower of Texas and Sen. Edward Gurney of Florida.

But even these men, not to mention Democrats who don't like Mr. Nixon's decentralizing plans, feel the inevitable urge to use their offices to solve problems. Because they hold federal offices, their handles on the problems tend to be federal handles. So in the months ahead there's reason to expect resistance to Mr. Nixon's proposal to abolish some 70 existing Washington-controlled grant programs. (In their place would be broader "special revenue sharing" distributions for education, manpower training, law enforcement and urban development.) Mr. Nixon may or may not have the force of logic on his side, but he is confronted with a force of political nature.

It showed up when Mr. Weinberger was patiently explaining the virtues of state and local decision-making the other day to a skeptical Senate Labor Committee. The Senators were troubled because $138 million in federal grants earmarked categorically for libraries in this year's budget appears to vanish next year.

No it doesn't, really, insisted Mr. Weinberger. A lot is budgeted for special revenue sharing for education, and local decision-makers can buy all the libraries they want with that.

THE SIXTY-FOUR THOUSAND DOLLAR QUESTION

Then a Senator asked what would happen if a great many states shunned libraries and put their special revenue sharing money into other kinds of educational activities.

"If I found that were happening in a significant number of states, Senator," replied Mr. Weinberger, "I would not hesitate to recommend that we do something about it, and that might take the form of an additional categorical program."

So the priorities of those local decision-makers could be "wrong" after all, as judged by decision-makers in Washington, even by good Nixon Republicans. Lack of statehouse devotion to libraries could lead to categorical federal grants for libraries, just as it led to this federal program in the first place. By Dewey and his decimal system, the United States is going to have libraries.

This isn't to suggest that Mr. Weinberger and his Nixonian associates are a bunch of hypocrites who aren't really serious about returning power to the people. They obviously are serious. Many of the narrowly targeted parcels of federal cash are indeed going to be freed for broader use at local discretion. But there's a limit to the number of strings that can be removed. Because federal law can override state and local law, Washington's officials and lawmakers always have the power to "do something" if they're interested enough. String-tying goes with their jobs.

Sen. Tower of Texas, for example, sees a "void" in the federal effort to train non-skilled people for better-paying jobs. Spanish-speaking trainees can't always follow courses conducted in English. So the Senator is sponsoring a bill earmarking $120 million over a three-year period for bilingual job training programs. Other sponsors include such pro-administration Republicans as Barry Goldwater of Arizona, Wallace Bennett of Utah and Strom Thurmond of South Carolina, plus several liberal Democrats. The bill appears to run counter to the administration's plan to fold narrow-category training programs into a $1.3 billion special manpower revenue sharing program.

"This is a general social problem involving minority groups all over the country," says Mr. Tower, explaining why he thinks it needs visibility in its own category. He says he'd be willing to see bilingual training programs folded into special manpower revenue sharing "once we get them off the ground, but in the early stages they should be separate."

Florida's Sen. Gurney wants to do something about crime and violence in the public schools. He's sponsoring a bill creating a new category of federal aid to grade schools and high schools which develop plans for making classrooms and corridors safer. "My proposal is a direct attempt to deal with a serious and complex problem," says the conservative Republican. A co-sponsor of his bill is California's liberal Democratic Sen. Alan Cranston.

The proposed new anti-crime aid would be voluntary; only those school districts wanting it need apply. Nevertheless, local authorities tend to squirm within the narrow confines of such categorical programs.

The squirming is very evident in some 750 turn-of-the-year answers by mayors to a questionnaire from a Senate subcommittee on intergovernmental relations chaired by Democratic Sen. Edmund Muskie of Maine. The subcommittee asked whether the mayors preferred revenue sharing-type cash or the old-fashioned categorical grants. The answers were overwhelmingly in favor of revenue sharing's looser rein.

A common complaint about categorical grants was directed at the red tape, delays and changing guidelines imposed by the granting agencies, especially the Housing and Urban Development Department. "The city of St. Paul often wonders if the federal agency has misplaced the city's address and phone number," grumped Mayor Lawrence Cohen.

But then Sen. Muskie asked a follow-up question: As revenue sharing and block grants take on more of the load, would the mayors favor a cutback in the old categorical programs?

Some mayors just said "No"; Mayor Charles Bott of Stockton, Calif., put down "an emphatic NO."

For many, it clearly was a matter of taking all the federal money they could get, in any form. "The city of Austin recommends the creation of a mix of federal aid programs utilizing (A) revenue sharing for the general support of local government, (B) block grants for greater flexibility in meeting local priorities in broad functional areas and (C) a limited system of categorical grants to focus on national priorities," wrote City Manager Dan Davidson of Austin, Texas.

It's attention to "national priorities" that naturally worries national politicians like Sen. Muskie. He still supports the already-passed general revenue sharing, but thinks the way most cities are using the no-strings money they've received under it is a bad omen of what would happen if broad-purpose special revenue sharing replaces Congress' cherished categorical programs.

In their questionnaire replies, the mayors ticked off the main ways they'll spend their first slice of general revenue sharing, among them public works, parks, higher police salaries, more police radios, libraries, street repair, fire trucks, ambulances, storm drains and garbage disposal. Officials of both San Antonio and Chattanooga reported they're deliberately going for one-spot purchases instead of expanding services that would have to be cut back if revenue sharing ends someday. Dearborn, Mich., was among the few cities stressing social benefits; all of its general revenue sharing money is going for low-income apartments for the elderly.

In a recent speech to state legislators, Sen. Muskie said these findings indicate that if federal categorical programs are abolished, the local spenders of special revenue sharing won't attack the problems that worry Congress. "The money will go to the most powerful—and that means, by and large, the most privileged—elements in every local power structure," he said.

The same point was made in his questionnaire reply by Lewis Murphy, Mayor of Tucson. While praising block grants and revenue sharing, he added this argument for keeping congressionally targeted categorical programs: "An entire community may not give a high priority to an identified and documented problem of great significance, because that problem may impact on only a small segment of the community not having high visibility. This reason should continue to be the specific purpose for categorical funding.

SENATOR JAVITS' OBJECTIONS

Liberal Republican Senator Jacob Javits of New York objects to the administration proposal for giving local authorities the option of picking up the tab for community action agencies or letting them die. These agencies now are federally funded organizations of the poor, local agents of Lyndon Johnson's War on Poverty. Sen. Javits notes that they have been in so many fights with city halls over the years that "it is not reasonable to expect that states and cities will come running to the assistance of their former antagonists if the federal lifeline is cut."

Now many people in and out of the administration think the War on Poverty itself is a mistaken failure, and that the disappearance of community action groups would be wise policy. And red tape and bureaucratic hassles surrounding other narrow-category federal programs of the '60s clearly have produced a local blacklash that aids the President's drive to decentralize the decisions of government.

But it doubtless won't happen as fast and as completely as Mr. Nixon would like, regardless of the merit of his proposal. There will always be cities somewhere so starved for money that they're willing to swallow federal strings to get it. And there will always be that bill hopper in Congress, tempting lawmakers to solve the problem of anything from poverty to that unbuilt library in Prairie Dog, Nebraska.

INDUSTRY FIGHTS JOB BOREDOM IN TOPEKA

Mr. DOLE. Mr. President, a rising concern in our industrialized society is that automation and other modern production techniques have robbed many jobs of their interest, satisfaction, and challenge to the point that workers can no longer tolerate them—regardless of wages.

Assembly line rebellions, industrial sabotage, and general discontent among workers have been the source of numerous headlines and have given rise to studies by sociologists, psychologists, and the management of many companies.

I was pleased to note in the New York Times that an industrial operation in Kansas has done more than merely study these questions and has instituted one of the most innovative and positive approaches to the problems of on-the-job boredom and alienation.

General Foods Co. operates a pet food processing plant in Topeka. In addition to being one of the most modern and efficient operations of its kind, the plant is also something of a laboratory—and quite a successful one—for improving employee morale and enhancing the quality of life in industry. As the article by Agis Salpukas points out there are many uncertainties and problems involved with such a program, but it is extremely encouraging to see such efforts being made. I certainly commend General Mills for choosing their Topeka plant to launch this innovative approach to solving one of modern technology's most perplexing problems and ask unanimous consent that the article from the February 5 New York Times be printed in the RECORD.

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

JOBS ROTATED TO FIGHT BOREDOM

(By Agis Salpukas)

TOPEKA, KANS., February 3.— Steve Applehanz, dressed in dungarees and sports shirt, carefully checked over the huge panel of lights and dials that controlled the operations of the General Foods pet food plant here.

Then, satisfied that everything was in good order, he took a coffee break.

The 26-year-old production worker and his 60 "blue collar" coworkers all get a chance to do every major job in the plant, from unloading with a fork lift truck to making complex tests in the quality control laboratory.

And they all have unusual latitude in deciding—free of supervisors—how to spend their time.

The workers at the Topeka plant are part of an experimental attack on the boredom and alienation that in recent years have led to increasingly high turnover rates and even random acts of sabotage in American industry.

If Mr. Applehanz's morale is at all typical, the experiment here is approaching its goal.

"Working in this place," he said, "is like having a job and going to school at the same time. You're always learning something. You look forward to coming to work in the morning."

But such efforts as this one, in which almost every past premise on how to set up a plant has been re-examined, are still rare.

A recent study by the Department of Health, Education and Welfare estimated that only about 3,000 workers in the United States were undergoing such basic experimentation as that at General Foods. (Other companies cited were American Telephone and Telegraph, Polaroid, Texas Instruments, Corning Glass and General Electric.)

Still, a growing number of companies employing hundreds of thousands of workers, "white collar" as well as "blue," are trying to make the workday a little less dull without at the same time hurting production schedules or profits.

The changes are not made easily or without friction. As jobs for production workers are expanded they often take away from or even eliminate traditional middle management jobs such as foremen, production supervisors and technical specialists, jobs that some of the workers might hope to advance to.

Initially, the workers tend to be suspicious and uncertain, fearing that the changes will mean harder work for the same pay and will do away with hard-won seniority rights.

Unions are frequently opposed to the changes because in many plants they have led workers to identify with management and have threatened union prerogatives. At the Topeka plant, for example, the workers refused even to meet with union organizers.

Management is often unconvinced of the assumptions on which most of the experiments are based: That workers want to be challenged; that pay, good benefits and working conditions, while important, are not as crucial in motivating people as the challenge of the job itself.

To motivate workers, the supporters of the movement to change jobs argue, companies must make basic reforms that give individuals responsibilities, opportunities to learn, and autonomy—a significant voice in determining how they do their work.

The impetus for change at most companies comes from the changing attitude among workers.

Even though they may be getting good pay and benefits and working in clean, safe plants and offices, many still quit after a short time, or are absent without an excuse, or fail to do their jobs properly.

A number of managers feel that the problem may simply be the dullness of the work itself. They believe that today's better educated workers, who do not have the same fears as those who experienced the Depression, will not tolerate jobs they consider degrading and unchallenging.

Very few companies are prepared to accept the premise of the recent H.E.W. report on work in America, which held that jobs should be enhanced not only out of corporate self-interest but also for humanitarian reasons—to improve society.

RESPONSIBILITY MAINTAINED

The report argued that just as business is now expected to help pay for its effects on the environment, it is also responsible for such social costs as political alienation, aggression, alcoholism and drug abuse, mental depression and physical illnesses, which some researchers have linked to dissatisfaction with work.

Edward R. Dulworth, the manager of the General Foods plant here, agreed with the H.E.W. study.

He explained in an interview, however, that the motivation for change at his company was the hope of avoiding some of the problems experienced in its other plants.

When the plant here opened two years ago, 63 workers were hired for the three-shift operation to turn out 300 tons of dog food a day.

They were broken down into teams of about 10 workers led by a team leader. Each team had a voice in the way the plant and the work was set up, although the basic ideas came from the team leaders and the plant managers.

The team leaders have authority similar to that of supervisors at a regular plant except that most of their decisions are made in meetings with workers at which the leaders present their goals and the workers help determine how to reach them.

The team leaders are the only management representatives in the production part of the plant since workers themselves have assumed the responsibility of immediate supervision, quality control and maintenance.

"Our assumption," Mr. Dulworth said, "was that people are concerned, trustworthy and will respond to responsibility. Our aim was to create an environment that would let them use those qualities."

Every production worker was expected to learn and rotate into every major job in the plant.

In the two years that Steve Applehanz has worked there, he has spent five months each in unloading grains, salt, minerals and vitamins from boxcars; in running complex machinery that mixes the various ingredients and then forms the dog food into chunks; in operating the power plant, and in working at the control panel.

WORKS UP TO TOP PAY RATE

Each time he learned a new job, his pay was increased. Now he has reached the top rate, $4.28 an hour.

In each job he learned how to test for quality and how to repair the machinery, a task that in most plants is done by specialists.

Most workers liked the idea of having full responsibility for each job. Each team, for example, decides who will work each job, hires new workers and makes most decisions affecting their area.

Each worker, when he arrives in the morning, may take any parking space (there are none reserved for management). He does not have to punch in, he decides with his fellow workers when to take his break, and he eats in the same cafeteria as the boss, whose office door is always open.

To Mr. Dulworth, the cosmetic changes such as the window in his office through which workers can see him at his job as they pass by have not been nearly as important in improving workers' job satisfaction as the changes in responsibility.

"The guts of the thing is that each man has autonomy to decide how we're going to do things," he said. "He shares his problems with his peers."

He estimates that the plant here is up to 30 per cent more productive than a comparable one. Its absenteeism averages 1 per cent and turnover is about 5 per cent a year, considerably lower than at other plants.

Similar experiments are also being tried with white collar workers, the most extensive at American Telephone and Telegraph under Robert N. Ford, personnel director for work organization and environmental research.

During the last seven years, Mr. Ford has reorganized work for thousands of employes. In each case he took workers who performed one simple task hundreds of times a day and gave them more variety and greater responsibility.

To Mr. Ford, the most damaging thrust in American industry has been the extreme application of the theories of Frederick Taylor, a social scientist who at the turn of the century formulated a number of concepts for scientific management.

One of his key ideas was that workers like to be used efficiently. This gave birth to time-and-motion men who walked through industrial plants analyzing jobs.

In most cases their studies led to simplification—taking a job that had many operations and doling them out to a large number of workers who would have simpler tasks that they could do faster and repeat hundreds of times a day.

Another major problem, according to Mr. Ford, has been the rapid advance of technology, which pours out new machines without any thought being given to what the effects will be on a worker.

Mr. Ford pointed out what happened to elevator operators. They used to control elevators entirely. Then this was done automatically, but they still used a lever to bring the elevator into line at each floor. And finally, they faced a panel of buttons that eventually could just as easily be pushed by the riders.

He recalled that there was a similar pattern in the stock and bond division of the company's treasury department, which manages the records of nearly five million security owners, when it computerized its operations.

Mr. Ford and A. Phillip Luse, the head of the division, decided to merge seven different operations into four. Workers, instead of being in different departments, were brought together into mini-groups of 12 workers headed by a supervisor.

A whole stock transfer operation is now performed within each group.

Millicent L. Ball, who had worked on a belt system, sat at a desk among her group and said: "Things are so much quicker now. You're really touching and learning. You can never say I've learned it all."

At a nearby desk, Mrs. B. L. Rota stapled together a completed transaction and said: "There's a different atmosphere now. In the old job you could hear a pin drop. Everyone was doing the same thing."

Other workers said that some of the advantages were: They can turn to someone next to them to correct a mistake instead of sending out memos; they can see the other higher jobs and have an incentive to learn them, and they can help one another.

It is hard to compare productivity with the older operation because there has been a big jump in technology. Also, two years ago the operation was moved from Wall Street to a new glass and concrete building in New Jersey.

But management had calculated that 13 groups totaling 250 people would be needed. Instead, 10 groups of 150 workers are doing the job, even though the work load has continually increased.

The changes, Mr. Ford said, were not made without resistance from within the company and skepticism from superiors. Throughout his seven years of job revisions, Mr. Ford has had to fight off criticism from various parts of the corporation.

Usually, to carry through a project, a strong commitment is needed from the top executives in the company—a willingness to put up with higher initial costs and tensions and even a possibility of failure.

It is also often necessary to overcome suspicion of the assumptions made by the behavioral scientists from whom most of the theories about work reorganization have sprung.

They believe, for example, that if you make certain changes in the environment, people's behavior will change.

They have an optimistic view of human nature: that people want to grow psychologically, that they seek situations that stimulate and challenge them and that they get great pleasure out of doing well at a challenging job.

And they argue that these needs cannot be fulfilled merely by providing workers with a good safe place to work, good pay and benefits and adequate supervisors and tools.

EXTENSION OF MEDICARE COVERAGE TO EARLY RETIREES AND THEIR DEPENDENTS

Mr. CRANSTON. Mr. President, I am pleased to join with the distinguished Senator from Florida (Mr. GURNEY) in introducing a measure designed to enable certain individuals who have not yet reached 65 to "buy into" parts A and B of medicare by the payment of equal-to-cost premiums.

The need for this legislation stems from the fact that medicare eligibility does not begin until age 65—except for those disabled social security beneficiaries to whom medicare coverage was extended as the result of Public Law 92–603—yet many older persons lose their group health coverage when they retire before the age of 65. They are forced to enroll in high cost individual health policies reflecting extremely limited and inadequate coverage—and even those are almost never available to individuals over 60 years old or to forgo any coverage whatsoever, gambling that they will stay healthy at least until they reach 65 when they become eligible for medicare.

This is an intolerable situation, Mr. President, and I believe that we can effectively counteract it through the enactment of the measure Senator GURNEY and I are proposing today.

During the last session of Congress, Senator GURNEY and I both introduced amendments to H.R. 1, the "Social Security Amendments of 1972," which were subsequently incorporated in the Senate-passed version of the bill, directed at providing adequate health insurance to people 60 through 64. Senator GURNEY's amendment provided that if one spouse was over 65 and enrolled in medicare, the other spouse, if at least 60 years old, could enroll in the program and receive equivalent benefits at cost. In discussing the benefits afforded by his amendment, Senator GURNEY and I agreed that, at still no cost to the American taxpayer, these benefits could be made available to an even broader range of older Americans—those already receiving social security or railroad retirement benefits. Consequently, I offered an amendment to H.R. 1, which was cosponsored by Senator GURNEY, to include, in addition to those covered by the Gurney amendment: First, social security old-age beneficiaries 62 years old and over; second, a wife or widow, regardless of her age, if she is caring for a child under 18 or disabled and the child receives payments based on the worker's record; third, a wife 60 or older or widow 60 or older; fourth, a dependent husband 60 or over, or a disabled widower who has attained age 60; or fifth, dependent parents of a deceased worker

At the time my amendment was offered, disability retirees, unless they had reached age 65, were not covered by medicare; however, since that time medicare coverage has been extended to individuals retired on social security disability, regardless of age, as the result of H.R. 1, as I stated previously. Because of this admirable extension of medicare coverage, those provisions in my proposal extending coverage to social security disability retirees have been deleted from the legislation we are offering today.

Both of these measures were adopted in committee by the Senate Finance Committee and retained in the Senate-passed version of H.R. 1. The Senate Finance Committee report on H.R. 1 (S. Rept. No. 92–1230, p. 68) stated:

MEDICARE COVERAGE FOR SPOUSES AND SOCIAL SECURITY BENEFICIARIES UNDER AGE 65

Present Law [Add Italics]

Under present law, persons aged 65 and over who are insured or are deemed to be insured for cash benefits under the social security or railroad retirement programs are entitled to hospital insurance (part A). Essentially all persons aged 65 and over are eligible to enroll for medical insurance (part B) without regard to insured status. The House bill includes a provision that would permit persons aged 65 and over who are not insured or deemed insured for cash benefits to enroll in part A, at a premium rate equal to the full cost of their hospital insurance protection ($33 a month through June 1974).

Problem [Add Italics]

Many additional social security cash beneficiaries find it difficult to obtain adequate private health insurance at a rate which they can afford. This is particularly true if they are of an advanced age, say, age 60–64. Frequently, these older beneficiaries—retired workers, widows, mothers, dependents, parents for example—have been dependent upon their own group coverage or that of a released worker who is now deceased for health insurance protection. It is a difficult task for such older persons to find comparable protection when they no longer are connected to the labor force.

Finance Committee Amendment [Add Italics]

The provision makes medicare protection available at cost to spouses aged 60–64 of medicare beneficiaries and to other persons aged 60–64 (such as a beneficiary who elects early retirement at age 62) entitled to benefits under the Social Security or Railroad Retirement Acts.

Though the Senate Finance Committee clearly recognized the need for this extension of medicare coverage, and recognized that it would be a provision of important health insurance benefits at no cost to the Government, this provision was deleted from the bill by the conference committee, and not included in the final version of the "Social Security Amendments of 1972" as signed by the President.

I have been advised by the Finance Committee that the major factor in its deletion was simply, the lack of opportunity, given the time constraints—under which we were all operating—in the concluding day of the last Congress, for the House to thoroughly evaluate this Senate provision.

Given the Finance Committee's positive response to this provision last year, and the continued need of well over 3 million people, Senator GURNEY and I have joined together this year to offer a measure which incorporates the basic

provision as contained in the Senate bill last year.

The "buy-in" procedure we propose today is similar to that allowing States to buy into medicare on behalf of their retired public employees 65 years or older. This extension of medicare coverage was included in Public Law 92-603. In light of this expansion of the medicare program, I believe it is only fitting that we concern ourselves, too, with the health care needs of the individuals who would be covered by our bill.

Mr. President, our proposal would allow these individuals, at an estimated cost of approximately $31 per month in the first year of operation—and perhaps as low as $22 per month thereafter—to enroll in part A of medicare—hospital insurance benefits—anytime they are or become eligible during a 90-day period following receipt of notice of eligibility from the Social Security Commissioner.

Because the enrollment period is limited to a specific number of days—a reasonable period of 90 days after the recipient receives notice of eligibility—the opportunity for adverse selection of coverage is very much reduced, thereby promising to keep premium charges to the absolute minimum.

Our amendment would allow these same eligible individuals to enroll in part B of medicare—Medical Insurance Benefits—within the same 90-day period. The premimum for part B coverage would be 200 percent of the regular part B premium—one-half of which the Government presently underwrites for medicare beneficiaries—it is presently $5.60 per month—and scheduled to increase to $6.30, as the result of H.R. 1, on July 1, 1973.

Individuals may opt out of either part A or part B at anytime, but automatically cease to be eligible for part B if they drop or lose eligibility for part A. All of these beneficiaries of course, would be eligible for the regular medicare program when they reached the age of 65.

Mr. President, March 3 and 4 of last year, as ranking majority member of the Subcommittee on Aging of the Labor and Public Welfare Committee, I was privileged to preside at hearings in California on problems affecting our Nation's more than 20 million older Americans. During the March 1972, hearings I discussed with many of the witnesses present the legislation which Senator GURNEY and I had proposed last year, and all testified to the importance of and vital need for such a measure.

I might add that these March hearings were on the Research on Aging Act—legislation passed into law last session, and vetoed by the President after the conclusion of the 92d Congress.

Mr. President, adequate health care coverage is a matter of the greatest concern to Americans reaching retirement age. This legislation addresses that concern and provides a mechanism for a substantial number of particularly hard-pressed older Americans to take full advantage of the benefits under the medicare program.

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

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

S. —

A bill to amend title XVIII of the Social Security Act to permit certain individuals, who have attained age 60 but not age 65 and who are entitled to widow's or widower's insurance benefits or are the wives or husbands of persons entitled to hospital insurance benefits, to obtain, in consideration of the payment of insurance premiums, (Insert title of bill here) coverage under the insurance programs established by such title

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) title XVIII of the Social Security Act is amended by adding after section 1818 the following new section:

"HOSPITAL INSURANCE BENEFITS FOR CERTAIN WIVES, HUSBANDS, WIDOWS, AND WIDOWERS WHO HAVE ATTAINED AGE 60 BUT NOT AGE 65

"SEC. 1819. (a) Every individual who—

"(1) has attained the age of 60, but has not attained the age of 65;

"(2) is—

"(A) the wife or husband of an individual who is entitled (without regard to the provisions of this section) to hospital insurance benefits under this part, or

"(B) entitled to widow's insurance benefits under section 202(e) or widower's insurance benefits under section 202(f) or to widow's or widower's annuity under the Railroad Retirement Act of 1937; and

"(3) is not otherwise entitled to benefits under this part;

shall be eligible to enroll in the insurance program established by this part.

"(b)(1) An individual may enroll under this section only in such manner and form as may be prescribed by regulations, and only during an enrollment period prescribed in or under this section.

"(2) In the case of an individual who satisfies paragraph (1) of subsection (a) of this section and subparagraph (B) of paragraph (2) of such subsection, his enrollment period shall begin with whichever of the following is that latest:

"(A) April 1, 1974, or

"(B) the date such individual first meets the conditions in such paragraph (2)(B), or

"(C) the date the Secretary sends notice to such individual that he is entitled to any monthly insurance benefits as specified in subparagraph (B) of such paragraph (2) and shall end at the close of the—

"(D) 90th day thereafter, if such enrollment period begins on the date specified in subparagraph (B) or (C) of this paragraph, or

"(E) the 180th day thereafter, if such enrollment period begins on April 1, 1974.

"(3) In the case of an individual satisfying paragraph (1) and paragraph (2)(A) of subsection (a) of this section, his enrollment period shall begin on whichever of the following is the later: (A) April 1, 1974, or (B) the date such individual first meets the conditions specified in such paragraphs, and shall end at the close of the (C) 90th day thereafter, if such enrollment period begins on the date sepcified in clause (B) of this paragraph or (D) the 180th day thereafter, if such enrollment period begins on April 1, 1974.

"(c) (1) In the case of an individual who enrolls pursuant to the provisions of this section, the coverage period during which he is entitled to benefits under this part shall begin on the first day of the second month after the month in which he enrolls, or July 1, 1974, whichever is later.

"(2) An individual's coverage period shall terminate at the earlier of the following—

"(A) for failure to make timely premium payments, at such time as may be prescribed in regulations which may include a grace period in which overdue premiums may be paid and coverage continued, but such grace period shall not exceed 30 days, except that it may be extended to not to exceed 60 days in any case where the Secretary determines that there was good cause for failure to pay overdue premiums within such 30-day period; or

"(B) at the close of the month following the month in which an individual files a notice with the Secretary that he no longer desires to be enrolled under this section; or

"(C) with the month before the month he no longer meets the conditions specified in subsection (a).

Notwithstanding the preceding provisions of this paragraph, an individual's coverage period shall terminate with the month before the first month in which such individual becomes eligible for hospital insurance benefits under section 226 of this Act or section 103 of the Social Security Amendments of 1965; and upon such termination such individual shall be deemed solely for purposes of hospital insurance entitlement, to have filed in such month the application required to establish such entitlement.

"(d) (1) The monthly premium of each individual under this section for each month in his coverage period before July 1975 shall be $31.

"(2) The Secretary shall, during December of 1974 and of each year thereafter, determine and promulgate the dollar amount (whether or not such dollar amount was applicable for premiums for any prior month) which shall be applicable for premiums chargeable to individuals for months occurring in the 12-month period commencing July 1 of the next succeeding year. Such amount shall be actuarially adequate on a per capita basis to meet the estimated amounts of incurred claims and administrative expenses for individuals enrolled under this section during such period; and such amount shall take into consideration underwriting losses or gains incurred during prior years. Any amount determined under the preceding sentence which is not a multiple of $1 shall be rounded to the nearest $1, or if midway between multiples of $1, to the next higher multiple of $1.

"(e) Payment of the monthly premiums on behalf of any individual who meets the conditions of subsection (a) may be made by any public or private agency or organization under a contract or other arrangement entered into between it and the Secretary if the Secretary determines that payment of such premiums under such contract or other arrangement is administratively feasible.

"(f) (1) The provisions of section 1840 shall apply to individuals enrolled under this section if such individuals are entitled to monthly insurance benefits under section 202 or 223. The provisions of subsections (d), (e), (f), and (g) of such section 1840 shall apply to any other individuals so enrolled.

"(2) Amounts paid to the Secretary for coverage under this section shall be deposited in the Treasury to the credit of the Federal Hospital Insurance Trust Fund."

(b) Title XVIII of the Social Security Act (as amended by other provisions of this Act) is further amended by adding after section 1844 the following new section:

"ELIGIBILITY FOR SUPPLEMENTARY MEDICAL INSURANCE BENEFITS OF CERTAIN WIVES, HUSBANDS, WIDOWS, AND WIDOWERS WHO HAVE ATTAINED AGE 60 BUT NOT AGE 65

"SEC. 1845. (a) Any individual who, under section 1819, is eligible for hospital insurance benefits under part A shall be eligible to enroll in the insurance program established by this part.

"(b) The provisions of this part shall be applicable to individuals referred to in subsection (a), except that (1) the periods dur-

ing which such individuals may enroll and the applicable dates for entitlement to benefits of such individuals shall be the same as those prescribed under section 1819 with respect to individuals eligible to enroll pursuant to such section, (2) the amount of the monthly premium payable by any such individual shall be equal to 200 per centum of the premium payable by an individual who have attained age 65 and is entitled to hospital insurance benefits under part A.

"(c) Premiums for coverage of such individuals under this part shall be collected in the same manner as premiums payable by other individuals enrolled under the insurance program established by this part, and all premiums collected from such individuals shall be deposited in the Treasury to the credit of the Federal Supplementary Medical Insurance Trust Fund."

FEAR IN THE DOMINICAN REPUBLIC

Mr. KENNEDY. Mr. President, I am concerned by the serious deterioration in political freedom in the Dominican Republic that has occurred in recent weeks. We have reports that political leaders of a legal opposition party in the Dominican Republic are being arrested and held without charges or accusations of any sort being filed against them. The leaders of that party, Prof. Juan Bosch and Dr. Jose Francisco Pena Gomez, are in hiding and there have been fears voiced that their lives may be in danger. The home of Professor Bosch has been ransacked, according to reports from the press, and remains under government occupation.

A curtain of fear has been dropped around this nation as all schools have been closed, several radio stations have been closed, a tight censorship has been established, and a de facto curfew apparently is in effect. Protests of these actions by the government of Dr. Joaquin Balaguer have come from various nations including the Government of Sweden as well as from four Catholic bishops located on the island.

All of these repressive actions taken by the government relate to its announcement that a single small boat had been discovered in which it was feared that guerrillas may have landed on the island. There was a denial by all of the formal political parties of any involvement with the supposed incursion and substantial question raised of whether in fact there had been any incursion.

In any case, the wholesale arrests of individuals without charges seems to be totally out of proportion to any reasonable national security concern. For anyone concerned about the progress toward achieving political freedom in the Dominican Republic, these recent acts of repression cause deep concern.

I ask unanimous consent to print in the RECORD recent press comments on this matter.

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

[From the Washington Evening Star-Daily News, Feb. 8, 1973]

DOMINICAN MINI-INVASION MAY BE MINI-THREAT

(By Jeremiah O'Leary)

The Dominican Republic is reacting to the landing on its southern coast by a band of 8 or 9 uniformed men as if it were another Normandy invasion.

But it also appears that President Joaquin Balaguer may have political reasons for being grateful to the intruders.

While his army is out beating the scrub forest and thorny hills of Azua province for the invaders, Balaguer has sent police to raid the home of his old opponent Juan Bosch and government forces have surrounded the university and the home of a new political enemy, Luis Amiama Tio.

Bosch, the excitable leader of the Dominican Revolutionary Party, slipped away before police arrived and is hiding somewhere in Santo Domingo. He already has sent communiques to radio stations declaring that he has nothing to do with the "invasion" and that it is all a Balaguer plot to exile him.

Amiama Tio, one of the two survivors of the assassination of Dictator Rafael Trujillo, once was a Balaguer aide but lately has declared his opposition to a third term for the president.

Balaguer says the rebels are trying to return the country to "1965 conditions" that exploded in civil war and led to intervention by U.S. Marines, the Associated Press said.

He said in a speech yesterday that the government will take "drastic measures" to meet the threat, but he did not give details. He added that troops and guerrillas who landed on a Dominican beach over the weekend had met in a "bloody clash."

The guerrilla action is "a diversionary tactic," he said.

Meanwhile, the U.S. is trying to assess what is known of the invaders. This much has been authoritatively reported:

Some time on Feb. 4, the small uniformed force landed and abandoned their 42-foot motorized sail boat on a beach at Caracoles on the Bay of Ocoa in Azua province about 50 miles from the capital. They were dressed in green dungaree uniforms and each man reportedly carried two weapons of unknown manufacture. They spoke Spanish but there is no information about whether they are Dominicans.

The "invaders" then proceeded generally northeast toward the town of San Jose de Ocoa. En route, they encountered peasants who live in the thinly populated region and bought some mules before disappearing into the hills. The peasants could not identify the armed force but they did report it to the nearest officials.

A search of the coast found the 42-foot vessel Black Yak or Black Jack, apparently registered in New York, abandoned. The government search of the vessel said a number of items were found on the abandoned boat including two cans of Yugoslavian sardines, nearly $2,000 in Dominican pesos, maps of the region, 260 rounds of ammunition, a guerrilla training manual and five small "subversive" books.

The government also said it found documents implicating Bosch in the "invasion" and photographs of Col. Francisco Caamano Deno, who was president of the rebel Constitutionalist government during the 1965 civil war and U.S. intervention in the Dominican Republic. Caamano, a bombastic and hard-drinking man, reportedly turned up in Cuba several years ago and was said to be in a Castro training camp for leftist Dominican guerrillas.

Officials here refuse to speculate on whether the landing forces came from Cuba but some diplomats said the landing might be viewed with a blessing by Balaguer supporters who want him to run for a third term in the May 1974 election. Balaguer already has given hints that he is considering "continuismo" (continuation) and has compared himself with the Mexican hero Benito Juarez who needed time to complete his reforms.

An "invasion" from abroad might be taken by Balaguer's Reform Party as the justification it needed to try to return the bachelor president to office.

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

DOMINICAN "INVASION"

Unless President Balaguer's Government is holding back significant information, there is no reason to get too excited about the "invasion" of the Dominican Republic by a small band of guerrillas said to have come from Cuba. What must be taken seriously, however, is the possibility that the military will use the incident as a pretext for trying to destroy former President Juan Bosch and his Dominican Revolutionary Party (P.R.D.).

For all his fiery oratory and foggy advocacy of a "dictatorship with popular support," Dr. Bosch has never shown a disposition to violence in a country addicted to violence. Whatever use of his name the guerrillas may have made in documents supposedly left in their invasion boat, there is no reason to doubt his denial—issued from hiding—of any knowledge of the landing.

Why then was Dr. Balaguer so hasty about ordering Dr. Bosch's arrest? His hand may have been forced by the military, even as he was evidently persuaded to ignore for months in 1971 the wholesale murder of leaders of Dr. Bosch's party and other leftist organizations by a right-wing terrorist group tolerated, if not actively encouraged, by the military.

Dr. Balaguer finally halted the 1971 killings, broke up the terrorist group and replaced the police chief who allegedly organized it. He should now take comparable steps to insure protection for Dr. Bosch and his colleagues unless solid evidence of their complicity in the "invasion" can be produced. Despite its divisions, the P.R.D. remains the most formidable Dominican opposition party; but it poses no serious threat to Dr. Balaguer's re-election if he decides to run for a third term next year.

Dr. Balaguer can best combat the P.R.D. and defeat any attempts to emulate Fidel Castro's invasion of Cuba by allowing greater freedom for all legal opposition groups while persisting in the country's economic development, particularly the land reform program he announced nearly a year ago.

RULES OF THE COMMITTEE ON VETERANS' AFFAIRS

Mr. HARTKE. Mr. President, section 133B of the Legislative Reorganization Act of 1946, as added by section 130(a) of the Legislative Reorganization Act of 1970, requires the rules of each committee to be published in the CONGRESSIONAL RECORD not later than March 1 of each year. Accordingly, I ask unanimous consent that the rules of the Committee on Veterans' Affairs be printed in the RECORD.

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

RULES OF THE COMMITTEE ON VETERANS' AFFAIRS

I. GENERAL

All applicable requirements of the Standing Rules of the Senate and of the Legislative Reorganization Act of 1946, as amended, shall govern the committee and its subcommittees.

II. MEETINGS

The committee shall hold its regular meetings on the first and third Monday of each month, when Congress is in session, or at such other times as the chairman shall determine. Additional meetings may be called by the chairman as he deems necessary to expedite committee business.

III. QUORUM

Three members shall constitute a quorum for the purpose of transacting committee business: *Provided,* That one member shall

constitute a quorum for the purpose of receiving testimony.

IV. VOTING

(a) Votes may be cast by proxy.

(b) There shall be a complete record kept of all committee action. Such record shall contain the vote cast by each member of the committee on any question which a "yea" or "nay" vote is requested.

V. SUBCOMMITTEES

(a) The committee chairman and the ranking minority member shall be ex-officio members of any subcommittee of the committee.

(b) Subcommittees shall be considered *de novo* whenever there is a change in the chairmanship and seniority on the particular subcommittee shall not necessarily apply.

VI. HEARINGS AND HEARING PROCEDURE

(a) The committee or any subcommittee thereof shall make public announcement of the date, place, time and subject matter of any hearing to be conducted on any measure or matter at least one week in advance of such hearing unless the committee or subcommittee determines there is good cause to begin such hearing at an earlier date.

(b) The committee shall as far as practicable require each witness, who is scheduled to testify at any hearing, to file his written testimony with the committee not later than forty-eight hours prior to his scheduled appearance. Said written testimony shall be accompanied by a brief summary of the principal points covered in the written testimony.

(c) No hearing of the committee or any subcommittee shall be scheduled outside of the District of Columbia except by the majority vote of the committee or subcommittee or by authorization of the chairman of the committee.

FREEDOM OF THE PRESS

Mr. NELSON. Mr. President, the basis for the constitutional guarantee of freedom of the press was succinctly and eloquently stated by the late Justice Hugo Black in one of his last opinions. In the June 30, 1971, decision on the "Pentagon papers" case, Justice Black said:

(I)n the First Amendment the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy. The press was to serve the governed, not the governors. The Government's power to censor the press was abolished so that the press would remain forever free to censure the Government. The press was protected so that it could bare the secrets of government and inform the people. Only a free and unrestrained press can effectively expose deception in government.

Recent court decisions and governmental actions have resulted in the jailing of newsmen for refusal to disclose confidential sources of information and in other forms of intimidation. These threats to the press are more than an attack on any one newsman; they strike a blow at one of the foundations of self-government, for the stifling of the free flow of independent information and criticism is the muzzling of the democratic dialog.

In light of these recent actions against the press, Congress is currently investigating the need to legislatively bolster the public's right to know by enacting "shield" laws to protect newsmen and their sources of confidential information. This month, Congressman ROBERT W. KASTENMEIER, of Wisconsin, has been holding a series of hearings in Subcommittee No. 3 of the House Judiciary Committee to gather public testimony on the many various legislative proposals which have been advanced in that body to establish a privilege for newsmen and their confidential sources.

On February 9, 1973, State Representative Edward Nager of Madison, Wis., articulated the argument for an "unqualified Federal shield legislation embracing both Federal and State government" before Congressman KASTENMEIER'S subcommittee. As the author of similar legislation introduced in the Wisconsin State Assembly, Representative NAGER made a persuasive argument in behalf of an "absolute" shield law.

I ask unanimous consent that a copy of his February 9, 1973, testimony be printed in the RECORD.

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

NEWSMAN SHIELD LEGISLATION

(Statement of State Representative Edward Nager)

Mr. Chairman and Members of the Subcommittee, thank you for extending me the opportunity to appear.

I am Edward Nager, of Madison, Wisconsin. For the past ten years, I have served in the Wisconsin Legislature as State Representative from the city of Madison. I am the author of a shield law now pending in the Wisconsin Assembly and appear here today in support of unqualified federal shield legislation embracing both federal and state government. Of the bills referred to this Subcommittee, I endorse three which are identical or substantially so. They are H.R. 2200, H.R. 2187 and H.R. 1813.

To govern themselves, it is axiomatic that people in a democratic society must, as a right, have the broadest possible access to all available information. This proposition was well recognized by those who drafted the Bill of Rights. The freedom to publish is established in the First Amendment. Implicit in this constitutional guarantee is the freedom to gather information, free from governmental interference, harassment, or threat of retaliation by imprisonment or otherwise. Regretfully, the U.S. Supreme Court does not subscribe to this proposition.

In June of 1972, in the *Branzburg-Pappas-Caldwell* decision, the Court denied the nation constitutional protection for information it needs to have and that should be embodied in the First Amendment's mandate: "Congress shall make no law . . . abridging the freedom . . . of the press."

Since *Caldwell*, the press has been faced with governmenal interference, harassment and actual imprisonment. That decision undercut the First Amendment mandate, helped establish a climate and attitudes inimical to press freedom, created a threat to the free flow of information to the public and thereby set up the conditions which will, and already have, deprived the public of their right to know.

Efforts to enact shield legislation must be viewed in broad perspective. At both the judicial and executive levels of government there appears to be a lessening of dedication to the protection of traditional press freedoms.

Long standing beliefs regarding protection afforded by the First Amendment have been shaken by court decision. The *Caldwell* case removed any vestige of constitutional protection from news gathering. The Pentagon Papers cases firmly established the government's right to censor the free press by imposition of prior restraints under conditions as yet undefined.

Proposals and comments originating at the executive level, such as the Whitehead proposal aimed at "taming" the television networks by intimidation of local station managers, and the Buchanan comment indicating an orchestrated attempt to bring the free press to heel, should be viewed as danger signals to the future of the press in America and not be permitted to go unchecked.

Whether these events are reflections of public sentiment which have by-passed the legislative branch to surface only in the judicial and executive levels of government, or whether they are part of an effort to create public opinion antagonistic to the free press is uncertain.

These are further compelling reasons a shield, at least in the news gathering process, is essential.

Returning to the *Caldwell* case, it should be noted that one Justice attempts to mollify the impact of its decision by assuring us that:

"The solicitude repeatedly shown by this Court for First Amendment freedoms should be sufficient assurance against any such effort (to annex the news media as an investigative arm of the government), even if one seriously believed that the media—properly free and untrammeled in the fullest sense of these terms—were not able to protect themselves. Justice Powell at 33 L.E. 2d 656."

Justice Powell further assures us that:

"The Court states that no harassment of newsmen will be tolerated. . . . In short, the courts will be available to newsmen under circumstances where *legitimate* First Amendment interests require protection. Ibid." (Emphasis added)

What is being said, of course, is that the Court, rather than the Constitution, will play the role of protector of the free press on an ad hoc basis. This is basically the same approach taken by the Court in the Pentagon Papers case regarding censorship.

And we all know how the Court protected that freedom in *Caldwell*.

And we also know what has occurred since *Caldwell*. Harassment of newsmen has increased in tempo throughout the nation. Witness the Weiler case in Tennessee, the Bridge case in New Jersey, the Farr case in California, and the recent Lawrence incident in the District of Columbia.

The U.S. Attorney General may have issued his personal Guidelines regarding issuance of federal subpoenas by the Department of Justice to newsmen, but I suggest that the *Caldwell* decision signalled the beginning of an open season on newsmen, the hunters being local prosecutors, grand juries and state legislative committees.

In a further attempt to assuage the harshness of its ruling which in effect created a constitutional cleavage between the publishing of information and the gathering of information preparatory to publishing, the Court advised Congress that it: "has the freedom to determine whether a statutory newsman's privilege is necessary and desirable and to fashion standards and rules as narrow or broad as deemed necessary to address the evil discerned, and, equally important, to refashion those rules as experience from time to time may dictate." 33 L. Ed. 2d 654.

The Court also gave state legislatures the green light to act in this area.

Considering the fact that we have 50 separate jurisdictions with the federal jurisdiction superimposed within each of these 50, the argument for federal legislation blanketing the entire nation with a uniform rule becomes unassailable. Any other course would result in fragmentation of the concept which the Congress may enact. The three bills I already referred to shield the source and information from both federal and state action.

In any case, that is the *Caldwell* decision and I see little chance of its being reversed

in the near future. Therefore, let us in the legislative branch of government attend to this matter and build a shield, realizing full well the inherent risks involved in embarking on this course. However, let us make that shield puncture-proof and not riddled with prefabricated holes called "qualifications" or "conditions".

The people's right to know, unfettered by governmental restraints upon information gathering would be better guaranteed by legislative act of the Congress than by reliance upon the good will of the courts or upon the Attorney General's interpretation of his Guidelines.

On January 12 of this year, I introduced into the Wisconsin Assembly, my version of an unqualified shield law. It was drafted so as to overcome loopholes found in the shield legislation of other states and those manufactured by the courts interpreting those laws. Subsequently, I received a copy of draft legislation prepared for the American Newspaper Publishers Association (ANPA). It accomplished the same purpose as my proposal and in a manner I believe to be preferable. With some minor changes, I submitted this proposal as a substitute. It has the unconditional public support of the Governor and every news media association in the state, representing both the printed and electronic media.

H.R. 2300, H.R. 2187 and H.R. 1813, bills now before this Subcommittee, are identical with the exception that they affect federal jurisdiction as well as the states.

In conclusion, I will make three observations for your consideration:

1. The public welfare will be promoted by enactment of an unqualified shield law. If the Congress fails to accept the invitation of the Supreme Court to act, newsmen's sources, now severely chilled, will go into a deep freeze and independent information, already difficult to obtain, will significantly dry up. Should this happen, the public will have lost.

2. The argument that shield laws impede law enforcement has been overstated. It should be obvious that those sources who speak to the investigative newsman will not speak to the prosecutor, Dry up the source and the information is lost, to both the public and the prosecutor.

3. Should the Congress fail to enact a shield law, we can expect to receive more and more information about government via the 'official' information officer and news release. Should this occur, what blunders will never come to light? What irregularities will be covered up? How will the public know?

It is imperative that the Congress repair the damage recently done to the First Amendment by enacting a national unqualified shield law.

POLICY TOWARD CUBA

Mr. KENNEDY. Mr. President, a year ago, President Nixon visited the People's Republic of China, thereby ending the policy of isolating that nation of 800 million.

Also a year ago, the President flew to Moscow to sign a major arms control agreement.

Those acts represent two promising signs of maturity and openness in U.S. foreign policy.

Unfortunately, the continuing rigidity of our policy toward the Republic of Cuba represents a throwback to the Cold War era.

For some time, I have urged that as part of a reevaluation of our overall lack of policy direction toward Latin America, we attempt to review and revise our current policies toward Cuba. Hopefully, the hijacking agreement will be a first step in this direction.

I am pleased now to see 12 House members, all Republicans, join together in adressing this same issue and reaching conclusions similar to my own.

The present policy of isolation has outlived whatever rationale or justification it may have had at its inception, and it is clear today that it is an anachronism in American foreign policy.

Besides the growing number of nations in the hemisphere who have individually moved to normalize their relations with Cuba, a recent event forcefully indicates the time has come for a change.

I refer to the recent speech by the distinguished President of Costa Rica, Jose Figueres in the Commonwealth of Puerto Rico.

Speaking to a gathering of Cuban exiles, President Figueres talked of today's reality and the need to understand that reality. And he called on the Cuban exiles to undertake a dialog with the current Cuban Government, offering as well to act as an intermediary.

His words more than most should convey to all, the need to reevaluate the current policy of isolation toward Cuba.

For these reasons, I believe it is worth considering the well-documented report of these 12 Congressmen, and I commend it to my colleagues.

Mr. President, I ask unanimous consent that a release and the report, entitled "A Detente With Cuba," be printed in the RECORD.

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

RELEASE

Stating "the time is ripe for diplomatic and economic initiatives to be made" a group of twelve Congressmen called for immediate Congressional and Presidential consideration of the re-establishment of normal relations between the United States and Cuba.

In a report called "A Detente with Cuba" the Congressmen have made a number of specific recommendations designed to improve relations with Cuba. The Representatives sponsoring the report are Charles W. Whalen, Jr.—(Ohio), Alphonzo Bell—(California), Edward G. Biester—(Pennsylvania), John Dellenback—(Oregon), Marvin Esch—(Michigan), William Frenzel—(Minnesota), Orval Hansen—(Idaho), John H. Heinz III—(Pennsylvania), Paul McCloskey—(California), Stewart B. McKinney—(Connecticut), Charles S. Mosher—(Ohio), Frank Horton—(New York).

Among the initiatives recommended by the report are:

That the President make every effort to achieve an anti-hijacking accord with Cuba and that the talks on this subject be used as a starting point to discuss other issues.

That the President direct a governmental interagency review of U.S.-Cuba relations.

That the United States support the Peruvian initiative in the Organization of American States which would permit any OAS member to normalize its relations with Cuba.

That hearings be held in both the House and Senate on present U.S.-Cuba relations.

Noting that U.S.-Cuba relations have been marked by "mutual distrust, hostility, and recriminations" for over a decade, the Republican legislators stated that three major developments are responsible for a new political climate which make the normalizing of relations between the two countries "desirable and potentially attainable."

First, the President's policy of dealing realistically with all types of governments has resulted in a relaxation of tensions with the People's Republic of China and the Soviet Union.

The Congressman said a dialogue with Cuba would be in line with this philosophy and would eliminate a policy inconsistency which "strives for friendship and an increasing dialogue with Russia while concurrently condemning Cuba for harboring a Soviet pressure."

The second development cited by the Congressmen is the recent trend among Latin American countries to normalize relations with Cuba as evidence by OAS votes and independent behavior of Latin countries.

The third reason for an improvement of relations, the Congressman said, is that Cuba itself is softening its formerly intransigent foreign policy.

Cuban willingness to seek an agreement on the hijacking problem as well as their reduced efforts in spreading revolution to the rest of Latin America, was cited by the report.

The report concluded that improved hemispheric cooperation would result from such a move.

"Removing this vestigate of the Cold War," the report stated, "would significantly reduce tensions and re-direct hemispheric policy focusing attention on more urgent priorities such as trade, economic development, foreign investment, and regional integration."

A DÉTENTE WITH CUBA

United States-Cuba relations have been marked by over a decade of mutual distrust, hostility and recriminations. Political and strategic considerations suggest that it may be in our national interest to initiate a dialogue with Cuba that might lead to an eventual normalization of relations between the two countries.

The United States severed commercial and diplomatic ties with Cuba in 1961, as a result of a threatening Soviet military presence on the island, Cuba's subversive activities against Latin American countries and the expropriation of U.S. owned properties in Cuba. In subsequent actions the U.S. halted economic and military aid, eliminated the Cuban sugar quota and placed an embargo on exports to Cuba. The Bay of Pigs invasion and the missile crisis further exacerbated the deep cleavages and hostilities between the two governments.

Relations between other Latin American countries and Cuba were equally bad. In 1964, the Organization of American States (OAS) voted to cut off diplomatic and commercial ties with Cuba. The ban proved relatively effective until several years ago when some OAS countries began to defy the ban and to establish diplomatic relations with Cuba.

American isolation of Cuba has continued to this day. Administration officials have publicly indicated that to date two factors have dictated our present hardline policy and impede any kind of policy review: (1) the Soviet military presence in Cuba, and (2) Cuba's export of subversive revolution to the rest of Latin America.

But action which was understandable, and even right, at one time and under one set of circumstances may no longer be right or even wise at another date and under another set of circumstances.

THE POLITICAL REALITIES OF 1973: THREE DEVELOPMENTS INDICATING A NEED FOR A POLICY REVIEW

The political realities of 1973 indicate to us the need for a review of United States-Cuba relations. Specifically, during the past several months three developments have oc-

curred which make the normalizing of relations between the two countries desirable and potentially attainable.

First, President Nixon is pursuing a pragmatic policy designed to deal realistically with all governments. This approach has resulted in relaxation of tensions between the United States and respectively, the People's Republic of China and the Soviet Union.

Our rapprochement with the Soviet Union has brought about the SALT agreements, established medical, environmental and space research contacts and increased trade and commercial ties.

The President's China visit renewed communications after more than twenty years of hostility. The recent announcement of a multi-million dollar grain sale to China further improves the favorable climate brought about by the President's initiative. Increased trade contacts with East European socialist countries have also materialized as a result of the President's policy.

In light of the Administration's efforts to negotiate and cooperate with Russia and China, a dialogue with Cuba would represent an extension of this philosophy. It would eliminate an apparent policy contradiction which strives for friendship and an increasing dialogue with Russia while concurrently condemning Cuba for harboring a Soviet presence.

Second, there has been a growing trend among Latin American countries to normalize relations with Cuba. In the past two years, an increasing number of Latin American States either have recognized the Government of Cuba or have strongly indicated a desire to do so. This development represents a significant change from the policy of isolation of Cuba followed by the nations of the OAS since 1964 when Cuba was excluded from participation in the Inter-American system and member states collectively severed diplomatic and economic relations with Fidel Castro's government.

Mexico was the only Latin American country that did not sever relations with Cuba, holding that the OAS measures against Cuba were in violation of the principles guiding the Inter-American system. In November, 1970, Chile, under the newly elected government of Salvador Allende also recognized Cuba.

Even prior to the Chilean move, Peruvian leaders indicated a disposition to change their country's policy toward Cuba. Fidel Castro on occasions had praised the Peruvian military government for its reformist policies and it can be asumed that the Peruvians were grateful for the massive earthquake relief effort extended by Cuba during the 1970 disaster.

Peruvian initiatives brought the matter of Cuban hemispheric relations to the surface and were responsible for the first OAS consideration of the issue since the 1964 ban. On May 31, 1972, the Permanent Council of the OAS held a special session to consider the draft resolution submitted by Peru which would permit any member state to normalize its relations with Cuba. The Peruvian resolution said:

"Some member states for different reasons maintain official relations with the Republic of Cuba and . . . others have expressed, on the basis of their own appreciation of the changes that are taking place in the world and inter-American circumstances, the convenience of re-establishing relations with the Republic."

By a vote of 14 to 1 with 8 abstentions, the matter was referred to the general committee of the Permanent Council for consideration. The Peruvian representative saw the agreement to debate the proposal as ". . . a representation of the current spirit of the Americas, a spirit that precisely indicates that Inter-American policies are aimed at the future."

At the conclusion of the meeting to consider the Cuba question on June 9, 1972, the OAS decided against the Peruvian resolution by a vote of 13 against, 7 for, and 8 abstaining. The Central American bloc, Brazil and the United States, voted against the resolution, as did Bolivia, Colombia, Dominican Republic, Haiti, Uruguay, and Paraguay. In favor of the resolution were Chile, Ecuador, Jamaica, Mexico, Panama, Peru, Trinidad and Tobago. Argentina, Barbados and Venezuela abstained.

In July, 1972 Peru recognized Cuba. In December 1972, Guyana, Trinidad and Tobago and Barbados announced the resumption of diplomatic relations with the Castro government. Panama and Ecuador have indicated their willingness to re-open relations. Venezuela has hinted that a change in her policy is possible.

Several factors are responsible for the trend toward recognition of Cuba. Many Latin American governments believe Castro's revolutionary fervor has waned and no longer see Cuba as a subversive threat. Furthermore, many of the states feel change toward Cuba is very much in line with the changing world situation as illustrated by the U.S. rapprochement with China and the Soviet Union.

Whether or not the United States makes overtures to Cuba, indications are that the number of Latin American governments reestablishing relations with Cuba will continue to increase.

The third reason for reviewing our Cuba policy is that Cuba itself seems to be softening its formerly intransigent foreign policy position. There is growing evidence to support this contention. Fidel Castro, for example, has hinted his willingness to cooperate on the hijacking problem.

In fact, the two most recent hijacking incidents indicate a firm willingness on the part of Cuba to reach some kind of bilateral agreement to discourage these practices. The Cuban government gave the State Department a prompt reply regarding the requested extradition of the Tuller family who hijacked an Eastern Airlines plane. Prior to this incident, Cuba failed to acknowledge any extradition requests.

On the Tuller case, the Cuban formal note relayed through the Swiss Embassy indicated that the four accused hijackers were under arrest. The Cuban government also asked the United States to provide them with detailed information of the other crimes the hijackers had committed. This unprecedented action by the Cuban government is a favorable sign that the hijackers could be returned to the U.S. to face prosecution under our laws.

The recent hijacking of a Southern Airways jet resulted in further cooperation by the Cuban government. The Castro government went out of its way to assist the thirty-one passengers and crew members after the hijacked plane finally landed. Cuba announced that the hijackers would be tried promptly and the State Department thanked the Cuban government formally for their cooperation.

In 1970–1971, there has been increased evidence that Cuba's revolutionary activities and the Soviet interest in Cuba are diminishing subversive activities throughout Latin America have reduced significantly since the Che Guevara effort in Bolivia in 1967. Both State and Defense Department officials have testified that Cuba has reduced its aid to local insurgents throughout Latin America and no longer shows the revolutionary fervor of earlier days.

During 1971 in Castro's vist to Chile, it was significant that he stated that his methods of revolution were not to be prescribed for all other nations. This is considered an acknowledgement by Castro of his unsuccessful efforts to establish his own brand of revolution throughout the hemisphere. The victorious election of Salvador Allende in Chile through a coalition of leftist parties represented a victory for the "via pacifica", a policy earlier scorned by Castro.

American officials continually have asserted that the Russian missiles in Cuba are defensive in nature and pose no offensive threat to the United States. However, some authorities contend that the Russian presence does present a security threat which could be minimized by our establishing relations with Cuba.

There have been several indications that the Soviets would welcome a detente or at least a warming of relations between the United States and Cuba. On February 13, 1969, the Wall Street Journal reported that a secret message was sent from the Soviet Union to a Western nation that might mediate a United States-Cuban settlement. The note reportedly stated that the Russians would "look favorably on anything the mediating country could do to normalize relations between Cuba and the United States."

An American reporter who recently visited Cuba reported that Soviet diplomats told him that Russia would reduce its military presence in exchange for an American withdrawal from Guantanamo. The economic burden of Cuba upon the Soviet Union, coupled with the lack of any tangible political benefits, could be motivating factors for their alleged interest in reducing their presence.

SOME NEGOTIATION ISSUES

A number of problems would have to be dealt with prior to any full restoration of diplomatic relations between the United States and Cuba. These include Cuban refugees to the United States, the American tenancy at the Guantanamo Naval Base, expropriation, and the sugar quota.

It can be anticipated that steps to normalize relations with Cuba would cause particular concern in the Cuban-American community about the problem of refugees. Currently Cuban refugees are exempted from the regular quota system. When Castro has permitted it, the State Department has arranged and paid for the airlift of refugees from Cuba to the United States. In December alone, 3,400 refugees immigrated in this fashion.

Should the special immigration status change further, Cuban immigrants would have to apply for permanent immigration status as part of the quota for the Western hemisphere. This quota permits a total of 120,000 persons to immigrate each year.

The United States presence at the Guantanamo Naval Base is certain to be an issue in negotiations. In view of the continued military presence of the Russians on the island, the United States is justified in remaining in Guantanamo. Although an American presence there does not place any significant restrictions on Soviet military activities in the area, the base does provide a convenient training center for naval ships.

Publicly, the Cuban leadership persistently demands that the U.S. evacuate the base; privately, Cuban leaders reportedly have indicated that Guantanamo would not be a major issue in negotiations.

Another issue that is certain to be raised is that of compensation for expropriated properties. In terms of expropriated properties, major corporations have already taken tax write-offs to satisfy some of their claims. Most of the remaining claims, smaller amounts in the $20,000 to $50,000 range, have already been determined by the Foreign Claims Commission, and it is hoped that a re-establishment of relations between Cuba and the United States would open the way for these claims to be negotiated and settled through Cuban administrative and judicial procedure.

In 1959, Cuba exported 3.2 million tons of sugar to the United States under the Sugar Act quota system—approximately 34% of the quota. When relations with Cuba were

terminated, Cuba's allotment was redistributed among the other Latin American sugar producing countries. The major beneficiaries were the Dominican Republic and Mexico.

In the event normal relations are re-established between Cuba and the United States, the Sugar Act grants the President the discretion to reallocate the existing quotas. Many options are available to him to provide for a phased redistribution of quotas which would allow affected nations time to make the necessary readjustments.

Each of the above issues would be knotty and resolution would not be simple. But none would be impossible to resolve.

BENEFITS OF NORMALIZATION

If renewed dialogue with the Castro government eventually leads to more normalized relations between Cuba and the United States, it is our opinion that at least three significant benefits will accrue.

The first and clearly a major benefit is a probable reduction of plane hijackings to Cuba. Obviously the United States and the Cuban government are equally disturbed by this problem and are willing to cooperate in an effort to curb these criminal acts.

Almost eighty percent of planes hijacked since 1963 have gone to Cuba. In general, the Cubans have been cooperative about returning these planes. Hijackers who have sought asylum in Cuba are clearly not welcome there as has been made obvious by the punitive treatment they receive from the Cuban government.

The president of the American Air-Line Pilots Association has called for a resumption of relations between the two countries to curb hijacking. American pilots are threatening to strike unless stronger anti-hijacking measures are implemented and enforced. A normalization of relations would result in cooperation between the two nations for the return and conviction of hijackers.

It is hoped that the Swiss-moderated negotiations will produce an agreement that will discourage further hijacking. These talks should serve as a point of departure for a broader discussion of issues of mutual concern. They are clearly a first step toward normal ties between the two countries.

Second, with normalization Cuba once again could be an important trading partner for the United States. In 1958, the year before Castro came to power, the U.S. imported $527.8 million worth of goods from Cuba and exported $546.9 million worth of goods to Cuba. Cuba supplied sugar and sugar-by-products, and some minerals, principally nickel. The United States exported finished goods, grain, and automobile parts, as well as the machinery for the sugar industry. The re-opening of the Cuban market to American products could again lead to healthy and productive commercial relations between the two countries.

Now, some of our closest allies maintain strong trade ties with Cuba. Cuba presently imports British and Japanese busses and trucks, Spanish fishing boats and many other Japanese and European products. Canada and Mexico still maintain consular and diplomatic relations and have been exporting foodstuffs to Cuba. There are strong indications that the Chilean trade agreement with Cuba is just the beginning of a movement among some Latin American States to resume trade if not diplomatic relations. Trinidad and Tobago's resumption of relations is based largely on their interest in Cuba as a lucrative oil market.

Cuba has recently made two major trade commitments in an effort to improve its economic position. In November 1971, Cuba was admitted to membership in the "Group of 77", the organization of developing nations within UNCTAD (United Nations Commission for Trade and Development), with strong backing from the Latin American bloc. In 1972, Cuba joined COMECON, the Communist counterpart of the European Common Market organization, allegedly to expand its commercial ties and obtain development and technical assistance.

It seems inconsistent that we impose commercial restrictions and limitations on our OAS allies for trading with Cuba while at the same time we sell millions of tons of grain to the U.S.S.R. and China and encourage commercial relations with other Communist nations.

Third, a warmer political atmosphere and improved hemispheric relations are bound to occur if relations between the United States and Cuba normalize. Nearly every year the Cuban matter severely cripples the OAS and makes it appear ineffective, besides becoming an extremely divisive issue among Latin American countries. Any further defiance of the OAS ban by Latin American countries would continue to strain relations of member countries. Unless changes are made in view of present realities, the Cuban issue will continue to impair relations between Western Hemisphere nations.

For over a decade, American isolation of Cuba has given substance to much anti-American rhetoric and ill feeling towards the United States among various groups in Latin America. Removing this vestige of the Cold War would significantly reduce tensions and redirect hemispheric policy, focusing attention on more urgent priorities such as trade economic development, foreign investment and regional integration.

Normalization of relations and a relaxation of tensions might provide an impetus for a regional economic integration program in the Caribbean which would involve Cuba. Although such a development is not imminent, the potential is there and should be explored further.

EXECUTIVE AND LEGISLATIVE RECOMMENDATIONS

A normalization of relations with Cuba is in the United States' best interest. The time is ripe for diplomatic and economic initiatives to be made. However, much depends on the recentivity of Cuba. A willingness on their part to seriously negotiate with the United States would produce an atmosphere conducive to debate and action by the Congress.

In an effort to improve relations with Cuba, we propose recommendations for Legislative and Executive action.

It must be recognized that these proposals cannot be implemented immediately. Action as important to our hemispheric relations as a detente with Cuba must be undertaken only after the most careful review. The Congress should fully participate in the decision making process of any change in U.S.-Cuba relations.

Accordingly, we make the following recommendations:

LEGISLATIVE INITIATIVES

We urge that hearings be held in the House Inter-American Affairs Subcommittee of the House Foreign Affairs Committee and in the Subcommittee on Western Hemisphere of the Senate Foreign Relations Committee on the present state of the U.S.-Cuba relations so that the American public and Congress can evaluate the viability of our present policy towards the Republic of Cuba and thoroughly and publicly consider proposed changes therein.

After such a complete Congressional assessment of the political and economic implications of normalization for the United States, and the success of executive negotiations, the following legislative initiatives should then be considered:

The removal of the trade embargo against Cuba inherent in section 620 of the Foreign Assistance Act of 1961 (as amended).

The removal of Section 103 under Title I of the Agricultural Trade Development and Assistance Act of 1954 prohibiting sale of U.S. Agricultural commodities to countries which sell, furnish, or permit their ships or aircraft to carry any equipment, materials or commodities to or from Cuba.

The repeal of the Cuban Resolution passed by Congress in 1962 and which still describes basic U.S. initiative policy towards Cuba.

EXECUTIVE INITIATIVES

We urge the President to make every effort to achieve an effective anti-hijacking accord with the Cuban government. We should utilize maximum flexibility to obtain a solution to curb the continuing proliferation of these acts. The anti-hijacking talks should be used as an opportunity to discuss other issues of mutual concern.

We urge the President to direct an interagency review of U.S.-Cuban relations with the objective of establishing concrete steps to normalize relations with Cuba.

We urge the President to confer and consult with Latin American countries in advance of any significant policy change. This would honor the President's commitment to utilize a policy of prior consultation with our Latin allies as enunciated in his State of the World message.

We urge immediate consideration of recognition of the legitimacy of the Castro government as the representative of the Cuban nation and people. Any kind of negotiations with Cuba should be conducted in a clear, frank and positive manner exemplary of two sovereign nations.

We urge United States support for the Peruvian Resolution of 1972 to permit any member state of the Organization of American States to "normalize its relations with Cuba" should it be re-introduced in the Permanent Council of the OAS, or support for similar initiatives.

THE ILLEGAL IMPOUNDMENT OF FUNDS

Mr. HUMPHREY. Mr. President, on February 15, 1973, I had the honor of addressing the Student Legal Forum of the University of Virginia Law School in Charlottesville, Va. My remarks that evening concerned the impoundment of congressionally appropriated funds by the executive.

It is my view that the present constitutional crisis in this country is a deliberate and conscious attempt by the President of the United States to concentrate power over the purse in the executive.

Let me state again: I consider impoundment to be illegal. It can and does alter, change, or terminate programs. It revises public policy. It performs the function of an item veto—expressly prohibited by the Constitution.

On almost every count, I find the arguments advanced by the President for impoundment to be inadequate and contrary to both the spirit and letter of the Constitution.

Mr. President, I ask unanimous consent that my remarks to the University of Virginia Law School be printed in the RECORD.

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

REMARKS BY SENATOR HUBERT H. HUMPHREY

A Constitutional crisis is at hand is our nation, a crisis arising not from the normal pulls and tugs, checks and balances between the executive and legislative branches.

Rather, the crisis faced today is a delib-

erate, conscious and manufactured attempt to concentrate in the executive, power forbidden to it—power over the purse.

And, the purpose of this confrontation is not to protect the public interest, but to sanctify an ideology and protect the special interest so long identified with Richard Nixon and the Republican Party.

The political strategy of the White House is clear:

Engineer a confrontation between the legislative and Executive branches;

Begin a coordinated high pressure public relations campaign designed to picture the Congress as the "big spenders";

Draw the battle line by presenting a budget that decimates social programs in the name of holding down taxes;

Illegally impound billions of dollars of Congressionally appropriated funds—all in the name of the economy and efficiency.

And, as a result of all four tactics, the intention is to divide and overwhelm an embittered, stalemated Congress.

Article I, Section I, of the Constitution vests all legislative powers in the Congress of the United States. Section 9 of that same article says that no money shall be drawn from the Treasury, but in consequence of appropriations made by law.

Article II, Section 3, says that the President shall take care that the laws be faithfully executed.

There is a careful delineation of function here—the power of the purse belongs to Congress. The duty of implementation is the responsibility of the executive.

But reality is hardly that simple. William Howard Taft once remarked, "Let anyone make the laws of the country, if I can construe them."

There perhaps is no better case in point than the impoundment of Congressionally appropriated funds. Impoundment can and does alter, change, or even terminate programs. It can and does significantly alter, change, or revise declared public policy. It can and does perform the function of item veto which is prohibited by the Constitution.

During the history of our nation, Presidents have withheld funds from such Congressionally approved programs as bomber and Air Force groups, food programs, flood control projects, model cities, highway construction, rural electrical programs and hospital construction.

But there are impoundments—and *then there are impoundments*. First, funds may be withheld from a program to "effect savings or prevent deficiencies."

Thomas Jefferson refused to spend $50,000 for gun boats on the Mississippi—even though this money was appropriated by Congresss. Jefferson said that the money was not needed. The United Statess had just purchased the Louisiana territory, and the threat that made gunboats necessary had abated. Jefferson was saving money.

And in 1905 and 1906, the Congress enacted the Anti-Deficiency Acts to prevent Executive agencies from hastily spending its complete appropriations and then seeking additional appropriations. These acts established a budget technique of monthly allotments to prevent undue expenditures.

In 1950, a clause was added to the Anti-Deficiency Acts that provided that moneys could be withheld to bring about "greater efficiency of operation," "to take into account changes in requirements," or "subsequent developments after the approval of the Appropriations."

Though these last three phrases are vague—and in my judgment do not represent clear law, they nevertheless were never meant to be vehicles for thwarting the declared policy of Congress. The legislative history is not vague on that point—the Anti-Deficiency Acts are instruments of accounting—not of changing Congressional intent or policy purpose.

Nor were they meant to obviate the separation of powers doctrine in the guise of efficiency. Chief Justice Warren, in 1965, declared that separation of powers was "obviously not instituted with the idea that it would promote governmental efficiency. It was, to the contrary, looked to as a bulwark against tyranny."

Congressionally directed impoundment is a second type of fund withholding. In the 1968 Revenue and Expenditure Control Act, Congress fixed a spending ceiling and made about half the mandated budget cuts provided by that Act. The President was directed to make the other half of the required reductions.

Or another example: In Title VI of the 1964 Civil Rights Act, the President is directed to withhold funds from Federally financed programs in which there is evidence of discrimination.

All of these instances have these things in common: the Congress has expressly delegated to the President, in statute, and debate, and legislative history, the power to withhold funds. Congress directed the impoundment. The Executive did not automatically assume the power. In fact, the very act of Congress delegating or directing the President to impound funds was an expression of congressional authority and a recognition that the President did not have inherent power to act on his own initiative.

A third kind of impoundment I refer to as "defense impoundment." There is little question in my mind that the Constitution gives a President broad scope to exercise judgment in his capacity as Commander in Chief.

In fact, Presidents have used impoundment extensively in military matters. President Truman, in 1949, requested funds for only 48 Air Force groups. The Congress provided 58. Truman impounded the funds for the extra ten groups. But he did so upon an expression of legislative intent. The language of the Conference Committee read: "if the money is appropriated, it may not be used." President Eisenhower refused to spend money for anti-ballistic missiles until he was satisfied that the developmental tests would prove fruitful.

There is a fourth type of impoundment—an impoundment I consider to be illegal—that of *Policy Impoundment*.

Policy Impoundment is practiced by President Nixon. It is the kind of impoundment that terminates programs enacted by Congress, such as the Rural Electrification Act; or significantly alters a program by severe cuts in the funding, such as the Water Pollution Control Act of 1972, where President Nixon's withholding has had a major impact on policy and program objectives.

Policy impoundment has resulted in substantial cuts in programs such as housing, water and sewer grants, and medical hospital construction—thereby changing legislative intent.

Under policy impoundment, funds are withheld not to effect savings, not as directed by Congress, not as Commander in Chief, but because the President has unilaterally decided to impound money for programs that are not his priorities. It is a method of substituting Executive will for Congressional purpose.

Since 1970, President Nixon has consistently impounded eight to $12 billion in Congressionally appropriated funds each year.

And, until last fall when Congress passed my Impoundment Information Act, the President neither explained, reported, or justified executive impoundment. He simply did it.

Policy impoundment is executive arrogance.

It encroaches upon the constitutional prerogatives of Congress.

It violates the separation of powers.

And, it gives the President an item veto—neither sanctioned by the Constitution nor granted by Congress.

President Nixon claims that he possesses inherent Constitutional power to impound, first, to fight inflation, and second, to resolve the meaning of contradictory laws.

The President's Deputy Attorney General—Joseph Sneed—in testimony before the Separation of Powers Subcommittee, said that the President has inherent "latitude" to refuse to spend or defer spending regardless of Congressional action.

Such an assertion is to my mind a blind reading of the Constitution. An earlier Justice Department memorandum prepared by then Assistant Attorney General, now Supreme Court Justice, William H. Rehnquist, said:

"With respect to the suggestion that the President has a Constitutional power to decline to spend appropriated funds, we must conclude that existence of such a broad power is supported neither by reason nor precedent."

Those are unequivocal words.

Rehnquist is correct. There is no constitutional authority to impound funds, to terminate programs, or substitute the President's judgment for that of the Congress on domestic policy.

With respect to the inflation control argument, if impoundment is justified on the basis of fighting inflation or protecting the debt limit, then the President has picked a weak tool to combat a serious problem.

The Employment Act of 1946 places responsibility to "promote employment, production, and purchasing power" in the entire federal government—not exclusively in the Executive branch. In addition, the most powerful means to fight inflation are antitrust actions to increase competition, economic controls, cutting import restriction, increasing trade, and government fiscal and monetary policy.

Impoundment ought not to be substituted for these weapons in our fight against inflation.

The President is correct when he notes that Congress has in some instances passed contradictory laws. But, the way to resolve conflicts over contradictory laws is not to take unilateral Presidential action, but to return to the Congress and ask for a clarification. That is the responsible way—the Constitutional way—to make changes in policy.

By policy impoundment, the President of the United States is violating the comity that has so characterized Executive-Legislative relationships for two hundred years. And, despite an occasional statement that the President indeed wants cooperation with Congress, his attitude and actions speak differently.

Instead of hiding behind dubious constitutional arguments, the President and his advisers ought to level with the American people, and tell the people what they are really up to and what they really do not like.

And what they do not like is quite obvious. They do not like the fact that Congress has changed and challenged their priorities.

Congress has cut defense, military procurement, foreign aid, and space spending. It has increased funds for housing, community facilities, water and air pollution, poverty programs, education and health care.

What are the remedies to Presidential impoundment? Can Congress assert its will?

First, Congress can and has in the past established minimum levels of what must be accomplished with appropriated money. For example, in the fiscal year 1972 Veterans appropriation, Congress stipulated that the funds must provide not less than an average of 97,500 beds for Veterans Administration hospitals that year.

Second, Congress can use mandatory language such as the President is "directed," "shall," "must," "required," or "ordered" to spend appropriated funds. Congress has done so before, such as in the 1970 continuing resolution for education funds.

Congress, understandably, has been reluctant to use such language because it recognizes that conditions do change—that changes might be necessary in the spending of funds. But, until the Nixon Administration came into office, Congress and the President have always had a relationship that was informal but clearly understood on the use of funds.

That comity no longer exists. Perhaps mandatory langauge will have to become standard in all appropriation bills so that the President will clearly follow and execute the law.

Third, Congress can establish impoundment procedures to affirm or reject any fund withholding. Legislation presently before the Subcommittee on Separation of Powers would require Congress to affirm the legality of any proposed impoundment, otherwise the President would be directed to spend the funds.

Fourth, Congress could go—and some members of the Senate and I have gone—to court to force the President to use the appropriated funds. The courts have been reluctant to enter this thicket of Congressional-Executive confrontation. But it is my judgment that they can no longer stand back. The courts will have to make a decision on the impoundment question.

Finally, there must be continued political pressure on the Administration. The Administration has a practice of holding back money after an election, only to release it before the next election. The American people must mount the same kind of sustained political campaign that forced the President in 1970 to release education funds and in 1972 to release food stamps money. Public opinion is a powerful force, even on a stubborn President.

How will this constitutional crisis be resolved?

I would be less than candid if I said I knew the answer. I do know that the crisis is serious.

And, of one more thing I am certain. The President's vision of America evidenced in his illegal impoundments and his recently released budget, is not the vision of America that I see.

The President claims he knows America—and Americans. He sees the self-made man, the self-sufficient, the free market, and the virtues of private enterprise.

Surely that is part of America, but it is not all of America.

There is a second America.

There is an America of compassion for its poor, its hungry, and its sick.

There is an America of devotion to helping others help themselves.

There is an America of great wealth, capable of great deeds, if only called to do so.

There is an America that is no longer content to be publicly poor and privately rich.

This is an America not found in the Nixon budget nor well served by a deepening Constitutional crisis precipitated by impoundment.

What America is really all about was well phrased in Franklin Delano Roosevelt's 1937 Inaugural Address. Looking out on a nation he described as one third ill-housed, ill-clad, ill-nourished, he said:

"The test of our progress is not whether we add to the abundance of those who have much; it is wehther we provide enough for those who have to little."

This is an America Richard Nixon does not know or understand.

For Richard Nixon, America is in retreat. It is an America practising domestic disengagement, retrenching—not to fight again but to abandon the cause of conquering our ills and enriching the lives of mankind.

It is not my vision of America.

My vision of America is found in the words of Carl Sandberg:

"I see America, not in the setting sun of a black night of despair ahead of us. I see America in the crimson light of a rising sun fresh from the burning, creative hand of God. I see great days ahead, great days possible to men and women of will and vision. . . ."

ROBERT BALL—DEDICATED PUBLIC SERVANT

Mr. RIBICOFF. Mr. President, I wish to express my deep appreciation for the excellent Government service rendered by Robert Ball, soon to retire as Commissioner of Social Security. As Secretary of the Department of Health, Education, and Welfare in 1962, I appointed Bob as Commissioner based on his outstanding ability, competence, and dedication. I never inquired into his politics and to this day I do not know his political persuasion.

For the last decade Bob has served the American people with the highest administrative competence and social imagination.

Since I left HEW I have had a continuing opportunity to work closely with the Commissioner in my role as a member of the Senate Finance Committee. At all times he has been forthright and acted in a bipartisan manner. His personal expertise in all aspects of the social security system has enabled the Finance Committee to act expeditiously with the fullest possible knowledge of the effects of its actions.

It will be difficult to find a man of Bob's caliber to replace him—especially at this critical time when the new Federal program for the aged, blind, and disabled is being set up. I hope that the administration will be able to find a person who can give the same dedication to the job that Bob did. Until that time I look forward to working with him and hope that his invaluable services will still be available to us even after he retires.

I ask unanimous consent that the following articles be printed in the RECORD.

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

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

DEFENDER OF THE AGED

In his decade as Social Security Commissioner, Robert M. Ball has demonstrated both administrative competence and social imagination of a high order. He came into the vast Federal insurance program for protection of the aged and disabled not long after its establishment in 1937. His subsequent career entitles him to rank alongside the late Arthur J. Altmeyer, the first head of the Social Security system, as an official who knew how to translate dreams into an efficient, corruption-free program.

The distinction of Mr. Ball's service makes it difficult to understand President Nixon's decision to speed his departure from Government just when massive new administrative problems are about to descend on the system in connection with the Social Security changes voted by Congress last year. We share the hope voiced by Chairman Mills of the House Ways and Means Committee that the dropping of Mr. Ball does not signify an Administration desire to "politicalize' Social Security. Perhaps his greatest contribution was keeping that multi-billion-dollar program totally free from any taint of politics.

[From the Baltimore Evening Sun, Jan. 25, 1973]

BALL SAYS SSA PROVES GOVERNMENT CAN WORK

(By Anne S. Philbin)

Robert M. Ball, retiring commissioner of Social Security who has served three presidents, hopes Americans will remember that social security "is at the very least, a big exception" to widely expressed views that government isn't working.

"There seems to be a lot of feeling today," he said in a farewell interview in his ninth floor office at Woodlawn, "that federal programs, particularly many Great Society programs, are not working well.

"If this is true, and I am not sure it is," he added, "I think Americans shouldn't forget social security is a big exception.

"It is by far the largest of federally financed programs in the area of health, education and welfare, and accounts for almost one-fourth of the country's entire budget."

Explaining this, Mr. Ball said that in 1974 the Social Security Administration, will be paying out about $70 billion, with one out of every eight Americans in the country receiving a monthly check.

The $70 billion figure includes $54.73 billion in social security cash benefits, about $10 billion for Medicare payments. $408 million in "black lung" benefits to miners and their widows and children, and an estimated $3.5 billion to be paid out under the Supplemental Security Income program effective January 1, 1974, for the needy aged, blind and disabled.

MINIMUM INCOME

SSI guarantees a uniform minimum income of at least $130 a month for an individual and $195 monthly for a couple; it is a 100 per cent federally financed and federally administered program.

Mr. Ball said he believes SSI is a "very good addition to the social security law. The federal payments will be higher than those now paid by more than half the states," he said.

"The amount is getting closer to what people need to live on," he added, "and certain onerous and restrictive features of some state welfare assistance programs such as home lien laws, will be removed."

Mr. Ball said he thinks social security cash benefits, which have increased more than 70 per cent in the last five years, have "reached a new level of adquacy."

"We now have the automatic provision which will keep benefits up to date as the cost of living goes up. Also, benefits rise as a worker's earnings rise. Medicare coverage has been broadened to include disabled persons under age 65.

"Over a hundred other changes in social security and Medicare have improved the protection of present and future workers and their families. Americans are paying more but they are getting more," he commented.

SOUNDLY FINANCED

Mr. Ball said the social security program is "completely and soundly financed, under present law, to the year 2011."

Touching upon administrative policies and leadership which have molded the Social Security Administration into what President Nixon has called a "model for other government agencies," Mr. Ball said he is very proud of a number of things that have happened during his 11-year tenure as commissioner.

"We have made a great deal of progress in training minorities for better jobs with SSA, opened up more career opportunities for women, pioneered in fair housing for our employes, sponsored a volunteer program whereby our employes respond actively to community needs, and supported a substantial education program.

"We have a strong union (American Fed-

eration of Government Employes, Local 1923) which does a good job in protecting employes; it is aggressive, but responsible," Mr. Ball said.

"And I think SSA has had a positive impact on the Baltimore area in the 19,000 jobs it presently provides here plus the 3,000 that will be needed to implement the recent legislative changes."

NEW BUILDINGS

Mr. Ball said the agency's expansion program would include new buildings "here at Woodlawn and also in downtown Baltimore."

Although he said it would be difficult to leave SSA at this particular time in history when the agency faces major problems in implementing H.R. 1's legislative changes, Mr. Ball indicated his departure was a "mutual agreement" between the President and himself.

He said he plans to write, answer questions raised by those who attack the social security system, and help in the development of long-range policy on national health insurance. On the latter, he said "the question today is not if we need it, but how we can accomplish it."

Mr. Ball began his federal career in 1939 as a field assistant in a New Jersey district office at an annual salary of $1,620. He worked his way up through the ranks and by 1954 had become deputy director of the former Bureau of Old Age and Survivors Insurance. Through government reorganization, this bureau was to become the Social Security Administration in the early sixties.

Since April, 1962 when President John F. Kennedy appointed him commissioner, Mr. Ball has been serving "at the pleasure of the President for the time being."

SHOCKED SURPRISE

Between then and now, he has submitted four pro-forma resignations to Presidents Johnson and Nixon. When the fourth was accepted by the White House early this month, the announcement was greeted in SSA and official Washington with shocked surprise, principally because Mr. Ball is as respected for his management leadership as his knowledge of social insurance.

He is also well-known and well-liked on Capitol Hill, having testified at every congressional hearing on social security since the early Fifties.

In describing the qualifications needed by his successor, Mr. Ball, in the judgment of his peers, has used the words they would use to best describe him.

"He should be someone with experience in running a large federal agency, he should be nonpolitical and a humanitarian."

During his 30 years of federal service, Robert M. Ball has placed his indelible stamp upon the social security system. Of all the schemes generated to promote the welfare of the nation's people, social security stands almost uniquely in its absence of associated scandal and accomplishment of its mission.

[From the New York Times, Jan. 25, 1973]

POLITICS, POLITICS EVERYWHERE

(By Wilbur J. Cohen)

ANN ARBOR, MICH.—The recent forced resignations of key personnel in the Department of Health, Education and Welfare is an ominous omen of worse things to come.

The termination of Dr. Robert Q. Marston, the distinguished director of the National Institutes of Health, has already been viewed by scientists as the possible politization of the institute, which no previous Republican or Democratic Administration has ever attempted. Dr. Marston has been recognized as a nonpolitical and able administrator of an important, difficult and scientific assignment. No reasons were given for his termination from a position so vital to continued expansion of our medical research capacity.

The resignation of Robert M. Ball, the outstanding commissioner of Social Security, is a further recognition that the Nixon Administration fails to understand the importance of retaining its key administrators in its key programs. The Social Security program has always been run on a nonpartisan basis. There has been up to now no political interference in the program by any Administration since it was established in 1935. Ball's superior competence has been recognized by all previous secretaries of H.E.W. His departure prior to the implementation of the massive and far-reaching legislation recently passed by Congress and approved by the President is premature and unfortunate. Next year, total expenditures under Mr. Ball's supervision will exceed $70 billion.

Certainly, changes in personnel in governmental programs are desirable and inevitable. But there is a difference between wholesale and retail changes. The Nixon Administration appears to be trying to tell employes in the various departments that they must recognize who is the boss—the White House.

Government programs such as medical research and Social Security must depend upon the professional competence and morale of the employes who administer them. This is a delicate, sensitive and precious set of elements. It may take many years to build; it can be destroyed in a moment. There is a lack of understanding in high places of the political importance of nonpolitical administration of services vital to the American people.

Prof. John R. Commons, the distinguished labor economist of the University of Wisconsin, used to tell his students that an inadequate law which was well administered was to be preferred to a good law, badly administered. The Nixon Administration appears to want to prove that it can administer good laws badly on a reduced budget without first-class administrators—a dangerous experiment.

The forced resignations of many able persons in other agencies of government—such as the Commissioner of Labor Statistics, Geoffrey Moore—tend to support this dismal conclusion. The Commissioner of Labor Statistics is a four-year-term appointment. No other Commissioner of Labor Statistics in any previous Administration has been asked to resign before his term expired. In 1969 the Nixon Administration also fired the chief of the Children's Bureau which no Administration had ever done in the 57-year, nonpolitical history of that bureau. No Administration has such a record of interference in statistical and early childhood development programs.

These personnel changes must be viewed in terms of the repeated White House interference and reversal of Secretary Richardson's recommendations, to name but two: the rejection of his compromise with Senator Ribicoff on the welfare-reform bill, and the lack of consultation on the veto of the Hill-Burton hospital construction amendments.

Coupled with the unprecedented Presidential vetoes of H.E.W. appropriation bills, and the attack by John D. Ehrlichman of the White House staff on the employes in the department prior to the election, why should competent men and women of stature and integrity take any of the jobs vacated? The health, education and welfare of all of the American people are too important to be sacrificed for political purposes.

[From the Scranton Times, Jan. 15, 1973]

NIXON MISTAKEN IN FIRING BALL

(By Bruce Biossat)

WASHINGTON.—President Nixon's dismissal of Robert M. Ball as commissioner of Social Security raises some serious questions about how to achieve and maintain skillful management in the government bureaucracy.

Since the agency has always been deemed to be off-limits politically, it would be a bad slip if the President were to name a successor whose experience suggested he was less a qualified social insurance expert and more an out-and-out political appointee.

But, actually, that is the shallow, obvious aspect of the matter, easy to judge. There is a deeper issue.

Ball has headed the Social Security Administration for nearly 11 years, and for roughly an equal time before that he was deputy commissioner of SSA's predecessor agency. His entire working career falls within the social insurance realm.

Does this kind of service make a man go stale and leave him empty of new ideas?

There is a school of thought that would say yes, automatically. The proponents of this view contend that turnover at the top level should occur fairly frequently. The argument can be guessed. Change assures regular infusion of fresh ideas, new energies, flexibility. Men of long tenure, it is suggested, cannot fill this need.

The argument has undeniable plausibility. The woods are full of executives and administrators whose energies flag and whose imagination runs thin. Rigidity and complacency often set in all too quickly. Against this very real prospect, change—even systematic change—looks like a sound rule.

Yet there is a strong counter-argument put forth steadily in the field of public affairs. Its core is that there are always men with a great capacity for self-renewal, continuing growth, and adaptibility to altered circumstances and problems. Such men not only can meet new challenges, but have a way of searching them out.

Here again, the contention has undoubted force. The corporate and government landscape is well dotted with figures whose long service in top posts is a consequence not of power but of demonstrated abilities maintained through markedly changing times.

Proponents of this point argue, incontestably, that to dispense with or shift such leadership from its proved realm is to waste human resource, to deprive a society of commanding individuals who serve its institutions as a keystone holds an arch together.

Does Robert Ball deserve such an accolade as this? There are a good many men in the U.S. Congress and many practiced observers of public service performance who believe he does.

He has presided over Social Security during its transformation from an agency of modest scale to one of enormous size and increasing complexity, and seen it hailed as the best of bureaucracy. In 1965, he laid over it the huge framework of the Medicare program, a task reasonably pictured as one of the greatest peacetime administrative assignments in history. He is a tireless innovator who knows his field as he knows the lines in his hands.

In 1972, Congress handed SSA new challenges for 1973 and 1974. Everything in the record suggests Ball was the man above all to meet them. His expertise is unmatched, and at 58 his powers and talents seem undimmed. He is a public servant of genuine distinction. In casting him out, President Nixon has made a gross error in judgment.

[From the Washington Evening Star-Daily News, Jan. 15, 1973]

OUSTER AT SOCIAL SECURITY

The word "bureaucrat," like the word "politician," has gathered a distinctly deprecatory ring to it. The public has grown more distrustful of big government, and so it has become fashionable, even in the town that lives by big government, to dismiss the man who works for government as something of a second-rater.

It is all too bad. For though second-raters, and third-raters, abound in government, as they do in private employment, the disparagement of the bureaucracy ignores the hard-working and the able in government ranks and it ignores those relatively few people who can fairly be called superb public servants.

Robert M. Ball is in that last category of bureaucrat. He will be, at least, until his successor is named and takes over as commissioner of Social Security. Whatever bothersome questions that have arisen about the legislative principles and the financing of Social Security, there is almost universal agreement that here is one government program that works: The computers whirr; the checks go out; public confidence in the system remains high. Bob Ball can take some of the credit for this.

Ball has been with Social Security since 1939, or almost since its inception. He has been commissioner for the last 10 years, a period in which the system experienced a mighty expansion in size, scope and complexity. As an administrator, keeping on top of the legislation, knowing what had to be done, and doing it in an apolitical way, Ball rode the expansion tide in admirable fashion.

All of which brings up the question: Why did President Nixon accept Ball's pro forma resignation? Ball, it is known, wanted to stay on. And he had reason to stay on, for in light of 1972 legislation further expanding the system to include all the nation's adult welfare programs, Social Security faces a challenge at least as complex as in the move eight years ago to establish Medicare within the system.

What the White House has in mind may become clearer when Ball's successor is announced. In the meantime, we believe the burden of proof is on the administration to show that it can come up with someone of Ball's stature, and someone who will not politicize this key position. Congressman Wilbur Mills, whose knowledge of the system is unequaled on Capitol Hill, says he'll be "watching carefully" the choice of a successor. That's good to hear. We hope a lot of other people, in Washington and elsewhere, will do the same.

[From the American Medical News, Jan. 15, 1973]

BALL LEAVES TOP SSA POST

Veteran Social Security Commissioner Robert Ball resigned under what he termed "a mutually acceptable decision" with the White House.

The 58-year-old career federal official was named commissioner of the vast Social Security Administration by President Kennedy. He was in the forefront of the fight for Medicare and other expansions of Social Security, and was regarded as one of the government's most knowledgeable officials.

No successor was announced.

Although he ran Social Security with an expert hand and generally managed to steer clear of political involvement, Ball was a firm believer in the ability of Social Security to handle larger responsibilities, such as Medicare.

His convictions clashed with those of former chief Social Security actuary Robert Myers, who resigned several years ago after accusing Ball of pushing unlimited expansion of Social Security.

In his letter to President Nixon, Ball said his "personal preference after nearly 11 years as commissioner of Social Security, has been to ask you to accept my resignation, effective at the beginning of the new term. I have refrained from doing so only because of my concern for the program and the Social Security organization during the coming period of great challenge. . . ."

Ball's resignation follows the departures—some voluntary, some not—of the entire top echelon at HEW's health department. Only Food and Drug Commissioner Charles Edwards, MD, remains. He is reported under consideration for promotion.

[From the Port Arthur (Tex.) News, Jan. 15, 1973]

WAS BALL DISMISSAL MISTAKE?

President Nixon's dismissal of Robert M. Ball as commissioner of Social Security raises some serious questions about how to achieve and maintain skillful management in the government bureaucracy.

Since the agency has always been deemed to be off-limits politically, it would be a bad slip if the President were to name a successor whose experience suggested he was less a qualified social insurance expert and more an out-and-out political appointee.

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Yet there is a strong counter-argument put forth steadily in the field of public affairs. Its core is that there are always men with a great capacity for self-renewal, continuing growth, and adaptability to altered circumstances and problems. Such men not only can meet new challenges, but have a way of searching them out.

Does Robert Ball deserve such an accolade as this? There are a good many men in the U.S. Congress and many practiced observers of public service performance who believe he does.

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In 1972, Congress handed SSA new challenges for 1973 and 1974. Everything in the record suggests Ball was the man above all to meet them. His expertise is unmatched, and at 58 his powers and talents seem undimmed. He is a public servant of genuine distinction. In casting him out, President Nixon has made a gross error in judgment.

[From the Washington Post, Jan. 14, 1973]

ROWLAND EVANS AND ROBERT NOVAK

The sacking of highly respected-civil servant Robert Ball as social security administrator fits neatly into President Nixon's overall program of attaining iron control over the federal government, but it came four years later than Mr. Nixon originally planned.

In 1969, White House aides, noting that the non-partisan Ball had first been named Administrator by President John F. Kennedy, wanted him replaced by a Nixon stalwart. But Mr. Nixon's newly designated officials at Health, Education and Welfare (HEW)—Secretary Robert Finch and Under Secretary John G. Veneman—protested they badly needed Ball's expertise. Moreover, Rep. Wilbur D. Mills, chairman of the House Ways and Means Committee, informed the White House he would be most unhappy if Ball were fired.

This time, Mr. Nixon experienced little difficulty. Elliott Richardson, outgoing secretary at HEW, told the White House Ball ought to be kept to administer changes in law, but did not press the point. His successor, Caspar Weinberger, made no protest. Mills was not consulted (though he is not happy about Ball's ouster).

A footnote: The Ball incident confirms the general expectation that Weinberger, highly competent administrator through he is, will be considerably more subservient to the White House than either Finch or Richardson.

[From the New York Times, Jan. 5, 1973]

SOCIAL SECURITY CHIEF IS BELIEVED OUT

WASHINGTON, Jan. 4.—President Nixon plans to accept the resignations of Robert M. Ball, head of the Social Security System for a decade, and Phillip V. Sanchez, director of the Office of Economic Opportunity, Government sources said today.

Mr. Ball, it appeared, is being pushed out of Government. However, there were indications that Mr. Sanchez will be promoted.

The removal of Mr. Ball, who heads both the retirement benefit and Medicare programs, will all but complete the removal of the entire top management staff of the health component of the Department of Health, Education and Welfare.

Announcement of the move, which is expected Friday, is believed likely to provoke bitterness among Social Security employes, who have considered themselves to be above partisan politics.

Informed sources have indicated that Mr. Sanchez, who has made many speeches praising the President for his initiatives for promotion—perhaps to an ambassadorial post in Latin American.

His departure comes at a time when the poverty office is faced with serious morale problems, largely the result of the uncertainty of its continued existence under the President's government reorganization plan.

Mr. Ball has been an advocate of an expanded Federal role in welfare and health affairs, which the Administration is trying to de-emphasize in favor of more state control.

Mr. Ball and Mr. Sanchez are known to have requested that they be allowed to remain in their present posts.

Mr. Ball, who has spent his entire career in the Social Security Administration, joins a list of a dozen key agency officials who are leaving. His departure, however, is not expected to have any immediate impact on Federal health policy.

Mr. Sanchez, appointed in September, 1971, has been the fourth director of the poverty office since 1969. He succeeded Frank C. Carlucci, who moved to high posts at the Office of Management and Budget and has now been designated Under Secretary of H.E.W.

[From the Asheville (N.C.) Times, Jan. 6, 1973]

AN UNFORTUNATE NIXON FIRING

President Nixon's shakeup of the federal bureaucracy perhaps moved a step too far when he accepted the requested resignation of Robert Ball as head of the Social Security Administration. The word out of Washington hints that Ball, who worked his way up from the civil service ranks and was named Social Security Administrator by President John F. Kennedy, had too many close contacts in Congress for the liking of the White House.

If so, it is a pity. Robert Ball served with considerable distinction as head of the vast Social Security Administration. He was one of the architects of Social Security's disability and Medicare provisions, and received the Rockefeller Public Service Award for the supervision of the vast social insurance program which now provides benefits to one of every nine Americans.

Ball can bow out with a very clear con-

science. Knowledgeable observers in Washington rate the Social Security Administration as perhaps the best of all the federal agencies. There has never been a breath of scandal connected with it, and the experts hold that administratively it functions with a minimum of waste and lost motion. People who have had occasion to do business with regional Social Security offices can testify to the fine courtesy and efficiency of the staff members.

The nation owes a debt of thanks to Robert Ball. It's too bad that he had to fall victim to the Nixon pruning hook.

[From the Augusta (Ga.) Chronicle, Jan. 6, 1973]

BALL RESIGNATION CONFIRMED—"NEW DIRECTION" PLANNED IN SOCIAL SECURITY SETUP

WASHINGTON.—The White House confirmed Friday that Robert Ball is stepping out as Social Security administrator and promised "there will be new direction" of the vast social insurance system.

Press Secretary Ronald L. Ziegler said Nixon has accepted Ball's resignation "with appreciation for his services and contributions" in his decade as head of Social Security.

But he refused to say whether Ball, in submitting the pro forma resignation, had expressed a desire to continue a government career which dates from the New Deal days. "The commissioner is returning to private life . . . that's all I have to say," Ziegler responded when asked why Nixon is replacing him.

Ball's successor was not announced, but Ziegler said "there will be new direction" in operation of the system which provides benefits to one of every nine Americans.

Ziegler also announced the President has accepted "with deep regret" the resignation of Andrew E. Gibson as assistant secretary of Commerce for domestic and international business. Gibson previously served as maritime administrator. He will return to private life, Ziegler said.

He would not discuss the President's plans concerning Philip Sanchez, Office of Economic Opportunity director. Sanchez' resignation from the poverty-fighting post reportedly has been accepted by Nixon.

MILLS SAYS CONGRESS WON'T BUY POLITICALIZED SOCIAL SECURITY

WASHINGTON.—Congress never will allow the Social Security system to be politicalized, Rep. Wilbur D. Mills, D-Ark., said Friday.

Mills is chairman of the Ways and Means Committee which handles Social Security legislation. He commented in connection with the departure of Robert Ball as administrator of the system and the subsequent remark by White House Press Secretary Ronald Ziegler that "there will be new direction" in the operation of the system.

"I hope that did not mean the administration wants to politicalize Social Security," Mills said. "I don't believe it does because they know in advance Congress would never permit it."

Mills described Ball as "a near genius in administration" and said "I will watch his successor very carefully."

[From the Evening Star-News, Jan. 5, 1973]

SOCIAL SECURITY CHIEF DROPPED, 33-YEAR VETERAN

(By Philip Shandler)

President Nixon has decided not to retain Social Security Commissioner Robert M. Ball in the second term. Ball's departure comes as the Social Security program is on the verge of what may be the biggest job ever for an agency with one of the most complex missions in government.

In a statement prepared to coincide with the impending White House announcement, Ball, 53, said recent Social Security legislation was so significant "it can be said that the program has come of age." And he added:

"It is particularly difficult for me to leave now and not be a part of these efforts . . ."

The President was expected to announce soon, possibly today, that he has accepted the resignation of Ball, a 33-year federal careerist who for more than a decade has overseen unprecedented expansion of what is now the world's biggest retirement and insurance system.

PRAISE FROM MILLS

Rep. Wilbur Mills, D-Ark., chairman of the House Ways and Means Committee, which handles Social Security legislation, said it would be "hard to find an equal to Bob Ball," whom he called "a near-genius."

Dialogues between Ball and Mills have been a familiar and instructive fixture of congressional activity for years. And Mills said he would be "watching carefully" the choice of a successor.

Social Security annuity increases, Medicare extensions and the first federalization of a welfare program—the so-called adult categories of state aid to the needy aged, blind and disabled—were voted by Congress in its last session.

This will require, Ball said, "at least as much effort and complexity for the Social Security Administration as the setting up of the Medicare program" of health insurance for the elderly eight years ago.

DEPUTY TO REMAIN

But he insisted that his resignation is a "mutually agreeable departure," and that he had "every confidence that the organization will perform well" under new direction.

There was no immediate explanation from the White House for letting Ball go, nor on a successor. His deputy, Arthur Hess—the only other political appointee at Social Security has not been told to go.

Ball said he would stay on until a successor takes over.

A spokesman for Sen. Russell Long, D-La., chairman of the Senate Finance Committee, said he hoped the White House "won't politicize the job."

This could happen, however, with what many see as a conservative mood clouding the prospect for further expansive social legislation from the Congress that convened this week, and thus minimize the need for a Social Security chief of Ball's expertise.

Ball, a native of New York, developed an interest in Social Security while a senior at Wesleyan University in 1935, from a professor who was a consultant on the newly created program.

In 1939, he took a $1,620 job as a field representative, became a protege of Wilbur J. Cohen, and rose to become deputy director of the Bureau of Old Age and Survivors Insurance in 1954.

Cohen was named secretary of the Department of Health, Education, and Welfare—Social Security's parent agency—by President John F. Kennedy, and Ball was promoted to head the Social Security program in 1962.

"SUPERB ADMINISTRATOR"

"A simply superb administrator," Cohen was quoted as describing Ball in a profile a few years ago.

At the same time, Ball was described by an anti-poverty worker as "my favorite bureaucrat . . . This guy really cares."

A husky six-footer with a quiet voice, Ball seemed at congressional hearings to have an inexhaustible supply of facts and patience.

In recent years, he has received top awards for service from both the government and the private sector.

In an interview, Ball said there was "very little different" he would like to have seen develop in his field legislatively.

"We've got about all one can say grace for now," he said.

When he leaves, Ball intends to write a book—"dosen't everyone?"—he said. It will deal with "the tendency in some quarters to see Social Security as just another government program."

[From the Evening Sun, (Md.) Jan. 8, 1973]

LETTER FROM NIXON

President Nixon has sent a personal letter of thanks to retiring Robert M. Ball, commissioner of the Social Security Administration for the past 11 years, in which the President said SSA has become a model for other government agencies.

Mr. Nixon's letter to Mr. Ball says in part: ". . . perhaps more than any other government program, the administration of Social Security reflects upon the efficiency and responsiveness of government. It is to your great credit that the Social Security Administration has, indeed, become a model for other government agencies in discharging its responsibilities to the American public."

Mr. Nixon noted that the scope of the program has been "enlarged and enhanced many times" and that "legislative additions and amendments to the law have demanded the finest in administering the implementations and this you have given superbly."

LETTER TO THE PRESIDENT

In his letter to the President, Commissioner Ball said he had refrained from asking the President to accept his resignation effective at the beginning of a new term "because of my concern for the program and the Social Security organization during the coming period of great challenge and difficulty arising from the need to implement the major new legislation contained in H. R. 1.

"It is my understanding," Mr. Ball wrote, "that you now believe that a successor can and will be found shortly and that you wish to accept my resignation at this time with the understanding that I will be available for whatever help I can give during the period of transition. . . ."

As of late Friday, no successor had been named to replace Mr. Ball.

The retiring commissioner has said he plans to devote himself "to helping in the development of long-range policy in health insurance, welfare, Social Security, and the organization of government for dealing with social programs." He started with SSA as a field assistant in New Jersey in 1939.

[From the News American, Jan. 3, 1973]

CHANGE AT WOODLAWN

The resignation of Robert M. Ball as commissioner of the Social Security Administration is regrettable.

Mr. Ball was planning to retire, but it was his hope that he could stay through the crucial period over the next few years when far-reaching provisions of House Resolution 1 are being implemented.

President Nixon, bent on replacing top federal administrators with men of h's own choice, decided otherwise. The job is a presidential appointment.

Mr. Ball was supported by powerful congressmen, and a fight could have been made over his ouster, but he chose to avoid one on the sensible grounds that no one wins or loses in such circumstances.

Baltimore, the national headquarters of Social Security, has a keen interest in the person picked to run the agency. Whoever is selected will have a difficult task filling Mr. Ball's shoes. Not only was Robert M. Ball a career agency employe, he also was intimately acquainted with the changes made in H.R. 1.

This measure, enacted by the 92nd Congress, contained provisions so broad in scope that the Woodlawn headquarters will be working overtime in the months ahead to implement them. Social Security, for example, will be assuming the states' responsibility for old-age assistance, aid to the disabled and

aid to the needy blind in 1974. Its responsibilities in the administration of Medicare have grown. The agency, in short, has been handed a gigantic task by Congress, and the post of commissioner is no place for a novice.

Mr. Ball's consolation is the knowledge that he presided over Social Security during a time of great change, including the creation of Medicare, and successfully led the agency through the period with a minimum of turmoil. It is unfortunate that he will be unable to remain through the final days of change.

[From the News American, Jan. 13, 1973]

NOTABLE QUOTE

By President Nixon, in accepting the resignation of Robert M. Ball as commissioner of the Social Security Administration:

"Few agencies in government have as direct and profound impact on the lives of our fellow citizens as does the Social Security Administration. And perhaps more than any other government program, the administration of social security reflects upon the efficiency and responsiveness of government.

"It is to your great credit that the Social Security Administration has, indeed, become a model for other governmental agencies in discharging its responsibilities to the American people. During your service as commissioner, the scope of social security has been enlarged and enhanced many times. Legislative additions and amendments to the law have demanded the finest in administrative implementation, and this you have given superbly. You have every reason to be proud of such distinguished efforts."

[From the Baltimore (Md.) Evening Sun, Jan. 19, 1973]

GRACE HINT CAN BE COSTLY

(By Lou Panos)

Statesmen at Work:

Robert M. Ball will not exit laughing when the White House finally comes up with his successor as commissioner of Social Security, but his gentlemanly departure could be a lesson for the presidential advisory corps itself in graceful withdrawal under pressure.

Some who have known him as a dedicated 34-year-career employe above and beyond the knees-and-elbow political infighting of four Democratic and two Republican administrations are not surprised by the absence of bitterness in his farewell comments.

But they say the gushy "Dear Bob" letter of appreciation from Richard Nixon for services rendered masks the true situation.

They believe he was tapped to walk the plank partly because of his suggestion that the White House inner circle was upsetting precedent in the tone used to notify Social Security recipients of increased benefits last fall.

The Ball hope was that, as in the past, the President might be credited for his role in boosting the benefits but that the notice might be couched in terms less partisanly political.

The hope now is that he'll still be available after leaving office to offer the government the benefit of his experience as a consultant or adviser on social welfare law and administration.

[From the Federal Times, Jan. 24, 1973]

ROBERT BALL LEAVING SOCIAL SECURITY POST

WASHINGTON.—The White House has accepted the resignation of Robert M. Ball, commissioner of Social Security.

Ball, who presided for more than a decade over the ever expanding activities of SSA, wished to stay on. But his pro forma resignation, submitted to President Nixon along with those of all other political appointees was accepted.

In a letter to SSA employes Ball said that although he personally longed to be freed from the "pressures of a highly demanding administrative job . . . I would have felt obligated to stay on to help implement the important new legislation contained in H.R. 1 had the President felt that it was of crucial importance that I do so."

Ball revealed to SSA employes that despite the administration's drive to reduce federal employment "we have approval for the increased staffing necessary to put the new legislation into effect so that your efforts can move forward at full speed."

He noted that it was "particularly difficult" for him to leave at this time "and not be part of these efforts."

His letter to Nixon contained a similar observation. Saying that even though his personal preference was to leave SSA, "I have refrained from doing so only because of my concern for the program and the social security organization during the coming period of great challenge and difficulty arising from the need to implement the major new legislation contained in H.R. 1."

The recently enacted welfare reform amendments will federalize certain state welfare programs, change eligibility standards, and draw thousands of additional employes into SSA, mostly at the district and field levels.

Numerous SSA employes have expresed displeasure at Nixon's action because they regarded 58-year-old Ball as an able and just administrator.

Many congressmen, including Rep. Daniel J. Flood, D–Pa., are reportedly unhappy at Ball's ouster. Flood is chairman of HEW's appropriations committee.

A Capitol Hill source said: "It was unlikely that the Nixon administration would retain Ball. You've got to remember that Ball was an old-line, independent-minded administrator, not the type that could be a yes-man to anyone, or be controlled by the White House. The Nixon game plan is to appoint bureaucrats who can be directly controlled by the White House."

Ball also was highly regarded by senior citizen organizations across the nation. A spokesman for the National Council for Senior Citizens said it was "unfortunate" Ball was leaving. The spokesman said Ball "administered a complicated program with great devotion and was one of our most outstanding public servants."

An SSA spokesman said Ball plans to work privately on development of long-range policy in health insurance, welfare, social security, and the organization of government for dealing with social programs.

A federal career employe, Ball started in the ranks as a field assistant in a social security district office in New Jersey in 1939 at a salary of $1,620 a year. He devoted his entire career to social insurance.

BEFORE President Kennedy appointed him SSA commissioner, 11 years ago, Ball served as deputy director of the former Bureau of Old Age Insurance.

He is a recipient of the Rockefeller Public Service Award "for distinguished service in the field of administration," and the National Civil Service League Award citing him as a top authority on social security and also for "his notable ability to lead and inspire those who work with him."

During 1947 and 1948, Ball was staff director of the Advisory Council on Social Security to the U.S. Senate Committee on Finance. In 1952, under the sponsorship of the National Planning Association, he wrote the study, "Pensions in the United States," which was published by the Joint Committee on the Economic Report of the Congress in 1953.

Born in 1914, Ball received his M.A. in economics in 1936 from Wesleyan University.

TAX REFORM VITAL

Mr. McGOVERN. Mr. President, one of the most urgent challenges before the Nation today is the need to reform our inequitable tax system. We do not need higher taxes, but we do need to adjust some of the tax loopholes that permit some people to dump their tax responsibility onto the backs of the rest of us.

Mr. Clayton Fritchey, the noted columnist has written a provocative piece on this subject which appeared in the Washington Post of February 17, 1973. The Saturday Review of October 21, 1972, contains an excellent piece on the same subject by the distinguished tax expert, Stanley Surrey.

I ask unanimous consent that these articles by Mr. Fritchey and Mr. Surrey be printed in the RECORD.

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

[From the Washington Post, Feb. 17, 1973]

HAS THE FIGHT GONE OUT OF THE U.S. TAX REVOLT?

(By Clayton Fritchey)

Whatever became of the hurricane of tax reform that for a time swept over the presidential campaign last year? It is gone with the wind.

In a key so low it can barely be heard, Rep. Wilbur Mills (D-Ark.), chairman of the House Ways and Means Committee, has now opened exploratory hearings on the U.S. tax structure, but none of the 1972 lions of reform (in either party) is shaking Capitol Hill with the kind of roars that made tax relief seem like such a spirited issue in last year's election, especially in the presidential primaries.

In view of the present calm, it's hard now to believe that the big tax storm was for real, yet last spring it dominated the headlines as both Gov. George Wallace of Alabama and Sen. George McGovern of South Dakota rode it to surprise primary victories.

It was really Gov. Wallace who started all the excitement. As part of his "populist" act, he developed a pitch against "taxers and spenders." Over and over, he said he was "sick and tired of the average citizen being taxed to death." It went over big.

At the same time, Sen. McGovern was pounding away against tax preferences for the wealthy. When Wallace and McGovern began to win all the early primaries, the then-favorites, Sens. Edmund Muskie of Maine and Hubert Humphrey of Minnesota, also took up the refrain.

Soon, even the conservative Wilbur Mills, himself a candidate for President, joined in, and finally Mr. Nixon fell in line with his pledge to cut the property taxes of homeowners in half.

There were a few skeptics like Rep. Henry Reuss (D-Wis.) who, foreseeing a letdown, urged Congress to strike while the iron was hot last year, but he was put off by Rep. Mills who, as chairman of Ways and Means, is a virtual czar over tax legislation.

As an earnest of his own good intentions, Mills, joined by Montana's Mike Mansfield, the majority leader of the Senate, introduced a seemingly far-reaching bill to eliminate 54 so-called loopholes in the federal tax laws unless Congress saw fit to reinstate them one-by-one.

Rep. Reuss tried to persuade Mills to offer his legislation as an amendment to the administration's debt-ceiling bill, then up for passage. "This may offer the last clear chance for veto-proof tax reform," Reuss wisely said. He also warned that Mr. Nixon "is highly likely to be re-elected," and in a second term "is highly likely to veto such a reform bill."

Mills, however, felt it should not be acted on until after the election, which led some to wonder how enthusiastic he would be for reform once his dreams of being the Democratic nominee for President or Vice President were over. We now have the answer, and

the answer is—not very. It might be added that he is not being noticeably prodded by Sen. Mansfield, the co-sponsor of the fading proposal.

Events have clearly borne out Rep. Reuss' doubts over Mr. Nixon's appetite for tax reform. A few weeks before the election, the President promised tax relief for elderly homeowners would be the "first order of business in our next federal budget." But there is not a mention of it in the new budget.

As for Mills, he is now saying that he thinks his committee hearings will "make a showing" to the American people that the tax laws, as they stand at present, are not as bad as they are painted. The chairman and the President seem to agree that if there was a tax revolt last year it's over now.

They could be right. Actually, from the federal standpoint, Americans pay comparatively light taxes. Moreover, for the last decade, federal taxes have been dropping. If the tax rates of 1963 were still in effect, federal revenues would be $50 billion greater this year. The real problem is not overtaxation, but unfair taxation.

The need is for revision, rather than reduction. Only a few days ago, the Ways and Means Committee heard experts testify that the closing of tax loopholes for special interests would provide more than enough revenue to carry on the Great Society social improvements without raising taxes. It is estimated that these tax preferences, some of them legitimate, presently total $77.3 billion. It is also estimated that not much is going to be done about it by the 93d Congress.

[From the Saturday Review, Oct. 21, 1972]

TAXES ARE A MORAL ISSUE

(By Stanley Surrey)

Reform of the federal income tax is a major goal that our society must achieve. Individual and corporate-income taxes are the mainstay of our federal revenue system, providing 60 per cent of the overall receipts. As a nation, we are willing to rely so heavily on this form of taxation because we consider it the fairest revenue measure yet devised. We accept almost intuitively the concept that income is a proper measure of a person's ability to pay for and contribute to the maintenance of our society.

An income tax remains, however, only if it reaches all income, only if there are no preferences or loopholes through which some people can escape. The very integrity of the tax system is challenged today when many persons, especially those well off, are provided with readily available escapes. All wages and salaries are taxed today. But only half of profits from investments are taxed, and indeed none of the gain is taxed if an individual dies holding appreciated investments. Yet persons who make these capital gains can use them to purchase a standard of living far beyond the level most Americans will ever attain. The savings-bank interest of the teacher or clerk is taxed but not the interest earned from state and local bonds generally held by wealthy, upper-bracket investors.

Since most of us pay our taxes weekly or monthly through withholding, we tend to think the system works methodically and inexorably for everyone else. The wealthy investor knows differently, because his investment advisers guide him to "tax shelters" through which he can become still wealthier. The high-income investor can join partnerships in oil, real estate, cattle, farms, or equipment leasing—businesses that produce large "tax losses." Interestingly enough, these "losses"—such as an investor's expenses for feeding his cattle—are losses only in the eye of the tax law. In the investor's own accounts the expenses are outlays on which he hopes eventually to make money. Meanwhile, on his tax return the "losses" can be deducted to offset income from other sources, thereby making much of that other income nontaxable.

There is something terribly amiss when, in order to provide low-income housing for the shelter of the poor, we at the same time shelter tax millionaires. We permit investors an accelerated depreciation on buildings far in excess of the real decline in the buildings' values. As a result of this loophole, and others like it, persons with actual incomes in the hundreds of thousands, even millions, either pay no income tax or pay at a rate less than that of semiskilled construction workers. This is an offense to our sense of fairness and decency. Tax reform is a moral issue.

The same criticisms hold true for corporations. We know that by law the tax rate on major corporations is 48 per cent, and yet the overall rate they pay is, in effect, only 35 per cent. Indeed, for some corporations the effective rate is still lower, sometimes even zero. Many a tax-escape path can be found by companies—quick and excessive depreciation, overly generous depletion allowances, untaxed profits derived abroad, reduced taxes on income from exports.

The McGovern tax program would end these individual and corporate preferences. It would provide more than $20 billion of new federal revenue, and yet neither individuals nor corporations would pay a tax rate over 48 per cent. But the new rate would be a real rate, not today's paper rate of 70 per cent for top-bracket individuals whose actual effective rate now averages only 32 per cent.

Tax reform is not a new issue. The Kennedy and Johnson administrations believed in tax reform, and they worked hard and successfully to eliminate tax abuses neglected during the Eisenhower years. But the tax policy of the Nixon period has been a betrayal of that move toward equity. The The Nixon adminstration has not made a single tax-reform proposal on its own that would end a single tax preference or close a single loophole. The few it did make were blueprinted in studies done under President Johnson, and they were prodded from the Nixon administration by Congress in 1969. Instead of backing reform, this administration has taken the path of more tax incentives for business—indefinite deferral of taxes on half of all income from exports (DISC) and even faster tax-saving write-offs for machinery. Each incentive has created a new tax escape.

The cynical may say that tax reform is a fool's game. Ingenious lawyers will open new loopholes as fast as others are closed. But the tax experts know better. Today's loopholes are not the product of tax brains fiendishly seeking hidden escape tunnels, they are sketched in the law for all to see. They are the product of misguided attempts to use tax subsidies and incentives to reach goals that could far more efficiently and fairly be achieved by direct government expenditure programs. If our social priorities require government assistance, it should be provided straightforwardly. We should, for example, assist state and local governments to meet the interest cost on their bonds directly rather than give tax-free interest income to bond buyers.

If we were to subsidize directly those efforts the government now subsidizes through the tax system, we would quickly begin to see that in most cases the financial help given through tax preferences is neither needed nor warranted. It would be difficult to imagine, for example, that the government could justify direct payments to finance the sale of exports, or to encourage corporations to invest abroad, or to enable actors to buy cattle. But that is just what the present system does.

There are those who warn that, if ever capital gains are fully taxed like other income, individual investment and risk taking will cease. They say, too, that, if business is deprived of tax write-offs for machinery far in excess of the equipment's actual decline in value, then corporate investment will greatly decline. Yet tax economists who have long studied these matters know better. It is the maintenance of a full-employment economy—an essential part of the McGovern economic program—that is the best assurance of an appropriate level of investment. Moreover, a climate in which the government takes only half of the profit from an investment—a 48 per cent top rate—and shares equally in losses is a healthy investment climate even for risky ventures. The investment credit can be at hand as a device to prompt corporate investment whenever that stimulus may be needed.

Finally we return to the matter of morality. Our social goals will require an increasing federal budget. Rational economic growth itself will provide increased revenues, and frenetic growth is not needed. But taxes will need to remain high if we want to achieve a better environment, better education, more opportunity for all, a decent income standard in place of welfare, and other social goals. Tax reform, by keeping our income tax fair, will permit us to maintain the needed level of revenues.

When asked what tax reform has ever accomplished for a society, let us remember that nations have been undermined and governments have toppled because unfair taxation destroyed the confidence of their peoples in them. Knowing what we do about the weaknesses of our own system, we do right in making tax reform a major priority today.

VOTER REGISTRATION

Mr. McGEE. Mr. President, earlier I had informed the Senate of the meaningful meeting of the secretaries of state in New Orleans on February 1 and 2.

The import of that meeting was the fact that exclusive attention was given to problems of voter registration and elections. The meeting was a landmark meeting insofar as the 46 States represented at the meeting agreed for the first time that grave problems of uniformity in our registration laws did in fact exist. Indeed, too often many of our registration requirements serve to exclude potential voters from the system.

Early in the first day of the meeting in New Orleans, an electrifying and eloquent statement was made by the Honorable Ben W. Fortson, Jr., secretary of state of Georgia. When Mr. Fortson's remarks were finally transcribed from a tape recording, I was so impressed that I wished to share them with you.

Ben Fortson has been secretary of state in Georgia for 28 years. His experience has not only been long but instructive. Certainly if all election officials shared Mr. Fortson's determination to include all eligibles on the voting rolls, the Congress of the United States would not now have to consider attacking the problem of voter registration.

However, the fact is that we do have a hodgepodge of voter registration laws, and that too often these laws have been so restrictive and prohibitive that over 40 million Americans who are otherwise eligible are not registered.

I ask unanimous consent that Ben Fortson's statement be printed in the RECORD.

There being no objection, the address

was ordered to be printed in the RECORD, as follows:

REMARKS BY THE HONORABLE BEN W. FORTSON, JR.

Madam Chairman, I told the young ladies back there, my chief election officers, I was going to keep my mouth shut at this meeting and try to learn something. I have. But, I could not keep quiet for long after such intriguing speculations and statements have been made.

Insofar as the voter's intent in Georgia, that's all he has got to say—he says I am here, I intend to stay here, this is my home—whether he owns property or anything—he is registered to vote, provided he comes in within the 60-day period for which we are allowed for state officials and county officials. If he comes in and wants to vote for President, he can register to vote 14 days prior to the General Election. And, all he has to do is to say I'm here, I intend to stay here and he is registered. The same applies to students.

I'm not up here really for that. I'm up here to make a statement that I have said many times before, as some of my fellow secretaries of state have heard me say. We had a great controversy some years back having to do with eighteen year olds. People said we weren't going to change our constitution to let them vote. I made the statement then—they are going to vote. And they are going to qualify.

The thing is I am glad that the Lieutenant Governor from Alaska has mentioned here about searching out on some central spot all people who are registered to vote. That's why I'm saying that the Federal Government is going to have federal registration in every precinct in the United States; and you'd just as well get ready for it! And then you're going to have your central registration.

The other thing is just as certain as we are sitting here today. Every child that is born is going to get a card, and on that card is going to be a social security number and the date of their birth; and when they take this card when they get to be eighteen years old, wherever they are that day, that time, in that election, they present that card and they are going to vote. Now you all think that's crazy, and I know I am crazy (laughter); but that's going to happen and there are two reasons for it.

One is, there is no longer a stationary people in this country. We've got 60 million people in this country that travel every day—they are moving. You are not going to be able to deny them, wherever they are, to take part in the election process.

The other thing is, the election process is not for me as an official. (applause) It hasn't got anything to do with the officials! I am getting tired of the officials saying we haven't got time to do it! Take time! The thing you are trying to save is the person who has got the right to vote and have his vote counted exactly as he voted it and have it reported and tabulated. That's the purpose of the election. And although we have got many many irritants and we haven't gotten out of the woods, I tell you we are coming to it, because this is going to be one Nation and it is going to be indivisible and it is going to be united. Whether it's under God or not depends on each one of us as individuals. (laughter and applause) I speak as a Georgian. And if anything should happen of any nature, it should happen in Georgia. (laughter) I have been there now as head of elections for 28 years.

If I were to recount, I would recount some of the things you have said. I would recount some of the things you've said over and over again—we don't want them to vote! Too often, we want the rolls low and small; and on any pretense, many of them will throw every voter off that they can without getting a kickback.

We are right now in the process this year of taking off of our voters lists every person who has not voted in three years—one time in three years. All right; what's going to happen? I know what's going to happen. I'm doing everything I can to tell all these election officials you can't arbitrarily take them off. You've got to notify them at their last address. If that letter comes back, you put it in the file. If you can't get in touch with them, you take them off; but you keep that letter as your protection. The other is they're not going to notify some of them. And they are not going to notify them until we have another hot Presidential Election, then they are going to come up and want to vote and find they are off. All right—you didn't notify them; you don't have any evidence that you did. Right there, they are going to court. This is the day of going to court for everything, and most of us are responsible for that. That is what we ought to do perhaps. So, what I am saying is this whole election proposition is going to change, whether we like it or not.

One thing, I'm glad I'm an American, I'm glad I live in the United States, I'm glad I'm here today in this time and age—the most talented age that's ever occurred anywhere—in any nation. For all our problems, we are blessed. We are going to solve them.

And I am going to say this and then I am getting out and I ask your forgiveness for getting up here. (laughter) This is a serious thing; it's serious for all of us. You know we are all going to do right if we know what right is. Therefore, I have to agree with the calling of this meeting. I assure all of you I will do all I can to help work where we can each go, find out and do what the Constitution of the United States and the decisions of our Supreme Court call for—that's what I stand for.

Thank you. (Applause and standing ovation.)

THE URBAN PARKLAND HERITAGE ACT AND PHILADELPHIA

Mr. WILLIAMS. Mr. President, at the beginning of this Congress I introduced S. 12, the Urban Parkland Heritage Act of 1973. The bill would substantially increase the Federal commitment to funding parks and recreational facilities, and it is specifically designed to remedy many of the deficiencies in recreation opportunity that exist for urban dwellers.

On February 6, Mr. John M. Elliott wrote a most thoughtful letter to the editor of the Philadelphia Inquirer concerning S. 12. Mr. Elliott is chairman of the Urban Committee Citizens Advisory Council to the Pennsylvania Department of Environmental Resources and he is a member of the Philadelphia City Planning Commission. His letter outlines a number of imaginative ways in which S. 12 could benefit the Philadelphia area.

I ask unanimous consent that Mr. Elliott's letter be printed in the RECORD.

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

URBAN ENVIRONMENT: BILL FOR PARKS OFFERS HOPE TO CITIES

To the Editor:

Recent Federal legislation proposed by Sen. Harrison Williams of New Jersey and Rep. Daniel Rostenkowski of Illinois offers considerable hope for America's growing metropolitan regions, which vitally need the physical and spiritual breathing room of new parks.

The "Urban Parkland Heritage Act of 1973" recognizes the need for new financial assistance to acquire urban parkland. Special consideration is appropriately given to park opportunities for low income and poverty areas.

Today, when escalating city budget deficits see vital urban services (housing, mass transit, schools, police) compete for every tax dollar, expanded and improved parks generally do not top the list of urban priorities.

Acting through a 15-member Federally funded national non-profit corporation, the "Urban Parklands Heritage Act of 1973" would allow public bodies to apply $5 billion of grant and loan contract authority ($1 billion immediately) to acquire and operate urban parkland, including vitally needed planning and maintenance costs—far more than any present "open-space" acquisition opportunities.

Philadelphia is blessed with Fairmount Park's oasis of green sanity, which offers respite to all segments of our society. The Wissahickon, Pennypack and Schuylkill watersheds are generally recognized as invaluable environmental and cultural assets which must be enhanced and preserved, and all sections of our city justifiably clamor for new parks.

Philadelphia has acted commendably to protect and expand its park system. The City Planning Commission recently announced a new 200-acre "open space" program for Upper Roxborough (which ties into another 200 park acres in Montgomery County).

Philadelphia is also participating in an environmental study of the Wissahickon watershed to ascertain what, if any, types of development can be tolerated there. Hopefully a similar study will be initiated on the Schuylkill River watershed.

Yet these hopeful initiatives are restricted by budget constraints which would be relieved by this proposed federal legislation, which can move many worthwhile projects closer to reality.

For example, center city's Schuylkill River Park linking Greys Ferry to the Art Museum; the Manayunk Canal restoration; Queen Village; new Northeast parkland; protection for historic park lanes such as Wises Mill Road and Livezy Lane; and parkland for Whitman Park and Germany Hill can all be advanced. Smaller community parks and recreational opportunities such as those called for by the Bella Vista Civic Association and by the North City Congress can also be accelerated.

Significantly, this imaginative legislation would allow local government, with full participation, to structure its own priorities. These new parks will uplift our region's spirit, and create vehicles for creativity and decency in an urban society, which is increasing bludgeoned by noise, congestion, dirt and dismay. Its early passage would be a hopeful and therapeutic asset to Philadelphia's efforts to improve the quality of our environmental, economic and cultural life.

JOHN M. ELLIOTT.

PHILADELPHIA.

ABUSE OF THE GRAND JURY IN FORT WORTH

Mr. KENNEDY. Mr. President, I have asked the Attorney General and the Department of Justice to review the circumstances involving the recent reimprisonment of five Irish Americans in the Tarrant County Jail in Fort Worth Tex.

The five men—Thomas Laffey, Matthias Reilly, Kenneth Tierney, Danial Crawford, and Patrick Morahan—are all from the New York City area. Originally, they were jailed in Fort Worth in June 1972 for contempt for refusing to answer questions before a Federal grand jury in the northern district of Texas investigating the possible shipment of arms to

Northern Ireland from this country. After several weeks in jail, the men were granted bail by Supreme Court Justice William O. Douglas last September, pending action by the Supreme Court on legal challenges involving their appearance before the grand jury. On January 22 of this year, the Supreme Court declined to hear the case, and on January 29 the men were again jailed in Fort Worth on the contempt charge. Unless steps are taken to review the case, the imprisonment may well continue throughout the life of the current grand jury, which expires in November.

My purpose in asking the Department of Justice to review the case is to determine whether the continued imprisonment of the men is justified in light of the current status of the investigation. As I have stated many times in the past, I strongly condemn the activities of extremists in Ulster. As I indicated to Prime Minister Lynch of Ireland and Prime Minister Heath of Great Britain in their recent visits to this country, I strongly support all legitimate activities, investigations and other actions to shut off the flow of any arms, or any funds for arms, from this country to Northern Ireland.

I also believe, however, that the Department of Justice has the obligation itself to obey the law in conducting any investigation it undertakes. I have a number of serious reservations about the manner in which the Fort Worth Five have been treated:

First, the circumstances under which the men were originally hauled before the Texas grand jury, far from their homes and friends and families, imposed major hardship on the witnesses for no apparent law enforcement purpose, and gave the strong appearance of an abuse of the grand jury process. Why could not the men have been subpenaed to testify before a grand jury in the New York area? It is known that grand juries in New York have been engaged in related investigations in recent months.

Second, it appears that the reimprisonment of the men may well have been at the command of the U.S. attorney in Texas, acting on his own, when the case should have had the complete review by Justice Department officials in Washington, to avoid the implication that the men have been jailed again for vindictive reasons, serving no valid law enforcement function.

Third, the Department of Justice itself has stated in the past that the five individuals were not, and are not, direct criminal suspects in the investigation.

Fourth, although the Supreme Court exercised its discretion by declining to review the case on certiorari, an earlier ruling by the Court had indicated substantial doubt as to the legality of the type of grand jury immunity grant under which the men had been asked to testify.

Fifth, it appears that the current imprisonment is being carried out under especially harsh conditions, with the men being incarcerated in a local, not Federal, jail, and being denied exercise and even contact by telephone with family or legal counsel. These conditions appear unduly punitive, partaking of solitary confinement. There can be no justification for this treatment, since the men are neither convicted offenders nor security risks.

As a result of the many questionable circumstances surrounding the investigation, and in light of the persistent reports linking the Government of Great Britain to the case, it appears that the clear effect, and most likely purpose, of the grand jury investigation is to harass Irish-American groups in this country opposed to British policy in Northern Ireland.

Last November, in Boston, the Department of Justice released Prof. Samuel Popkin of Harvard University from jail in somewhat similar circumstances. Professor Popkin had been imprisoned for contempt for refusing to testify before a grand jury investigating aspects of the Pentagon Papers case. Professor Popkin was freed on bail pending his legal challenge to the contempt citation, but he was reimprisoned when a Boston Federal judge denied the challenge. Yet, after 7 more days in jail, he was released when the Department of Justice reviewed the case and found that the grand jury was about to expire and was no longer pressing the investigation.

According to available public information on the present case, the Texas grand jury in Fort Worth has not pursued the investigation for many months, and there appears to be no possibility that the investigation will be resumed. In this posture of the case, a high price in human suffering has already been exacted from the men for no apparent purpose. Unless the Department of Justice can provide compelling reasons for the continued imprisonment of the men, they should be released from prison now and allowed to return to New York to rejoin their friends and families. It would be a travesty of justice and even-handed law enforcement for five ordinary citizens to remain in jail because their plight has not received the national notoriety and attention of Professor Popkin's case.

Unfortunately, the Fort Worth case fits the all too familiar and growing recent pattern of grand jury harassment by Justice Department officials in a variety of cases, a practice rising serious questions in Congress and the country about the Department's current operations. If Justice officials had showed the same zeal in pursuing individuals like Donald Segretti before a grand jury as they had shown in the case of the Fort Worth Five, we might know a great deal more than we know today about the Watergate affair.

THE MOOSE-LOWENSTEIN REPORT ON KOREA AND THE PHILIPPINES

Mr. SYMINGTON. Mr. President, over the weekend a staff report on Korea and the Philippines was issued by the Committee on Foreign Relations. The concluding comments in the report summarize the outlook for the future in these two countries, where there have been important internal political developments, where there are major deployments of U.S. military forces, and where the United States operates significant military and economic assistance programs. The material presented in this staff report provides a basis for informed judgments which Senators will be called upon to make regarding United States relations with Korea and the Philippines in the weeks and months ahead. I commend the staff report to the attention of the Senate and ask unanimous consent that its concluding comments be printed in the RECORD.

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

CONCLUDING COMMENTS

Unless some unexpected spark ignites Korean resistance (as it has on occasion in the past), the prospects for the future in Korea seem to be for a continuation of the trend toward what is, in effect, a personal dictatorship; for a continuation of the North-South talks which, although they should have some effect in reducing tensions, are unlikely to bring political reunification any closer; for increasing independence from the United States in both foreign and domestic policy; for continued pressure against any reduction of U.S. forces or military assistance levels; and for a continuation of economic growth.

In the Philippines, the future is far less clear. President Marcos probably will have a limited length of time—perhaps a year at most—to show some tangible evidence of progress toward the "New Society." His chances of success are considered no better than even; there will undoubtedly be opposition to the new constitution, a continuing threat of assassination, a resumption of insurgent activity, and increasing opposition from the oligarchy whom he will have to push hard if he is to achieve the reforms he has promised. If he does not bear down on the oligarchy and instead compromises his objectives, the people may not be willing to concede him continuing unlimited powers. President Marcos' actions thus far seem designed to reassure foreign investors so that he can obtain the additional capital inputs which will be required to produce more jobs and foreign exchange. Even so, prospects for economic progress seem less certain in the Philippines than in Korea. There will undoubtedly be Philippine pressure on the United States for more economic assistance, especially to support the new land reform program, and for continuing military assistance at least at present levels.

Whatever their motivations, the steps which Presidents Park and Marcos have taken to enhance and perpetuate their power have profoundly affected the future political outlook of their countries. In the case of Korea, President Park has now obtained the power he sought. He can be removed only by his own agreement, by death or by revolution. Those who wish to oppose his one-man rule will have virtually no option but to seek his removal by extra-legal means. While in the past it was true of the Korean political system that the consent of the governed was not always freely given, at least it was required. It is no longer even required today, for the only support which President Park needs is that of the Korean CIA and the Army.

Although President Marcos' ultimate source of support is also the Army, he lacks President Park's efficient apparatus for internal control and repression. Furthermore, he is dealing both with insurgents as well as with a populace that has long been accustomed to vigorous political activity. Thus, having restructured the Philippine Government as a vehicle for personal rule, challenged the traditional ruling classes, and countered the insurgents with a promised revolution of his own, President Marcos has created a situation in which a loss of momentum on his part could result in political and

economic chaos surpassing anything the Philippines has yet experienced.

While the United States was vaguely critical of developments in Korea, it was altogether uncritical of what occurred in the Philippines. The distinction in American eyes appeared to be that while Preisdent Marcos' martial law measures were constitutional and deemed warranted (although not in terms of the alleged communist threat) those taken by President Park were unconstitutional and considered unnecessary.

We were told by U.S. officials that in neither Korea nor the Philippines was there anything the United States could have done to deter the actions taken, that at most we might have won minor concessions in the name of democratic process but at the cost of associating ourselves with the eventual authoritarian outcome and that if the United States had intervened we would have incurred added responsibility at a time when American public sentiment seems to favor a reduced U.S. role in Asia. This argument may be accurate, realistic and logical, but the fact of the matter is that, without having taken a position either for or against the preservation of democratic process, the United States is today as closely associated with both regimes in their new authoritarian forms as it was before. We saw no evidence of any diminished sense of U.S. responsibility for either government. Indeed, insofar as material aid is concerned, it would appear that in the coming year the Congress will be asked to do more for both countries.

We found few, if any, Americans who took the position that the demise of individual rights and democratic institutions would adversely affect U.S. interests. In the first place, these democratic institutions were considered to be severely deficient. In the second place, whatever U.S. interests were—or are—they apparently are not thought to be related to the preservation of democratic processes. Even in the Philippines, our own colonial step-child and "showcase of democracy" in Asia, the United States appears to have adopted a new pragmatism, perhaps because there was no other choice, turning away from the evangelical hopes and assumptions with which it has tended to look at political evolution. Thus, U.S. officials appear prepared to accept that the strengthening of presidential authority will enhance President Park's ability to negotiate with the North and enable President Marcos to introduce needed stability; that these objectives are in our interest; and that detente and stability (and more F–5's for Vietnam), in Korea, and military bases and a familiar government in the Philippines, are more important than the preservation of democratic institutions which were imperfect at best.

At the same time, there is some apprehension on the part of American officials about the future. One official in Korea, for example, expressed the belief that by his actions President Park had "sown the seeds of his own destruction." Another in the Philippines stated that if President Marcos obtained the power he sought "the only alternative his opponents will have will be to go to the hills." It would be ironic indeed if President Park's apparent effort to confront the North with a mirror image of its own authoritarian unity provoked internal disorders which the North would then be able to exploit or if the constitutional changes made possible by President Marcos' declaration of martial law produced conditions which transformed the imagined threat into a reality or brought about greater political chaos than that which he supposedly acted to correct.

There is no easy basis for judgments on such questions as the amount of military assistance Korea requires in order to deter an attack, the rate at which U.S. troops should be withdrawn from Korea, the equivalent worth in military assistance of our bases in the Philippines or the extent to which the United States should underwrite a Philippine land reform program. But, in considering our future policies in these two countries, if we need no longer be concerned with the nature of their internal political systems, perhaps we can analyze our interests on a more objective basis. To do so, certain policy assumptions regarding both Korea and the Philippines, which have been handed down intact from year to year, will have to be re-examined. Our force deployment under the Mutual Security Treaty with Korea is a case in point. The principal justification for continuing to deploy forces in Korea at present levels seems to be our treaty commitment. As a general proposition, there appears to be a certain bureaucratic inertia which makes it more convenient to invent justifications for maintaining existing commitments and present force levels than to re-examine or reduce them, if for no other reason than to avoid disturbing relations with the recipients. In the specific case of Korea, however, there is an added problem. It would appear that since 1966 our desire first to obtain, then to increase and more recently to retain Korean participation in the war in Vietnam has kept us psychologically and politically in debt to the Koreans.

With the U.S. involvement in Vietnam soon to be terminated, with the opening of North-South talks, and with the end of our illusions about Korean democracy, it should be possible to take a fresh look at our residual interest in Korea. Our basic objective would appear to be to avoid tension or conflict on the Korean peninsula which would disturb the present apparent equilibrium in the North Pacific area where the interests of the Soviet Union, China, Japan and the United States converge. To date we have sought to accomplish this objective by maintaining a military balance backed by a U.S. deterrent presence. This policy has been expensive and has carried with it the danger of an automatic U.S. involvement in another Asian war.

The North-South talks may offer the United States a way out of this expensive and potentially dangerous commitment—or at least a means of reducing the cost and the risk. Yet at the same time we seem to have no clear concept of how far the South Koreans are prepared to go in these talks, or at what speed, or indeed how far we would like to see them go. To our own calculations on this point must be added the feelings of the Japanese with regard to Korean security and possible re-unification, for developments in Korea have an important bearing on Japanese defense decisions.

If the United States is now in position to re-examine its programs and posture in Korea, basic questions such as these should be addressed: why does South Korea, with a more prosperous economy, require grant military aid while North Korea pays for most of what it receives; why is it necessary for the United States to pay operating and maintenance costs of the Korean armed forces; why does the United States have troops and advisers in the South while the Russians and Chinese have none in the North; what is the justification for having U.S. weapons systems with nuclear capabilities in Korea; why must American ground forces be retained if they are no longer necessary to maintain the military balance; are the existing interlocking U.S.-U.N.-Korean command arrangements still desirable; and should we wish to be automatically involved if another Korean war were to break out?

The examination of such questions might suggest alternatives to present policies. For example, the case for maintaining present force levels, the interlocking command structure and the "trip wire" deployment of U.S. forces in Korea for another year seems far less strong to us than the argument for maintaining some military presence. Similarly, the argument for completing a realistic modernization program would be far more appealing if there were some assurance that by a date certain there would be no further need for grant aid or for automatic U.S. involvement in Korea's defense.

In the case of the Philippines, too, there are long held assumptions which should be reconsidered. Certainly the most important of these is whether Clark Air Base and the Subic Naval Base are essential to our military posture in the Pacific area. The answer to this question depends upon the military posture and force structure which the United States chooses to maintain in the Western Pacific. It is important that this aspect of U.S. defense planning be fully explored in connection with American policy in the Philippines because virtually every program we have there is justified, at least in part, in terms of the importance of retaining the Clark and Subic bases. Yet we were told that there is as yet no basic guidance within the Executive Branch regarding our post Vietnam military posture in the Pacific.

A second important assumption with regard to the Philippines is the belief that we need the Philippines more than they need us and that if we do not provide substantial funds for military assistance the Philippine Government will restrict our use of the bases and other facilities. In the same vein, the American business community apparently believes that unless the United States increases or maintains its present aid level, our business interests in the Philippines will suffer. Yet the burden of recent evidence suggests that President Marcos is highly dependent both upon U.S. investment and the aid to which our bases are linked.

In both Korea and the Philippines, then, U.S. policy appears to be in transition from the idealism of the past—based on an assumption that American democracy could and should be adopted by others—to a new pragmatism. At the same time, in both countries we appear to be immobilized by our own presence and by commitments which Presidents Park and Marcos are able to use as leverage in obtaining from us what they want in order to pursue their own objectives, turning their weaknesses into assets in dealing with us as patron and protector.

THE FEDERAL REGULATORY PROCESS

Mr. TAFT. Mr. President, for sometime I have believed that many of our regulatory agencies are stifling competition and hurting the consumer. This has been particularly true with respect to the Interstate Commerce Commission.

On February 13, 1973, Assistant Attorney General, Thomas E. Kauper, delivered an address at the Town Hall of California, entitled "Regulation—Is Protection the Name of the Game?" Because of the incisive comments which he makes with respect to our regulatory process, I ask unanimous consent that this speech be inserted in the RECORD.

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

REGULATION—IS PROTECTION THE NAME OF THE GAME?

I am delighted today to be here to speak before the Town Hall of California, both because it is always pleasant to be in California and, on some occasions at least, to be miles away from Washington. I am pleased to be here for another reason. Most of my speaking engagements are before antitrust lawyers. Without derogating the antitrust bar, I welcome the opportunity to carry the antitrust message to a different group.

It is largely through speeches that I can

encourage the public to support strong antitrust enforcement, to examine very carefully proposed legislation which affects antitrust enforcement, and to take a critical look at present or proposed regulation of the economy by federal, state or local governments. Such regulation may be used to eliminate or at least impede competition in a given industry. It is this broad subject I want to talk about today.

Some may ask why we don't just stick to enforcing the antitrust laws and leave broader competitive policies to Congress or to the regulatory agencies. I am sure there are some who wish we would. But the Antitrust Division is charged with a broader and more demanding role.

Under Department of Justice regulations, the Attorney General has directed that the Division participate in regulatory proceedings requiring an accommodation of the purposes of the antitrust laws and the purposes of the regulatory statutes.

Congress, too, has also come to rely rather heavily on the presentation of our views as advocates for competition. We are continually called upon by various congressional committees to testify concerning the impact proposed legislation may have upon competition. Congress has also specifically directed that the Attorney General furnish competitive advice and reports to other government agencies or to Congress. For example, the 1966 Bank Merger Act requires that the Attorney General submit reports to particular banking agencies on the competitive factors involved in proposed bank mergers.

All in all, the Division has a particular role to play in evaluating the impact of decisions on competitive policies which are made by the courts, by the Congress, by the Executive Branch, and by state and local law-making bodies as well.

There are times, I suspect, that our advice is unappreciated; there are times also that our advice goes unheeded; there are, of course, times that competitive consideration are outweighed by other overriding legitimate public concerns. And we make no claim of infallibility—there may be times when we are wrong. Nevertheless, we feel compelled to continue to advise, in the hope that public decisions are properly made.

I

This nation teaches its children that they have a demanding civic responsibility. If democracy is to survive, our citizens must be informed and must be active participants in the democratic process. Too often, however, I think that the American citizen does not understand the role which competition plays in his daily life. And what we do not understand, we cannot support.

There is no mystique about competition. And there is no mystique about the antitrust laws which preserve competition.

Why competition? This nation's demand for more goods and services each year dictates that our productive resources be used efficiently. Competitive markets promote efficiency, both by rewarding firms which produce at low cost and by disciplining inefficient producers. In a competitive industry those who are inefficient are forced to become efficient or be driven out of the business—the latter a result the public sometimes seems unwilling to accept. A firm in a non-competitive market, such as a monopolist, does not face this same pressure to reduce costs. And costs are commonly higher with a monopolist than under truly competitive conditions.

Competition is also an important prod to the development of new products and manufacturing processes. The free market system rewards the successful innovator. Those firms which do not innovate do not survive. Only firms in non-competitive markets can dare to be lethargic in research and development.

The policy of promoting competition often dovetails with the promotion of political and social goals. The concentration of economic and political power has traditionally been seen as a threat to individual freedom. Under competitive market conditions economic power is fragmented—no one firm can control prices or supply. Political power is also decentralized with competition, because there is no need for massive government regulation if there is no monopolist. And the individual has vast freedom of action in his economic affairs—for which no government permission is required. The promotion of competition therefore supports the American ideals of both individual liberty and limited government intrusion.

So much for competition. Why the antitrust laws? Given this nation's decision to follow the path of free enterprise and competition as the principal mechanism for economic growth and innovation, government plays a very limited role. The government can be characterized as an umpire, making no decisions as to how the game is played, but insuring that it is played fairly and that there are enough players on the field so that the game goes on. The Supreme Court has referred to the antitrust laws in even more lofty terms: as "a charter of economic liberty." [1]

Under the antitrust laws, businessmen who choose to tamper with competition are punished by criminal and civil sanctions. Price-fixing, group boycotts of competitors, limitations on output, restrictions on innovation, all eliminate competition and threaten the free enterprise system.

II

From time to time we have chosen to depart from the system of free enterprise and rely instead on government regulation. The justification for this departure has often—in modern terms—been that we are dealing with a "natural monopoly" in transportation, power, communications and the like. Or the departure can be based on an assertion that competition interferes with some overriding public goal.

Also, at times, the State has determined that competition should be restricted or eliminated because it owns the favored company, or it directly subsidizes or otherwise promotes the well-being of the favored company or companies.

I do not question that occasions may arise which require that regulation replace or at least restrain free competition. But I do think we have to direct some very tough questions to those who would propose or continue regulation as a substitute for free enterprise.

As a starting point, I think we have to view such assertions in an historical context. Stated as a kind of "territorial imperative," I should imagine that from time immemorial man has considered ways in which to stop other men from intruding on his corner of the world, whether that corner was a jungle clearing or an economic market. To enjoy the quiet life of monopoly is not an unreasonable, nor even unnatural, individual viewpiont, although it may be totally unreasonable from the standpoint of the general public interest.

Historically, much economic regulation by the State, or by custom, or by private institutions sanctioned by the State, has been designed to protect favored individuals or companies from competition of outsiders. The guilds in Western society and the caste system of the East served a common purpose: They insured that some men were to be treated in the eyes of the law as more favored than others. They denied to a large class of men the right to earn a living in competing with the favored class.

Footnotes at end of article.

Adam Smith, in criticizing the guilds, noted the effect of barriers to entry in an occupation of one's choice upon a very basic human liberty:

"The property which every man has in his own labour, as it is the original foundation of all other property, so it is the most sacred and inviolable. The patrimony of a poor man lies in the strength and dexterity of his hands; and to hinder him from employing this strength and dexterity in what manner he thinks proper without injury to his neighbour, is a plain violation of this most sacred property. It is a manifest encroachment upon the just liberty both of the workman and of those who might be disposed to employ him. Smith, *Wealth of Nations* 121–22 (Modern Library ed. 1937)."

The historical justifications for these occupational barriers vary, though their effect—protection of the favored class from competition—is the same. Apologists for protectionism have relied upon a deity, upon purity of bloodlines, upon consumer protection, and upon the public weal in general to support the need for regulation and exclusion of competitors.

Once the government has decided that it shoul[d] substitute regulation for free enterprise, it is very difficult to return to a competitive system. The original premise for regulation may no longer exist, yet those who are regulated and enjoy the benefits of limited or non-existent competition, fight to keep protective regulation.

Also, when competitors outside the regulatory scheme begin to threaten the security of the protected industry, those who are under regulation seek to extend it to control unregulated competitors. As the Attorney General's report on the antitrust laws states: "[R]egulation tends to beget further regulation. For if one industry is regulated then it may be urged that its competitors should, in fairness, also be regulated." [2]

A classic example of this behavior can be found in the federal regulation of surface transportation—railroads, motor carriers, and barge lines. Regulation in this field originated with legislation enacted in 1887, when it was argued that the railroads had monopoly power on freight throughout the country which adversely affected various shippers, farmers and geographic regions.

These were the reasons given at the time for regulation. Historians have since suggested that the railroads sought federal regulation to eliminate all vestiges of competition among themselves, and that the railroads sought minimum rate regulation to maintain a profitable level of rates.

In the 1930's motor carriers, not subject to the federal scheme of regulation, made inroads on railroad traffic. The railroads and others insisted that this competition was ruinous and had to be stopped. Congress responded by extending regulation to these carriers. Thus, the original justification for regulation of the railroads—their monopoly power—was discarded and a new justification—the elimination of "destructive" competition—was adopted.

Today the scheme of transportation regulation which was formulated in 1887 is still with us, still mandated by Congress. During this period we have seen massive inefficiencies, antiquated marketing practices, freight car shortages, and unnecessarily low rates of return for the railroads leading to many bankruptcies. The way things now stand, motor carriers, for example, cannot compete on the nation's highways for freight traffic unless they have been granted a piece of paper by the Interstate Commerce Commission called a "certificate of public convenience and necessity." These certificates to compete are, needless to say, extremely valuable. But a particular certificate may not make much economic sense. As an extreme hypothetical, a motor carrier may be given

permission by the ICC to haul television tubes from Chicago to Cleveland, but the carrier cannot make stops along the way to serve intermediate shippers, the carrier cannot haul anything but television tubes from Chicago to Cleveland, and the carrier cannot haul anything back. Thus, half his time is spent driving an empty truck and the other half may be spent driving a half empty truck.

Generally, these restrictions are imposed to protect another carrier's market.

My example may seem extreme, but these kinds of regulatory "Chinese walls" have been erected all over the country. The results are equally far-reaching. As Professor James Nelson has stated:

"Empty mileage from insufficient commodity or return-haul authority, added mileage from route and gateway restrictions involving circuitous routes, and idle truck time occasioned by commodity and class-of-shipper restrictions obviously increase excess capacity and raise unit costs."

Even apart from such economic inefficiencies, reexamination is needed. At a time when this nation is trying to conserve precious fuel, to reduce the carnage on the highways, and to eliminate pollution, such regulatory policies do not seem to make much sense.

Regulatory schemes of this protective sort are reminiscent of the kind of protectionism cited by Alfred Kahn in his book on The Economics of Regulation.[3] Professor Kahn noted the lengths to which a regulator would go to protect a favored firm. In 1690, Louis XIV subsidized a theatre company that he named Comedie Francaise. The theatre company was given the exclusive right to perform plays of all deceased authors. The French people, however, possessed such a great demand for theatrical productions that a number of other companies, not sanctioned by the King, came into existence. The French Government undertook to limit this competition in a manner which may well have been the model for much of the regulation we have today.

As it is characterized by Marvin Carlson, in The Theatre of the French Revolution,[4] these competitors were allowed to operate only with an amazing series of restrictions:

"Some could let their characters faint or bleed, but not die. Some could let their performers do only acrobatics or pantomime. Two small establishments . . . were forced to hang a gauze curtain between the actors and audience. One amateur theatre in the Rue Saint Antoine could open only at seven, over an hour after the others, and so on. . . . Even with the protection of official authority, the national theatres were hard pressed by these little rivals, and they were not to enjoy that protection much longer."

The French Revolution brought an end to these restrictions. The news of the revolution caused the director of one of the little theatres, forced to operate behind a gauze curtain, to express his great delight:

"Tearing down the curtain of gauze the police had required on his stage, he threw himself on the forestage shouting 'long live liberty.' The battle for freedom was launched."

We do not have any royal monopolies in this country, but we have had over the years a rather constant stream of candidates for the role. Last year a bill was submitted to Congress which would have conferred protective regulation upon travel agents. The bill bore a remarkable resemblance to motor carrier regulation.

From time to time also, various industries seek to come under the protection of existing regulation by petition to a regulatory agency. As an example, the press reports that the Air Freight Forwarders Association is asking the Civil Aeronautics Board to discontinue the free entry policy which has existed in the industry for the past 25 years and grant permanent certification to the freight forwarding industry based on "public convenience and necessity." The rhetoric, at least, is predictable. The Air Freight Forwarders Association asserts that the free entry policy "has not only out-lived its usefulness, but has actually promoted an unsound transportation system. The floodwaters of excess competition under the existing come-one-come-all policy will continue to wash away the potential profits of the airlines from air freight, will drown out the introduction of the lowest possible air freight rates for the shipping public, and will destroy the ability of a viable forwarding industry to sustain itself."[5]

There are other recent instances of attempts by regulated firms to eliminate the competition of outsiders. The New York Stock Exchange is now engaged, in its proposals for a "central market system," in an effort to remove the competition of over-the-counter dealers who make markets in NYSE-listed stocks. These over-the-counter dealers, generally called the "third market," compete among themselves and with the NYSE specialists on the price at which stock transactions are executed and they don't charge the fixed commission on transactions set by the Stock Exchange. In an age of increasingly large institutional investors—which are very conscious of price considerations on stock transactions—the third market firms have become an increasingly important part of our securities system.

The "big board" now announces that it wants the third market legislated out of existence. The Exchange says that the third market firms execute transactions "in the dark." Yet the third market firms have publicly supported the consolidated tape, which would report third market transactions, and which is now being developed. The Stock Exchange says that the third market firms are not as extensively regulated as Stock Exchange members—an argument which the railroads made in the 1930's against motor carrier competition—and yet it does not say how they should be regulated. One may agree that aspects of securities transactions require some form of regulation without accepting the view that there must be a single market.

III

It should be noted, I think, that anti-competitive schemes have been pressed not only upon the federal government but upon state governments as well. These schemes can take various forms and are generally supported and—at times—enacted in the name of protection of the public health and safety. Certainly a state has a right to protect the well-being of its citizens. But there are instances in which regulations imposed under this banner have nothing to do with the health and safety of a state's citizens but are conceived instead to shield the financial interests of a particular industry. In these cases, a state's citizens are forced to deal with a monopoly in essential services and are taxed for that monopoly by higher prices.

A state's licensing power can be used in support of a monopolistic scheme by limiting entry in a particular trade or profession. High prices can be maintained for the benefit of the favored industry. At times some rather odd licensing proposals have been made. Jethro K. Lieberman, in his book The Tyranny of the Experts, notes that a session of the Wisconsin legislature was once subjected to an onslaught of bills sponsored by caterers, canopy and awning installers, cider makers, car dealers, dancing school instructors, egg breakers, frog dealers, labor organizers, meat cutters, music teachers, and beer coil cleaners, all seeking the umbrella of state regulation. In this instance they failed.[6]

While a case can be made for the licensing of certain professions which affect our health and safety, I would suggest that occupational licensing has gone too far. I would suggest also that the various licensing statutes may be abused by the favored occupations. Many statutes provide for licensing boards made up solely of members of the occupation to be regulated. This "fox in the hen house" approach carries with it a danger that the regulations issued by the board will be designed not to protect the public but to protect those in the industry from competition.

Aside from licensing, the state may also eliminate competition through the granting of franchises to do business. Some of these franchises may confer an absolute monopoly to a private company; others may restrict competition to a very large degree.

Some states also have banned advertising of prices of pharmaceutical drugs and the like. Without price advertising the sick may pay much more for their drugs at one establishment than they would at another. But since the public cannot make an informed judgment between druggists because of the ban on price advertising, the sick pay more.

IV

There are times when an industry is placed under a form of regulation which attempts to incorporate the benefits of competition. Where Congress elects to regulate an industry it has at times attempted to encourage rather than impede workable competition. We believe experience has shown the wisdom of this pro-competitive approach, which carries regulation no further than necessary to accomplish certain specific goals.

The regulated industry, however, has sometimes chafed under such regulation and insisted either that Congress did not intend to permit competitive considerations, or that if it did intend to do so, it should repeal the legislation. A case in point involves the Atomic Energy Commission pre-licensing antitrust review of nuclear generator applications.

In 1970, Congress instructed the Attorney General to advise the AEC whether the activities under a nuclear reactor license "would create or maintain a situation inconsistent with the antitrust laws."[7] If the Justice Department determines that antitrust dangers exist, the AEC is required to hold a hearing on the license. AEC must make an antitrust finding under the statute. If the finding is adverse to the applicant, it must accommodate antitrust objectives with electric power needs. A license could nevertheless be granted, but Congress indicated that it should be conditioned to achieve antitrust objectives.

We have recommended that the AEC hold hearings in ten cases. We have also entered into stipulations with a number of applicants which, in our view, removed anti-competitive problems which otherwise might be attached to or maintained by operation of the nuclear plant. In those cases, we advised AEC that no hearing was necessary because of the inclusion of these stipulations in the license. We believe the responsibilities imposed on us by Congress under the statute require no less.

Recently, several critics have voiced their disagreement. They say that the Department is using the AEC licensing procedure to restructure the entire electric power industry and that our advice, and stipulations entered with companies, exceeds our statutory mandate. Some say that the antitrust pre-licensing review procedure should be abandoned because of inordinate delay in AEC hearing. I think these criticisms deserve reply.

There is little doubt that Congress intended the Attorney General to advise the AEC on a broad range of antitrust problems related to the operation of the proposed facilities. We have recently been upheld in this view by two hearing boards at the AEC.

This is not to say that we regard pre-licensing antitrust review as an opportunity

Footnotes at end of article.

to litigate any and all antitrust issues which might be raised with respect to the applicant. On the contrary, the Department has repeatedly recognized the need for a rational connection between the proposed activities of the applicant under the Commission's license and the situation which is or will be inconsistent with the antitrust laws. Those who doubt that our antitrust advice is related to activities under the license should read our letters of advice. These letters have been concerned exclusively with the competitive conduct of the various applicants vis-a-vis their actual or potential competitors at wholesale or at retail in the electric power supply business. This is far from being a total antitrust review of all aspects of the applicants' business.

As for delay, I want to state again a point which has been repeatedly emphasized by the Justice Department: that we are totally committed to the effort of making pre-licensing antitrust review work, as Congress intended that it would work, without any substantial delay in the licensing of new nuclear generating units.

Nor has the Department of Justice seized upon the AEC's pre-licensing antitrust review procedures as a convenient instrument for achieving some massive economic scheme not apparent on the face of the Attorney General's advice letters or the Department positions taken in the AEC proceedings to date. We are not, I repeat, not seeking restructuring of the electric utility industry in these proceedings. The Department of Justice has publicly outlined, both in some of its advice letters and in prehearing conferences in other cases, the kinds of relief which it believes would be necessary to remedy various situations alleged to be inconsistent with the antitrust laws. These include license conditions requiring equal access to nuclear units, power pools, wholesale power, and high voltage transmission systems where some monopoly power is involved. These also include license prohibitions to prevent the utility from controlling resale of power and applying various other types of leverage to its customers. All of our proposals amount to traditional antitrust relief aimed at restrictive practices. I cannot see how they can be regarded as a vast restructuring of the industry.

I realize that questions involving licensing of nuclear power plants are complex and to a certain extent novel. But I believe the public has a strong interest in insuring that a new and important source of energy is not employed in a manner which destroys competition. This is why I suggest that the public listen to the arguments of all concerned, for the taxpayer has made a tremendous investment in nuclear units, and it is he who will suffer if competition in this new form of energy is eliminated.

FOOTNOTES

[1] *United States* v. *Northern Pac. Rr.*, 356 U.S. 1, 4 (1958).

[2] Report of the Attorney General's National Committee to Study the Antitrust Laws, 269, (1955).

[3] Kahn, *The Economics of Regulation*, Vol. II, at 4, n. 6 (Wiley & Sons 1971).

[4] Marvin Carlson, *The Theatre of the French Revolution*, 12, 16 (Cornell Univ. Press 1966).

[5] Aviation Daily, February 5, 1973, p. 187.

[6] Lieberman, *The Tyranny of the Experts* 15 (Walker & Co. 1970).

[7] Pub. Law 91-560, 91st Cong., December 19, 1970.

FINANCIAL HEALTH OF AMERICAN RAILROADS

Mr. TAFT. Mr. President, recently I introduced S. 756, the Modern Railway Transportation Act. This bill has two purposes. The first purpose is to relieve railroads of the enormous financial burden of operating unproductive branch lines. These branch lines sap the strength of our railroads at hundreds of points. The bill would, however, provide a mechanism for retaining essential rail service to isolated communities where that service is important to the regional economy. I have spoken many times in the Senate on the importance of this type of reform.

The second purpose of the Modern Railway Transportation Act is to rationalize the rate structure in the railway industry. One consultant to the Department of Transportation has estimated that there are 43 trillion rates on file at the ICC without an index. The complexity of these rates imposes an enormous and costly burden on shippers who must engage rate auditors to determine if they are being overcharged. In addition, the present rate policy permits discrimination against Great Lakes ports. It is cheaper, for example, to ship electrical transformers from Zanesville, Ohio, to New York for export than it is to ship them from Zanesville up to Cleveland for export. One can scarcely imagine a more unworkable bureaucratic mess than the present rate structure of America's railroads. It is a burden to shippers, it is costly for consumers, and it distorts proper transportation patterns.

Recently, I received copies of two articles and a speech prepared by Arthur C. Roy, general manager—traffic—of the Pennsylvania Glass Sand Corp. Mr. Roy takes an approach which reflects many of my concerns. He advocates a simplified and sensible way of computing transportation charge. Because of the importance of this matter to America's consumers, and the urgency of reform, I commend his position to my colleagues and ask unanimous consent that his speech and articles be inserted at this point in the RECORD.

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

TALK AT NDTA SEMINAR, PITTSBURGH, PA., OCTOBER 16, 1972

(By Arthur C. Roy, General Manager, Traffic, Pennsylvania Glass Sand Corp.)

"A man would do nothing if he waited until he could do it so well that no one could find fault with what he had done."—CARDINAL NEWMAN.

The United States rail transportation system shows increasing weakness. Quick action seems imperative when we realize that a substantial portion of the nation's railroad system (practically all eastern railroads) are bankrupt. Improvement of the financial health of America's railroads is essential and major changes in existing policies seem necessary. With inflationary trend destined to continue well into the future and the continued need for carrier regulation, it appears that despite whatever legislative assistance carriers can secure, their relief must come from cost reductions and revenue increases. It is to this area of carrier self-help that my pricing structure recommendations are made. I may sound like an extremist, yet if so, I'm in good company, for if it weren't for extremists and their enthusiasm for causes, we would have very little progress.

The Barber report recently released by the Senate Committee on Commerce and entitled "The American Railroads: Posture, Problems and Prospects" mentions the escalation of loss and damage claims from 167 million dollars in 1967 to more than 224 million dollars in 1972; difficulty of shippers in obtaining cars; stating railroads cling to value of service rate making principles that distort the rate structure allowing many commodities to move below or far above actual cost; carriers have not been aggressive in tailoring rates to potential marketing opportunities; that railroads are heavily oriented to the transportation of bulk commodities; that they must exploit potential that lies in movements of manufactured goods and a rate and service package geared to today's needs. The House Commerce Committee report entitled "Inquiry Into Freight Car Shortages" report 92-1384 also recently released calls for rate simplification.

I recall some years ago when I was engaged in the compilation of motor carrier tariffs when that industry came under ICC regulation that the central states motor freight tariff that first came out was practically a copy of the B. T. Jones 489 tariff; with rail mileage rate base numbers, etc., the basic difference being in the list of participating carriers and rules and regulations. Now I think we have reached the other extreme where the "competitive to rail" carriers are setting the rates—not the railroads. Therefore, it appears that what has to be done is to embark on a restructuring of rail freight rates to reflect present day movements. Changed conditions in transportation call for changes in policies and it seems evident that pricing structure of the railroads have not provided the tonnage volume nor the revenues to make carriers financially healthy. New concepts or innovative pricing ideas, therefore, seem in order. The railroads used to have small shipment problems. They solved this problem by getting out of the railway express business. They used to have less than carload problems. These were solved by getting out of the less than carload business. They used to have mail and passenger problems. Solution here was by getting out of the passenger business through Amtrak so it leaves us with rail carriers now handling carload and container (TOFC) business and some rail carriers seem to be advocating wholesale abandonment of lines. The McKinsey Company, a transportation consulting company, recently advocated abandonment of 100,000 miles of railroad. Robert Nelson, formerly of the high speed ground department of D.O.T. mentioned on a profitability basis, 130,000 miles of railroad could probably be abandoned. I don't want rail carriers to solve their present ills by going out of the carload business, so why not recognize the specific type business rail carriers are handling today and price services accordingly?

In trying to analyze the railroad pricing structure and come up with as simple a solution as possible, I remembered an article I had once read (author unknown) where he advocated among other things, listing the most foolish ways one could think of to solve a problem, think of ways to achieve the opposite of what you want, also ways to antagonize the people who will be affected. Purpose, as I recall, was that fresh ideas have two common enemies: (1) logic and (2) common sense. Perhaps it was in this vein and quest for new ideas in ratemaking that I finally came up with the ultimate goal—the elimination of all tariffs. Naturally, there must be some form of a carrier price list so we have to come up short of complete elimination of tariffs as our ultimate goal.

Approximately 20 years ago I was one of

the 12 National winners in Warren Brown's inherent advantage of railways essay contest. Every winning paper stressed four things—the railroad's competitive ability over any other form of transportation to make mass transportation movements at the lowest costs; also, that although rate structure was originally soundly conceived it has been disrupted by mode of transport competition, rail rates for distance moves should be lower than truck costs to compensate for inherent advantages of trucks and rates should reflect lower rail costs disregarding so-called value of service. This, of course, was at the time rail carriers were engaged in passenger service, less than carload service, express service and mail service. Today, railroads, as mentioned, have solved these four problems and I think we have reached the point where rail carriers must again return to their position of being the rate making form of transportation by publishing their rates on the container handled (freight car, trailer or container) regardless of commodity involved with such rates high enough to reflect the fully allocated costs plus a profit. I hasten to add here that this entire premise of ratemaking is based on the fact that railroad costs are ascertainable and I hold no brief for one standard of costfinding versus another. I think that today with our sophisticated costfinding methods a basic and satisfactory cost standard can be agreed upon. Suppose it is out a dollar or two dollars per carload compared to some other costfinding method. Any excessive profits carrier might receive would show up after a year or two of operation under a cost plus program. Certainly, carriers need one or two exceptionally good years of operation to get their plant back in shape after 85 years of poor or marginal profits. I agree that railroad costing is perhaps more difficult than industrial pricing, but in any event, costs are going to continue to need be developed to a more correct and refined basis so why not gear prices to such costs? Suppose cost finding is not perfect—carriers shouldn't go broke awaiting the perfect formula which will never come, but should take advantage of the best cost figures available.

In previous days of railroad monopoly, the public had to be protected and as a result rail pricing became geographical pricing resulting in entire areas, communities and industries being subsidized, lower rates to meet low cost water movements, etc. Today, there is no need for freight pricing to subsidize areas or communities. In fact, the barber report shows a shift in manufacturing from eastern or official territory of some 15% in the last 30 years. With the trend toward industry locations closer to markets, rates should stand or fall on the basis as to whether they are profitable to carriers based on each modest transport cost advantage. Rail carriers no more than any other type carriers should not be obligated to neutralize any shipper's geographical disadvantages, but where such is absolutely essential and origins and costs are reasonably close, it can be accomplished by the same rate base point applying to competitive suppliers in a specific area. Further, mode of transport competition is no longer confined to specific movements nor specific areas; therefore, each carrier's inherent advantage must be recognized in ratemaking.

I commend and agree with the B&O–C&O that a moratorium has to be placed on general percentage freight rate increases. I think also transportation users have to recognize there is no room in carrier finances today for any economic waste and we must reduce the present transportation bill by assisting carriers to affect savings through cost reductions. They can be done in the pricing process by substituting a simplified system requiring little, if any, legislation and a minimum of regulatory commission control. Along with such simplified pricing based on the cost of moving the container (freight car, container or trailer), would come elimination of discrimination, encouragement of incentive loading, elimination of any carrier concern, other than safety, for the commodity being moved, and many other benefits. The demand is for simplicity and clarity so let's see what we can throw out for starters—or a goal to be accomplished as soon as practicable or at least a goal toward which we can all work.

Rates today are what they are because of the historical and competitive influences and the result of certain basic rate-making factors such as the value of the commodity, susceptability to damage, nature and stage of preparation, value of service, seasonal demands, density, cost of transportation and type care needed. If we can in our rail pricing eliminate or segregate such non-transportation factors as value and the risk of damage as well as car furnishing cost, it would seem the cost of transporting one unit (freight car) or one commodity would vary very little with cost of handling a unit (freight car) of another commodity. With valuation and car cost factors eliminated, carriers should then be able to more easily ascertain than they can today a close enough and acceptable transportation cost to set up a pricing system based on cost of handling the unit plus a reasonable profit to apply on all freight (or at least 95% of all movements). Today under suggested Department of transportation legislation, proposal is that rates 150% of cost of handling each commodity would be considered reasonable. This, however, is "commodity" not "unit" pricing. "Commodity" pricing promotes what should be termed "honest" description misrepresentations and "end use" arguments as well as comparisons with similar commodities which may or may not be paying their way. Imagine trying to ascertain the cost of moving each individual commodity in an industry where in 1890, 82 years ago, in Haddock V.D.L&W (41CC296) the Commission said, "the cost of transportation of any one article of commerce can never be disposed of with any accuracy. If the carriers desired to make the cost of any particular traffic look large or small, it would not be difficult to swell or lessen it by such figures as might appear plausible in each case".

For years I have heard that this or that mode of transportation is the low-cost form. Why should not each mode fully exploit whatever cost advantages they have in their overall pricing policies?

Also, for many years rail carriers have lost revenues due to car shortages. We now hear that the Russian wheat sale program is going to result in an extremely short car supply. Although railroads have since 1958 reduced this serviceable car fleet by some 300,000 cars, they do point to increase in total car capacity from 93 million to 100 million tons. Unfortunately, *a* car loaded to one-half of its potential capacity is still *one* car, so any rate structure change must be geared to encourage full utilization of car capacity. If customers need only a limited tonnage of 10, 20 or 25 tons, railroads shouldn't tie up a freight car to be partially loaded but let these shipments move by truck, utilizing car for goods and shipments that can take advantage or railroad's inherent weight and cube capacity.

To sum up—I advocate the following as a goal:

1. Carriers on other than special rates such as unit trains should base freight charges on transporting the unit (freight car) regardless of commodity. Freight charge should be based on as close to accurate fully distributed costs of transportation as can be ascertained by a properly designated agency plus a reasonable profit. Cost finding agency would be DOT or ICC controlled or a joint AAR–ICC–DOT group. Charges should be so much per car dependent on length of haul. As distance increases, the size of destination mileage block would increase with tapering principal to recognize terminal costs. Distances could be based on simplified national rate basis grouping and blocking mileages. A minimum per car charge of something like $100/200 per car could also apply.

2. From this single car base, rates could be published on a multiple car move of one up to 10 cars dependent on clerical and terminal cost savings under single car rates that such multiple moves reflect. Beyond 10 cars daily on one bill of lading to one consignee, etc., we get into what might be termed specialized or unit movements.

3. Carriers should charge a valuation charge on freight bill based on actuarial experience and shippers declared value as insurance to cover loss and damage. This may require that section 20 of the act be amended. Shippers could elect to be self-insurers. If shippers are self-insurers, they may take greater interest in damage prevention. Valuation premium collected could go to a centralized AAR insurance company who would handle all carrier loss and damage claims.

4. Carriers should charge shipper "X" dollars per car for each car furnished. Charge could depend on number miles involved in the movement up to a maximum charge per car. The car charge would be on a cost of car, plus interest and repair based on a 20-year life and would go to the carrier owning car whether or not such carrier participated in actual route. This arrangement could aid to eliminate present per diem and encourage shipper to buy or lease his own car thus possibly channeling some present short haul traffic to rails that they are today not receiving. Car cost furnishing savings plus even today's low mileage allowances should encourage user furnished cars.

5. Accessorial charges such as weighing, diversion, stop-offs, transit, etc. would be in addition to the basic transportation charge. Possibly suggested system could eliminate need for transit.

6. No commodity should be handled by carriers unless it met full cost plus profit standards. No business should be handled at a loss.

This recommended simplified system of a four-factor freight bill breakdown would mean that anyone could ascertain beforehand as well as after the shipment moves the actual charge dependent on a simplified published rate per car for easily ascertained mileage, value declared, if any, and charge, if any, for type of car furnished plus any accessorial charge applicable.

Of course, this is all too simple. There would, as anyone in transportation knows, have to be certain published rules that must be enforced such as cars not being loaded heavier than carrying capacity, being properly placarded on certain materials, prepaid stations, routing guides, etc., but the number of tariffs and guides needed could be reduced to possibly no more than ten from the present 12,000 or more rail tariffs.

Now what would all this accomplish? I can think of the following:

1. Rail carriers as well as carriers competitive to rail (some of which presently have simplified tariffs) could be assured their inherent benefits would bring them the business which they are best fitted to handle.

2. Carriers would be assured a profit on every car handled.

3. Rail carriers would save $250,000,000 per year in loss and damage claims. Carrier experienced claims personnel could be transferred to AAR insurance company suggested. Perhaps immediately a simple rule in classification or tariffs could be established giving shipper a 2% freight rate reduction if they act as self-insurers.

4. Carriers could get new revenues up to one billion dollars annually in car furnish-

ing charges. Car charges would differ on different types, capacity of cars. Savings in per diem might also result by eliminating bookkeeping, etc.

5. There would be little, if any discrimination between shippers, communities, etc. eliminating need for 99% of all tariffs, all rate negotiation bureaus, majority rate negotiation personnel, regulatory personnel, etc. at savings anticipated to be $200 million more annually.

6. By above savings, carriers would have funds available to update their deferred maintenance and to upgrade their right of way resulting in labor savings because of delays now experienced in "slow" orders, poor condition of tracks, etc. The additional speed and safety generated would eventually result in better transit time service and lower costs.

7. Shipper would have choice of buying only what transportation he wanted. He could furnish his own cars, serve as self-insurer, etc.

8. Shipper would be per car charge have incentive to load all cars as heavy or to as full cubic capacity possible thereby reducing present wasteful transportation of not fully loading cars and resultant need for carriers to provide excess cars.

9. Generate the biggest car building boom of record—allowing railroads to concentrate on the efficiency and lower costs of standardized cars. Per car charge and present mileage allowance would assure carrier or shipper owner or leasee that each car he furnishes would pay for itself over a reasonable amortization period. Also encourage building of specialized cars.

10. A lesser number of cars needed or to be built by carriers would save them the 7% or 8% interest now being paid in equipment trusts to build new cars.

11. Eliminate the need for large number rate personnel in industry traffic departments.

12. Shipments of a number of different commodities could be loaded in one car promoting more mixed cars for distribution, consolidation of smaller shipments to warehouses—distribution points, more foreign forwarder business, etc. Local or regional truckers, household goods carriers or warehouses could purchase rail cars for movement to truck terminal distribution points—or for TOFC services, user-owned cars could serve for warehouse purposes. All kinds of new and intermodal movement or coordinated transportation possibilities by using now largely unused rail right of way.

13. Save a large portion of the $75,000,000 annual damage now done to carrier furnished cars. Shipper, owner or lease company could handle their own cars more carefully. If not, they would be responsible for damage and repair to serviceable condition.

14. Time would indicate whether costs as originally ascertained were high or low. If costs are higher or lower than original base, this would be reflected in carrier earnings.

15. After one or two years of experience, transportation user and taxpayer would benefit in that carrier being regulated could hardly hide any excessive profits and a fair part of savings enumerated would accrue to transportation user and consumer.

There are other benefits such as the generation of new business and, of course, probably some detriments but every traffic man could be satisfied that he is subsidizing no other traffic and is paying no more for the transportation of his shipments than he should based on the true and natural transportation characteristics of his particular commodity. Although per car or per truck rates would be the same regardless of contents because of density, weight of material, and valuation charge, the resultant actual per cwt or per ton rates would differ on different commodities, but this, nor the commodity transported needn't be a carrier or tariff concern.

Although the elimination of section 22 of the ICC Act which section grants reduced rates on government traffic is now covered by Senate Commerce Committee Surface Transportation Act, certainly one of the legitimate reasons the military has used to support such rates is the need for secrecy on certain movements which presently the usual rate bureau procedure handling publicizes if a specific per car charge applied as suggested on all freight, it would not be necessary for the government to disclose contents of any car. The military has already negotiated many "freight, all kinds" rates.

I might also mention possible suspension. If rates are based on meeting full costs, doubt suspension petition could be sustained but perhaps ICC Act should limit suspension requests only to transportation users, not carriers nor rate making bureaus.

I am speaking of long-range goals toward rate structure simplification. There is no reason why some other method of simple pricing cannot work. Perhaps rates should be on a freight, all kinds carload or truckload basis tied to fully allocated costs for different types equipment and different rate territories. For rail carriers, costs to be used could be as spelled out in the ICC carload cost scales by territories latest statement—assuming these costs can be made as accurate as rail costing can be. I have in previous traffic world articles also suggested some other alternatives such as freight, all kinds, incentive rates based on docket 28300 mileages and varying carload minimum weights. Perhaps a simple rule in the classification stating that all cars loaded in excess of the minimum carload weights shown in classification or in tariffs subject to classification would receive a rate reduction dependent on excess loaded in car. A 5% reduction for 10,000 pounds over minimum, 10% for 20,000 pounds, etc. would encourage loading to car carrying capacities.

As you also no doubt have noticed, I have been speaking primarily about rail transportation, not to isolate this mode of transport, but because this is where simplified pricing must start. I don't want to finish without commending certain types of motor carriers and also Canadian rail carriers who already have at least started to simplify their price structure and their tariffs. We also already have "freight, all kinds" rates in TOFC service, and bulk material truck and household goods carriers have simplified rates. Also, although what I am advocating is a new set of ratemaking principles geared to stop the erosion of rail traffic, primarily to private transportation, these same principles apply to other modes. Transportation price should very between modes according to transportation unit used and mode of carrier cost. If you have a better service that the customer needs, he will buy it. You don't price a Cadillac the same as a Volkswagen.

The big question I seem to be always asked in all my talks on this subject is, how can what you advocate be accomplished?

Well, as I view it, first, this cannot be a one-man endeavor, enough transportation users must insist a price structure change is needed. This can be done individually and through trade association resolutions or actions. Rail carrier executives should be encouraged to appoint a national committee to investigate the savings and new revenue potential as well as the need for a rate structure change. Committee should study possibility of carrier industry recognition of territorial cost formulas, basing rates on full costs dependent on distance, incentive rates to encourage full utilization of cars, rates on a per car rather than commodity basis, assessment of a valuation charge or lower rates based on elimination of carrier loss and damage responsibility, setting up a central AAR insurance agency to handle loss and damage claims, more rates on a freight, all kinds basis, identical rates based on identical transportation characteristics regardless of commodity, encouragement of lower rates based on user furnished cars or the possibility of separating a car use charge from freight charges on freight bills. Such a committee should be charged to seek by hearings and otherwise and report as soon as possible on suggested rate structure innovations. I would hope this would be a carrier sponsored and not a government or regulatory commission endeavor. Pricing is a carrier and user function, not that of government. Carriers should also make this study independently so as to coordinate their findings with those of the resource management corporation who have been given an ICC contract for commission guidance in respect to the ex parte 270 rail freight rate structure investigation.

I realize that what I advocate may seem too simplistic a solution of carrier's present chaotic and complex pricing policies. As mentioned, there may be other improved methods of simplified pricing compared to what I advocate, but it seems to me that after 85 years of marginal profits, rail carriers must make a start in this direction and some type of a goal must be established.

I don't say I have the complete answer, but there should be no question on the final goal toward which we should all work. If shippers beat the drums of better pricing, carriers will hear them. As H. G. Wells said, "When it gets dark enough you can see the stars."

HERE'S A POSSIBLE ROUTE TO SIMPLER, MORE SENSIBLE RAIL FREIGHT RATE STRUCTURE

(By Arthur C. Roy, General Manager—Traffic, Pennsylvania Glass Sand Corp.)

The ultimate goal of every industrial traffic manager should be the elimination of his position. As a problem solver, should his work eventually prove 100 per cent successful—all problems eliminated—there should be no further use of his services.

The ultimate consumer of a specific product is paying the transportation charges on that product and on the raw material that went into the making of the product as well as subsidizing transportation charges on other commodities where those commodities are not paying their way or where industry is equalizing rates or shipping on an "FOB: Delivered-or-Destination" basis. The larger diversified industries and so-called conglomerates today are paying different freight charges on a multitude of commodities, yet their total annual transportation bill in the final analysis is what counts. On this theory, the proper approaches toward reducing the nation's total transportation bill would be to effect savings (a) through cost reductions that can be made by the various carrier modes and (b) through the need for little regulation of rates.

In order to understand the present chaotic system of carrier rates and pricing, one should have a knowledge of types of rates, the historical and competitive influence, and the various rate-making factors, such as value of commodity, damage susceptibility, value of service, nature and stage of preparation, seasonal demands, density, competition, cost of transportation, etc. If certain of these factors can be segregated from the actual transportation factors and charged accordingly, then it would appear that the actual cost of transporting one unit of one commodity versus the cost of transporting another could be the same—the unit being the container (freight car) transported instead of the contents.

Any large shipper or receiver will admit he must have rail carrier services, and to a limited degree those services today are monopolistic and cannot be economically replaced by other modes of transport. A steel company presently pays different freight rates on

iron ore, coal, limestone, or scrap that go into the making of steel and on its steel finished product. A glass producer pays different rates on raw materials such as sand, soda ash, limestone, and cullet, and on the outbound glass. Yet in these typical cases a reduction in one rate may, in order to maintain carrier revenues, make necessary an increase in another. The transportation user in a case of this kind possibly finds certain of his freight rates subsidizing others, yet his total transportation bill is added to his costs and passed along to the consumer. If all commodities were identically rated, based on carrier's cost plus a reasonable profit, the savings generated to the carrier could be passed along in the form of lower over-all user transportation costs.

One of the railroad transportation industry's greatest problems, and therefore also the problem of the industrial traffic manager, is created by the complications inherent in the present rail freight rate structure, partially as a result of precedent and partially because of the demands of price regulation. It should therefore be the goal of the transportation industry to work toward a more simplified rate structure that requires a minimum of regulation or regulatory reform, if any. What is suggested in this thesis is something that can be considered unconventional (even though previously discussed or advanced in some form), something that cannot occur overnight. For presentation purposes this suggested "something" perhaps is over-simplified, but it does pose a challenge and it could provide stimulus to the transportation industry and the transport-service user to work toward such a Utopian freight rate structure.

It should be and is recognized that there would always be a need for some exceptions from the suggested method of carrier pricing on special, volume and/or unit train movements, but it would appear that over 95 percent of rail carrier freight rates can be reasonably and profitably priced as suggested.

In a recent presentation at a University of Wisconsin Seminar on November 11, 1971 (T.W., Nov. 22, 1971 p. 23) Dr. E. Grosvenor Plowman stated:

"It is almost impossible for most business executives who are concerned with freight rates, as they are used for transportation by the common carriers of the United States, to think rationally about them. The reason is that each individual freight rate or charge has evolved to its present level and its present applicability within the environment or context of the web of inherited ideas and procedures. It is difficult to think about freight rates without taking for granted the seemingly permanent built-in constraints that have developed in the past. Yet we must free our thinking from this restraining and limiting background. Only by breaking away from tradition can we provide the railroads and other common carriers with expanding opportunities to serve industry and commerce commensurate with their economic and social value."

Dr. Plowman then went on to quote Charles Ellet, Jr. in his 1858 "report on the Tariff Toll for the Virginia Central Railroad," a part of which century-old report is as follows and is one of the basic premises of suggested simplified rates:

"First, No commodity should be carried for less than the actual cost of its conveyance, added to the cost of storage and handling, and the value of the risk which you incur in case the object transported is injured, lost, or stolen while in your care . . ."

RAIL TRANSPORTATION COSTS

Forty years of experience in the industrial traffic field have taught the writer, if nothing else, that because of variable factors there has yet evolved no method by which true rail transportation costs can be ascertained on the normal carload movement of any specific commodity. This is not, however, to say that a fairly accurate cost is not ascertainable, but simply that it cannot be precisely said that the cost of moving a certain commodity from Point A to Point B is exactly "X" cents per 100 pounds. Although controversial, since some say it is not a true reflection of costs, the publication by Interstate Commerce Commission's Bureau of Accounts title "Railroad Carload Cost Scales by Territories" probably contains what are to date the best over-all rail cost figures available.

The particular cost-oriented method of pricing suggested herein is based on the premise that by separating from actual transportation costs such factors as the kind of car furnished, the value of commodity transported, and damage susceptibility, as well as the various accessorial services that may be necessary, it costs rail carriers no more to move a carload of one commodity than to move a carload of another, and, therefore, these factors should be broken down in carrier pricing. The key to the suggested simplified pricing is a specific charge per mile or charge per car for certain mileage blocks, with a minimum carload charge; it includes recognition of the tapering principle that costs and rates should decrease as distance increases; it includes, also, a charge for use of carrier furnished cars, a charge for special services such as weighing, reconsignment, diversion, stop-offs, icing, transit, etc., and an insurance factor to cover value of the commodity and risk of handling.

In lieu of the present tariffs and classification and exceptions—publications that would no longer be necessary, except for some rules—the present National Rate Basis tariff can be carefully extended and analyzed to cover necessary grouping of origins and destinations to reflect recognized market competition. Further refinement of such situations can be covered in mileage guide publications. Here present mileages such as contained in the present class tariffs can be published with mileage blocks extended to 25-mile up to 200-mile increments for distances beyond 500 miles. Rather than a per-mile charge, a table of per-car rates dependent on miles of movement would be more simple.

With publication of specific mileages to apply from and to all points in the United States on other than TOFC, unit-train and specially-rated movements, a rate would be assessed on each carload on the transportation factor on a specific cents per-mile figure. For example, using a hypothetical figure, the charge could be $1.00 per mile, subject to a minimum carload charge of $100, with commodity valuation and damage limitation of $200 per carload when the commodity loaded to not more than the weight-carrying capacity of the car.

On the value limitation, should the shipper be content with the $200 maximum liability or prefer to act as a self-insurer, no valuation charge would be added to the freight bill. If, however, the shipper desired to declare a greater valuation on the bill of lading, a valuation charge of, for example, $5 per $100 valuation per car would be assessed, with carrier liability limited to the proven invoice value of the goods. Perhaps an AAR insurance company could be established to handle, centralize and process all carrier claims.

For the furnishing of a car, a specific per-car charge would be assessed on each freight bill; for example, $60 for a 100-ton hopper, $50 for a 70-ton hopper, $60 to $70 for a tank car or DF, refrigerated or specially-equipped car, and $40 for open hoppers, ordinary box, stock, flat or gondola cars. In order to prevent discrimination, future cars should be standardized, with higher charges assessed for cars of special size or type. Special charges could apply on bi-level, tri-level and other types of automobile cars. This car furnishing charge would accrue to the railroad owning the car, whether participating in actual movement or not, thus eliminating the need for per diem charges. The car charge would be periodically kept consistent with remaining depreciated cost based on a 20-year car life. For example, on a $20,000 car, a $50 per-car charge on a two-turnarounds-per-month average per car should more than compensate for car value, interest and repairs over a 20-year period.

A tariff schedule could be filed listing the charges for furnishing various types of cars. (See Exhibit 4.) If the user furnished his own or a leased car, there would be no per-car charge, thus practically guaranteeing to the car user no real financial loss on use of his owned or leased equipment. A new rental business might develop where car owners would lease cars for one trip, one month, one year, etc. In fact, car purchases by the user of special-type cars for favorably transporting his commodity would be encouraged, as would leases or purchases of cars by users for short-haul movements.

Accessorial charges, such as those for stop-offs, transit, refrigeration, and weighing cars when the shipper needs weight records for invoicing purposes, etc., would be in addition to mileage rates, valuation and car-furnishing charges. Shippers would thus be encouraged to build their own scales to eliminate weighing cost.

Demurrage charges on the basis that a car earns at least as much per day when standing idle at shipper's or receiver's sidings as it earns under movement would also encourage carrier investments in equipment.

A $40 car on a 14-day turnaround should be charged demurrage no less than $3 a day. Encouragement toward prompt unloading by average demurrage agreements could be continued, and perhaps an actual per dollar per car refund could be made for less than 24-hour unloading.

It has been estimated that the cost of tariff publications, carrier rate departments, negotiations, etc., amount to $8 per carload. Most, if not all, of this part of the transportation cost could be saved by the shipping public under the method of uniform pricing here suggested.

Also, along with the elimination of present tariffs and publishing thereof, rate departments, rate negotiations, personnel, tariff bureaus, etc., would be diminished, with resultant elimination of rate regulatory commission personnel. If any discrimination would exist that would have to be handled by regulatory commission and made the subject of litigation, it should be in the service area rather than in the freight rate area.

Industrial traffic departments could be cut in size, again with cost savings to industry. Individual rates need not be computerized, auditing being simply a check of tariff mileage multiplied by the mileage rate, plus specific accessorial charges.

Incentive loading would be encouraged, as transport service users would tend to load every car to its cubic or weight carrying capacity, in that manner lowering their per-unit transportation cost. The per-unit transportation cost would be of little importance to the carrier, but the suggested pricing method would recognize the commodity density factor in that a heavy material loading to the car's weight capacity would have a per-ton cost less than that of a bulky lightweight commodity.

Origin and destination mileage groupings and widening of mileage blocks as distance increases would recognize and would meet the commercial needs of transportation users. Each shipper would have the advantage of his geographical location and mileage block grouping; that's as far as the carriers should normally go, aside from recognizing the costs of transport, as the Commission and the courts have often decided that it is

not carrier's duty to correct any shipper's geographical disadvantage.

Low-value commodities will receive natural rate benefits that are inherent from their transportation factor recognition, and movements would be encouraged by lack of a need for a valuation charge greater than carrier's maximum liability. Such commodities are normally heavy loading, and when loaded to weight-carrying capacity of the car, as they should be, the unit per-ton rate would be less than on bulkier, lighter-loading commodities, and a normal car being used —an open hopper, for example—will carry a charge less than the charge for the more expensive closed car. Commodities moving in open hoppers would, however, probably have to be weighed, but the shipper would have the option of providing his own scales or arranging for a per-car of weight agreement with the customer.

On higher-valued commodities the tendency would be to load to the cube capacity of the car, also lowering unit cost, and the freight rate would not subsidize other lower-value commodity movements.

The carrier also would have no need to be concerned as to commodity description. Articles of the same description may have a wide range of values, and the carrier's only interest would be his liability, dependent on the shipper's declared value. There would be no need except as carriers desired to keep commodity statistics.

This suggested method of pricing should apply to all users, eliminating section 22 rates. The interstate commerce act would have to be revised to allow carriers to limit their liability, and although possibly there would be no need for this under the suggested system, the act should be revised so that only the transportation user, not another carrier, can petition the ICC for investigation and suspension of any rate.

Some exceptions from this pricing method would be needed for special moves, unit trains, etc., but such exceptions would be minimal. The basic idea would be that no shipments would be handled by a rail carrier below carrier costs, and such costs as those of weighing, car furnishing, valuation, etc., would be segregated so that the shipper would be free to choose whatever charges he wished to assume, and the carrier could control costs in relationship to rates. As the carrier guarantees transportation without loss and damage, the insurance rate must be set high enough to compensate for the risk.

The raw-material versus finished-product rate, where it presupposes that both inbound and outbound shipments would move via the same mode of transport, is no longer valid when competitive modes of transport today share in, and compete as intensely for, the raw material move as for the finished product move. No commodity moving should cast a burden on any other commodity—each would pay its way. Regardless of value at point of origin, any commodity needed at a particular destination would have added to its destination value its own cost of transportation from point of origin.

Normal class-rate routes in effect today could be used; there would be no need for routes to apply only over short-line distances, but the carriers would hardly want to continue to compete where their routes generate excessive mileages.

If the carrier furnishes a car, he should be assured of an adequate return on such investment over a recognized and fair amortization period. After all, the carrier is in the transportation business, and this is what he would be furnishing at a fair, compensatory and reasonable, as well as profitable, price. No carrier should handle any commodity at a loss. If the commodity cannot pay its way, it has no business being considered for rail transport beyond its economic mileage range, if any.

Healthy competition would be preserved for if each commodity paid its own cost of transportation, it would be likely that the traffic would gravitate toward the more efficient mode of transport for that commodity. The per-mile theory should be welcomed by truckers whose costs are constant or definitely increase with distance of haul. If each form of transport handled the traffic for which it is best suited, then increased productivity and efficiency should also result. Shippers should, by this suggested method of rate making, be encouraged to furnish their own rail equipment for short hauls, making this traffic more profitable and competitive to present truck moves. On long hauls, with proper mileage block recognition, the carriers would be assured of adequate and profitable revenues. The shippers would by their own decision insure shipments, furnish scales, furnish own cars, etc., and buy only the transportation they desire. Further, they would know their traffic was not subsidizing other commodity movements, as there should be no rate discrimination.

It is entirely possible that should shippers or receivers be able to furnish their own cars for both long and short hauls and know that the savings of using same can fully cover all car costs, a privately owned car and private-sidings arrangement could open other doors; carloading companies, local truckers or United Parcel might purchase their own cars for loading smaller shipments into carloads for rail movement to destination point and distribution of small shipments beyond; a local trucker or distributor located on a rail line might do the same and then work out of his own or leased car without demurrage. Shippers could do likewise by leasing or purchasing destination properties on rail sidings and handling small shipments with their car used as a warehouse. Long-distance truckers could purchase flat cars for trailer moves to their various terminals with rail sidings.

From a competitive angle, rail carriers should and do recognize that except on long hauls and in trailer-on-flat-car hauls they cannot presently match the trucks from the speed standpoint. There are the higher loading and unloading charges of railroads versus trucks, the expense of sidings, etc., and savings in inventory and capital costs in purchasing lower truckload quantities. Recognizing this, rail carriers should concentrate on their inherent advantage of mass movement, private right of way and specialized services. On this basis, charging a simplified rate that covers full costs plus profit and encouraging users to furnish cars, etc., monies now put into equipment could be used for track upgrading to handle heavier per-car loads and longer trains at faster speeds and resultant lesser cost. Any carrier who owns a private right of way can properly be criticized if he does not make the most of it—building pipelines alongside, paving as a roadway for commuter buses, truck toll highway, etc.

In my traffic and transportation experience I have worked with small shipments as well as with large-movement multi-plant bulk shippers. To some, it may seem heresy to advocate a Utopian system of carrier pricing, but such a system can be attained and it is a goal for all dedicated traffic people. It can take place within a year or two, and the place to start is in the TOPC field. Here, pricing policies have already began on per-trailer rates on FAK (freight all kinds) classifications, and it would seem that a continuation of this type of pricing in that field could then carry over to cover the entire rail carload movement.

It is therefore suggested that:

An immediate program be initiated to establish and publish mileages from and to every point in the United States, using National Rate Basis groupings and present class tariffs as a basis.

(a) For distances from 500 to 750 miles, the mileages need not be exact for example, the rates could be related to distances specified in terms of 25-mile increments (525 miles, 550 etc.). From 750 to 1,000 miles increments of 50 miles could be used (750, 800, 850, etc.) From 1,000 to 1,500 miles the rates could relate to 100 mile increments, and for distances from 1,500 miles up the increments would be 200 miles. This would recognize the tapering theory and terminal cost reduction as the line haul distance increases, it would be in keeping with the old axiom that as mileages increase, costs decrease.

(b) The above mileages should be made applicable to present class and exceptions and TOFC tariffs.

TOFC rates be established on a cents-per-mile basis per trailer, loaded or empty, with no rail carrier damage liability and with valuation limited to trailer value when user-furnished, an additional charge being assessed for declared value of the contents in user-furnished or carrier-furnished trailers.

(a) The charges would be uniform as to all TOFC shippers, based on following:

Plan 1. Carrier furnishes transportation only; the rail car and trailers are furnished by the user, who might be an industrial shipper, a truck line, a freight forwarder, a shipper association, etc.

Plan 2. Car and transportation furnished by carrier. (A set figure over Plan 1.)

Plan 3. Transportation, car and trailer furnished by carrier. (A set figure over Plan 2.)

Plan 4. Transportation, car and trailer pickup delivery furnished by carrier. (A set figure over Plan 3.)

Plan 5. Transportation, car and trailer pickup and delivery furnished by carrier. (A set figure over Plan 4.)

The advantage of having a set figure is that any combination of plans could work—carrier furnishes transportation and trailer—user furnishes car, etc. Also so that cost of requested service can be kept separate.

If this mileage and FAK valuation method of pricing proves successful on TOFC, the same principles suggested above should then be carried over to all railroad movements.

In lieu of seeking another ex parte percentage increase, perhaps carriers should petition for a car-furnishing charge of approximately 50 cents per net ton based on rated capacity of car; $30 for 50-ton box, $35 for 70-ton hopper or gondola, and $40 for 100-ton cars, with car-furnishing charge to go to the car-owning carrier. This would:

Increase rail carrier revenues by some $700 million annually, dependent on the amount of the per-car charge.

Encourage shippers to lease or purchase their own cars, especially on short haul movements where present mileage allowance is inadequate.

Generate the biggest rail car building boom of record.

Encourage shippers to load fewer cars by loading each car to cubic or weight capacity. This, of course, would cut down the number of cars the carriers would need.

Eliminate need for rate-increase tariff revisions; one tariff would suffice.

Not cause the market disruptions that percentage increases cause, because the increase would be the same for all shippers using the same type car.

Allow carriers to concentrate on operations and labor cost savings by upgrading of their rights-of-way—their basic transportation tool.

Tear this pricing system apart. Why can't it work? I think it can.

A Better Way of Computing Transport Charges

(By Arthur C. Roy, General Manager—Traffic, Pennsylvania Glass Sand Corporation)

In my experience, this country has never been as close to nationalization or the threat

of nationalization of railroads as we are today, and it is time that the transportation user exhibits some statemanship to assist carriers in resolving our transportation problems, even if it requires us to recognize that we must temporarily pay more to do the job. There are various ways of doing this, but I am writing today about freight rates. I am not, however, going to advocate that we (as we are doing today) pay more and more money in rate increases for transportation services without being certain that our railroads have dispensed with the luxury of maintaining within their ranks an expensive, built-in system of pricing which, because of historical developments and geographical and commodity competition, including regulation, has allowed freight rates to evolve into the complex and chaotic situation we have today.

I make no charges against any one specific group for our present mess, be it carriers, regulatory commissions or the transportation users, for like Topsy—I suppose—the system has just grown. We in industry cannot deal with the problem with clean hands, because in our zeal to keep our delivered prices at a minimum, we tend to lose sight of what may be our best long-range interests, in favor of short-term or parochial competitive gains. We depend on the carrier to protect his own interests; meanwhile, by super-salesmanship, by use of other modes of transport or of private transportation and by promises of new tonnage we try to persuade carriers to reduce their prices to meet our particular needs. This certainly is not all bad, and it can be termed "the free enterprise system at work," but because our transportation system must serve our entire nation and all its people, we all have the same over-all obligation to make our transportation system work, and to keep it as up-to-date as we do our national defense. A successful privately owned transportation network is a basic strength of the free enterprise system.

We have what appears to be a regulatory struggle taking place today between the ICC and the Department of Transportation. These groups supposedly are 100 percent against nationalization, but their present efforts and enthusiasm to dominate regulation of the transportation industry promotes nationalization. Each future regulatory step is only another nail in the coffin. We have out bankrupt eastern railroads and their plea for government funds, we have all our rail friends pleading for government legislative assistance through the ASTRO program, the surface transportation bill (S. 2362), the transportation assistance act (S. 2841), the transportation regulatory modernization act (S. 2842), the ICC legislative package (S. 3239), various transportation labor bills, and a myriad of other bills, all designed to cure in whole or in part the difficulties besetting the transportation industry.

Well, I'm still conservative and old-fashioned enough to believe that every time an industry runs to Washington to mend its bruises, a little more government control comes with every Band-Aid.

How important are our railroads? Well, they handle 70 per cent of all our industrial sand, 70 per cent of our coal, 76 per cent of the automobiles and parts, 73 per cent of the cotton, 74 per cent of the canned and frozen foods, 86 per cent of our pulp and paper, better than 80 per cent of our lumber, and so on. For handling approximately 40 per cent of goods moving via common carriers, railroads collect some $11 billion of annual freight revenue.

I have seen total annual transportation figures quoted for all modes, including private transportation, of a hundred billion dollars, also figures broken down to a point where 20 cents out of every sales dollar is expended for transportation. Aside from the annual railroad freight revenues just quoted, I can't support these other figures, but when we compare the 1971 annual rail revenues with those of previous years and recognize the effects of inflation on railroad expenses, it's indicated that we are not presently being overcharged on an annual dollar basis for our rail transportation. Where we are being overcharged is in our paying more for a poorer service, and this has come about, at least in part, because our railroads are so hamstrung with pricing complexities and expenses that they cannot spend the revenues they do receive to acquire new equipment and to upgrade their rights of way. Where they do buy new equipment, the financing has to be done by means of equipment trusts on which they have to pay interest of 7 or 8 per cent.

There are those who advocate nationalization, so let's just briefly explore this. According to one western railroad spokesman, it certainly wouldn't mean any better service—it would mean more employes, it would mean a government expenditure of some $60 billion to take over a sick industry that requires at least $3.5 billion per year to meet capital improvement needs, plus debt financing of some $2 billion annually, plus the loss of railway taxes, which today exceed $1 billion per year.

It has been pointed out that in countries in which the railroads have been nationalized, the rail operating losses are heavy. Japan loses $1 million daily, the French lost $900 million in 1968. Every country in which the railroads are government-owned has 10 to 15 times more employes per track-mile than the United States carriers, with freight costs per ton-mile double or triple the United States figure. I don't think comparisons with other countries are important, as their situations may well be unique. Canada, for example, has an efficient, government-controlled total transportation system competing against a private enterprise carrier system.

How do we go about assuring our carriers of adequate revenues to finance new equipment and facilities, make a reasonable profit, and keep rates low and non-discriminatory? I wish I were genius enough to solve carriers problems, but this is even beyond my powers, so I can only contribute a few ideas that have also been detailed in my earlier TRAFFIC WORLD article, and possibly stir up enough enthusiasm for a simplified pricing system that something might be done. I am sure you all realize that the transportation industry is probably the only industry in existence in which a salesman or executive calling on a customer cannot tell the customer what his price is. He first has to find out all the specifics of a shipment as to commodity, weight, type car, from where to where, etc., get this information back to his home office by telephone, wire or letter, where his question is turned over to a green-eye-shaded, black-garter-sleeved veteran who looks into at least three or four tariff publications, checks milages, adds 20 cents, 40 cents or 60 cents under X–256, no increase or 5 per cent under X–259, 6 per cent under X–262, 6 per cent under X–265, 6, 12 or 14 per cent under X–267, plus a 2½ per cent surcharge under X–281, and then says. "I think this is the rate." Of course, this is somewhat exaggerated, but it has been estimated that published rates are in the trillions. Of that I'm not sure, but the railroads alone publish over 10,000 tariffs, each requiring one or more supplements to keep the tariff up to date. As a former ICC member says:

"Tariff reading and interpretation make logarithms and calculus child's play by comparison. Recognizing this, transportation companies and the regulatory agencies have tried to simplify them, without success. Tariffs are baffling, confusing, and complicated. A mistake can cause serious consequences, since the law places upon the shipper a definite responsibility for tariff knowledge. The monster they have to deal with today frightens them.

"As matters now stand, in addition to the direct costs of for-hire transportation, a shipper must contend with the expense of a staff of experts, clerks, office space, commerce counsel, etc. The present rail Uniform Classification alone has thousands of ratings. To these must be added other thousands of exceptions, commodity rates, special routing requirements, rules combinations, single factors, alternative applications, minimum charges, master tariffs of increases, special interpretations, and on and on, let alone the hazards they create. Under such circumstances the second-rate status of public carriers in our economy becomes understandable.

"A radical and fundamental change of technique in computing charges must be found—something which meets the needs of the second half of the twentieth century, the keynote of which is speed and efficiency. The crude methods of the nineteenth century are out of harmony.

There seems to be an unprecedented demand for simplicity and clarity, so let's see what we can throw out for starters—a goal to be accomplished as soon as practicable, or at least a goal toward which we can all work. The changes in rate making I advocate may initially cost all of us a bit more today in actual dollars per shipment, but much less in the long run, as the economics of simplified rating dictate that savings will accrue to the user. A friend of mine said, "I see you are advocating simplification of tariffs." I said, "No I'm promoting simplified rates and elimination of tariffs."

Rates today are what they are because of the historical and competitive influences; they are results of certain basic rate-making factors, such as the value of the commodity, susceptibility to damage, nature and stage of preparation, value of service, seasonal demands, density, cost of transportation, and type of car needed. Today's rates are unlike rail rates of yesterday, which applied on minimum shipments and less-than-carload shipments and which subsidized passenger services, mail and express. Today's railroads handle only freight in carloads, trailerloads or containers. If we can in our rail pricing eliminate or segregate the non-transportation factors, such as value, risk of damage and type car needed, it would seem the cost of transporting one unit (freight car) of the commodity would vary very little with cost of handling a unit (freight car) of another commodity. With valuation and car cost factors eliminated, carriers or an expert agency should then be able to easily ascertain a feasible enough and acceptable transportation cost (even if not ideal) base, to set up a pricing system on cost of handling the unit plus a reasonable profit to apply on all freight (or at least 95 per cent of all movements).

This article and much of today's legislation are based on the assumption that carrier costs are ascertainable. Today, in proposed legislation sponsored by the Department of Transportation, rates 150 per cent of costs of handling each commodity would be considered reasonable. This is, however, "commodity" instead of "unit" pricing. Commodity pricing promotes discrimination, honest-description misrepresentations and "end use" arguments.

Imagine trying to ascertain the cost of moving each individual commodity in an industry where in 1890, in Haddock 1. DL&W (4 ICC 296) the Commission said, "The cost of transportation of any one article of commerce can never be disposed of with any accuracy. If the carriers desired to make the cost of any particular traffic look large or small, it would not be difficult to swell or

lessen it by such figures as might appear plausible in each case."

Here we are, 82 years later, and I can make only one safe generalization about rail carrier freight costs, and that is: There is no safe generalization that can be made about such freight costs.

Because of their complexity, there is probably no facet of knowledge in which a businessman is so weak as in knowledge and understanding of transportation rates—the way they are made, and the way that he can save money by a knowledge of transportation matters. Also, there is probably no parallel of the power comparable to that inherent in carrier freight ratemaking to create, retard or destroy a firm, region or industry. The Congress of the United States in its taxing powers does not have the power equivalent to that enjoyed by the various common carriers and the Interstate Commerce Commission in its regulatory authority. Someone has said, "Were the Congress to pass a series of tax laws that approached in scope and effect the common carrier rail and motor freight rate structures, and with the same elements of potential regional and commodity discrimination, the result would surely be an uprising of the people."

A party writing to TRAFFIC WORLD in support of my earlier article wrote, "It is almost unbelievable that the railroad industry could go 85 years under regulation of the ICC before someone within the industry said:

"Enough of this nonsense—let's publish cost-plus rates and be done with it. Starting with 10 class rates (10 ways to discriminate) the rate structure was expanded to millions of commodity rates (millions of ways to discriminate between commodities, industries, communities and even individuals). Having accepted the Robin Hood role (to steal from the rich and give to the poor), the railroads have lost their overpriced traffic, are stuck with the underpriced traffic—and with something more than a moral obligation to continue for evermore."

Well, speaking of obligations, I have an obligation to your time, so I will say that I advocate the following:

Carriers on other than special rates, such as unit trains should base freight charges on transporting the unit (freight car) regardless of commodity. Freight charge should be based on as close to accurate fully-distributed costs of transportation as can be ascertained by a proper agency, plus a reasonable profit—so much per car, dependent on length of haul. As distance increases, the size of destination mileage block would increase, with tapering principle to recognize terminal costs. Distances could be based on simplified national rate basis grouping and block mileages. A minimum per car charge of something like $100/$200 per car could also apply.

From this single car base, rates could be published on multiple-car moves of one up to 10 cars, dependent on clerical and terminal cost savings under single car rates such multiple moves reflect. Beyond 10 cars daily on one bill of lading to one consignee, etc., we get into what might be termed specialized or unit movements.

Carriers should charge a valuation charge on freight bill based on actuarial experience and shipper's declared value, as insurance to cover loss and damage. This may require that section 20 of the Act be amended. Shippers could elect to be self-insured. Valuation premium collected could go to a centralized AAR insurance company, which would handle all carrier loss damage claims.

Carriers should charge shipper "X" dollars per car for each car furnished. Charge could depend on number of miles involved in the movement, up to a maximum charge per car. The car charge would be on a cost of car, plus interest and repair based on a 20 year life, and would go to the carrier owning the car, whether or not such carrier participated in the route. This arrangement could help to eliminate present per diem and encourage shipper to buy or lease his own car, thus possibly channeling some present short-haul traffic to rails that they are today not receiving. Car cost furnishing savings plus even today's low mileage allowances should encourage user-furnished cars.

Accessorial charges such as weighing, diversion, stopoffs, transit, etc. would be added to basic transportation charge.

No commodity should be handled by carriers unless it met full cost plus profit standards. No business should be handled at a loss.

The recommended simplified system would mean that anyone could ascertain beforehand as well as after the shipment moves, the actual charge dependent on a simplified published rate per car for easily ascertained mileages, value declared, if any, charge for type of car furnished plus any accessorial charge applicable.

Of course, this is all too simple. There would, as anyone in transportation knows, have to be certain published rules that must be enforced, such as cars not being loaded heavier than carrying capacity, prepaid stations, routing guides, etc., but the number of tariffs and guides needed could be reduced to possibly no more than 10 from the present 10,000 or more.

Now what would all this accomplish? I can think of the following:

Rail carriers as well as carriers competitive to rail (some of which presently have simplified tariffs) could be assured their inherent benefits would bring them the business which they are best fitted to handle.

Carriers would be assured a profit on every car handled.

Rail carriers would save $250,000,000 per year in loss and damage claims. Carrier experienced claims personnel could be transferred to AAR insurance company suggested.

Carriers could get new revenues up to $1 billion annually in car-furnishing charges. Savings in per diem could also result by eliminating bookkeeping, etc.

There would be little, if any, discrimination between shippers, communities, etc., eliminating need for 99 per cent of all tariffs, all rate negotiation bureaus, majority rate negotiation personnel, regulatory personnel, etc., at savings anticipated to be $8 per carload or $200 million more annually.

By above savings, carriers would have funds available to upgrade their rights of way, resulting in labor savings because of delays now experienced in "slow" orders.

Shipper would have choice of buying only what transportation he wanted. He could furnish his own cars serve as self-insurer, etc.

Shipper would, by per car charge, have incentive to load all cars as heavy or to as full cubic capacity as possible, thereby reducing need for excess cars.

Generate the biggest car building boom of record, as per-car charge would assure carrier or shipper owner or lessee that each car would pay for itself over specific period of time.

A lesser number of cars needed or to be built by them would save carriers the 7 per cent or 8 per cent interest now being paid in equipment trusts to build new cars.

Eliminate the need for large number of personnel in industry traffic departments.

Shipments of a number of different commodities could be loaded in one car—to warehouses—distribution points, etc. Local truckers, household goods carriers or warehouses could purchase rail cars for movement to truck terminal distribution points—or for TOFC services—all kinds of new movement possibilities by using rail right of way.

Save a large portion of the $75,000,000 annual damage now done to carrier-furnished cars. Shipper, owner or lease company would handle their cars more carefully. If not, they would be responsible for damage and repair to serviceable condition.

Time would indicate whether costs as originally ascertained were high or low. If costs are higher or lower than original base, this would be reflected in carrier earnings.

After one or two years' experience, transportation user and taxpayer would benefit in that carrier, being regulated, could hardly hide any excessive profits and a fair part of savings enumerated would accrue to the transportation user and consumer.

There are other benefits, such as the generation of new business, and, of course, probably some detriments, but every traffic man could be satisfied that he is paying no more for the transportation of his shipments than he should, based on the natural transportation characteristics of his particular commodity. Although per-car rates would be the same, regardless of contents, because of density, valuation charge, and weight of material, the per-hundredweight of per-ton rates would differ on different commodities, but neither this nor the commodity transported need be a carrier concern.

One of my other suggestions on rate simplification deals with the elimination of section 22 of the interstate commerce act, which section grants reduced rates on government traffic. Certainly one of the legitimate reasons the military has used to support such rates is the need for secrecy on certain movements which presently the usual rate bureau procedure handling publicizes. If a specific per-car charge applied as suggested on all freight, it would not be necessary for the government to disclose contents of any car. There is no reason why the government should pay either cheaper or more expensive rates than the commercial shipper. The military has already negotiated many "freight, all kinds" rates.

Perhaps something similar to the proposals set forth in the exhibits (Nos. 1 and 2) on this page could be adopted and inaugurated immediately as maximum rates (the figures used are hypothetical, but could be 150 per cent of the present fully allocated costs as determined by the ICC) to alternate with the present rates. Thereby incentives could be provided to encourage full use of car weight-carrying capacity. The rates could insure profit for the carriers and could channel additional business to the railroads. Canadian carriers publish similar point-to-point incentive rates today. Perhaps a simple rule in the classification stating that "cars loaded to 10 per cent higher than Classification carload weight or minimum carload weight named in tariff subject to Classification would receive 5 per cent reduction in rates, on excess 20 per cent, a 10 per cent reduction, etc.," might be productive of revenue, tonnage and profit.

Also, I am writing of long-range goals toward rate simplification. There is no reason why some other simple pricing method cannot work. Perhaps rates should be on a per carload basis tied to fully allocated costs for different types of equipment and different rate territories, as spelled out in the TCC carload cost scales by territories (latest statement), assuming these costs are as accurate as rail costing can be.

As you also no doubt have noticed, I have been writing primarily about rail transportation because this is where simplified pricing must start. I don't want to end this article without commending certain types of motor carriers who already have simplified their pricing and tariffs. We also already have "freight all kinds" rates in TOFC service, bulk-material truck and household goods carriers have simplified rates.

I might suggest that you help me beat the drums for simplified freight rates. It's a goal toward which all transportation people should work.

I am not advocating change for that sake

alone. "All change doesn't mean progress, but progress means change." Progress is the law of economic life; when a company ceases to progress it falls back in today's intense competition. New methods, new products, etc. must be developed every day. In the chemical field, in any given year, 30 to 40 per cent of products weren't in existence 10 years earlier, Manufacturers with 3,000 or more lines will tell you that over half of their products are less than five years old. A large glass company receives three-fourths of its income from products developed in the last 25 years. In rail carrier pricing, the "We'll make on the bananas what we lose on the oranges" philosophy hasn't resulted in a financially successful over-all railroad industry in the last 85 years, so it appears it's time for a change.

I wish I had the complete answer. I don't—but dream a bit with me.

Everyone pays for good transportation. He pays most, however, who does not have it!

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. All time for morning business has now expired.

PRIVILEGE OF THE FLOOR

Mr. KENNEDY. Mr. President, I ask unanimous consent that my aide, Mr. Mark Schneider, be permitted the privilege of the floor during consideration of S. 50, the Older Americans Act.

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

Mr. EAGLETON. Mr. President, I ask unanimous consent that Mr. James Murphy, counsel to the Subcommittee on Aging, and Messrs. William Oriol, staff director, and David Affeldt, counsel, of the Special Committee on Aging, be allowed floor privileges during the debate and vote on S. 50.

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

OLDER AMERICANS COMPREHENSIVE SERVICES AMENDMENTS OF 1973

The PRESIDING OFFICER. Under the unanimous-consent agreement, the Senate will now resume consideration of S. 50, which is on limited time. The clerk will report the bill.

The assistant legislative clerk read as follows:

S. 50, to strengthen and improve the Older Americans Act of 1965, and for other purposes.

Mr. EAGLETON. Mr. President, what is the allocation of time on this bill?

The PRESIDING OFFICER. On the bill there are 3 hours. On amendments, debatable motions and appeals, 30 minutes.

Mr. EAGLETON. I thank the Chair.

Mr. President, I yield myself such time as I may need.

Mr. President, S. 50 extends the authorizations contained in the Older Americans Act of 1965 for an additional 3 years, until June 30, 1975. Moreover, it substantially expands the range of programs contained in the act and provides for a reorganization of the administration of these programs at the Federal, State, and local levels.

S. 50 is substantially similar to H.R. 15657, which was passed by the Congress in October 1972, but which the President declined to sign following the adjournment of the 92d Congress. Because this was a pocket veto by the President, there was no opportunity for an override effort in the Congress.

In recommending the enactment of a bill similar to the one vetoed last year, I do not seek a confrontation with the President. I, for one, believe that a great deal more can be accomplished through cooperation between the legislative and executive branches than through conflict between the two. Nevertheless, I also believe that we, in Congress, cannot shirk our responsibility to enact programs that meet the needs of the Nation's elderly citizens—needs that have been fully documented by extensive hearings conducted by the Subcommittee on Aging of the Committee on Labor and Public Welfare, of which I am chairman; by the Senate Special Committee on Aging, chaired by the distinguished senior Senator from Idaho (Mr. CHURCH); and the Select Subcommittee on Education of the House Committee on Education and Labor chaired by Congressman BRADEMAS of Indiana.

In an effort to overcome at least some of the President's objections to this legislation, we have reduced the total amounts authorized by this bill by about 25 percent. In addition, we have made a number of technical changes from the vetoed bill, including provisions designed to aid in the transition to the new administrative structure mandated by this bill.

By way of a brief summary, Mr. President, S. 50 would:

Upgrade the Administration on Aging—AOA—in the Department of Health, Education, and Welfare by transferring it from the welfare-oriented social and rehabilitation service to the Office of the HEW Secretary.

Authorize the establishment of comprehensive and coordinated systems for the delivery of social services to the aging at the local level.

Provide improved recreation, educational, and voluntary service opportunities for the elderly.

Expand research in aging and the training of needed personnel in the field of gerontology.

Establish a community service employment program and special training and counseling programs in the Department of Labor for middle-aged and older persons.

Authorize grants for the acquisition, remodeling, and renovation of facilities for use as multipurpose senior centers and provide for mortgage insurance, interest subsidies and initial staffing grants for such centers.

The heart of the bill is in title III, which authorizes grants to States and, through them, to local communities to deliver needed social services to the aging. In the past, the bulk of the activities carried out under the Older Americans Act have been in connection with the title III programs. Last year, for example, more than 1 million older persons were served by over 1,500 projects funded under title III. These projects delivered a wide range of services including transportation, nutrition, home health, recreation, aid to the handicapped, and services for independent living designed to assist the elderly in retaining their independence and avoiding institutionalization.

Under existing legislation, these services are funded through what are essentially block grants to State aging agencies. These State agencies, in turn, make project grants to local agencies for the delivery of services.

As the program has expanded, it has become apparent that the existing delivery mechanisms are inadequate to assure the efficient delivery of needed services with a priority scheme for the allocation of scarce resources. President Nixon alluded to these conditions in his address to the White House Conference on Aging in 1971, when he said:

In addition, I am asking that the Older Americans Act be amended to strengthen our planning and delivery systems for services to the elderly. Too often in the past, these "systems" have really been "nonsystems", badly fragmented, poorly planned and insufficiently coordinated. My proposed amendments are designed to remedy these deficiencies.

The amendments submitted on behalf of the administration to restructure the title III programs by the very able junior Senator from Maryland (Mr. BEALL), the ranking minority member of our Subcommittee on Aging, have, for the most part, been incorporated into S. 50. The revised title III will now designate the kinds of social services which may be provided by States to their older residents. Moreover, it provides that the delivery of such services shall be accomplished primarily by area planning and service agencies to be designated by the State agencies and operated in accordance with area plans approved by the State agencies. State agencies are required to designate those areas within their States which they determine to have the highest priority in terms of need. In order to concentrate limited resources, no more than 20 percent of the Federal allotment to a State may be spent outside of such designated priority areas. Moreover, the Federal share for projects in designated priority areas may be as high as 90 percent, while it may not exceed 75 percent in other areas of the State.

Limitations are placed on the direct provision of services by area agencies on aging, for it is not intended that an entirely new system of providers be established under this act. Rather, the area agencies are to act primarily to coordinate and fund existing service providers and to encourage the expansion of services by existing providers when the need for such is determined.

Only in those cases where an adequate supply of services cannot be otherwise assured may the State or area agencies provide them directly.

Title III also authorizes the Commissioner on Aging, who heads AOA, to fund directly projects conducted by any public or private, nonprofit agency when, after consultation with the appropriate State agency, he determines that such

model projects will expand or improve the supply of services for the aging or will demonstrate improved methods of delivering such services.

The ultimate aim of the revised title III, Mr. President, is to stimulate the development of comprehensive and coordinated networks for the delivery of services to the aging in every community in the land—including both rural and urban areas—where there is a need for such a service network, beginning with the communities which the States determine have the greatest need.

In addition to structuring services for the aging at the State and local level, this bill, title II, also reorganizes the Administration on Aging, which administers the majority of the programs under the Older Americans Act. When the Older Americans Act was first passed in 1965, it was intended that AOA be a separate entity functioning at a high level in the Department of Health, Education, and Welfare to serve as a focus for programs dealing with problems of aging.

Over the years, however, AOA has been pushed into successively lower layers of the HEW bureaucracy, to a point where its effectiveness as a spokesman has been materially eroded. In 1967, AOA was placed within the social rehabilitation services—SRS—a welfare oriented agency with the Commissioner on Aging reporting to the Administrator of SRS. Programs under the Older Americans Act are not, and never have been, welfare programs and experience has taught us that our older citizens are often resistant to utilizing needed services when those services are viewed as part of a welfare program.

In order to restore the status and visibility of the Administration on Aging, to permit the Commissioner on Aging to act effectively as a spokesman for older persons, and to make possible coordination with other agencies conducting programs affecting the aging, title II of S. 50 moves the Administration on Aging out of SRS and into the Office of the Secretary. Moreover, the bill prohibits the delegation of the Commissioner's functions away from AOA without observing Reorganization Act provisions. These provisions are intended to avoid such situations as occurred when the AOA research and demonstration programs were transferred to the social and rehabilitation service.

I have attached a title-by-title summary of the bill to my remarks, along with a table showing the amounts authorized, Mr. President, so I will not go into detail regarding the other programs in the act. Suffice it to say that they authorize grants for research in aging and the training of needed personnel in the field of gerontology; provide for the acquisition and refurbishing of facilities to be used as multipurpose senior centers; enlarge volunteer opportunities for the aging under programs conducted by ACTION; make technical changes in the title VII nutrition program recently established by Public Law 92–258 and provide for the coordination of such nutrition programs with the delivery of other social services under title III programs; authorize special library and educational programs for older citizens; and, in title IX and X, provide new programs for community service employment for the aging and special job training and counseling services for both middle-aged and older workers.

With respect to titles IX and X, Mr. President, it is my understanding that efforts will be made on behalf of the administration to delete these two manpower titles. If that comes about, I will comment in more detail on the manpower programs contained in the bill at that time.

For the moment, I do want to point out that one of the cruelest things that a society can do to older persons is to turn them out to pasture with nothing useful to do. Title IX would permit persons aged 55 and over to perform important public service jobs on a part-time basis. Title X is concerned with those middle-aged and older workers, still members of the labor force, who are so often the ones hardest hit by layoffs and plant close-downs. A man 50 years old who has spent all his working years at one job, in many cases, finds it extremely difficult to find new employment suited to the skills he has acquired. Title X of the bill authorizes special programs in the Department of Labor to counsel and retrain such workers so that they may continue as active workers in the labor force.

Mr. President, there has been a debate in recent years over "income strategy" versus "services strategy" with respect to providing for those members of our society whose circumstances preclude complete self-sufficiency. In my judgment, there is a degree of compatibility between these two approaches that is perhaps best illustrated by the policy we have followed—largely through congressional initiatives—regarding the aging.

Over the last 4 years, Congress has enacted social security increases totaling 52 percent, with the result that retirement incomes of most older Americans have been substantially increased. The legislation we are considering here complements the income strategy embodied in those increases. An older citizen in need of home health care, or transportation to the doctor and the supermarket, or nutrition services, cannot use his increased income to purchase these services if they simply do not exist. This bill will help to provide a network of such vital services.

I am confident, Mr. President, that this bill, taken together with the social security legislation passed earlier, will help older Americans to lead fuller and richer lives, on the one hand, and permit our society to continue to reap the benefits of the contributions and accumulated wisdom of the aging, on the other.

Mr. President, I ask unanimous consent to have printed in the RECORD the title-by-title summary of S. 50, and the table on cost estimates to which I have referred.

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

TITLE-BY-TITLE SUMMARY OF S. 50

TITLE I—DECLARATION OF OBJECTIVES

This title expands the objectives contained in the original Older Americans Act of 1965 by placing emphasis on the need to make comprehensive social service programs available to older Americans and to insure their participation in the development of these programs.

TITLE II—ADMINISTRATION ON AGING

This title establishes the Administration on Aging and places it within the Office of the Secretary of Health, Education, and Welfare. AoA is headed by a Commissioner on Aging who is appointed by the President and confirmed by the Senate. The Administration on Aging is given primary responsibility for carrying out the programs authorized under this Act. Language has also been included to restrict the authority of the Commissioner or Secretary to delegate programs away from AoA until Congress is given an opportunity to veto such delegations. AoA is transferred from the Social and Rehabilitation Service (SRS) to the Office of the Secretary and the Commissioner of AoA made to report directly to the Secretary.

Title II also creates a "National Information and Resource Clearing House for the Aging" which is designed to collect analyze, prepare and disseminate information regarding the needs and interests of older Americans.

In addition, Title II contains a provision establishing a "Federal Council on Aging" which will be composed of 15 members appointed by the President and confirmed by the Senate. The Council will assist and advise the President on matters relating to the needs of older Americans; review and evaluate the impact of federal policies and programs on the aging; serve as a spokesman on behalf of older Americans by making recommendations to the President, the Secretary of Health, Education, and Welfare, the Commissioner on Aging, and the Congress with respect to federal activities in the field of aging; and undertake programs designed to increase public awareness of the problems and needs of our senior citizens. The Federal Council on the Aging will also undertake various studies designed to further clarify the specific needs of the elderly and recommend solutions to them, and to evaluate the effects of the allocation formula contained in Title III by which funds are allotted by state.

Authorization—National Information & Resource Clearing House for the Aging; FY 73, $750,000; FY 74, $1 million, FY 75, $1,250,000. Administration of the Act; such sums as may be necessary.

TITLE III—GRANTS FOR STATE AND COMMUNITY PROGRAMS ON AGING

Under Title III, the Administration on Aging will work with state aging offices to develop a state-wide plan for delivering social services to senior citizens. Each state will be divided into planning and service areas which will bear the primary responsibility for developing the apparatus required to deliver social and nutritional services to the elderly. These area aging units are designed to coordinate existing governmental services, purchase services, and/or provide services where they are otherwise unavailable.

In addition, the Commissioner may undertake "model projects" within a state giving special consideration to projects involving the housing needs of older persons, transportation needs, continuing education, pre-retirement information, and special services to the handicapped. It is hoped that these model projects will expand and improve the delivery of social services to older persons.

Authorizations:

Area Planning and Social Services; FY 73,

$100 million; FY 74, $150 million; FY 75, $200 million.

Planning, Coordination, Evaluation and Administration of State Plans; FY 73 $20 million; FY 74, $20 million, FY 75, $20 million.

Model Projects; FY 73, $20 million; FY 74, $25 million; FY 75, $30 million.

TITLE IV—TRAINING AND RESEARCH

The Commissioner on Aging is authorized to make grants for research and development projects in the field of aging. He may also undertake programs designed to attract qualified persons into the field of aging and to provide training programs for personnel in this field. There is also a provision for the establishment and support of multidisciplinary centers of gerontology which will assist in the research and training programs as well as provide technical assistance for state and local aging units.

Authorizations:

Training; FY 73, $10 million; FY 74, $15 million; FY 75, $20 million.

Research; FY 73, $15 million; FY 74, $20 million; FY 75, $25 million.

Special Transportation R&D; FY 73, $7.5 million; FY 74, $15 million; FY 75, $20 million.

TITLE V—MULTIPURPOSE SENIOR CENTERS

This provision provides for the acquisition, alteration, and renovation of multipurpose senior citizen centers. Included in this section are provisions for mortgage insurance for senior citizen centers, grant authorizations for staffing of such centers, and interest subsidies for mortgages.

Authorizations:

Grants for Multipurposes Senior Centers; FY 73, $10 million; FY 74, $15 million; FY 75, $20 million.

Loan Insurance for Multipurpose Senior Centers; such sums as may be necessary.

Annual Interest Grants; FY 73, $1 million; FY 74, $3 million; FY 75, $5 million.

Personnel Staffing Grants for Senior Centers; FY 73, $10 million; FY 74, $10 million; FY 75, $10 million.

TITLE VI—NATIONAL OLDER AMERICANS VOLUNTEER PROGRAM

This title extends and expands the authorization for the Foster Grandparents program and other Older Americans Community Service programs. These programs, which were transferred to the ACTION Agency in 1971 seek to involve Older Americans in a variety of programs designed to benefit persons, both children and adults having exceptional needs.

Authorizations:

RSVP; FY 73, $20 million, FY 74, $30 million; FY 75, $40 million.

Foster Grandparents and other Senior Volunteer programs; FY 73, $41 million; FY 74, $52 million; FY 75, $63 million.

TITLE VII—NUTRITION PROGRAM

This title makes several minor conforming changes in the nutrition legislation which was passed earlier this year. The changes are primarily designed to produce greater coordination between nutrition programs and the social service programs provided in Title III.

TITLE VIII—AMENDMENTS TO OTHER ACTS

This provision amends the Library Services and Construction Act, the National Commission on Libraries and Information Science Act, the Higher Education Act, and the Adult Education Act, so as to provide expanded opportunities for older Americans to participate in programs of continuing education.

Authorizations: See table.

TITLE IX—COMMUNITY SERVICE EMPLOYMENT FOR OLDER AMERICANS

This title is designed to provide community service jobs for low income older Americans 55 years of age and older in the fields of education, social services, recreational services, conservation, environmental restoration, economic development, etc. The programs created by Title IX are structured in such a way as to draw upon the experiences of numerous pilot and demonstration projects conducted by the Department of Labor under its Operation Mainstream program, under the names of Senior Aides and Green Thumb. It is estimated that as many as 40 to 60 thousand jobs could be created under the provisions of this title.

Authorizations:

Community Service Employment; FY 73, $100 million; FY 74, $150 million.

TITLE X—MIDDLE-AGED AND OLDER WORKERS TRAINING ACT

This title is designed to provide manpower training programs and other services to increase job opportunities for middle-aged and older persons. The Secretary of Labor will carry out the provisions of this title within the framework of existing programs during the remainder of fiscal year 1973, while new funds are authorized for fiscal year 1974.

Authorizations:

Middle-Aged and Older Workers Training: FY 74, $150 million.

COST ESTIMATES OF S. 50

	1973	1974	1975	1976	1977
Title I: Declarat on of objectives					
Title II:					
National information and resource clearing house for the aging	$750,000	$1,000,000	$1,250,000		
Administration of the act[1]					
Title III:					
Area planning and social service	100,000,000	150,000,000	200,000,000		
Planning, coordination, evaluation, and administration of State plan	20,000,000	20,000,000	20,000,000		
Model projects	20,000,000	25,000,000	30,000,000		
Title IV:					
Training	10,000,000	15,000,000	20,000,000		
Research	15,000,000	20,000,000	25,000,000		
Special transportation R. & D	7,500,000	15,000,000	20,000,000		
Title V:					
Multipurpose centers	10,000,000	15,000,000	20,000,000		
Loan insurance for multipurpose senior centers[1]					
Annual interest grants	1,000,000	3,000,000	5,000,000		
Personnel staffing grants	10,000,000	10,000,000	10,000,000		
Title VI:					
RSVP	20,000,000	30,000,000	40,000,000		
Foster grandparents and other senior volunteer programs	41,000,000	52,000,000	63,000,000		
Title VII: Nutrition program (authorized in Public Law 92-258)					
Title VIII:					
Older readers services	11,700,000	12,300,000	12,900,000	$13,700,000	
Special programs ((Title I, Higher Education Act)	5,000,000	5,000,000	5,000,000	5,000,000	$5,000
Special projects (Adult Education Act)					
Senior opportunities and services	7,000,000	7,000,000			
Title IX: Community service employment	100,000,000	150,000,000			
Title X: Middle-aged and older workers training		150,000,000			
Total	378,950,000	680,300,000	472,150,000	18,700,000	5,000

[1] Such sums as may be necessary.

Note: S. 50 total authorization, $1,555,100,000.

Mr. JAVITS. Mr. President, I yield myself 2 minutes.

The PRESIDING OFFICER (Mr. SCOTT of Virginia). The Senator from New York is recognized for 2 minutes.

Mr. JAVITS. I have strongly supported this bill, including titles IX and X. I will develop my reasons for that in due course, but I merely wish to state to the Senate at this time that it has twice passed both of these titles; that is, manpower training for older and middle-aged workers and community service employment for older workers, which is a continuation of the mainstream program, and an expansion of it, as it has developed under the Office of Economic Opportunity.

The Senator from Maryland (Mr. BEALL) in due course will be acting with respect to both of these titles. I know he is devoted to the bill, other than these titles. Indeed he is in the anomalous position in which I and others have found ourselves on other occasions concerning other bills, in that his tremendous creativity in respect of this bill seems to be lost in the fact that he has profound disagreement, in the interests of securing the bill itself, with titles IX and X. Therefore, unless I said it, it might be difficult to distinguish, so far as the Senator is concerned, his position on these two titles from his position on the bill generally, of which he was a principal architect.

So I would like the record to be clear that Senator BEALL, the ranking minority member of the Aging Subcommittee of the Committee on Labor and Public Welfare, of which I am the ranking minority member, has been the principal architect, on the part of the minority, of the amendments which will do much to broaden the opportunities for older Americans. I will testify to his deep devotion to this expansion of opportunity. He has a profound disagreement with

the majority of the committee, which includes myself, on how much the bill will be hurt by the inclusion of the two manpower training titles, and that is his only difference. I respect it fully, though I do not agree with him, and I think the record should be very clear as to his outstanding service with respect to the proposed legislation.

I consider myself a trustee of the time assigned to the minority. So far as I know, there have been no other requests for time, and in that spirit I yield 15 minutes to the Senator from Maryland (Mr. BEALL).

Mr. BEALL. Mr. President, I thank the distinguished ranking minority member of the Committee on Labor and Public Welfare, the Senator from New York, for his very kind remarks with regard to my participation in this measure and his very accurate description of our areas of disagreement. It is not a disagreement as to the intent of the proposed legislation. I think we disagree as to how we should proceed in order to get legislation continuing and improving, the activities of the Administration on Aging on the books as part of the law of the land.

I appreciate the very kind remarks of the distinguished Senator from New York with regard to our service and our general agreement on the aims of this measure.

Mr. President, I will develop my arguments against the inclusion of the manpower titles in this measure, at a later time, when I offer my motion, dealing with this matter.

Mr. President, it is a pleasure for me to join once again the distinguished chairman of the Labor and Public Welfare Committee's Subcommittee on Aging in bringing up for Senate consideration the comprehensive older Americans services amendments. I would like to commend the junior Senator from Missouri who has diligently overseen this committee's deliberations on the amendments to the Older Americans Act of 1965. As a result of the committee's efforts, we have before us today a bill which, with two reservations, I believe is worthy of the prompt and favorable consideration of the full Senate. This bill reflects many of the ideas that were contained in the testimony of expert witnesses, the advice and guidance of the appropriate officials from the various government agencies involved, as well as inputs from Senators on both sides of the aisle.

S. 50 is basically the same legislation that was passed by the Senate last October and subsequently disapproved by the President. There are, however, several significant improvements which I think we should note. The conference report on H.R. 15657 had a total authorization level, for the 3-year life of the bill of approximately $2 billion. The President indicated in his memorandum of disapproval that these authorization levels were "far beyond what can be used effectively and responsibly." S. 50, has a 3-year authorization level of just over $1.5 billion, a reduction of $500 million or 25 percent. In addition, the bill contains various technical improvements, many recommended to us by the Department of Health, Education, and Welfare, which will serve to improve the functioning of the older Americans programs mandated by this bill. For instance, we have included in S. 50 a provision to allow for phase-in funding of existing title III programs during the period when the new State and area plans are being developed. This change should assure the smooth transition from the current program to the more ambitious one envisioned in this legislation. Another interesting addition to S. 50 is the directive to the Federal Council on Aging to carry out a comprehensive study of the functioning of the funds distribution formula contained in this bill. As all of us are aware, the controversy surrounding the distribution of funds often evokes considerable debate and disagreement between the large States and those with smaller populations. It is hoped that the study conducted by the Federal Council on Aging will give us our first comprehensive review of the functioning of this funding formula and enable Congress to more knowledgeably legislate in this area when this bill comes up for reconsideration in 3 years.

Mr. President, I believe that the older Americans portions of S. 50—the first eight titles—would make a significant contribution to the well-being of our senior citizens:

TITLE I, THE DECLARATION OF OBJECTIVES

In title I, the Congress expanded the objectives contained in the original Older Americans Act of 1965 by placing additional emphasis on the need to make comprehensive social service programs available to older Americans, giving greatest priority to those in need, and to insure the participation of senior citizens in the development of these programs.

TITLE II, THE ADMINISTRATION ON AGING

This title reestablished the Administration on Aging and places it within the Office of the Secretary of Health, Education, and Welfare. Since 1967, AOA has been located under the Administrator for Social and Rehabilitation Services. This placement within the administrative structure of the Department of Health, Education, and Welfare clearly reduced the effectiveness and visibility of AOA and severely limited its ability to carry out its assigned mandate. It was clearly the objective of Congress, with broad bipartisan support, to bring about a significant updating and strengthening of the Administration on Aging so that it can more adequately cope with the unique and pressing problems of the aging. The Administration on Aging is to be headed by a Commissioner on Aging who is to be appointed by the President with the advice and consent of the Senate. The Administration on Aging is given the primary responsibility for carrying out the programs authorized under this act.

In addition, title II creates a "National Information and Resource Clearing House for the Aging" which is designed to collect, analyze, prepare, and assimilate information regarding the needs and interests of older Americans. In addition, title II contains a provision establishing a "Federal Council on the Aging" which will be composed of 15 members appointed by the President and confirmed by the Senate. The Council will assist in advising the President on matters relating to the needs of older Americans; review and evaluate the impact of Federal policies and programs on the aging; serve as a spokesman on behalf of older Americans by making recommendations to the President, Secretary of Health, Education, and Welfare, the Commissioner on Aging, and the Congress with respect to Federal activities in the field of older Americans; and undertake programs designed to increase public awareness of the problems and need of our senior citizens. The Federal Council on the Aging will also undertake various studies designed to further clarify the specific needs of the elderly, recommend solutions to them, and as I mentioned before, it will monitor the functioning of the title III formula program so as to provide Congress with the information we need to more effectively legislate in this area.

TITLE III, GRANTS FOR STATE AND COMMUNITY PROGRAMS ON AGING—STATE AND LOCAL GRANTS

Undter title III, the Administration on Aging will work with State aging offices to develop statewide plans for delivering comprehensive social services to senior citzens. Most States will be divided into planning and service areas which will contain an area planning unit which will bear the primary responsibility for developing the apparatus required to deliver comprehensive social and nutritional services to the elderly within their area. These area planning units are designed to coordinate existing governmental services, purchase services, and/or provide services where they are otherwise unavailable. This effort to establish a more coherent and comprehensive approach to the delivery of social and nutritional services to our senior citizens is perhaps the most outstanding reform contained in this legislation.

Title III further authorizes the Commissioner to undertake "model projects" within the various States, giving special consideration to projects involving the housing needs of older people, transportation, continuing education, preretirement information, special services to the handicapped, and so forth. It is hoped that these model projects will enable us to substantially expand and improve the delivery of social services to older Americans.

S. 50 also places great emphasis on the need for information and referral systems on both the State and area levels. The committee believes that the vitality and resourcefulness of most of our senior citizens will enable them to successfully grapple with many of the problems confronting them if they have in their possession the proper kind of information.

TITLE IV, TRAINING AND RESEARCH

The Commissioner on Aging is authorized to make grants for research and development projects in the field of aging. He may undertake programs designed to attract qualified persons into the field of aging and to provide training programs for personnel in this field. There is also a provision for the establishment and support of multidisciplinary centers of gerontology which will assist in the

research and training programs as well as provide technical assistance for State and local aging units.

TITLE V, MULTIPURPOSE SENIOR CENTERS

This provision authorizes the acquisition, alteration, and or renovation of multipurpose senior citizen centers. In addition, it includes a section which authorizes the Commissioner to insure mortgages for the acquisition, alteration, or renovation of multipurpose senior citizen centers. The Commissioner also may make grants for the staffing of these senior citizen centers at a declining Federal share of 75, 66⅔, and 50 percent.

TITLE VI, NATIONAL OLDER AMERICANS VOLUNTEER PROGRAM

This title extends and expands the authorization for the foster grandparent program and other older Americans community service programs. Most of these programs were originally authorized under the Older Americans Act, but the administration of them has subsequently been transferred to the Action Agency. It is anticipated that the Congress will consideration Action Agency legislation later this year which will probably repeal title VI of the Older Americans Act and reenact it as part of the overall action legislation.

TITLE VII, THE NUTRITION PROGRAM

This title makes several minor conforming changes in the nutrition legislation which was passed in March of 1972. The changes are primarily designed to produce greater coordination between the nutrition program and the social service program provided for in title III.

TITLE VIII, AMENDMENTS TO OTHER ACTS

This provision amends the Library Services and Construction Act, the National Commission on Library Information Science Act, the Higher Education Act of 1965, and the Adult Education Act, so as to provide expanded opportunities for older Americans to participate in programs of continuing education.

Mr. President, the two remaining titles of S. 50, titles IX and X would establish categorical manpower programs to be administered by the Department of Labor. While I am very sympathetic with the need to open new job training and employment opportunities for senior citizens, I believe that it should be clear to all of us that the inclusion of these titles will almost assuredly bring about a second Presidential veto. This is a matter, Mr. President, which I will address myself to in greater detail later in this debate.

Mr. President, it is with the first eight titles that I find myself in agreement. However, I do not agree with the inclusion of titles IX and X in this bill.

I have been joined in the presentation of supplemental views on this subject by Senators DOMINICK and TAFT, and I ask unanimous consent that the supplemental views be printed at this point in the RECORD, because I think they outline our basic objection to this bill in its present form.

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

SUPPLEMENTAL VIEWS OF MESSRS. BEALL, DOMINICK, AND TAFT

We support, with two reservations, the Amendments to the Older Americans Act of 1965 which were ordered reported by the Labor and Public Welfare Committee on February 7, 1973. There is no disagreement that the problems of the aging deserve attention from the Federal Government at the highest levels, and the goal of this legislation is to expand the authority of the Administration on Aging so that it can more effectively deliver social and nutritional services to older Americans. There is no constituency more deserving of assistance or more willing to help themselves than our senior citizens.

Substantial progress has been made in the past several years in bringing a higher degree of visibility and recognition, within our government, to the problems of the aging. The appointment of Doctor Arthur S. Flemming to serve as the Special Consultant to the President on Aging has brought a distinguished public servant and a vigorous advocate of senior citizen causes into a prominent position within the White House. Doctor Flemming's work, coupled with the effort of the Committee on Aging within the President's Cabinet-level Domestic Council, reflects a firm commitment to promote the interest of senior citizens at the highest level of our government. Title II of S. 50 revamps and upgrades the Administration on Aging by placing it in the Office of the Secretary of Health, Education, and Welfare. This reorganization will give the Administration on Aging a status far greater than it has ever possessed before. It will serve to guarantee that the problems of the aging will receive attention at the highest possible level.

We are, however, concerned about Titles IX and X of this bill which would create programs of Community Service Employment for Older Americans and Middle-Aged and Older Workers Training, respectively. Title IX was originally introduced in the 92nd Congress as a separate proposal (S. 555). This bill would create a two year Public Service Employment Program for senior citizens designed to create 40,000 jobs the first year and 60,000 jobs the second year. As separate legislation, this bill was approved by the Subcommittee on Aging, the Labor and Public Welfare Committee, and the Senate during the closing days of the 2nd Session of the 92nd Congress. The primary argument used to justify the inclusion of this title in the Older Americans Act was that the House of Representatives could not consider the Senate-passed bill without suspending its rules. To overcome this obstacle, the Older Americans Community Service Employment Act was added as an additional title to the Older Americans Act which was viewed as a suitable vehicle for overcoming the parliamentary obstruction in the House of Representatives. At this stage of the 93rd Congress, it is obvious that the rules of the House no longer serve as an obstacle to the consideration of Title IX as a separate legislative proposal to be weighed on its own merits.

Title X, the Middle-Aged and Older Workers Training Act, was also introduced during the 92nd Congress as a separate bill (S. 1307). This proposal would create a categorical manpower program designed to provide training for middle-aged and older workers aged 45 and over. As a separate measure, this proposal received the approval of the Subcommittee on Aging and the Labor and Public Welfare Committee last year. No report was filed, and the bill never proceeded to the consideration of the full Senate. It was subsequently added to the Older Americans Act, so as to insure its passage by the 92nd Congress.

In the Memorandum of Disapproval, President Nixon clearly indicated that the inclusion of Titles IX and X were a major factor in his decision to withhold his signature from this important legislation. In his statement dated October 30, 1972, the President said that—

* * * the Congress added to the bill containing these provisions a range of narrow, categorical service programs which would seriously interfere with our efforts to develop coordinated services for older persons. This is particularly the case with two categorical manpower programs which were added on the floor of the Senate and were considered without regard to manpower programs already serving older persons.

Shortly after the President withheld his approval from the Older Americans Comprehensive Service Amendments of 1972, we wrote the Honorable Elliot Richardson, Secretary of Health, Education, and Welfare, the Honorable Caspar Weinberger, Director of the Office of Management and Budget, and other Administration officials in an effort to more clearly determine the nature of the President's opposition to this proposal. In a letter dated December 26, 1972, Secretary Richardson stated that—

in addition, the new manpower programs would have duplicated existing programs aimed at identical clientele groups, using the same institution, and competing for the same jobs and training opportunities. They would therefore have added to the severe administrative difficulties which the Administration's Manpower Revenue Sharing proposal was designed to eliminate.

In a letter dated January 2, 1973, Director Weinberger stated:

As you know, the President's Memorandum of Disapproval on H.R. 15657 called attention to the provisions of the bill which would have established a range of new narrow categorical service programs contrary to the Administration's approach of more comprehensive, coordinated local delivery of services to the elderly.

But, most important is the basic fact that S. 50, in its present form, is clearly two or perhaps three distinctly different pieces of legislation. The principal portion of this legislation is a bill designed to extend, expand, and improve the Older Americans Act of 1965. The core of federal efforts to improve the lot of our senior citizens is carried on within the Department of Health, Education, and Welfare by the Administration on Aging. The first eight titles of S. 50 address themselves to this department and programs conducted therein, with the exception of Title VI which authorizes certain Action Agency programs which had previously been established under the authority of the Older Americans Act.

The second measure contained with S. 50 is a two part manpower proposal. Titles IX and X are, in fact, separate acts designed to be administered by the Department of Labor and wedded to the Older Americans Act as a legislative and political marriage of convenience. We believe that this practice is fundamentally unsound for three basic reasons:

1. It is fundamentally unjust to unnecessarily delay the enactment and implementation of programs designed to greatly expand and improve the social and nutritional services so desperately needed by many of our senior citizens for reasons totally extraneous to the purposes of this legislation.

2. Congress has a responsibility to exercise its vast legislative powers in a responsive and responsible manner. During this period, when the Congress is seeking to fully reassert its constitutional prerogatives, we believe that it is especially important for the Senate to enact legislation that directly relates to the individual programs and problems which we

are seeking to establish or resolve without the all too frequently added riders which blur the merits of a given proposal. We believe that our constituents and the country expect the Congress and each of its Members to take forthright stands on the issues confronting our Nation, a prospect which is almost impossible when dealing with the so called "Christmas Tree" bills.

3. Recently the Congress has voiced its objections to the misuse of Executive powers in the legislative process. While some of this criticism may be justified, we believe that the practice of enacting multipurpose legislation severely limits the ability of the President to exercise his constitutional power of veto. We are asking the President to make a judgment on the "lesser of evils" rather than on the merits of the particular legislation.

We believe that the Congress should enact the first eight titles of S. 50 as the Amendments to the Older Americans Act of 1965. This essentially "clean" bill should be sent to the President and weighed on its merits. This approach would allow the Congress to responsibly demarcate between two significant areas of need, require the President to evaluate each according to its merits, and if need be, bring back to the Congress vetoed proposals which are clearly defined and upon which the Congress can further work its will.

The choice is clear, we can enact a "clean" bill that relates to the programs conducted by the Department of Health, Education, and Welfare so that our senior citizens can begin to receive the benefits and services they so rightly deserve; or we can seek to add extraneous categorical programs which will most likely bring about a second veto. In other words, Congress can seek to enact a bill or to produce an issue. The wellbeing of our senior citizens is more important to us than the political advantages, real or imagined, that might be achieved by forcing a confrontation between the Congress and the President on this issue.

J. GLENN BEALL, Jr.
PETER H. DOMINICK.
ROBERT TAFT, Jr.

Mr. BEALL. I point out that we disagree with the inclusion of titles IX and X for basically three reasons:

1. It is fundamentally unjust to unnecessarily delay the enactment and implementation of programs designed to greatly expand and improve the social and nutritional services so desperately needed by many of our senior citizens for reasons totally extraneous to the purposes of this legislation.

Then, we say:

2. Congress has a responsibility to exercise its vast legislative powers in a responsive and responsible manner. During this period, when the Congress is seeking to fully reassert its constitutional prerogatives, we believe that it is especially important for the Senate to enact legislation that directly relates to the individual programs and problems which we are seeking to establish or resolve without the all too frequently added riders which blur the merits of a given proposal. We believe that our constituents and the country expect the Congress and each of its Members to take forthright stands on the issues confronting our Nation, a prospect which is almost impossible when dealing with the so called "Christmas Tree" bills.

3. Recently the Congress has voiced its objections to the misuse of Executive powers in the legislative process. While some of this criticism may be justified, we believe that the practice of enacting multipurpose legislation severely limits the ability of the President to exercise his constitutional power of veto. We are asking the President to make a judgment on the "lesser of evils" rather than on the merits of the particular legislation.

I think there is no excuse, at this time, for allowing titles IX and X to be included in the bill because this legislation falls within the jurisdiction of the Subcommittee on Aging. Traditionally and according to the Rules of Procedure, manpower legislation is reviewed by the Subcommittee on Manpower. I do not believe that we should not combine, in a single bill, matters administered by the Department of Health, Education, and Welfare and matters under the jurisdiction of the Department of Labor.

It seems to me that the President made his point clear in his veto message last fall. He said one of the principal reasons he vetoed the bill was because it included titles IX and X. He said that he had some disagreement with their intent. I do not know if I agree with his analysis of title IX and X but I do agree that they do not belong in the bill. If we are interested in getting a bill to help resolve some of problems relating to aging and to give a higher degree of responsibility and visibility to the Administration on Aging, then we will do well to strike out these two titles and not give the President a bill we know he will veto. There may be enough votes here to override the veto, but then again there may not be. In the meantime we are delaying the enactment and implementation of legislation dealing with problems of the aging for a considerable period of time.

This legislation could be passed now and placed before the President. I do not know if he would sign the bill with just the first eight titles, but at least we have a better chance and we would be in a far better position as far as congressional responsibility is concerned.

So at the appropriate point in our discussion I will make a motion that will have the effect of removing titles IX and X from the bill so that they can be considered as separate legislation, I do not see any reason, this early in the session, why we should be considering manpower legislation in a bill principally devoted to reorganizing the Administration on Aging.

I am prepared to yield back whatever time I have remaining.

Mr. JAVITS. Mr. President, will the Senator yield to me for 1 minute?

Mr. BEALL. I yield.

Mr. JAVITS. Mr. President, I ask unanimous consent that John Scales, manpower specialist of the Committee on Labor and Public Welfare, be permitted on the floor.

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

Mr. BEALL. Mr. President, I ask unanimous consent that David Rust of my staff may have the same privilege.

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

Mr. EAGLETON. Mr. President, I ask unanimous consent that the name of the Senator from Tennessee (Mr. BROCK) may be added as a cosponsor to S. 50.

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

Mr. EAGLETON. Mr. President, I suggest to the Senator from Maryland (Mr. BEALL) that now is the time to offer his amendment to strike titles IX and X and then we could get to a debate on the merits.

Mr. BEALL. I wanted to be sure that other Senators had an opportunity to speak on the bill.

The PRESIDING OFFICER. The question first occurs on the committee amendments, en bloc.

Mr. EAGLETON. Mr. President, I move their adoption.

Mr. JAVITS. Mr. President, if the Senator will yield, if the amendment of the Senator from Maryland (Mr. BEALL) is offered, should we not get unanimous consent to consider them as original text? If the Senator will yield to me for 1 minute, will the experts tell us if this will block consideration of the proposal if we approve the amendments en bloc?

Mr. EAGLETON. Mr. President, I address that as a parliamentary inquiry to the Chair.

The PRESIDING OFFICER. If the committee amendments are agreed to, no amendments to those amendments are in order.

Mr. JAVITS. Mr. President, I ask unanimous consent that the committee amendments may be considered as original text to the bill and open to amendment in the usual way.

The PRESIDING OFFICER. Without objection, it is so ordered. Without objection, the committee amendments are agreed to en bloc.

Mr. BEALL. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BEALL. Mr. President, it is my intention to make a motion to recommit the bill with instructions to the committee to report the bill back forthwith with titles IX and X deleted. If I make that motion do I understand we have one-half hour debate under the order entered into?

Mr. JAVITS. Mr. President, I yield myself 2 minutes for a parliamentary inquiry. If that is the intention of the Senator we cannot adopt the committee amendments. I wish to ask the Chair whether a motion to recommit with instructions may lie notwithstanding the fact that instructions affecting a committee amendment adopted by the Senate in the course of the debate.

Mr. President, I withdraw that inquiry. Let the matter remain where it is for a moment.

Mr. BEALL. I thank the Senator.

Mr. EAGLETON. Mr. President, then the situation is that once the motion is made by the Senator from Maryland each side would get 30 minutes.

Mr. JAVITS. Fifteen minutes on each side.

Mr. EAGLETON. Fifteen minutes on each side.

Mr. BEALL. Mr. President, I wish to propound a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BEALL. As I understand it, we still have the opportunity to yield ourselves time on the bill should we run out of time under the one-half hour.

Mr. EAGLETON. I would prefer the Senator make his motion.

Mr. BEALL. Did I get an answer to my inquiry? Is it in the affirmative?

The PRESIDING OFFICER. Under

the unanimous-consent agreement time may be yielded as the Senator suggests.

Mr. BEALL. Mr. President, may I be recognized to make a motion?

The PRESIDING OFFICER. The Senator is recognized.

Mr. BEALL. Mr. President, I move to recommit S. 50 to the Committee on Labor and Public Welfare with instructions to report the first eight titles of the bill back to the Senate forthwith.

The PRESIDING OFFICER. Will the Senator submit his motion to the desk.

Mr. BEALL. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BEALL. May I withdraw my motion and make a further parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BEALL. I ask unanimous consent to withdraw my motion.

The PRESIDING OFFICER. The motion is withdrawn.

Mr. BEALL. Mr. President, if I were to make a motion to recommit S. 50 with instructions to report back forthwith with the first eight titles, may I further add to that motion language to the effect that we may add manpower to the bill as soon as the procedure is allowed?

The PRESIDING OFFICER. The Chair would not feel that is possible. There is a rule of germaneness.

Mr. BEALL. I did not understand the Chair.

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

The PRESIDING OFFICER. On whose time?

Mr. JAVITS. Mr. President, I ask unanimous consent that it may be charged to both sides.

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

The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. EAGLETON. 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. EAGLETON. Mr. President, I ask unanimous consent that floor privileges may be afforded to Mr. Robert Humphreys during the pendency of this bill.

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

Mr. BEALL. Mr. President, will the Senator yield me some time?

Mr. JAVITS. Of course, whatever the Senator wishes. Ten minutes?

Mr. BEALL. Five minutes.

Mr. JAVITS. I yield 5 minutes to the Senator from Maryland.

Mr. BEALL. Mr. President, I had hoped that I could make a motion to recommit the bill with instructions that the committee report the first eight titles of the bill back to the Senate forthwith, and then bring back a second bill composed of titles IX and X. That cannot be done in a correct parliamentary fashion. Therefore, I am going to make a motion to recommit the bill with instructions to report it back forthwith, without titles IX and X. I should state that it is not my intention, in making this motion, to say that I am against titles IX and X, because I think these titles have a great deal of merit and should be considered by the Senate as separate legislation.

I think, however, we are jeopardizing the possibility of this legislation ever being signed into law because titles IX and X are included. I think it would be much cleaner legislative procedure to have them come up as separate pieces of legislation. So I will make a motion to recommit the legislation with instructions that the first 8 titles be reported back forthwith, with titles IX and X deleted, and I will, if this motion carries, introduce titles IX and X as a separate bill this afternoon. I want to make it perfectly clear that it is not my intention to kill titles IX and X, but it is my intention to have this bill passed with the best chance of its getting Executive approval.

I say that without having had any conversations with those who make that kind of decision, but it is obvious that if the President vetoed this basic bill last October, he is very likely to veto it again.

The PRESIDING OFFICER. Is the Senator making that motion?

Mr. BEALL. Mr. President, the Chair is correct, and I am talking on the time very generously given to me by the Senator from New York. For the purpose of making my intentions clear.

Mr. President, I move to recommit S. 50 to the Labor and Public Welfare Committee with instructions to report the first eight titles of the bill back to the Senate forthwith.

The PRESIDING OFFICER. The motion will be read by the clerk.

The assistant legislative clerk read the motion, as follows: I move to recommit S. 50 to the Labor and Public Welfare Committee with instructions to report the first eight titles of the bill back to the Senate forthwith.

The PRESIDING OFFICER. The question is on agreeing to the motion.

Who yields time?

Mr. JAVITS. Mr. President, I yield myself 30 seconds for a parliamentary inquiry. This time is controlled by the mover, and the Senator from Missouri (Mr. EAGLETON) is the opponent. Is that correct?

The PRESIDING OFFICER. If the Senator from Missouri is opposed to the motion.

Mr. JAVITS. I gather he is.

Mr. EAGLETON. Yes.

Mr. BEALL. Mr. President, I yield myself 5 minutes.

Mr. President, 11 months ago I introduced S. 3391, the administration's proposed revisions of title III of the Older Americans Act of 1965. Under the provisions of that legislation, the Administration on Aging would have assumed a much more active role in developing State and area plans for the comprehensive delivery of services to our Nation's senior citizens. Not only would the administrative structure of our aging programs be strengthened, but it was our intention to make this structure increasingly responsive to the unique and growing problems of our senior citizens. The areawide planning agencies would seek to assess the needs of the elderly in each community and to formulate a plan to meet these needs through a coordinated, comprehensive service delivery system. I believe that it is through the provision of additional comprehensive nutritional and social services that the goals of continued independence and improved well-being for the Nation's elderly can be met.

This bill, and others introduced by various Senators, was referred to the Labor and Public Welfare Committee's Subcommittee on Aging, on which I am pleased to serve as the ranking minority member. During the remainder of the second session of the 92d Congress, our subcommittee worked to produce a bill that would achieve these goals.

As we are all aware, the ensuing bill—H.R. 15657—was passed in the closing days of the 92d Congress and pocket vetoed by the President on October 30.

Mr. President, I ask unanimous consent that the portion of the White House memorandum of disapproval relating to H.R. 15657 and letters I received from former Secretary of Health, Education, and Welfare, Elliot Richardson, and the former Director of the Office of Management and Budget, Casper Weinberger, further explaining the reasons for his veto, be printed in the RECORD at this point in my statement.

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

OLDER AMERICANS COMPREHENSIVE SERVICE AMENDMENTS OF 1972 (H.R. 15657)

Last March, I submitted to the Congress a plan for strengthening and expanding service delivery programs under the Older Americans Act. This program would begin the development of more comprehensive and better coordinated systems for delivering services at the local level. In addition, I submitted a proposal to broaden the highly successful Foster Grandparents Program. The Administration will continue its vigorous pursuit of both these objectives.

However, the Congress added to the bill containing these provisions a range of narrow, categorical service programs which would seriously interfere with our effort to develop coordinated services for older persons. This is particularly the case with two categorical manpower programs which were added on the floor of the Senate and were considered without regard to manpower programs already serving older persons. Furthermore, this bill would authorize new funding of more than $2 billion between now and fiscal year 1975—far beyond what can be used effectively and responsibly.

I cannot responsibly approve H.R. 15657.

THE SECRETARY OF HEALTH,
EDUCATION, AND WELFARE,
Washington, D.C., December 26, 1972.

Hon. J. GLENN BEALL, JR.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BEALL: Thank you for your letter of November 21 concerning the objections underlying the President's disapproval of H.R. 15657.

As you know, the President's Memorandum of Disapproval of October 30 specifically cited the categorical manpower programs and the high authorizations as provisions in the bill to which he objected.

The authorization levels in H.R. 15657 were well beyond what the Administration be-

lieved could be used effectively and would have raised false expectations among the elderly.

In addition, the new manpower programs would have duplicated existing programs aimed at identical clientele groups, using the same institutions, and competing for the same jobs and training opportunities. They would therefore have added to the severe administrative difficulties which the Administration's Manpower Revenue Sharing proposal was designed to eliminate. The bill would have authorized other new categorical programs in HEW that would have been duplicative of existing federal authority.

H.R. 15657 would also have legislated various highly undesirable organizational changes in HEW. The bill would have moved the Administration on Aging (AOA) from the Social and Rehabilitation Service component of HEW to the Office of the Secretary. It would also have placed authority for carrying out AOA's responsibilities under the Act in the Commissioner on Aging, rather than the Secretary. The Commissioner would have been prohibited from delegating any of his functions to an officer not directly responsible to him, unless he first submitted a delegation plan to Congress and neither House disapproved within 30 days.

The mandating of organizational changes in HEW would seriously impede the Secretary's authority to organize and manage the Department. The prohibition on delegation would likewise restrict the Department's managerial flexibility and would raise constitutional issues.

Among other defects, the bill also did not adopt the three year limit on Federal funding of service projects which had been proposed by the Administration. Thus the bill, in effect, would have provided permanent Federal funding rather than having States and localities assume financial responsibility for aging programs after an initial period of Federal assistance.

Finally, as you are aware, the Executive Branch is currently in the process of developing the budget and legislative proposals for fiscal year 1974. As part of this process, budget and legislative decisions relating to the Administration's proposed programs for the elderly in the next Congress are presently under consideration. These decisions will be reflected in the 1974 budget and legislative proposals which will be submitted to Congress as early in the coming session as possible.

I very much appreciate your concern and assistance in these matters.

With kindest regards,

Sincerely,

ELLIOT RICHARDSON,
Secretary.

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C. January 2, 1973.

Hon. J. GLENN BEALL, JR.,
U.S. Senate
Washington, D.C.

DEAR SENATOR BEALL: Thank you for your letter of December 5 concerning the objections which impelled the President to disapprove H.R. 15657.

As you know, the President's Memorandum of Disapproval on H.R. 15657 called attention to the provisions of the bill which would have established a range of new narrow categorical service programs contrary to the Administration's approach of more comprehensive, coordinated local delivery of services to the elderly. In addition, as the Memorandum noted, the bill would have authorized funds far in excess of what can be used effectively and responsibly.

We are presently engaged in the formulation of the 1974 budget. The President's recommendations to the 93rd Congress with regard to programs for the elderly are under consideration in the context of that process. The outcome of our current considerations will be reflected in the budget which we will be submitting early in the coming session of the Congress.

I appreciate your interest in this matter.

Sincerely,

CASPAR WEINBERGER,
Director.

Mr. BEALL. Mr. President, it is obvious to all of us that the inclusion of titles IX and X were a major factor in the President's decision to withhold his signature from this important legislation. Title IX, the Community Service Employment for Older Americans Act, was originally introduced into the 92d Congress as S. 555. Under the provisions of this legislation, a 2-year public service employment program for senior citizens would have been created. As separate legislation, this bill won the approval of the Subcommittee on Aging, the Labor and Public Welfare Committee, and the Senate during the closing days of the 92d Congress. The primary argument used to justify its incorporation into the Older Americans Act was the fact that the House of Representatives could not consider the Senate-passed bill without first suspending its rules. To overcome this obstacle, the Older Americans Community Service Employment Act was added as an additional title to H.R. 15657, the amendments to the Older Americans Act. This decision was made because the Older Americans Act seemed to be a suitable vehicle for overcoming the parliamentary obstacles that existed in the House of Representatives. At this early stage in the 93d Congress, it is obvious that the House rules no longer serve to obstruct the early consideration of title IX as a separate legislative proposal to be weighed on its own merits.

Title X, the Middle-Aged and Older Workers Training Act, was originally contained in a comprehensive manpower bill which was vetoed by the President and revived during the 92d Congress as a separate legislative proposal—S. 1307. This measure would create a categorical manpower program designed to provide training for middle-aged and older workers 45 years of age and older. As a separate measure, this proposal also received the approval of the Subcommittee on Aging and the Labor and Public Welfare last year. No report was filed, and the bill was not considered by the full Senate. It was, however, subsequently added as an amendment to the Older Americans Act to insure its passage during the closing days of the second session of the 92d Congress.

It is not my intention to delve into the merits of either titles IX or X which seek to resolve pressing problems confronting our senior citizens. I, for one, am very sympathetic with the worthy goals set forth in these titles. But there are several basic, and I believe very profound, points which must be made relative to this legislative package which is pending before the Senate at the present time. S. 50, in its present form, is clearly two or perhaps three different pieces of legislation. The principal portion of this bill is designed to expand, extend, and improve the Older Americans Act of 1965. The Administration on Aging, contained within the Department of Health, Education, and Welfare, is the central agency charged with the responsibility for carrying out the Federal role in efforts to improve the lot of our senior citizens. This legislation dramatically strengthens and upgrades the Administration on Aging in an effort to increase its effectiveness in meeting these pressing problems. The first eight titles of S. 50 address themselves primarily to this Department and the programs conducted therein, with the exception of title VI which authorizes certain action agency programs which have previously been established under the authority of the Older Americans Act. I believe that a complete legislative package will come before the Senate later this year with regards to the action program. If this is in fact the case, title VI will be repealed and the action agency will no longer need to derive its authority to conduct senior citizen programs from the Older Americans Act.

The second and third measures contained within S. 50 are the two part manpower proposals discussed previously. Titles IX and X are, in fact, separate acts designed to be administered by the Department of Labor and wedded to the Older Americans Act as a legislative marriage of convenience.

My motion to recommit this legislation is based, not out of opposition to the merits of titles IX and X, but out of the firm conviction that the congressional "shotgun wedding" is a fundamentally unsound, unwise, and unfair legislative technique.

S. 50 is primarily designed to establish the necessary administrative structure needed to implement an expanded program of nutritional and social services for our senior citizens. Many of our 20 million senior citizens desperately need these vital services, and they are being denied them unnecessarily and unjustly for reasons totally extraneous to the primary purposes of this legislation. Since last June, when the title III programs expired, the Federal program for the aging has been in a state of suspended animation. This state of marking time was extended at the end of October when the President vetoed H.R. 15657—primarily because of the inclusion of titles IX and X—and I believe it is safe to assume that the same fate will befall S. 50 in its present form. I cannot justify in my own mind the continued delay in enacting and implementing this legislation, and that, Mr. President, is the fundamental issue in this debate.

A second point which I believe merits consideration, is the need for Congress to exercise its legislative powers in a responsible manner. This is a period when the Congress is seeking to fully reassert its constitutional prerogatives, an objective which I fully support. But to achieve this goal, I believe that it is important for the Senate to enact legislation that relates directly to the individual programs and problems which we are seeking to establish or resolve without the all too frequently added riders which obscure the merits of a given proposal. I believe that the enactment of so-called Christmas tree bills makes it virtually impossible for the Congress to take forthright stands on the issues confronting our Nation. I

personally believe that our constituents expect more of us individually and the nations deserves more from us collectively than they are presently receiving.

The third point which I believe to be relevant to this discussion revolves around the President's use of his constitutional powers. Many voices in the Senate, as well as in the other body, have recently been raised in opposition to the misuse of Executive powers in the legislative process. While some of this criticism may well be justified, I believe that the practice of enacting multipurpose legislation severely limits the President's ability to exercise his constitutional power of approving or disapproving legislation in a responsible manner. When we confront him with conglomerate legislation, we are usually trying to force him to sign into law legislation which he clearly opposes along with something he obviously wants. In other words, we are asking the President to make a judgment on the basis of the "lesser of the evils" rather than the positive merits of the legislation before him. It is interesting to note, that many of our Governors possess the item veto which enable them to remove undesirable sections of legislation while signing the remainder of it into law. In their wisdom, our constitutional forefathers chose to deny the President that power, but they might well have seen this issue differently had they had the opportunity to observe the modern Congress in action.

In conclusion, Mr. President, I would like to stress once again that my opposition to titles IX and X has not been directed at the merits of the proposals. There is only one issue at stake as far as I am concerned. How can we expedite the enactment of legislation that will dramatically expand and improve the delivery of social and nutritional services to the senior citizens who need them. My motion to recommit this bill to the Labor and Public Welfare Committee with instructions to immediately report the first eight titles as a separate bill is based on my desire to maximize the chances of prompt enactment of this legislation, to maximize the chances that the President will sign the bill into law and enthusiastically implement it, and to maximize, if need be, the chances that the Congress can override the President's veto of a clean bill. Generating issues, forcing a confrontation with the President, and bringing about another veto are certainly not going to create jobs for senior citizens, train middle-aged workers, provide nutrition services for these senior citizens, expand a myriad of social services, et cetera. The 445,000 senior citizens in the State of Maryland deserve better than that, the 20 million senior citizens throughout our Nation deserve better than that, and that, Mr. President, is the sole reason I am seeking the Senate's concurrence in my efforts to separate titles IX and X from this bill and to submit them to the Senate as completely separate pieces of legislation. Then each of us can weigh their merits and vote accordingly, the distinguished Members of the House of Representatives will likewise have that opportunity; and after the Congress has jointly worked its will, the President will have a clear choice to make unobstructed by extraneous considerations.

Mr. President, I am going to ask for the yeas and nays. I wonder if there is a sufficient number of our colleagues present to take advantage of the opportunity to hear our stimulating debate and able to grant the yeas and nays.

Mr. JAVITS. Mr. President, if the Senator will yield, I can assure the Senator that we will grant whatever time is necessary for a quorum call in order to get the yeas and nays.

Mr. BEALL. Mr. President, I reserve the remainder of my time.

Mr. EAGLETON. Mr. President, I yield myself such time as I may require. I shall be brief, hoping that there will be 11 Senators present by the time I get finished so that we may have the yeas and nays ordered on the motion.

Mr. President, the Senator from Maryland (Mr. BEALL) has pledged his fidelity and allegiance to titles IX and X. However, again before he made the motion and after he made the motion, he said how much he loves titles IX and X. Mr. President, he loves them so much that he wants to have them stricken from the bill. He will then introduce identical provisions under his own authorship.

If he loves these provisions so much, why does he not want to leave them in the bill in their entirety instead of going about it in a circuitous manner?

I think that titles IX and X are needed now.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD a six-point memorandum entitled: "Why Titles IX and X Are Needed Now."

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

WHY ARE TITLES IX AND X NEEDED NOW?

1. By whatever barometer one would choose to use, middle-aged and older workers have been grossly under-represented in our Nation's work and training programs. Persons 45 or older account for 20 percent of the total unemployment (as of January 1973), 27 percent of the long-term joblessness (15 weeks or longer), and 31 percent of the very long-term unemployed (27 weeks or longer). Yet, the 45-plus age category constituted only 4.9 percent of all new enrollees in manpower and training programs in fiscal 1972. Even in Mainstream—which supposedly is an older worker employment program—individuals 45 or older represented less than a majority (44.1 percent) of all participants.

2. Large numbers of older workers (persons 45 to 64) are "dropping out of the labor force because of our Nation's failure to establish a comprehensive manpower policy to maximize job and training opportunities for this age group. During the past year alone (from January 1972 to January 1973), nearly 800,000 persons aged 45 to 64 withdrew from the work force. On the other hand, nearly 2 million more persons under age 45 were employed during this same period.

3. As of January 1973, 867,000 persons 45 or older were unemployed—approximately 45 percent greater than four years ago. Yet, these figures represent only the tip of the iceberg because of the substantial amount of "hidden" unemployment among mature workers. There are now more than 2.7 million men aged 45 to 64 who are not in the labor force, and 11.7 million women in this same age category who are similarly situated. Assuming that just 25 percent of these middle-aged and older men (probably a conservative estimate) and 5 percent of these women (also a conservative projection) wanted and needed employment, this would increase unemployment for persons 45 or older by nearly 1.3 million—from 867,000 to about 2.2 million.

4. Enactment of Titles IX and X could provide new training and employment opportunities for an additional 83,000 middle-aged and older workers (for fiscal 1974)—almost double the present total of 92,460. The effect of this action is that the proportion of the 45-plus enrollment could be boosted from 4.9 percent to nearly 9 percent.

5. Without specific statutory authorization, the existing neglect is likely to continue—and quite likely worsen. This point was made abundantly clear during hearings on this legislation in 1971 and 1973. In response to questions posed by Senator Edward Kennedy, Paul Fasser (Deputy Assistant Secretary of Labor and Manpower Administrator) did not hold out much hope that persons 45 or older would ever account for more than 5 percent of enrollees in manpower and training programs.

6. The typical worker today can expect to change jobs six or seven times during his working life time. Without an effective training and retraining program, the older worker can expect to find himself in a "no-man's" land: the first to be fired but the last to be hired.

Mr. EAGLETON. Mr. President, since the Senator from Maryland and I are unanimously in favor of titles IX and X, I ask the Senator from Massachusetts if he would like to affirm the need for titles IX and X and we can then have a vote.

Mr. JAVITS. Mr. President, I think the Senator misspoke himself when he said that the Senator from Maryland and he were unanimously in favor of titles IX and X.

Mr. EAGLETON. Mr. President, we are in favor of titles IX and X. I want to vote on them today. However, the Senator from Maryland wants to vote on them tomorrow.

Mr. BEALL. Mr. President, the answer is at the other end of Pennsylvania Avenue. Although we may agree with the objectives of each of these titles, the occupant of the White House has different feelings.

Mr. EAGLETON. The occupant of the White House should be persuaded by the 68 cosponsors of the bill, which includes titles IX and X.

Mr. President, I yield to the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I rise to oppose the pending motion of the Senator from Maryland to strike out titles IX and X of this extremely important measure.

I find somewhat curious the logic in the position of the Senator from Maryland who indicates from his remarks that the programs covered in titles IX and X that affects employment opportunities for the elderly people of the country are not consistent with the purposes of the Older Americans Act. Let me quote from the Older Americans Act of 1965, as amended, in the declaration of objectives. In paragraph 5 of title I, they talk about opportunities for employment with no discriminatory personnel practices because of age. In paragraph 7, they talk about its being pursuant to meaningful activity within the major range of

civic opportunities. I ask unanimous consent that the declaration of objectives appear in the RECORD at this point.

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

TITLE I—DECLARATION OF OBJECTIVES: DEFINITIONS

DECLARATION OF OBJECTIVES FOR OLDER AMERICANS

SEC. 101. The Congress hereby finds and declares that, in keeping with the traditional American concept of the inherent dignity of the individual in our democratic society, the older people of our Nation are entitled to, and it is the joint and several duty and responsibility of the governments of the United States and of the several States and their political subdivisions to assist our older people to secure equal opportunity to the full and free enjoyment of the following objectives:

(1) An adequate income in retirement in accordance with the American standard of living.

(2) The best possible physical and mental health which science can make available and without regard to economic status.

(3) Suitable housing, independently selected, designed and located with reference to special needs and available at costs which older citizens can afford.

(4) Full restorative services for those who require institutional care.

(5) Opportunity for employment with no discriminatory personnel practices because of age.

(6) Retirement in health, honor, dignity—after years of contribution to the economy.

(7) Pursuit of meaningful activity within the widest range of civic, cultural, and recreational opportunities.

(8) Efficient community services which provide social assistance in a coordinated manner and which are readily available when needed.

(9) Immediate benefit from proven research knowledge which can sustain and improve health and happiness.

(10) Freedom, independence, and the free exercise of individual initiative in planning and managing their own lives.

Mr. KENNEDY. Quite clearly from the outset, the development of the Older Americans Act was intended to develop job opportunities for the elderly people of this country.

In response to the 1965 act, and the OEO Act, we have seen pilot programs of Operation Mainstream develop that included some 9,000 persons 55 and older last year. Those pilot programs such as Senior Aides and Green Thumb have been evaluated from every possible angle and have been shown to be enormously successful.

From the testimony of every elderly group and also from the department's own evaluation, these pilot programs show great promise.

The Senator from Maryland himself basically talks about the proposal being good, and he is conscious of the efforts made last year to develop coordinating language so that these titles could be integrated with other manpower programs.

In so doing, Mr. President, we instructed the drafters of the legislation—and I believe the legislation so states in section 903(b)(1) and section 903(b)(2)—that it is to be carefully coordinated with other manpower programs while retaining its particular focus on jobs for elderly persons.

Mr. President, title IX will provide $250 million to be spent over the next 2 years to create new job opportunities for persons of low income over the age of 55. In all we expect the legislation to create approximately 100,000 job opportunities.

No one, not even the President, can deny the need for such legislation. The plight of older Americans grows more desperate with each passing month. For as unemployment has been rising throughout the country over the last 4 years, so the unemployment of the elderly has been rising fastest of all.

Title IX does the following:

First, it seeks to convert the Operation Mainstream pilot programs into permanent nationwide programs.

Second, it would authorize the Secretary of Labor to enter into agreement with nonprofit private organizations and State or local governments to pay up to 90 percent of the cost of community service employment projects for low-income persons 55 and older who have or would have difficulty in locating employment. Also, 100 percent Federal funding would be authorized in economically depressed areas.

Third, it would authorize the Secretary of Labor to consult with State and local governmental units with regard to localities where community service projects are most needed, employment situation and types of skills processed by eligible individuals, and the number of eligible individuals in the local population.

Fourth, it would authorize the Secretary to encourage agencies administering community service projects to coordinate activities with agencies conducting existing programs of a related nature under the Economic Opportunity or Emergency Employment Act.

Fifth, it would require the Secretary to establish criteria designed to achieve equitable distribution of assistance among States and between urban and rural areas.

Finally, it would authorize $100 million for fiscal year 1973 and $150 million for fiscal year 1974.

In short, the bill would create an impetus for advocating manpower training and job opportunities within the Department of Labor. It would also enable the creation of a nationwide permanent program aimed at providing job opportunities for older workers in areas where they can best contribute to the life of our Nation in schools, hospitals, libraries, and other public service institutions, and organizations.

This bill is, essential to our society. It is essential if we are to build a community in which care of the aged—of those who have already made a major contribution to society—is considered important. It is essential if we are to reward rather than disdain those who spent their lives in building the Nation. It is just one part, but a very vital part of the creation of a more just society.

When we look at the record of this administration—and, I must say, that of a Democratic administration—with respect to the programs for the elderly people, we find that they have been the forgotten minority in this Nation. Whether it has been with regard to the traditional manpower programs, the poverty program, or the emergency employment program, they have been the forgotten individuals. We find that a little less than 6 percent of the emergency employment program consists of persons over 55, yet they comprise more than double that percentage of unemployed.

If you take general manpower programs, persons over 45 constitute only 4 or 5 percent of the total enrollees. For persons over 55, it is less than 2 percent.

Now, what does the administration want to do? It wants to turn all of those programs back to the States. We know the tragic record of the States on the development of programs for the elderly. This would continue the lack of priority for older workers evidenced by this administration. We have seen the reduction of the total number of people involved in Operation Mainstream from 31,000 to 27,000. We have seen how the total number of older persons involved in Operation Mainstream has been reduced in the last year. And what is even more disturbing, the administration plans to phase out—"absorb" was the word used by the Deputy Assistant Secretary of Labor for Manpower—Operation Mainstream entirely in the next 2 years. This July, the emergency employment program will be ended under administration plans.

We know that the money available for all manpower programs absolved by the manpower revenue sharing proposal will be reduced by some $70 million from $550 million to $480 million. And there is no requirement that any of those funds be spent on older workers. You and I know what the result will be, and what group will be left out. It will be the elderly people.

This measure including titles IX and X was overwhelmingly accepted by the Senate, by a vote of 88 to 0, last year. It has been introduced in the House of Representatives by Representative BRADEMAS with more than 120 cosponsors.

The need for community service employment for older workers has been debated and discussed. It has been pilot programed to death. There is a tremendous need for making it permanent and nationwide.

So why go on with one more effort to seek a delay, and a possible sidetracking of benefits which are so important and so essential for the elderly people of this country? I hope the motion of the Senator from Maryland will be defeated. The time to act is now. The elderly people have been waiting far too long.

This program, in terms of cost efficiency and in terms of good administration and all the other criteria which have been put forward by this administration, is a sound program. It reaches every one of those possible objections; and if the President is going to veto it, let us have the veto, and let the people across the country understand it, and let Congress act and respond to it, but let us not once again take a program which is of such importance to the elderly people of this country and delay its consideration by the Senate.

Mr. President, I hope the motion will be defeated.

Mr. BEALL. Mr. President, I ask for the yeas and nays on my amendment.

The yeas and nays were ordered.

Mr. EAGLETON. Mr. President, I ask for the yeas and nays on the bill, at such time as we vote on passage.

The yeas and nays were ordered.

The PRESIDING OFFICER. Who yields time on the motion?

Mr. JAVITS. Mr. President, I will just take 2 minutes, if I may, on the bill, so as not to invade Senator Beall's time.

Mr. President, I believe the situation has been stated, interestingly enough, very accurately on both sides. There is a real need for the program, and there is real danger that the President may veto it, precisely because of the inclusion of these two titles.

Mr. President, if the President should veto the bill, because of the inclusion of these two titles, he will certainly express himself in that veto message as to whether without the two titles he would sign it. Then we can proceed, if we cannot take action over his veto, to divide the bill at that time.

I do not feel justified, myself, much as I sympathize with the view of the Senator from Maryland, in striking out these two titles at this time, simply because of the history of Senate passage with these two titles in it.

I think it would be very useful, and I will be happy to yield the time to the Senator from Maryland, if he would specify for the Senate, the Members who are listening to the debate and those who will have it reported to them, precisely why he feels this is a different situation from the previous occasions upon which we have passed the bill with these two titles in it.

As to the need for the titles, Mr. President, there is absolutely no question. Our committee handled manpower training. We are deeply concerned with the paucity of manpower training opportunities afforded to older and middle-aged citizens. We recognize the deep connection between getting employment and upgrading skills, which is compelled by modern technology and modern demand in terms of job training, and we are convinced, as I think Senator Beall himself is, that some specific measure is necessary in that regard in order to increase materially the training slots for older people.

As to the ongoing Mainstream program and the effort to expand that, I can think of no finer concept than "keeping them walking," as the saying is in respect to older people, and keeping them interested and employed.

In short, this measure will pay such huge dividends to the country that Mainstream, like Headstart, has probably been as attractive a program as we have pioneered under the war on poverty.

For all those reasons, and with greatest sympathy for the position taken by Senator BEALL, I shall be compelled to vote against his motion.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. BEALL. Mr. President, I yield myself 3 minutes.

I appreciate the feeling of the Senator from New York on this matter, but he asked that I explain how the situation is different this year than it was last year. By last year we mean September. October, when the Senate considered this legislation, and the conference report on H.R. 15657.

Mr. President, there is considerable difference. Let me point out that title IX of this bill was added in the committee during the closing days of the 92d Congress; and the reason given to justify its incorporation in the Older Americans Act was the fact that the House of Representatives could not consider the Senate-passed bill without first suspending its rules. To overcome this obstacle, the Older Americans Employment Opportunities Act, as it was entitled, was added to the Older Americans Act as an amendment. The Older Americans Act seemed to be a satisfactory vehicle for overcoming the obstacles which existed in the House of Representatives. I point out to Senators that we are now in the opening months of a new session of Congress, and those parliamentary obstacles do not now exist. Title X, had been ordered reported by the Labor and Public Welfare Committee, but the full Senate had not acted on the bill. Thus the Middle-Aged and Older Workers Training Act was similarly added as an amendment to the Older Americans Act.

We are not talking about the merits of the first eight titles, as opposed to titles IX and X. We are assuming that the merits of all 10 are worthy of consideration and passage. What we are talking about is the almost undeniable fact that the President will veto this bill if titles IX and X are in it. I am not certain he will not veto it if they are not included, but he certainly will if they are.

If we are interested in reorganizing the Administration on Aging, in increasing its visibility in the governmental hierarchy, and in continuing to expand some very important programs for our senior citizens, we will take out titles IX and X, which really belong in separate legislation, because they are under the purview of the Department of Labor. It seems to me that we are doing ourselves an injustice, early in the session, when we hold to a course of action that may have been valid to the situation last year, but which now refer to parliamentary obstacles that no longer exist. This legislation, worthy as it is, should be considered separately, so that we may have a chance to bring to passage a bill of real importance to our senior citizens, and get the benefits of these programs to those who need them as early as possible.

I think this bill ought to be considered purely on the basis of the legislation that deals specifically with amendments of the Older Americans Act. For that reason, I have proposed that we strike titles IX and X, as I have said before, not because I disagree with their intent, but because I want to see the main part of the bill become law as soon as possible, and if possible, allow the others to become law as well.

Mr. EAGLETON. Mr. President, I yield myself 5 minutes, and yield such portion thereof as he may desire to the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I would like to ask the chairman of the Aging Subcommittee, who has afforded outstanding leadership in this area, whether he remembers the President's address to the White House Conference on Aging. I ask unanimous consent that the text of that address, as published in the Washington Post on December 3, 1971, be printed in the RECORD at this point.

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

YOUNGER AND OLDER AMERICANS NEED ONE ANOTHER

Following is a partial text of President Nixon's prepared address to the White House Conference on Aging:

In recent years a gulf has been opening between older Americans and the rest of our people. This gulf is the product, in large measure, of a great social revolution which has weakened the traditional bonds of family, neighborhood and community. For millions of older Americans, the result has been a growing sense of isolation and insecurity.

We must change that. Younger and older Americans need one another. We must find ways to bring the generations together again.

In addressing the challenges before us, let me begin where most of you begin: with the problem of inadequate income. If we move on this front, all the other battles will be easier. If we fail to move here, the other battles will be impossible.

That is why it is so important that the Congress approve one of the most important bills to come before it in many years—the bill which is known as H.R. 1—and approve it without delay. For this legislation would revolutionize our whole approach to income problems among the elderly.

NATIONAL FLOOR

For the first time in our history, it would put a national floor under the annual income of every older American. For the first time in our history, it would make social security benefits inflation-proof.

It would also allow social security recipients to earn more money from their own work. It would raise benefit levels, especially for widows. And I hope the Congress will also include in H.R. 1 my proposal for eliminating the $5.60 monthly fee now charged for Part B of Medicare.

H.R. 1—as it now stands—would provide some 5½ billion dollars in additional federal benefits to older Americans; 3 billion dollars in increased social security benefits—and, when it is fully effective—another 2.5 billion dollars in new benefits to persons with lower incomes. My proposal to eliminate the monthly Medicare fee would enrich this 5.5 billion dollar package by an additional 1.4 billion dollars—the equivalent of an additional 5 per cent increase in social security.

As we work to increase federal benefits for older Americans, we must also work to reduce the pressure of taxes. We are therefore supporting a series of tax reform proposals which would enable a single person age 65 or older to receive up to $5,100 of tax free income. A married couple, both of whom are 65 or older, could receive over $8,000 in tax free income if these changes take effect.

However, one of the most onerous of all taxes for older Americans is largely unrelated to income. I refer, of course, to the property tax—which keeps going right on up, even when an older person's income is going down. In fact, property tax collections have increased by some 40 per cent in the last five years alone.

Nearly 70 per cent of older Americans own

their own homes. For many, these homes represent a lifetime of careful saving. And yet, because of property taxes, the same home which has been a symbol of their independence often becomes a cause of their impoverishment.

Even older persons who rent their homes often bear an unfair burden, since property tax increases are often passed along in the form of higher rents. And the inequity of the property tax is often all the greater because it takes money from those who have already educated their own children and uses it largely for the education of others.

EMPTY DREAMS

I received a letter recently from a woman whose parents brought her and five other children to this country from Switzerland many years ago. They settled in California as homesteaders, full of hope and pride. And over the years that followed they made their dreams come true.

But today—many years later—things have changed, so much so that Mrs. Ewing begins her letter to me by asking. "Was it just an empty dream after all?" Her father—at 73—is too ill and tired to work. His family is grown and scattered. And to meet his real estate taxes he is now being forced to sell the property for which he worked so hard and so long. "If this is really the country I grew up believing it to be," Mrs. Ewing continues, "these inhumane tax laws must be changed . . ."

I agree. We need a complete overhaul of our property taxes and of our whole system for financing public education. Our revenue sharing program can help relieve the pressure on property taxes and older Americans have a large stake in its enactment. But additional reform is also needed.

I am therefore preparing specific proposals to ease the crushing burden of property taxes for older Americans, and for all Americans.

The President's Commission on School Finance, which I appointed last year, has been carefully studying a range of possible remedies. It is clear that these remedies will involve large sums of money. We are prepared, however, to make the hard decisions we will have to make. The time has come to stop talking about the impact of property taxes on older Americans and to act in their behalf, and in behalf of other citizens in similar circumstances.

A second major problem affecting the income of older persons is the inadequacy of private pension plans.

I will therefore propose to the Congress a new program to reform our private pension system. This program will include measures designed to expand pension coverage and to ensure that pension funds are soundly and honestly managed. It will also recommend new laws to require the vesting of pensions—to ensure that the benefits which accumulate in a person's working years are paid to him when he is older.

COST OF LIVING

Lately, of course, we have been giving high priority to another effort that has special meaning for older Americans: the drive to curb the rise in the cost of living. When wages and prices rise unreasonably for the few, the result is an unreasonable decline in the purchasing power of the many. By holding wage increases to reasonable levels for those who are working we will help protect the incomes of those who are retired.

I have appreciated the support that older Americans have given to this effort—and I am determined that as we achieve our new prosperity, it will be a new prosperity without inflation, and therefore without the hidden tax that hits so cruelly at those on fixed incomes.

As the income position of older Americans improves, so will their ability to cope with many of the other problems you have been discussing. But even with higher income, many older persons will still face problems beyond their individual control.

Take the one million Americans who live in nursing homes, for example. Many of them—like my 91-year-old aunt in California—receive excellent care in pleasant surroundings. But many do not—and there is little they can do about it. This is why I announced last summer an 8-point program for improving our Nation's nursing homes and for cutting off funds to those which remain substandard.

Our primary objective is the upgrading of nursing homes. But we will not hesitate to cut off funds from homes which are hopelessly substandard. Furthermore, we will take the initiative in making sure that public and private resources are available to provide alternative arrangements for the victims of such homes.

But nursing homes are only one part of the picture. The greatest need is to help more older Americans to go on living in their own homes. Income programs and tax reforms can help us achieve this objective. And so can a number of additional decisions which we already have made.

We want to begin by increasing the present budget of the Administration of Aging nearly five-fold—to the $100 million level. We plan to give special emphasis to services that will help people live decent and dignified lives in their own homes—services such as home-health aides, homemaker and nutrition services, home-delivered meals and transportation assistance. Much of this new money will be used to help marshal existing and expanded resources more effectively at the local level.

Toward this end, I will direct the Social Security Administration to provide an information center in each of its 889 district and branch offices to help explain all Federal programs which aid the elderly.

We have made two additional administrative decisions which will also help older Americans to remain in their own homes. The first will make housing money more readily available to older citizens to purchase homes in a variety of settings, including condominium apartments and retirement communities. The second will require that federal grants which provide services for older persons also provide for the transportation they need to take advantage of these services.

Some of the best service programs for older Americans are those which gave older Americans a chance to serve. Thousands of older Americans have found that their work in hospitals and churches, in parks and in schools gives them a new sense of pride and purpose even as it contributes to the lives of others.

Federal programs to provide such opportunities have proven remarkably successful at the demonstration level. But now we must move beyond this demonstration phase and establish these programs on a broader, national basis. I will therefore request that the Retired Senior Volunteers Program be tripled to $15 million, so that an additional 50,000 volunteers can be involved. I will request that the Foster Grandparents programs be doubled to $25 million and will ask that this program be altered so that foster grandparents can work with older persons as well as with children.

I have also ordered that our jobs program for older persons with low incomes be doubled to $26 million. Under the program, projects such as Green Thumb and Senior Aides have demonstrated that older Americans can make valuable contributions in health, education and community service projects even as they earn additional income.

Older persons can be proud of how well they have made all these programs work in recent years. These decisions mean they will now be able to work in more places and for more people. . .

Any discussion of recommendations for dealing with the problems of the aging would not be complete without recognizing the strong support expressed at this conference for extending medicare coverage to include prescription drugs, and for accelerating the rate at which the income floor comes into effect under H.R. 1.

As you know, these proposals involve very difficult budgetary problems for the government.

However, because of the interest which conference delegates have expressed in these changes, I have directed the Domestic Council to carefully consider both proposals and to make recommendations to me at an early date.

Your work is not yet over. You have a message to take home with you from this Conference—a message which must now be heard in every community in this land.

NEW ATTITUDE

The message is simply this: We need a new national attitude toward aging in this country—one which fully recognizes what America must do for its older citizens, and one which fully appreciates what our older citizens can do for America.

A few months ago I met with a remarkable man by the name of George Black. For more than 80 years, Mr. Black has been making bricks by hand in Winston-Salem, North Carolina. George Black is 93 years old.

Recently our government sent George Black to the country of Guyana in South America, so that he could share his skills with people in that land. When he was asked about his trip, Mr. Black made this comment: "I have always asked the Lord," he said, "to let my last days be my best days. I feel like he's answering my prayers."

George Black's prayer is the prayer of millions of Americans—"to let my last days be my best days." And for them—as for him—its answer depends not only on what they are given but on what they continue to give.

Mr. KENNEDY. I wish to read just two paragraphs from that address. The President said then:

Federal programs to provide such opportunities have proven remarkably successful at the demonstration level. But now we must move beyond this demonstration phase and establish these programs on a broader, national basis.

Then he continued:

I have also ordered that our jobs program for older persons with low incomes be doubled to $26 million. Under the program, projects such as Green Thumb and Senior Aides have demonstrated that older Americans can make valuable contributions in health, education and community service projects even as they earn additional income.

Older persons can be proud of how well they have made all these programs work in recent years. These decisions mean they will now be able to work in more places and for more people . . .

Does the Senator from Missouri remember those words, and does the Senator from Missouri really believe that we are carrying out the President's mandate in this area?

Mr. EAGLETON. Precisely, I remember that speech before the White House Conference on Aging in which he paid tribute to the Older Americans Act and how it should be extended to the same program that the Senator from Massachusetts is now talking about.

What is important about the motion of the Senator from Maryland is that President Nixon loves these provisions, the Senator from Maryland loves these pro-

visions, and we will vote in these provisions and something will happen. If the President vetoes the provisions he loves, I just do not understand that. Yet he liked everything in the bill 100 percent in the speech he gave before the White House conference for the old folks. Yet he can veto the bill in the dark of night so we read about it in the morning newspapers.

Mr. KENNEDY. Is not the Senator from Missouri also concerned about the manpower provisions in the President's budget? Under the President's budget, it says that federally directed manpower programs will constitute a limited set of high priority national objectives, including veterans' training, reemployment, employment of welfare recipients, and rehabilitation of the physically and mentally disabled persons. But there is no mention in there about the older worker, and no mention in the President's set of priorities about older workers. This clearly conflicts with his remarks to the White House Conference on the Aging.

Does not the Senator agree with me that not only will we be carrying out the President's mandate in his statement to the White House Conference; but we will be writing in our set of Federal manpower priorities to include the older worker?

Mr. EAGLETON. The President wants further information from us as to our priorities. There is nothing more specific we can do than to pass this bill, S. 50.

Mr. KENNEDY. I thank the Senator from Missouri and I hope this motion will be rejected.

Mr. EAGLETON. 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. EAGLETON. 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. EAGLETON. Mr. President, I yield 10 minutes on the bill to the distinguished Senator from West Virginia (Mr. RANDOLPH).

The PRESIDING OFFICER. The Senator from West Virginia is recognized for 10 minutes.

SENATOR RANDOLPH URGES SUPPORT FOR EMPLOYMENT TRAINING OF MIDDLE-AGED AND OLDER WORKERS

Mr. RANDOLPH. Mr. President, I wholeheartedly support the enactment of the pending measure. The able and knowledgeable chairman of the subcommittee on Aging and manager of S. 50, Mr. EAGLETON, is to be commended for his diligent efforts in bringing this most worthwhile proposal to the Senate.

Certainly, the improvement and refinement of legislation to aid our senior citizens is most timely and important. Although appropriations for services to older Americans have increased rapidly over the past several years, a great deal remains to be done. Millions of our aging population still do not have access to the necessary services which this measure can help provide.

As principal sponsor of title X of the pending bill I know that there is, in addition to the other services provided under S. 50, a crying need for employment training for middle-aged and older workers. This category of individuals is hardest hit by periods of high unemployment. For example, joblessness among middle-aged and older workers totaled 596,000 in January of 1969, but as of January 1973, there were 867,000 such persons out of work, for an increase of 45 percent.

It is clear from a statistical analysis that middle-aged and older workers are seriously affected by long-term unemployment. The figures show a shocking 233-percent rise in unemployed persons aged 45 and older between January 1969 and August 1972, from 115,000 to 384,000.

Very long-term unemployment figures are even more disheartening. Those without jobs for 27 weeks or longer increased from 48,000 in 1969 to 284,000 in 1972 a 346-percent rise. These depressing statistics, coupled with the fact that middle-aged and older workers comprise a very substantial part of the "dropout" population—those who have given up the search for work—shows that a very real, serious, even critical problem exists today for hundreds of thousands of middle-aged and older workers without jobs.

Mr. President, in addition to title X, I was able to obtain the support of my colleagues on the Labor and Public Welfare Committee to increase the minimum funding level for planning and administration by State agencies from $100,000 to $150,000. This will be of substantial assistance to many smaller States which would, without the increase, find themselves in severe difficulty in attempting to plan for the program envisioned in this act, as well as for the nutrition program enacted into law last year.

I believe my colleagues will agree with the statement that older Americans, who in their younger days were the very fabric of this Nation, were indispensable in building America into a strong and viable country, badly need and richly deserve whatever benefits we can provide them. S 50 is a measure which will help make those golden years a reality for our elderly.

WHY ARE TITLES IX AND X NEEDED NOW?

Now, Mr. President, we are talking about titles IX and X. I recall for the record that title X is embodied in this legislation but had previously been introduced by me as a bill in 1971, which was incorporated, as our able colleague from Maryland knows, in the legislation of 1972. That bill was vetoed by the President of the United States.

By whatever barometer we would choose to use, middle-aged and older workers have been grossly underrepresented in our Nation's work and training programs. Persons 45 or older account for 20 percent—I remind my colleagues—of the total unemployment—as of January 1973—27 percent of the long-term joblessness—15 weeks of longer, and 31 percent of the very long-term unemployed—27 weeks or longer. Yet, the 45-plus age category constituted only 4.9 percent of all new enrollees in manpower and training programs in fiscal 1972. Even in Mainstream—which supposedly is an older worker employment program—individuals 45 or older represented less than a majority—44.1 percent—of all participants.

Large numbers of older workers, persons, I call them 45 to 64—are "dropping out" of the labor force, because of our Nation's failure to establish a comprehensive manpower policy to maximize job and training opportunities for this severely hit age group. During the past year alone—from January 1972 to January 1973—nearly 800,000 persons aged 45 to 64 withdrew from the work force. On the other hand, nearly 2 million more persons under age 45 were employed during this same period. You see, Mr. President, the difference in the figures I have just given.

As of January 1973, 867,000 persons or older were unemployed—that is approximately 45 percent, I emphasize, greater than we had in our country just 4 years ago. Yet, these figures represent only the tip of the iceberg, because of the substantial amount of "hidden" unemployment among mature workers. There are now more than 2.7 million men aged 45 to 64 who are not in the labor force, and 11.7 million women in this same age category who are similarly situated. Assuming that just 25 percent of these middle-aged and older men—and that is probably a conservative estimate—and 5 percent of these women—also a conservative projection—wanted and needed employment, this would increase unemployment, I say to my colleague from Maryland, for persons 45 or older by nearly 1.3 million—from 867,000 to about 2.2 million.

Enactment of titles IX and X could provide new training and employment opportunities for an additional 83,000 middle-aged and older workers—for fiscal 1974—almost double the present total of 92,460. The effect of our action, anticipated by passage of the bill and the signature of the President, is that the proportion of the 45-plus enrollment could be boosted from 4.9 percent to nearly 9 percent.

Without specific statutory authorization—and I emphasize this fact—the existing neglect will continue. I think it will worsen. This point was made clear during hearings on this legislation in 1971 and 1973. In response to questions posed by Senator EDWARD KENNEDY, Paul Fasser—Deputy Assistant Secretary of Labor and Manpower Administrator—did not hold out much hope that persons 45 or older would ever account for more than 5 percent of enrollees in manpower and training programs.

The typical worker today can expect to change jobs six or seven times during his working lifetime. Without an effective training and retraining program, the older worker will find himself in limbo and she will find herself in limbo.

What do I mean by that, Mr. President? The first to be fired and the last to be hired.

Mr. President, I am sure that these two titles should remain in this important legislation being considered at this time.

The administration has posed a number of arguments which support the ex-

clusion of titles IX and X from S. 50. Following is a summary of each argument, followed by my rebuttal:

ARGUMENT

If the manpower titles are retained in the bill, the President will more than likely veto the Older Americans Comprehensive Services Amendments.

REBUTTAL

First. At the urging of the minority, language was incorporated in the bill to authorize the Secretary of Labor to integrate the Older Americans Community Service Employment Act—title IX, and the Middle-Aged and Older Workers Training Act—title X—with any comprehensive manpower legislation subsequently enacted. This was adopted in response to the administration's objection to categorical programs.

Second. Additionally, the Congress reduced the funding authorization by $150 million for the Middle-Aged and Older Workers Training Act. This was another conciliatory measure to enhance the enactment of the Middle-Aged and Older Workers Training Act.

Third. As a practical matter, detaching titles IX and X would mean a long delay before these proposals could be enacted into law. In the meantime, middle-aged and older workers would continue to be overlooked or ignored under our Nation's manpower and training programs.

Fourth. It is imperative that action be taken at the earliest possible date to respond to the unique and growing unemployment problems of older workers. During the past year, nearly 800,000 persons 45 to 64 "dropped-out" of the labor force, all too often involuntarily. Unless corrective action is taken soon, this situation is likely to intensify.

Fifth. Time is not on the side of older workers. Moreover, they have been waiting for nearly 3 years for passage of this legislation. However, administration opposition and procedural arguments have thwarted these measures, although they have been enthusiastically endorsed by the Congress and overwhelmingly supported by every leading organization in the field of aging.

ARGUMENT

The manpower titles should be considered separately and not in conjunction with the Older Americans Comprehensive Services Amendments. A major reason for tacking these measures on to H.R. 15657 during the past Congress was that the House could not act separately—without suspending its rules—on the Senate manpower proposals. At this stage of the 93d Congress it is obvious that the rules of the House no longer serve as an obstacle to the consideration of titles IX and X as separate legislative proposals to be weighed on their own merits.

REBUTTAL

First. Both the House Education and Labor Committee and the Senate Labor and Public Welfare Committee have several high priority items—including legislation vetoed during the past Congress—which must be acted upon in 1973 and 1974. Hearings must be held on these proposals: Executive sessions must be scheduled; the bills must be placed on the calendar; a conference committee would have to be called to resolve the differences in the House and Senate-passed bills. All of this requires precious time, which is operating to the serious disadvantage of the mature worker.

Second. Both these measures have been enthusiastically endorsed by the Congress in the past. The Older Americans Community Service Employment Act was approved separately last year by a vote of 77 to zero. The Middle-Aged and Older Workers Training Act was adopted—without opposition in the Senate—in 1970 as an amendment to the Employment and Training Opportunities Act—the vote on final passage was 68 to 6. Support for these measures has been expressed at hearings—held in July 1971—by the National Council of Senior Citizens, National Council on the Aging, National Retired Teachers Association-American Association of Retired Persons, National Farmers Union, and AFL–CIO. Quite clearly, it is the administration—not the Congress, the national senior citizens organizations, or the elderly themselves—who is out of the "mainstream" on this issue. And, the administration simply should not be allowed to engage in obstructionist tactics which may play havoc with the lives of older workers.

Third. The painful truth is that the administration has no effective game plan to maximize job opportunities for older workers. In the fiscal 1974 budget, the administration calls for national programs to meet the special employment and training needs of veterans, criminal offenders, Spanish-speaking persons, Indians, migrant workers, and others. However, there is one notable exception: The mature worker. Yet, there are almost 31 million persons 45 and older in the civilian labor force, accounting for nearly 36 percent of the total.

ARGUMENT

Practically all of the services under titles IX and X can be provided under existing legislation—such as Operation Mainstream, the Wagner-Peyser Act, and the Manpower Development and Training Act.

REBUTTAL

First. But as a practical matter, MDTA and the employment service programs under Wagner-Peyser have simply not responded adequately to the special needs of the mature worker. This is precisely why the Middle-Aged and Older Workers Training Act was developed: to provide the wherewithal and commitment to respond to the clearly identifiable problems of the 45-plus age group.

Second. A similar commitment was developed for the Emergency Employment Act, and it has paid dividends. Nearly 16 percent of the participants—or about 36,000 persons—in the public employment program are aged 45 or older.

Third. The purpose of title IX is to convert the successful pilot projects under Mainstream—such as senior aides, green thumb, and others—into permanent, ongoing national programs. These programs have clearly proved their worth during the past 5 or 6 years. And, now they should be expanded to allow more low-income older Americans to participate. Even the administration has conceded that the Mainstream pilot projects are "good programs"—Paul Fasser at hearings on S. 50 by the Subcommittee on Aging of the Senate Labor and Public Welfare Committee, February 5, 1973.

ARGUMENT

It is fundamentally unjust to unnecessarily delay the enactment and implementation of programs designed to greatly expand and improve the social and nutritional services so desperately needed by many of our senior citizens for reasons totally extraneous to the purposes of this legislation.

REBUTTAL

First. It is not the Congress—but the Nixon administration—that has delayed the enactment of the Older Americans Comprehensive Services Amendments. During the past Congress, similar legislation passed the Senate 89 to zero. In conference committee, the House and Senate agreed to retain both of the manpower provisions in the proposal. Later the conference report was adopted by voice vote and without opposition by the House and Senate. Yet, the President chose to pocket veto this measure after the Congress adjourned, despite the overwhelming support for the legislation.

Second. The following organizations have endorsed S. 50 with both manpower titles:

AFL–CIO.
National Association of Retired Federal Employees.
National Conference of Catholic Charities.
National Council on the Aging.
National Council of Senior Citizens.
National Farmers Union.
National Jewish Welfare Board.
National Retired Teachers Association-American Association of Retired Persons.
United Auto Workers.
Urban Elderly Coalition.

Third. The manpower titles are supported by every leading aging organization. In fact, the major membership organizations—with more than 7 million members—have enthusiastically endorsed the enactment of the manpower titles as a part of S. 50.

Fourth. The President should not be allowed to kill urgently needed legislation—supported overwhelmingly by the Congress, national aging organizations, and older workers themselves—simply by the threat of the veto.

Fifth. S. 50—with titles IX and X—has received widespread bipartisan support. In fact, 67 Members of the Senate have already cosponsored S. 50—with the manpower provisions—including 19 Republicans.

The following chart graphically illustrates the plight of middle-aged and older workers in the context of existing job programs:

MANPOWER AND TRAINING PROGRAMS—NEW ENROLLMENT (FISCAL YEAR 1972)

Program	Total enrollment	45-plus enrollment	Percent	Under 21 enrollment	Percent	55-plus enrollment	Percent
1. Jobs Optional	57,300	4,360	7.6	18,340	32.0	1,090	1.9
2. Job Opportunities in the Business Sector	82,800	4,140	5.0	35,000	43.0	(1)	(1)
3. On-The-Job-Training	24,800	3,100	12.5	8,090	32.6	970	3.9
4. Manpower and Development Training Act (Institutional)	150,600	11,600	7.7	57,080	37.9	2,710	1.8
5. Job Corps	49,000			49,000	100.0		
6. Operation Mainstream	31,400	13,850	44.1	1,190	3.8	9,420	30.0
7. Work Incentive Program	120,600	5,790	4.8	33,530	27.8	720	.6
8. Concentrated Employment Program	84,700	4,570	5.4	37,860	44.7	1,270	1.5
9. Public Employment Program	226,100	35,950	15.9	33,010	14.6	12,210	5.4
10. Neighborhood Youth Corps (In-School and Summer)	945,900			945,900	100.0		
11. Neighborhood Youth Corps (Out-of-School)	65,000			60,970	93.8		
12. Public Service Careers:							
Plan A [2]	10,500	2,250	21.4	2,480	23.6	1,270	12.1
Plan B [3]	11,200	1,860	16.6	2,020	18.0	640	5.7
Plan C [4]	5,300	400	7.5	1,160	21.9	150	2.9
Plan D [5]	4,100	630	15.3	940	23.0	(1)	(1)
Plan E [6]	32,300	3,550	11.0	13,630	42.2	1,065	3.3
13. New Careers in Employment Service	2,500	410	16.2	190	7.5	70	2.9
Total	1,904,100	92,460	4.9	1,300,990	68.3	[7] 31,585	[7] 1.7

[1] Figures not available.
[2] Entry and upgrading in State and local governments.
[3] Employment and upgrading in grant-in-aid programs.
[4] New Careers in human services.
[5] Entry and upgrading in Federal service.
[6] Supplemental training and employment programs.
[7] Total enrollment and percent for 55 plus age category available for programs where information is available.

The PRESIDING OFFICER. Who yields time?

Mr. EAGLETON. Mr. President, I do not know whether I have any time remaining on the motion, but if I do I am prepared to yield it back.

Mr. BEALL. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Maryland has 7 minutes.

Mr. JAVITS. If the Senator from Maryland would like to reserve his time, Senator PERCY wishes to be recognized, and I will yield him time.

Mr. BEALL. On the bill?

Mr. JAVITS. I do not know on what subject he will speak, but he wants the time.

I yield 5 minutes on the bill to the distinguished Senator from Illinois.

Mr. PERCY. Mr. President, I dislike disagreeing with the distinguished Senator from Maryland, as I generally find myself in accord with him. But I feel very strongly about this particular section, and I agree very deeply with the distinguished Senators from West Virginia and Missouri.

In 2 more years, I would find myself ineligible to speak on this matter because of a conflict of interest, because I might conceivably be eligible for the community service employment program, at 55. For 2 years I can speak without that conflict.

Many times, I suppose, we make a mistake; but, on the other hand, it is sometimes a benefit for us to have personal experiences which sometimes condition our judgment.

I know that in the so-called Great Depression, in the 1930's, when 17 million people were out of work, my father, who had been a small neighborhood banker, was thrown out of work, and he was in his midforties. For a preiod of 6 or 7 years, I saw the heartbreaks that came to him as he was constantly turned down by companies that were simply unwilling to break their policy of never hiring anyone over 40.

That was in an age, 20 or 30 years ago, when job skills changed less frequently than they do today. Several decades ago, in the early 1900's, a person could take a job, walk into a factory with a bag of tools, and have the same job when he retired 30 or 40 years later. But today, the average person, with the change in technology, changes jobs an average of almost five times in his lifetime in order to hold steady employment. The difficulty of changing skills, changing jobs, and adapting to new requirements when a man is over 50 is a great deal more difficult than for a younger man.

For this reason, I express my support for retention of titles IX and X, which provide, respectively, for a community service employment program for people aged 55 and over, and for a midcareer training program in the Department of Labor for workers aged 45 and over.

Although middle-aged and older workers account for 20 percent of our Nation's total unemployment, they account for only 4.9 percent of all new participants in Labor Department manpower and training programs.

From January 1969 to August 1972, unemployment among older workers rose from 596,000 to 1,045,000, or by 73 percent.

During the same period, long-term joblessness—defined as being out of work for 15 weeks or longer—among older workers went from 115,000 to 384,000, or rose by 233 percent.

Very long term joblessness—27 weeks or more—rose from 48,000 to 284,000.

Literally every day, I receive, in some form or another, communication from older constituents—by letter, telephone, or the many listen-ins that I hold throughout the State of Illinois—discussing the problem of age discrimination in employment and its unfortunate impact upon their retirement income.

One of the most serious consequences of unemployment for the older worker is a reduced or lost income during his years of retirement. Because of serious deficiencies in many private pension plans, the end of one's job may also mean the end of one's pension coverage. The end of one's job may mean the total or near-total erosion of his lifetime savings.

Even if the older worker manages to escape the total loss of private pension coverage or his lifetime savings, he may not escape suffering from reduced social security benefits caused by unemployment during his later working years. The reason for this is that social security benefits are based on a person's lifetime earning record.

Thus, it is essential to recognize that unemployment among older workers has special, long-range consequences, which may affect adversely his entire retirement income.

We must see that the Age Discrimination in Employment Act of 1967 is more strictly enforced than it has been in recent years. But we must also zero in on the older worker's employment problems by making sure that he receives his fair share of Labor Department resources. Titles 9 and 10 of S. 50 do precisely that: They make sure that special efforts are made to alleviate the special employment problems of middle-aged and older workers.

Title 9 authorizes $250,000,000 in fiscal years 1973 and 1974 to provide community service employment for low-income persons aged 55 and over. Title 10 authorizes $150 million in fiscal year 1974 for the Secretary of Labor to set up specialized services within his Department to train and retrain persons over age 45 who want and need to upgrade their skills.

Mr. President, I support these programs to help older workers and believe we should not delay their enactment, and I must therefore declare my opposition to the motion before the Senate.

I feel very strongly about this. Congress has made remarkable progress in recent years. It has shown tremendous leadership in recognizing the deficiencies we have had in always putting emphasis upon the youth culture and the young, finding billions of dollars for their education, for the erection of beautiful dormitories, for the erection of buildings across the country, on college campuses, expanding our services magnificently in this area—all of which I support. At the same time, we have to recognize that today, in this highly skilled world, the older worker is falling further and further behind; and we must make up for this and not recede in the progress we have made.

Mr. EAGLETON. Mr. President, I am prepared to yield back the remainder of my time, not only on the motion of the Senator from Maryland, but also, so that we may have back-to-back votes, I am prepared to yield back the balance of the time on the bill.

Mr. JAVITS. Mr. President, I have had no further requests to speak, unless the Senator from Maryland wishes to speak.

Mr. BEALL. I will use 1 minute of my own time.

Mr. JAVITS. I suggest that we withhold yielding back the time on the bill until this debate is concluded.

Mr. BEALL. I am ready to vote on the motion and the bill.

I want to take a minute to say to the Senator from Illinois that I do not disagree with anything he has said. My point is that we should not be mixing apples and oranges. I want to get these measures in such a legislative position so that we have a chance to get both parts of the bill rather than not having either an employment and manpower bill or aging bill.

Mr. President, I yield back the remainder of my time.

Mr. EAGLETON. I yield back all my time on the motion and all time on the bill.

Mr. JAVITS. I yield myself 3 minutes.

Mr. President, S. 50 is virtually identical to the Senate-House conference report that was passed last year in the 92d Congress and which regrettably, was pocket-vetoed by the President last fall. While I appreciate and understand many of the concerns alluded to by the President in his veto message on this legislation, S. 50 is a very carefully drawn bipartisan bill which commands widespread support in both the Senate and the House, and I would hope that the administration would give careful consideration to the sense of priority that the Congress has attached to enacting the kind of legislation that would materially assist older people in leading lives of dignity, respect, and independence.

Older people have paid their way through the upbuilding of our country and we do not have to be ashamed or hesitant or stingy about providing them, as this bill does, with the essential framework for filling their lives with hope, confidence, and the freedom to act in their older years.

I am particularly gratified that the bill upgrades and strengthens the Administration on Aging by placing it in the office of the Secretary of the Department of Health, Education, and Welfare and assigning primary responsibility for carrying out the act to the Commissioner on Aging. This initiative will provide greater visibility and leadership capability to the Administration on Aging and will remove it from conflicting tendencies generated as a result of its present location in the Social and Rehabilitation Service. In addition, the bill directs the Commissioner to establish and operate a National Older Americans Information Clearinghouse which I believe can play a vital role in serving as a focal point for information relating to the needs and interests of older persons. Senator BEALL is to be complimented for promoting this very useful concept, and, of course, the author of the bill, the Senator from Missouri (Mr. EAGLETON), and his associates on the Democratic side.

One out of every 10 Americans is age 65 or older. By the year 2000 it is projected that more than 30 million Americans will be of age 65 or over. If we are to provide older Americans with opportunities and programs which will enable them to sustain their independence and the effectiveness of their contributions to the society, it is clear we must provide the knowldge necessary to adequately meet the physical, mental, social, and environmental problems and needs of this rapidly growing segment of our poplation. S. 50 recognizes this need by establishing a more adequate and coordinated program of research and training related to the aging processes and the diseases of aging in order that we may specially deal with the needs of the elderly. The bill will develop the leadership, technical specialists, and facilities from which to understand very thoroughly the impact of various disciplines on the aging processes, and this includes special provisions for study and demonstration projects on the transportation problems of older Americans. The current lack of effective approaches to this transportation is a serious impediment to meeting the mobility requirements of the elderly.

Finally, I applaud the intent of S. 50 to expand and improve social services for the aging by more generous formula grants to the States and for the initiating of model projects which will more fully test the best delivery system for dealing with the problems of the elderly in the areas of housing, continuing education, free retirement training, and services to the physically and mentally handicapped elderly. I also note that title VII of the Older Americans Act, which provides nutritional services for the elderly, is expanded and that the authorization for the Foster Grandparents and RSVP programs, which have continued to grow and develop since their transfer to the ACTION agency, is extended for an additional 3 years with new programs established to permit the provision of expanded services.

Mr. President, most older Americans seek from the Government only that which they cannot obtain for themselves. They want to be treated as full citizens and welcomed as participants in the mainstream of American life. S. 50 is a salutory effort to restore first class citizenship to all older Americans, by strengthening the Older Americans Act and providing adequate financial support for ongoing and future programs under the act, we will have made a great stride forward to assure that quality of life that we owe to our elderly citizens.

I would like also to offer for the RECORD a brief description of the major provisions of the bill.

First, it establishes a 15-member Federal Council on the Aging which would work actively to promote the interests of older Americans on matters relating to their special needs and to Federal programs affecting them.

Second, the Administration on Aging would be elevated by placing it in the Office of the Secretary of Health, Education, and Welfare and would make the Commissioner on Aging directly responsible to the Secretary and required to report to him on the central policy matters affecting the act.

Third, the bill adopts the existing title III formula for fiscal year 1973 except that the minimum guarantee is reduced from 1 to ½ percent for States and from ½ to ¼ percent for territories. In succeeding fiscal years the formula now contained in title VII of the Older Americans Act of 1965 is adopted, except that each State and territory is guaranteed as a minimum an amount equal to its fiscal year 1973 allotment.

Fourth, funds are authorized for direct grants by the Commissioner on Aging to support model projects which would expand or improve social services to older persons including projects dealing with such matters as housing, transportation, employment, continued education, preretirement counseling, and special services for the handicapped.

Fifth, the Commissioner is authorized to make grants and contracts to conduct research in the field of aging and for training personnel for programs for the aging, including the establishment of multidisicipline centers of gerontology. A special program of grants and contracts relating to transportation problems of the elderly is incorporated into the model projects section of the bill.

Sixth, funds are authorized to make grants for the purpose of acquisition, alteration or renovation, of multipurpose senior centers.

Seventh, authorization for the Foster Grandparents and RSVP programs conducted by the action agency is extended for an additional 3 years and broadened to permit the provision of services to individuals other than children. The present age 60 eligibility for participation in the program is retained.

In addition, the bill includes two proposals to maximize job opportunities for older workers: First, the Older Americans Comprehensive Service Employment Act which would assist in converting mainstream pilot projects into permanent ongoing national programs, and second, the Middle-Aged and Older Workers Training Act which would authorize training, counseling, and special support services for unemployed or underemployed individuals who are middle aged or older.

Mr. PACKWOOD. Mr. President, in light of the benefits that the Older Americans Comprehensive Services Amendments of 1973 would afford our Nation's senior citizens, I could do no less than support the general intent of this measure; thusly, I am cosponsoring the bill. However, such a commitment does not in any way lessen specific objections to particular titles to the bill that I may have. Because of my grave reservations concerning the possibility of the duplication of services provided by titles IX and X, and consequential increase in unnecessary cost and supportive bureaucracy, I am lending my support to the Senator from Maryland (Mr. BEALL) in voting to recommit the bill with instructions to strike titles IX and X.

Mr. CHURCH. Mr. President, as chairman of the Senate Committee on Aging, I consider the older Americans comprehensive services amendments to be one of the highest legislative priorities during the 93d Congress.

For nearly 4 months the field of aging has struggled in confusion and doubt because of President Nixon's ill-conceived pocket veto of the Older Americans Act amendments last October.

It is high time to resolve this growing uncertainty by decisively registering our strong approval for S. 50, a measure supported by every leading organization in the field of aging and millions of older Americans throughout the Nation.

First, however, I wish to compliment the chairman of the Subcommittee on Aging (Mr. EAGLETON) for bringing this urgently needed proposal to the floor in a timely fashion.

This bill, which is cosponsored by 67 Senators, represents nearly 2 years of work by legislators, experts in gerontology, Government officials, program administrators, and the elderly themselves.

In 1971—the year of the White House Conference on Aging—the Senate Committee on Aging attempted to provide direction and leadership by designating an advisory committee to assess the strengths and weaknesses of our Nation's commitment in aging. And the report of this panel, I am pleased to say, provided a solid foundation for subsequent legislative proposals.

Hearings conducted by Senator EAGLETON and Representative BRADEMAS also made it abundantly clear that major organizational changes and program improvements were needed to respond to the dynamic challenges in the field of aging.

The legislation that emerged from the House and Senate committees—the older Americans comprehensive services amendment—reflected this broad consensus.

This proposal was approved overwhelmingly last July by a vote of 351 to 3 in the House. In the Senate the vote was unanimous, 89 to 0.

The net impact of this action is that 99.32 percent of the Congress expressed approval for the older Americans comprehensive services amendments. Yet, President Nixon decided to pocket veto this desperately needed legislation, despite this clearcut and unmistakable bipartisan support.

Now this legislation has been modified by the Labor and Public Welfare Committee to make it more acceptable to the President.

This new version of the older Americans comprehensive services amendments, it seems to me, is a proposal which the President should support.

It would at long last provide the elderly with the kind of advocacy and action envisioned by the authors of the Older Americans Act in 1965.

Particularly noteworthy, S. 50 would elevate the Administration on Aging from the welfare oriented social and rehabilitation service to the office of the Secretary of Health, Education, and Welfare. More importantly though, this action would help to provide the aged with a high-level spokesman with the power and prestige to formulate coherent policies and develop programs of direct usefulness to older Americans.

For far too long, AOA has been relegated to the basement of the vast HEW bureaucracy. As a consequence, its advocacy and coordinating missions have been seriously hampered.

Our Nation can ill afford a half-hearted commitment for nearly 30 million persons aged 60 or older. And the upgrading of AOA will be helpful in providing aged and aging Americans with a forceful advocate to represent them in the highest councils of Government.

One of the most important innovations in this legislation is the establishment of model programs to focus on several of the elderly's everyday problems, such as housing, transportation, and others. Housing, for example, now represents the elderly's number one expenditure—accounting for almost one-third of their income.

S. 50 would also provide the essential wherewithal to make social services available for the aged on a much more realistic scale. More than 7 years of experience under the Older Americans Act has clearly demonstrated the worth and value of services for the elderly.

For many older Americans, these services can mean the difference between living in their homes or being unnecessarily institutionalized at a much higher public cost. It should also be pointed out that if these services could shave just 1 day off the medicare national hospital average, this could produce a savings approaching $300 million.

On other important fronts, S. 50 would make major improvements and additions to the Older Americans Act. Funding would be authorized to establish multipurpose senior centers to provide a focal point for the delivery of social and nutritional services.

The foster grandparent program would also be expanded to include in-home services, as well as supportive services for children in institutional settings. This action is clearly warranted, especially because of the glowing evaluation which the foster grandparent program received from Booz, Allen Public Administration Services, Inc. That report stated very positively:

> The inescapable conclusion is that the Foster Grandparent program provides benefits that are considerably in excess of costs.

Additionally, S. 50 would establish two new manpower programs—the Older American Community Service Employment Act and the Middle-Aged and Older Workers Training Act—to maximize job opportunities for mature workers. The need for these measures, I believe, is especially urgent.

During the past year, approximately 800,000 workers aged 45 to 64 "dropped out" of the labor force. In far too many cases, this decision is made involuntarily after prolonged periods of fruitless search for employment.

However, these two new proposals would help to provide new job opportunities for older workers by:

Establishing a comprehensive mid-career development services program to authorize training, recruitment, placement and other supportive services for unemployed or underemployed persons 45 or older; and

Creation of a national senior service corps to convert green thumb, senior aides, and other successful mainstream pilot projects into permanent, ongoing national programs.

For these reasons, I reaffirm my enthusiastic support for the early enactment of S. 50, the older Americans comprehensive services amendments.

Mr. President, before concluding my remarks, I should like to make one further point. Several Senators, I am sure, received a telegram recently from the National Retired Teachers Association-American Association of Retired Persons.

The basic message is brief and powerfully presented: the provisions for community service jobs and manpower training programs for middle-aged and older workers must be retained in S. 50. Their sound and compelling advice, I firmly believe, should be heeded.

Mr. President, I ask unanimous consent that the telegram from NRTA-AARP—expressing support for S. 50 with titles IX and X—be printed at this point in the RECORD.

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

WASHINGTON, D.C., *February 16, 1973.*

Senator FRANK CHURCH,
Washington, D.C.

The five million members of the American Association of Retired Persons and the National Retired Teachers Association urge you to support the Older Americans Comprehensive Services Amendments (S. 50) as reported by the Senate Labor and Public Welfare Committee.

We urge that you oppose any effort to weaken the legislation. Please oppose any attempt to strike or amend titles IX and X. The provisions for Community Service Jobs and Manpower Training Programs for middle aged and older workers are vitally important because they would help alleviate one of the most serious problems facing older Americans today. The problem of inadequate income. It is imperative that the Senate expedite action on this vital legislation. We are most appreciative of your continued interest in aging legislation.

CYRIL F. BRICKFIELD,
Legislative Counsel.

Mr. CLARK. Mr. President, it is a privilege for me to join the distinguished Senator from Missouri (Mr. EAGLETON), and so many other Senators as a cosponsor of the older Americans comprehensive services amendments. Of all the States, Iowa has the second largest proportion of senior citizens in its population, and there will be no social legislation this year more important to Iowa or to the country than this bill.

Growing older is something that happens to all of us. Old age can be one of the very best periods of life, or it can be one of the very worst. For some people, old age means a comfortable, active, and productive retirement. For all too many others though, it means sickness, loneliness, and the feeling that the best years of life have passed by. The problems of old age do not respect race or heritage or wealth. That alone ought to encourage us to improve the quality

of life for our senior citizens, and this bill would help us do it.

This country is only beginning to listen to its conscience on the problems of aging, only beginning to find ways to give older Americans the dignity, the security, and the comfort they have earned. It is not really a matter of giving, though. Older Americans have contributed to the success and the prosperity of this country, and they deserve a share of its benefits.

Senator EAGLETON and other Senators already have explained the provisions of the bill and the reasons each title is so important:

Improved recreational, educational, and voluntary services for the elderly;

Expanded research on aging and more training programs for people who will work with the elderly;

Federal funds to help communities with their senior citizen programs, including senior citizen centers;

A new community service, employment, and counseling program to enable older Americans to continue making a significant contribution to society; and

By emphasizing the importance of the Administration on Aging, indicating this country's national commitment to helping its senior citizens.

Each of the provisions of this bill is essential. Senior citizens need special library programs, and this bill would give those programs to them. Senior citizens need help in finding adequate housing, low-cost transportation, educational opportunities, and this bill would help the States and local communities give those programs to them.

The employment counseling and training programs outlined in this bill are especially important. Americans over 45 years old account for more than 20 percent of all the unemployment in this country. This legislation will help fulfill our obligation to try to find them jobs—not just for their sake, but for the country's sake as well.

I was not a Member of the Senate when this legislation first came before Congress. It passed the Senate by a vote of 89 to 0 and the House of Representatives by a vote of 351 to 3. Yet despite the overwhelming support for the bill, despite the overwhelming need for it, the President chose not to sign it into law. He said that it was inflationary, that we could not afford to spend $1.5 billion over the next few years to improve the quality of life for senior citizens. I do not think spending $19 for every person over 60 in this country will contribute to our economic problems, especially when some of the money will be used to help people find jobs.

Any time there is a proposal to spend $1.5 billion on anything, Congress had better take a hard look at it. That has been done with this bill. It is the product of a great deal of analysis and hard work by committees of the Senate and the House of Representatives on the White House Conference on Aging. It has bipartisan support in both Houses; $1.5 billion is a great deal of money, but it is worth noting that this country spent $2 billion in cost overruns on the C5A military transport. It is worth noting that the first year cost of this program is less than the cost of a single aircraft carrier. I think we can afford this bill for senior citizens. What we cannot afford is to let the President's pocket veto stand.

In the months ahead, there will be considerable debate on the President's budget proposals: on the cuts in social services, on the increases in medicare costs, on the decreases in almost everything but the military budget, and on the constitutional confrontation between the President and Congress that underlies it all. That is ahead of us, but this is the place to begin. This is the place to begin to set the priorities straight.

At the White House Conference on Aging, President Nixon really put our case quite well:

> Any action which enhances the dignity of older Americans enhances the dignity of all Americans, for unless the American dream comes true for our older generation, it cannot be complete for any generation.

If we cannot help our senior citizens, our own parents and grandparents, whom can we help?

Mr. President, it is absolutely essential for the Senate to pass the bill. I think it will.

Mr. WILLIAMS. Mr. President, I strongly support the early enactment of the older Americans comprehensive services amendments.

This proposal, in my judgment, is now the No. 1 legislative priority for older Americans.

It is gratifying, indeed, that the distinguished chairman of the Subcommittee on Aging (Mr. EAGLETON) has helped make it possible for early consideration of this measure.

Last year, a similar proposal received overwhelming bipartisan support of both the House and Senate. However, a pocket veto by the President—after the Congress adjourned—had the effect of killing this urgently needed legislation and adding to the already mounting uncertainty in the field of aging.

His veto measure, I am disappointed to say, was based upon many objections which were simply ill-founded, unsubstantiated, and totally without merit.

Shortly thereafter, I pledged that the Labor and Public Welfare Committee, of which I am chairman, would complete action on this bill by February 12. This goal has been achieved. In fact, the committee beat the deadline by 5 days. On February 7, S. 50 was ordered reported unanimously by the full committee.

The bill that has emerged should, I emphasize, be acceptable to both the executive branch and the Congress. Two-thirds of the Senate—or 67 Members of this body—have already cosponsored this proposal.

Moreover, it has received the enthusiastic endorsement of every leading organization in the field of aging and others with an interest in older Americans.

At the subcommittee and committee levels, a number of modifications were approved to make this proposal more acceptable to the President. We took these actions in a bipartisan fashion—and in many cases unanimously—to enhance the likelihood of passage of this legislation.

No one will benefit—least of all the elderly—if the administration insists on a long, bitter controversy over the Older Americans Act amendments. And the aged will be the big losers if the administration continues in its stubborn opposition to the measures in this bill.

These proposals, I want to reiterate, are strongly supported by national senior citizen organizations representing more than 7 million older Americans.

Many of these recommendations have also been endorsed by the White House Conference on Aging.

For these reasons, I am hopeful that the President will reassess his earlier position, which I believe was indefensible.

And this modified version of S. 50 provides that opportunity. It would reduce authorized funding levels for the Older Americans Act by nearly one-half billion dollars, compared with the vetoed bill. The committee version also took into account another objection of the administration: the provision for authorizing Federal funding for construction of multipurpose senior centers would be removed. However, money would still be available for acquiring, altering, or renovating existing facilities to serve as senior centers.

Additionally, the committee was mindful of the administration's opposition to categorical manpower programs for older workers. For this reason, language was included in S. 50 to authorize the Secretary of Labor to integrate programs under the proposed Older American Community Service Employment Act and the Middle-Aged and Older Workers Training Act with any comprehensive manpower legislation subsequently enacted.

These measures represent constructive steps for accommodation to resolve the intensifying problems caused by the veto.

S. 50 would provide an effective vehicle for coming to grips with the many everyday problems of the elderly. It would authorize vitally needed funding to launch a comprehensive social services program for older Americans.

These services—such as homemaker, home health, and many others—have proved to be enormously effective for the elderly. And, they should continue to be expanded because the need is so great.

Another important provision, which I sponsored with the Senator from Vermont (Mr. STAFFORD), would provide a mechanism for solving some of the aged's most serious transportation problems. Today many older Americans live under a form of "house arrest," cut off from vital services.

Only about 42 percent are even licensed to drive. In far too many cases, transportation services are inaccessible or inappropriate for their special needs.

As a result, millions of elderly are denied an equal opportunity to participate in their communities. Routine tasks for others—such as shopping, visiting friends, or going to the doctor—become a formidable obstacle to aged persons without means of transportation.

Under my proposal, funding would be available to first, establish special transportation subsystems for older persons with mobility problems; second, provide portal-to-portal services; third, demonstrate improved coordination between transportation subsystems and social service delivery systems; and fourth, authorize innovative solutions to solve some of their most pressing problems.

I would also like to call special attention to provisions which I sponsored to assist older persons who also have physical or mental impairments to maintain their own homes, live as independently as possible, participate in community social service programs for the elderly, and avoid costly institutionalization. As the committee report indicates, special effort is needed to insure that those older Americans who are handicapped are reached by programs under the Older Americans Act.

First, I would like to point to section 308(a)(1), which authorizes model projects to provide particular services to older handicapped persons. These include homemaker services, special transportation and escort services, reader and letter writing services, shopping services, and the like, which older persons who are handicapped can call upon as needed. For example, establishment of a community transportation and escort service on a volunteer or fee basis would be invaluable to assist older persons who have serious orthopedic problems or who are blind, to visit their doctors or go to senior centers. At such centers, these individuals will be able to obtain nutrition and social services and participate in normal activities.

Provision of these special services under S. 50 would be complemented for older blind and otherwise severely handicapped persons by independent living and other basic rehabilitation services authorized by S. 7, the Rehabilitation Act of 1973, which we expect to enact very soon. These basic rehabilitation and independent living services will be provided by State vocational rehabilitation agencies, and we expect those State agencies to work closely with State agencies on the aging to assure effective, coordinated programs on behalf of older handicapped persons.

Furthermore, we have included within the definition of social services in section 302(1)(e):

> Services designed to assist older persons in avoiding institutionalization, including pre-institutionalization evaluation and screening, and home health services.

Many studies of local community mental hospitals have indicated that a disproportionate number of older persons have been institutionalized because there were few other alternatives for care and treatment. As many as 40 percent of this population may only have physical health problems, but because of lack of reasonable alternatives for care and no living relatives, these individuals are initially brought to mental hospitals, and may never leave.

It is very important that we develop community based services to insure that every available alternative to institutionalization be explored before such drastic action is taken. In addition, we expect that some of the funds authorized under title IV of the Older Americans Act, as amended by S. 50, will be used for the training of specialized personnel with expertise in providing services to older persons who are handicapped and for research and development projects to improve services to these individuals.

Our intention is to insure full participation of older handicapped Americans in all programs under the Older Americans Act, not only as recipients of services but also as providers of volunteer and compensated services themselves. Some older handicapped persons have already demonstrated their capacity for giving assistance to others, and we believe that their knowledge and experience can be effectively utilized in these programs.

In addition to these particular provisions which I have mentioned, the bill would expand many of the existing successful programs under the Older Americans Act, such as research, training, RSVP and foster grandparents. Such programs, I believe, are crucial for the sound and continued development of the field of aging.

For all of these reasons, I strongly support the passage of S. 50 and urge its prompt enactment so that the benefit of its provisions may begin assisting older Americans as soon as possible.

Mr. BROCK. Mr. President, I am extremely pleased to cosponsor S. 50 which will strengthen and expand service delivery programs under the Older Americans Act to our Nation's elderly.

The first eight titles are meritorious and I support them fully. I am glad that we will, at long last, provide a "National Information and Resource Clearing House for the Aging"—a center we have long needed. It will collect, analyze, prepare, and disseminate information regarding the needs and interests of older Americans. The assistance this center will provide to both the senior citizen and those working within the field will be beyond measure.

I am also very glad to sponsor a bill which will provide grants for research and the development of projects in the field of aging. Certainly, this is a new and tremendously challenging field. With this research, we will be able to provide the best possible services for the elderly of our Nation who are so deserving of them.

I cannot, however, stand in support of titles IX and X, and I feel that I must go on record stating my discord with these last two titles of the bill. These titles provide for categorical service programs which would seriously interfere with our effort to develop coordinated services for older persons. The President vetoed this act during the last session, in large measure, due to the inclusion of these two titles. I feel that these once again threaten the approval of this act by the President. For that reason, I have sponsored their deletion today. I think that we should let these titles stand on their own merit and be placed before the Senate to deal with separately, so that we can produce prompt enactment of the Older Americans Act. I think all my colleagues will agree with me that we wish to do nothing to deter the delivery of much needed services to our Nation's elderly.

Mr. STEVENS. Mr. President, I will join with the Senator from Maryland (Mr. BEALL) today in asking that the Senate remove titles IX and X from S. 50. As a cosponsor of this legislation, I would like to see it enacted in the form approved by the Labor and Public Welfare Committee; however, I do not think that we can risk another veto of this bill.

Title X, the middle-aged and older workers training program has twice been part of legislative packages which have been vetoed. In both cases, this title was specifically mentioned in the message of disapproval.

It is true that the current manpower training programs have not been responsive to the needs of our middle-aged workers and senior citizens who have been displaced due to outmoded skills and advancing technology. As these titles are to be administered by the Department of Labor, I would hope to see them included in a comprehensive manpower program in the near future. At such time, I will lend my full and active support to obtaining passage of these needed programs. For the present, however, I do not feel that we can afford to jeopardize enactment of S. 50 by retaining these two titles.

Mr. HARTKE. Mr. President, I am pleased to lend my support today to the passage of the older Americans comprehensive services amendments. S. 50 has many similarities to legislation that I introduced in the 92d Congress and I offer my full support to quick passage and enactment of the older American comprehensive services amendments.

Millions of older American citizens, particularly those over the age of 65, are deprived of the opportunity to carry on normal lives because our society has failed to supply them with the minimal services to which they are entitled. The elderly are increasingly confronted by obstacles in their environments which prohibit them from living normal lives.

In the past we have tended to emphasize the economic obstacles to encountered by the aged. Major barriers exist, however, in the areas of health, housing, transportation and other social services. We must realize that the needs of the elderly cannot be defined merely on the basis of their budgets, but must be determined on the basis of what is essential for a life of dignity. Consequently, it is our obligation to provide community services that will raise the standard of living of our elderly citizens so that in their advancing years they can maintain their self-respect as human beings.

I believe that S. 50 establishes a series of realizable goals which, if implemented would permit the elderly of the Nation to live lives of dignity and economic security. Therefore I add my voice to the concerned Senators and Representatives who call upon the President to not delay the enactment of the older Americans comprehensive services amendments.

Mr. McGOVERN. Mr. President, we have before us today another of the bills the President vetoed after Congress ad-

journed last fall, the older Americans comprehensive services amendments to the Older Americans Act of 1965.

This is no spending measure hastily conceived by Democratic Members of Congress, as OMB appears to charge. Rather, it is a carefully worked out bipartisan measure which would greatly increase the quality of life and employment opportunities of older Americans. All the available evidence suggests that the manpower sections of the bill would decrease Federal expenditures for such things as welfare and medicare as well as increase tax receipts. In other words this program would ultimately pay for itself many times over.

This bill provides for a relatively small investment in the future of older Americans—$100 million in the first year of operation and $150 million in the second. The first-year amount is thus only one-tenth of the cost of one boat in the fleet of the new missile submarines the administration wants to build. In contrast, if this bill reduces the medicare national hospital average by just 1 day, the chairman of the Senate Committee on Labor and Public Welfare tells us we will have saved nearly $300 million.

Thus, in financial terms alone, this investment is well worth making. The human reasons are even more compelling.

Another aspect of the President's veto surprised me. He has said that people should ask what they can do for themselves—and yet he vetoed this measure which was designed to help older Americans stand on their own two feet in dignity.

This bill would replace the boredom of old age with educational opportunity.

It would replace loneliness with meaningful voluntary service.

It would replace television soap operas with more challenging recreational activities.

Perhaps most importantly, the job retraining provisions would help lift the more than 1 million older Americans who are currently unemployed, from the indignity of joblessness.

The Budget Director should be reminded that he has a special debt to older Americans. The recession the administration created in order to control inflation increased joblessness among older Americans by a shocking 73 percent during the period of 1969–72. The number of older Americans unemployed 27 weeks or longer soared 3½ times during the same period.

Mr. President, it is time we cast off "the young man's burden"—older Americans do not want paternalism; they want to participate. Their experience and knowledge remains one of the last great untapped resources of our society.

Let us give them a chance to participate.

Let us give them a chance to readjust to a society which has grown faster than any of us.

Mr. President, I call upon Congress to pass this measure by as wide a margin as we did last year—89 to 0 in the Senate and 351 to 3 in the House—so that the budget cutters in OMB will know we will override any veto. Perhaps then they will belatedly recognize their error, as was done in the case of the recent cuts in veterans' benefits.

Mr. DOLE. Mr. President, older Americans comprise an increasingly larger proportion of the American population. The latest census reveals that 1 out of every 10 persons in the United States today has reached the age of 65. Unfortunately, ill health, disability, retirement, or income limitation have separated many of these older Americans from the mainstream of community life. They have become isolated and unproductive long before their mental and physical abilities would impose limitations on their activities.

In recent years the Federal Government has begun to address itself to the needs of these older citizens and the problems and waste which results from their isolation. A major shift in emphasis came about during the first 4 years of the present administration when the Federal Government in the design and implementation of its programs began treating older Americans as a resource rather than as a burden. As a Nation we are beginning to realize that separation of the elderly from the community's mainstream is not an answer to their needs but on the contrary only compounds their difficulties and is a tremendous waste of human resources. The segregation of the aging not only denies many older citizens a sense of fulfillment and satisfaction they deserve for their past contributions, but it also denies the country the full value of their skills, insights and experience which have guided this country to the present day.

Today I rise in support of S. 50, the Older Americans Comprehensive Amendments of 1973. I feel the provisions of S. 50 will not only develop new programs in areas of need but also help coordinate the many existing programs and benefits for older Americans, making them more readily available to those in need of assistance. S. 50 will help older Americans return to the center of community life and the end of the senseless separation of them from their fellow citizens, and it will help put an end to the waste of this great national resource. I therefore wholeheartedly support this legislation because of its potential benefits for the elderly in Kansas and throughout America. As President Nixon stated in his address before the White House Conference on Aging:

> Any action which enhances the dignity of older Americans enhances the dignity for all Americans.

The purpose of S. 50 is to make available to our older citizens comprehensive health education and social service programs through the expansion of existing programs and the coordination and development of new State and local systems for delivering these programs and services. The goal of these programs is to provide, secure, and maintain maximum independence and dignity in a home environment for older persons capable of self-care. Appropriate supportive services would be supplied these elderly individuals in the areas of nutrition, hospitalization preretirement training, continuing education, low-cost transportation, housing, and health services.

Kansas provides an excellent example of the need for such a program for American senior citizens. My own State now has 266,201 residents over the age of 65. This is 11.8 percent of the State's population. An additional 211,555 Kansans are between the ages of 55 and 64. Although this is not a large proportion, a look at the population figures over the last 10 years shows a significant trend. While the total population of the State was increasing at a 3.2 percent rate, the population between the ages of 60 and 70 increased by 10.8 percent nationwide, the over-65 population has increased at twice the rate of the under-65 population since the turn of the century. It therefore becomes obvious that older Americans are a growing force in America, a group whose needs should be anticipated, and a resource which if properly utilized can add to the richness of all American life.

S. 50 attacks the problems of our older citizens by giving their programs a higher priority within our Federal Government structure. The bill expands the duties of the Administration on Aging and places the agency within the office of the Secretary of Health, Education, and Welfare, so it can serve the interests of the elderly at the highest departmental level. The bill also establishes the Federal Council on the Aging which will serve as an advisory body to the Commission on Aging and also actively promote the interests of older Americans throughout the whole range of Federal policies and programs.

BETTER INFORMATION

A National Information and Resource Clearinghouse for the Aging will be established to provide data on the Federal programs benefiting the elderly. Information on State and local agencies and private organizations primarily responsible for serving the needs of older Americans would thus be made accessible along with information on the complex medicare, medicard and other programs operating within the framework of the Social Security Act.

A survey taken of 5,000 elderly persons in southeast Kansas several years ago revealed that the average income from the group was $72.12 per month. Many in this group were eligible for Old Age Assistance but were not receiving it. Dr. W. D. Moreland who conducted the study concluded that, although pride was one reason those eligible and in need were not receiving public assistance, the basic reason for not participating in the programs was a lack of information on the availability of assistance. The Resource Center will provide a valuable service to these residents of Kansas and other States who are unaware of Federal programs that might offer assistance or who feel the procedure for acquiring the benefits is too complicated.

COMMUNITY PROGRAMS

Title III of the Older Americans Act provides grants for State and community programs for the aging. Funds allocated to State and local planning and service areas will be used to improve the linkage of services to the elderly into

a comprehensive, coordinated network. Through this system of comprehensive services to benefit the health, education, and welfare of the aging, these programs can be more efficiently administered and made more accessible to all the elderly. The Commissioner on Aging will also have the authority to issue grants for model projects to develop new means and methods of dealing with special problems of older Americans. Special priority is to be given projects which assist in meeting these housing needs of older Americans including home repair and methods of adapting existing homes to the physical restrictions of the elderly. Other areas of priority include transportation, continuing education, and problems of the handicapped elderly.

TRANSPORTATION NEEDS

A major problem of the elderly in Kansas has been their inability to obtain necessary transportation. This problem is especially severe in rural areas where the elderly are widely dispersed and separated from the necessary community services which may also be infrequent and inadequate. Similar problems exist in the cities where elderly housing projects have been located a distance from necessary supportive services. Under the training and research title of the Older American Act, the Commissioner on Aging in conjunction with the Secretaries of Housing and Urban Development and Transportation is directed to conduct a comprehensive study of the transportation problems of older Americans. In this regard, the Commissioner is directed to establish demonstration projects to test alternative methods for meeting transportation needs of the elderly. Half of these projects are to be carried out in States predominantly rural in character in recognition of the special transportation programs of the elderly in rural areas. I am hopeful that one of these projects can be conducted in Kansas and a model developed to help meet the special transportation needs of the Kansas elderly.

EDUCATION TRAINING

Other provisions within the training and research title of S. 50 will assist State agencies and educational institutions in their effort to attract qualified persons to the field of aging and to improve the training methods and research in the field. Multidisciplinary gerontology centers are to be established to recruit and train personnel, conduct research, provide technical assistance and consultation, and act as a repository of information to advise and direct the orientation of the various State programs. The result will be better programs and more efficient utilization of resources in the field of the elderly.

SENIOR CENTERS

Satisfying and constructive use of time is a key factor in the morale and self-image of the aging individual. Older persons should be urged and helped to do what they enjoy doing. To assist in the meaningful use of time, S. 50 provides funds for the purchase, lease or repair of facilities to be used as a multipurpose senior center. Groups are encouraged to make use of schools, libraries or other neighborhood facilities to establish a hub for their activities.

The centers would not only be a recreation and leisure focus, but would also be a point for community service and volunteer work to be directed toward the elderly. Under title VI of the Older Americans Act funds are made available for the expansion of the foster grandparent program and the senior health aid and senior companion programs. Through these programs older Americans can expand and continue their contribution to the community by offering services to other elderly and the less fortunate children of that community. From this nucleus other voluntary programs can be developed to meet the specific needs of that community. By granting older Americans the opportunities to serve others while they serve themselves, these programs can be the basic ingredient for a meaningful life for millions of aging Americans.

NUTRITION PROGRAMS

Title VII of the bill absorbs the nutrition service program for the elderly into the coordinated State and local delivery system required under the State plan. These provisions will help assure that the necessary nutritional materials will be accessible to all those in need of this service.

Other provisions of S. 50 will amend existing laws to make library facilities and services more accessible to the elderly and to make library materials more responsive to the needs of the elderly in addition, title I of the Higher Education Act is amended to encourage institutions of higher education to apply their resources toward meeting needs of the elderly. Adult education courses are to be developed and made accessible to the elderly to assist them in dealing successfully with the practical problems in their everyday lives, including the making of purchases, meeting their transportation and housing needs, and complying with governmental requirements such as those for obtaining citizenship, public assistance, or social security benefits.

BETTER INCOMES

The basic provisions of the Older Americans Act establish a broad range of programs for the elderly. But these programs are not the beginning of an effort on behalf of the older American; rather, they will be following legislation enacted last year to help deal with a basic problem facing the aging—the problem of low income. Passage of the social security amendments has raised the income level for millions of older Americans and general revenue sharing has the potential of granting much needed tax relief for our senior citizens.

REVENUE SHARING

During the next 5 years general revenue sharing will channel over $30 billion to State and local communities and will thus provide a significant opportunity for property tax relief. This relief will be especially important for the elderly who must meet increasing taxes out of fixed incomes. Since Kansas ranks near the top in percentage of homeownership, property tax reduction could be an especially beneficial result of revenue sharing. Additional efforts of the administration to hold down Federal spending and thereby reduce inflation are of special concern to the elderly who have been most severly injured by inflation's past bite out of their fixed incomes.

RURAL DEVELOPMENT

The rural development program enacted last year will also be of major importance to the elderly in Kansas. Increased business and industry in rural areas will increase job opportunities for those who have retired but wish to continue in part-time employment. Income restrictions in determining Social Security eligibility were raised during the last session of Congress but should be increased even more or eliminated completely. The problems of the elderly in maintaining their incomes are sufficiently difficult without the additional hardship of Government policy which opposes self-help.

The 20-percent increase in Social Security payments and the expansion of Social Security Health and Disability benefits are also helping to alleviate the income problems of the elderly. Administrative charges are currently under consideration which would expand medicare reimbursement for home health care services with the seed money for this program to be provided under provisions of S. 50. National health insurance and measures to improve rural health care have also been introduced in Congress and if enacted will provide major sources of assistance and financial relief for the elderly.

Thus, S. 50 is not the complete solution to the problems of older Americans, but as an effort to coordinate existing programs and policies for the elderly, it is an enormous step in the right direction. I urge my colleagues to join in support of this legislation and other measures which offer assistance to older Americans.

Let me add, however, that I believe titles IX and X should be considered separately and therefore I am supporting the motion of the Senator from Maryland (Mr. BEALL). I am hopeful of some resolution of the conflict between Congress and the executive branch over these titles.

Mr. HELMS. Mr. President, I wish I could support this legislation (S. 50), and I could readily do so if the Senate in its wisdom had seen fit to delete titles IX and X.

We are in a time of great economic stress in America, Mr. President. Whether we like it or not, the Congress of the United States can no longer continue to vote to spend enormous sums of money over and above Federal income. It is time for us to face up to our responsibility, and exercise economic prudence—and begin the task, long overdue for attention, of restoring stability to our Nation's economy.

No Member of this body is more concerned than I for the welfare of the elderly. But, Mr. President, I suspect—in fact, I am quite certain—that what we are about to do is delay—delay, Mr. President—the establishment of a well-ordered program for the elderly.

President Nixon vetoed this very same

bill last year because it went too far. The President can be expected to veto it again. The same economic conditions prevail today, Mr. President, except that they are worse.

For the most part, Mr. President, the elderly of America understand that the brakes must be applied to Federal spending, and particularly in the instance of Federal programs which duplicate the very same functions being rendered by other agencies and with other Federal funds. The elderly deserve our earnest and sincere concern. They have mine. Therefore, I regret that the course on which we are headed is merely another confrontation with the President—and a delay in our getting about the business of really aiding the elderly who need and deserve our careful and considered attention.

Mr. TUNNEY. Mr. President, senior citizens are among the most neglected of all groups in our country. I am pleased, therefore, to be a cosponsor of S. 50, the older Americans comprehensive services amendments. The importance and urgency of this legislation is underlined by the fact that over two-thirds of the Members of this Senate have joined together in cosponsorship.

Modern science has enabled man to increase his lifespan by many years. We must decide today whether those years will be spent in misery and neglect or whether they can be made enjoyable and fruitful.

S. 50 is the same legislation as H.R. 15657, which passed both the House and Senate last year and which was pocket vetoed by President Nixon. It received near-unanimous support from the Congress as well as from a great number of local and national organizations concerned with the welfare of senior citizens.

S. 50 will create the Federal Council on the Aging, which will act as an advocate for the aging throughout the Federal Government, will make recommendations to the President, Congress, and heads of Federal agencies regarding policies and programs affecting the elderly, and will inform the public about the problems and needs of the aging, as well as the programs and activities designed to meet those needs. S. 50 will move the Administration of Aging from the Social and Rehabilitation Service of the Department of Health, Education, and Welfare to the Office of the Secretary of HEW. The Commissioner of the Administration on Aging is to establish and operate a National Information and Resource Clearinghouse to collect, maintain, and disseminate information relating to the needs and interests of the aging.

Under S. 50, funds will be granted to the States in order to provide social services to the aging in accordance with approved State plans. Model projects may also be funded by the Commissioner on Aging with priority consideration being given to the areas of housing, employment, transportation, continuing education, preretirement training, and services to mentally and physically handicapped senior citizens.

In addition, S. 50 will expand research in the field of aging, with special attention being given to the establishment of multidisciplinary centers of gerontology. It will make grants to help set up multipurpose senior centers. It will extend the authorization for the foster grandparent and the RSVP—retired senior volunteer program—programs for an additional 3 years. Nutrition services, which will include expansion of surplus commodities available, and special library and education programs will also be increased.

Finally, S. 50 will create programs in the Department of Labor to provide for the employment of individuals aged 55 and older and would also provide special counseling and training programs for middle-aged and older workers.

It has been said that our Nation seems to be falling behind, rather than advancing, in terms of achieving security and well-being for older Americans. Older Americans have already waited too long and have been given too little. Today we are faced with a challenge—the challenge of accepting responsibility for our obligations to America's elderly. As America begins to accept that responsibility, we in Congress must enact legislation to insure that that responsibility is carried out. The veto last year by President Nixon of the Labor-HEW appropriations, which would have funded the Comprehensive Older Americans Act, dealt a cruel blow to the hopes for expansion and improvement of services and opportunities for the elderly. The pocket veto last year of the older Americans comprehensive services amendments was another disappointment. Mr. President, this terrible trend must not be allowed to continue. I urge the immediate passage of S. 50.

I ask unanimous consent that an article by Mr. Frank Nelson of Pasadena, Calif., which was published in the Senior Citizens Sentinel, be printed in the RECORD.

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

PAGING THE AGING

(By Frank Nelson, Pasadena)

Will the real Mr. — ? — please stand up? It is becomingly evident that here is a surplus of speech writers in this country.

Bulwar Lytton, English racconteur, used to say, "There is no virtue in consistency." If that was true in his day in England, what would he think of the contraditions that are now rife in this country?

How is it possible for such statements as, "The American is just like a child in the family . . . If you make him completely dependent and pamper him too much, you are going to make him soft and eventually a very weak individual" match up with a remark made to some of us only a little over a year ago that, ". . . Unless the American dream comes true for our older generation, it cannot be complete for any generation," made by the same person in Washington, D.C.? This was made in all sincerity before 3,500 delegates, of which I was one, after which the speaker stated, "I join with thousands . . . in a personal commitment to make 1972 a year of action on behalf of 21 million older Americans."

What happened in between these two statements by the same man? It would be an interesting study by the most astute psychologist to find the answer to this sudden switch-over from middle-of-the-road conservatism to the fulminations of economic royalism.

Personally, I feel that speech writers have gotten out of hand; that in the turmoil of more urgent matters, some rhetoric got by unnoticed. I can't believe that such a logical mind has suddenly gone beserk and has been a victim of such inconsistency as is evidenced in these two remarks. Some subversive rhetorician has gotten his foot in the door, wreaking havoc among the "best laid plans of mice and men." * * * and help defeat the Senate measure to grant elderly home owners—as well as tentants—a $300 tax credit against oppressive taxes and rents? (Property taxes have increased 35 percent since 1969 and nothing whatever has been done about it!)

Will the same voice which promised to encourage the extension of the Senior Aides Program, all of which have proved so far to be remarkably successful be allowed to die on the vine? His statement to us was, ". . . these programs have demonstrated that older Americans can make a valuable contribution in health, education and community projects, even as they earn additional income." Why was this program projection scuttled by pocket veto? No one can explain this unexpected inconsistency.

Will the same voice that was raised in behalf of the extension of the Older Americans Act which included a national program for the provision of nutritious meals for the elderly be silenced when this innovative project is re-introduced again in the 93rd Congress as a separate measure? We hope not. The elderly have been supinely passive in their demands in the past. They have been content to "eat the crumbs from the master's table" just once too long. Now the tables are turned. Since the White House Conference on Aging, some of us have developed "clout," and we intend to use it. We do not intend to be a victim of a purportedly new social program devised, we think, by some benighted speech writers and characterized by such country words as "shucked off" and "trimmed down." These crude words have no part in the American Dream.

THE RIGHT OF OLDER AMERICANS TO A NEW SENSE OF PRIDE AND PURPOSE

Mr. HUMPHREY. Mr. President, as an original sponsor of S. 50, the Older Americans Comprehensive Services Amendments of 1973, I believe it is of the highest importance that the Senate take favorable action on this vital legislation today. It has been well said that there is no constituency more deserving of assistance or more willing to help themselves than our senior citizens. This legislation provides for the effective targeting of Federal assistance to assure that limited resources are directed at critical needs of the elderly.

This legislation builds upon extensive experience gained from programs initiated and new problems defined during the administration of the Older Americans Act of 1965. It extends and expands the services provided under this act—services both for and by the elderly themselves—and it improves the organizational structure for the delivery of these services at all levels of government.

I was deeply disturbed by the President's veto of similar legislation enacted by Congress last fall. That veto directly contradicted his earlier promise to give greater focus and priority to programs and policies on behalf of 20 million Americans over age 65. This sharpened focus and increased priority can be accomplished under provisions in the present bill for the establishment of a 15-

member Federal Council on the Aging to be a spokesman before all Federal agencies on the real needs and concerns of the elderly, and to elevate the Administration on Aging, placing it directly in the Office of the Secretary of Health, Education, and Welfare.

A further, important initiative is undertaken in this legislation to provide for the establishment of a National Information and Resource Clearinghouse for the Aging. This agency can be of great help to senior citizens in providing information on the purchase of insurance, real estate—where fraud has been an all-too-common experience—and other consumer areas which directly affect older Americans.

Community programs under title III of the Older Americans Act have been of major importance. The present bill expands and reorganizes the existing program of formula grants under this title to direct resources to high priority areas and to effectively coordinate services provided by these programs. The success of these programs is well demonstrated by the fact that last year more than one million older persons were served by over 1,500 projects funded under title III.

The present legislation adds to this formula grant program an authorization for direct grants by the Commissioner on Aging to model projects where priority is given to services in the areas of housing, employment, transportation, continuing education, preretirement training, and services to the physically and mentally handicapped elderly. All these areas represent critical needs today among older Americans which must be met without further delay.

I strongly support the further provisions in this legislation to extend the foster grandparent and RSVP programs—to whose great value in transforming lives I can personally testify from numerous firsthand encounters with these programs in Minnesota and across the country. And important initiatives and expanded efforts on behalf of the elderly are clearly evident in authorizations for grants and contracts to conduct research and training in the field of aging, to expand the range of surplus commodities available for the title VII program of nutrition services for the elderly, and to provide for grants to the States for special library and education programs for older Americans.

I strongly urge that titles IX and X remain a constituent part of this legislation. Title IX builds upon the success of the operation mainstream pilot programs that I was privileged to have a direct role in fostering. In providing for the establishment of an Older Americans program, it clearly recognizes the major role that older Americans can and should take in helping to carry out the social services that are of crucial importance to our communities. This program means jobs for individuals aged 55 or older who have a low income and who would have difficulty in securing other employment—jobs in providing community health, education, recreational, and other services; in environmental protection and natural resources conservation projects; and in economic development programs.

This title establishes a national commitment that I have long urged upon Congress: That there must be a firm Federal policy against discrimination in employment on the basis of age, and in support of the right of every older citizen to continue utilizing his or her education, experience, and skills in meaningful work at a fair wage. Everything possible must be done to maintain the direct involvement of older Americans in the life of our Nation and its communities. It was for this reason that I fought for the doubling of appropriations, to a level of $100 million, in 1971 for community service programs under the Older Americans Act. And to further these objectives, I intend to again introduce the Older Workers Conservation Corps Act, to provide for a major expansion of opportunities for older Americans to obtain paid jobs of great importance to our communities and States.

These same fundamental considerations underlie my strong support for title X of this legislation, to provide for the establishment of a comprehensive midcareer development services program in the Department of Labor to provide training, counseling, and special supportive services for persons aged 45 or older.

The unemployment crisis afflicting older workers is clearly established in the harsh statistics that joblessness for this age group increased by 73 percent, from 596,000 to 1,045,000, between January 1969 and August 1972. Long-term joblessness has risen by 233 percent. But these statistics do not include those who have dropped out of the work force altogether, often involuntarily—including an estimated 2.5 million men in the 45-to-64 age category. For those who do manage to hold on to their jobs, the pressures for early retirement have steadily increased—as indicated by a decline in work force participation for this age group while the general civilian work force has experienced a significant expansion.

It is profoundly wrong that there should be 6 million persons aged 55 and older living in poverty in America today. It is unconscionable that our federally assisted manpower programs, as presently administered, should fail to meet the serious unemployment problems of older people.

The Middle-Aged and Older Workers Employment Act, established under title X of this legislation, would redress this serious neglect in national policies and priorities.

I firmly believe that a decent respect for human dignity demands that this legislation be enacted.

Mr. CHILES. Mr. President, in Florida alone there are over 1 million persons over the age of 60—that is over 20 percent of the total population. On January 12 of this year I held a conference on the aging at Eckerd College in St. Petersburg. It was planned to provide our elderly an opportunity to voice their concerns while at the same time gain some worthwhile information from officials. And the principal conclusion of this conference—as I expect most conferences on this subject—was that this Nation's elderly retirees have few problems that cannot be minimized or eliminated with money. Those who are well-fixed financially are not complaining.

The President has cited the Older Americans Act of 1965—which S. 50 amends, as "Landmark Legislation." I believe early passage of these amendments are most desirable since the President's pocket veto of last year left the Administration on Aging operating on a day-to-day basis under a continuing resolution.

Last year in a message to the Congress on the aging the President said:

> We often hear these days about the "impatience of youth." But if we stop to think about the matter, it is the elderly who have the best reason to be impatient. As so many older Americans have candidly told me, "We simply do not have time to wait while the government procrastinates. For us, the future is now." I believe this same sense of urgency should characterize the government's response to the concerns of the elderly. I hope and trust that the Congress will join me in moving forward in that spirit.

In the closing days of the last session, Congress did move "forward in that spirit." H.R. 15657, a bill substantially identical to S. 50, was approved in the Senate by a vote of 89 to 0 and in the House by a vote of 351 to 3. And yet despite such solid bipartisan support, and despite his expression of a "sense of urgency," the President vetoed the bill—after the Congress had adjourned, making it impossible to pass the bill without the signature of the President.

I believe the President got most of what he wanted incorporated in H.R. 15657 and Congress managed to add some additional provisions which it thought appropriate. In short, the bill represented a cooperative venture by both parties working with administration representatives.

As a cosponsor of S. 50 I fully support the bill believing it is a sound effort to meet the demonstrated needs of the elderly. Since it—

Authorizes the establishment of comprehensive and coordinated systems for the delivery of social services to the aging at the local level;

Provides improved recreational, educational, and voluntary service opportunities for the elderly;

Expands research in aging and the training of needed personnel;

Establishes a community service employment program and special training and counseling programs in the Department of Labor for middle-aged and older persons.

Mr. ROBERT C. BYRD. Mr. President, I wish to express my strong support for S. 50, the Older Americans Comprehensive Services Amendments of 1973, of which I am a cosponsor.

The Older Americans Act was first enacted in 1965; however, it was amended in 1967 and 1969. Since its original enactment, in 1965, virtually all of the States and territories have created State offices on aging. The appropriations which have been made pursuant to the 1965 act as amended, reflect the tremendous interest and growth in this field. In 1966, which was the first year of operation for this program, $7,500,000 was appropriated, and since that time, this program has gained large increases every

year. The 1973 budget requests $257,000,000 for this program. The principal focus of activity under this act in the past has been primarily centered in community programs conducted under the authority of title III, which provides services to older Americans. It is estimated that last year, more than 1 million older persons were served by over 1,500 projects funded under title III of the Older Americans Act. These programs assisted elderly persons in maintaining independent living arrangements and in meeting many of their daily needs. They succeeded in reaching a large number of older Americans, and these in-home and out-of-home services made it possible for the elderly to maintain a sense of dignity and independence in their own familiar community environment. Some of the other programs provided home-delivered meals and arranged for transportation to doctors' offices, clinics, grocery stores, or to food stamp offices. However, these programs have filled only a very small portion of the existing need among this large group of very deserving citizens. S. 50 is designed to further fill this void; to provide these needed services in a comprehensive fashion; and at the same time, give priority to those older persons who are in the greatest need.

This bill makes many changes in the existing act which we know are needed, through experience with the ongoing programs. Most importantly, it takes the Administration on Aging—(AOA)—out of the Social and Rehabilitation Service of the Department of Health, Education, and Welfare and places it directly under the Office of the Secretary in order that it will receive his direct attention, and in order that AOA can function, as designed, with the least possible bureaucratic layers which have, on some occasions, insulated those in decisionmaking positions from those who actually work with, and administer these programs.

This act also: Establishes a Federal Council on the Aging to actively promote the interests of older Americans throughout the whole range of Federal policies and programs affecting them;

Establishes a National Information and Resource Clearinghouse for the Aging;

Substantially revises the State grant program in order to provide for a better organizational scheme at State and local levels which will permit the targeting of limited resources to high priority areas, and authorizes grants of $150 million for fiscal year 1974, and $200 million for fiscal year 1975;

Provides for upgrading all training and research programs and, toward this objective, authorizes the Commissioner of Education to make grants for the purpose of establishing multidisciplinary centers of gerontology;

Authorizes grants to cover the cost of establishing or renovating multipurpose senior centers;

Authorizes the Secretary of Agriculture to donate commodities to older persons who are eligible grantees;

Authorizes a comprehensive library program for the elderly, including the training of persons to work with the elderly in libraries, and authorizes funds to purchase the specialized reading material and collections desired by elderly readers, including the necessary grants to carry out this title;

Establishes an older Americans community service employment program under which low-income persons 55 and over who have, or would have, difficulty in securing employment would be channeled into community service employment.

Mr. President, I firmly believe that this legislation is needed to provide comprehensive services to our older citizens, who have been neglected for too long in our society and I urge its passage.

Mr. JAVITS. Mr. President, I yield back all time on the bill, having no further requests to speak and no notice of amendments or motions by any other Member.

The PRESIDING OFFICER. All time on the motion and the bill has been yielded back.

The question is on agreeing to the motion to recommit the bill with instructions. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Alaska (Mr. GRAVEL), the Senator from Iowa (Mr. HUGHES), and the Senator from Washington (Mr. MAGNUSON) are necessarily absent.

I also announce that the Senator from Mississippi (Mr. STENNIS) is absent because of illness.

I further announce that, if present and voting, the Senator from Indiana (Mr. BAYH), the Senator from Alaska (Mr. GRAVEL), the Senator from Iowa (Mr. HUGHES), and the Senator from Washington (Mr. MAGNUSON) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from New York (Mr. BUCKLEY), the Senator from Hawaii (Mr. FONG), and the Senator from Arizona (Mr. GOLDWATER) are necessarily absent.

The Senator from Texas (Mr. TOWER) is absent on official business.

The Senator from Colorado (Mr. DOMINICK) is detained on official business.

The result was announced—yeas 26, nays 64, as follows:

[No. 19 Leg.]

YEAS—26

Baker	Fannin	Saxbe
Bartlett	Griffin	Scott, Pa.
Beall	Hansen	Scott, Va.
Bellmon	Helms	Stevens
Bennett	Hruska	Taft
Brock	McClure	Talmadge
Cotton	Packwood	Thurmond
Curtis	Pearson	Young
Dole	Roth	

NAYS—64

Abourezk	Clark	Huddleston
Aiken	Cook	Humphrey
Allen	Cranston	Inouye
Bentsen	Domenici	Jackson
Bible	Eagleton	Javits
Biden	Eastland	Johnston
Brooke	Ervin	Kennedy
Burdick	Fulbright	Long
Byrd, Harry F., Jr.	Gurney	Mansfield
	Hart	Mathias
Byrd, Robert C.	Hartke	McClellan
Cannon	Haskell	McGee
Case	Hatfield	McGovern
Chiles	Hathaway	McIntyre
Church	Hollings	Metcalf
Mondale	Pell	Stafford
Montoya	Percy	Stevenson
Moss	Proxmire	Symington
Muskie	Randolph	Tunney
Nelson	Ribicoff	Weicker
Nunn	Schweiker	Williams
Pastore	Sparkman	

NOT VOTING—10

Bayh	Goldwater	Stennis
Buckley	Gravel	Tower
Dominick	Hughes	
Fong	Magnuson	

So Mr. BEALL's motion to recommit was rejected.

The PRESIDING OFFICER. The bill is open to further 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 it pass? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Alaska (Mr. GRAVEL), the Senator from Iowa (Mr. HUGHES), and the Senator from Washington (Mr. MAGNUSON), are necessarily absent.

I also announce that the Senator from Mississippi (Mr. STENNIS) is absent because of illness.

I further announce that, if present and voting, the Senator from Indiana (Mr. BAYH), the Senator from Alaska (Mr. GRAVEL), the Senator from Iowa (Mr. HUGHES), and the Senator from Washington (Mr. MAGNUSON), would each vote "yea."

Mr. GRIFFIN. In anounce that the Senator from New York (Mr. BUCKLEY), the Senator from Hawaii (Mr. FONG), and the Senator from Arizona (Mr. GOLDWATER) are necessarily absent.

The Senator from Texas (Mr. TOWER) is absent on official business.

The result was announced—yeas 82, nays 9, as follows:

[No. 20 Leg.]

YEAS—82

Abourezk	Fulbright	Muskie
Aiken	Gurney	Nelson
Allen	Hansen	Nunn
Baker	Hart	Packwood
Beall	Hartke	Pastore
Bentsen	Haskell	Pearson
Bible	Hatfield	Pell
Biden	Hathaway	Percy
Brock	Hollings	Proxmire
Brooke	Huddleston	Randolph
Burdick	Humphrey	Ribicoff
Byrd, Harry F., Jr.	Inouye	Roth
	Jackson	Saxbe
Byrd, Robert C.	Javits	Schweiker
Cannon	Johnston	Scott, Pa.
Case	Kennedy	Sparkman
Chiles	Long	Stafford
Church	Mansfield	Stevens
Clark	Mathias	Stevenson
Cook	McClellan	Symington
Cranston	McClure	Taft
Dole	McGee	Talmadge
Domenici	McGovern	Thurmond
Dominick	McIntyre	Tunney
Eagleton	Metcalf	Weicker
Eastland	Mondale	Williams
Ervin	Montoya	Young
Fannin	Moss	

NAYS—9

Bartlett	Cotton	Helms
Bellmon	Curtis	Hruska
Bennett	Griffin	Scott, Va.

NOT VOTING—9

Bayh	Goldwater	Magnuson
Buckley	Gravel	Stennis
Fong	Hughes	Tower

So the bill (S. 50) was passed.

NOTE.—The text of S. 50, as amended and passed today, is identical with the text printed in the CONGRESSIONAL RECORD of yesterday, Monday, February 19, at pages 4430 through 4443.

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

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

The motion to lay on the table was agreed to.

AUTHORITY FOR THE SECRETARY OF THE SENATE TO MAKE NECESSARY CLERICAL AND TECHNICAL CORRECTIONS

Mr. EAGLETON. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make necessary clerical and technical corrections in the engrossment of the bill and that the bill (S. 50) be printed as passed by the Senate.

The PRESIDING OFFICER. 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 a nomination reported earlier today by the Committee on Interior and Insular Affairs.

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

Mr. MANSFIELD. Mr. President, this is being done at the specific request of the distinguished chairman of the Committee on Interior and Insular Affairs, the Senator from Washington (Mr. JACKSON), and with the approval of the distinguished Republican leader, the Senator from Pennsylvania (Mr. SCOTT).

ASSISTANT SECRETARY OF THE INTERIOR

The assistant legislative clerk read the nomination of John Henry Kyl, of Iowa, to be an Assistant Secretary of the Department of the Interior.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

Mr. MANSFIELD. 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

On request of Mr. MANSFIELD, and by unanimous consent, the Senate resumed the consideration of legislative business.

RESTORATION OF RURAL ELECTRIC AND TELEPHONE DIRECT LOAN PROGRAMS

The PRESIDING OFFICER (Mr. SCOTT of Virginia). Under the previous unanimous-consent agreement, the Senate will proceed to the consideration of S. 394 under limited time. The Senate will be in order, and the bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 394) to amend the Rural Electrification Act of 1936, as amended, to reaffirm that such funds made available for each fiscal year to carry out the programs provided for in such Act be fully obligated in said year, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its consideration.

The Senate proceeded to consider the bill.

PRIVILEGE OF THE FLOOR

Mr. HUMPHREY. Mr. President, first I ask unanimous consent that the following staff members of the Committee on Agriculture and Forestry be permitted to be present on the floor during the consideration of this measure, to assist certain Senators during the debate: Mr. Bill Taggart, Mr. Jim Thornton, Mr. Mike McLeod, Mr. Forest Reese, Mr. Harker Stanton, and Mr. Jim Giltmier.

The PRESIDING OFFICER. Without objection, it is so ordered. Who yields time?

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

The PRESIDING OFFICER. On whose time?

Mr. MANSFIELD. The time to be taken from both sides.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HUMPHREY. 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. HUMPHREY. Mr. President, the bill before us today (S. 394) is cosponsored by 54 U.S. Senators. The bill was originally introduced by myself and the Senator from Vermont (Mr. AIKEN), and there are now 52 of our colleagues who have joined with us as cosponsors. I ask unanimous consent that the names of the 52 cosponsors be printed in the RECORD at this point.

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

Mr. Abourezk, Mr. Allen, Mr. Bayh, Mr. Bellmon, Mr. Bentsen, Mr. Bible, Mr. Burdick, Mr. Robert C. Byrd, Mr. Cannon, Mr. Chiles, Mr. Church, Mr. Clark, Mr. Dole, Mr. Eagleton, Mr. Ervin, Mr. Fulbright, Mr. Gravel, Mr. Gurney, Mr. Hart, Mr. Hartke, Mr. Haskell, Mr. Hatfield, Mr. Hathaway, Mr. Hollings, Mr. Huddleston, Mr. Hughes, Mr. Kennedy, Mr. McGee, Mr. McGovern, Mr. McIntyre, Mr. Mansfield, Mr. Metcalf, Mr. Mondale, Mr. Montoya, Mr. Moss, Mr. Muskie, Mr. Nelson, Mr. Nunn, Mr. Pearson, Mr. Pell, Mr. Randolph, Mr. Schweiker, Mr. Scott of Pennsylvania, Mr. Sparkman, Mr. Stennis, Mr. Stevens, Mr. Stevenson, Mr. Talmadge, Mr. Thurmond, Mr. Tunney, Mr. Williams, and Mr. Young.

Mr. HUMPHREY. Mr. President, the bill before us does not seek to enumerate any new principle. Its sole purpose is to reiterate and reaffirm the original and continuing intent of Congress—that the rural electrification and rural telephone loan authority vested in the administration by the Rural Electrification Act of 1936 is mandatory in the amount appropriated each year.

This bill will not prohibit the use of funds under the Consolidated Farm and Rural Development Act as a supplement to the amount of direct loan funds provided under the Rural Electrification Act. It does, however, prohibit them from being used in lieu of REA loan funds appropriated by Congress.

My service in the Senate goes back to 1949. It has always been my position that the President has the same constitutional obligation to execute the law contained in appropriation acts as he has with respect to any other law.

The Congress passes laws and the President may either sign them or veto them. But once a bill is approved by both the Congress and the President, the executive branch is dutybound to carry out and enforce its provisions. The President and his subordinates are then obligated to do what the law prescribes.

By no stretch of anyone's imagination can it be claimed that the executive branch has the right or power to unilaterally repeal a statute by refusing to carry out its terms. But this is precisely what the President has done with respect to the Rural Electrification Act of 1936.

With all of the formality and due process of a one-page, back-to-back, double-spaced press release, the Secretary of Agriculture unilaterally terminated a Federal program which has been operated successfully and continuously for 36 years pursuant to a specific statute enacted by the Congress. And during all of those years the Congress has continuously reviewed this program and appropriated funds in response to Presidential budget requests—sometimes in amounts above what was requested.

This action by the Secretary on December 29—the Friday before the long New Year's weekend—constitutes a great deal more than impoundment of appropriated funds. It constitutes nothing less than a refusal by the executive branch to carry out the terms of a duly enacted Federal statute. In effect and in reality the Rural Electrification Act of 1936 has been repealed by a one-page Department of Agriculture press release on mimeograph paper.

The National Rural Electric Cooperative Association, following this USDA announcement, retained the Washington law firm of Arnold and Porter to determine if it or its member systems might have a case in the courts.

I have had an opportunity to review this memorandum to the National REA Cooperative Association on the subject of the legality of the Department of Agriculture's termination of the REA Act 2-percent loan program. It is an extensive document, made available January 22, 1973, to the National REA Cooperative Association by competent counsel.

This law firm has completed a 74-page memorandum of law on the subject and the association's board of directors now has it under study.

Here is how Arnold and Porter sum-

marizes its views with respect to the termination of the REA loan program:

It is our view that a strong case can be made for the proposition that the Department has exceeded its legal authority in taking that action. We find no constitutional basis for the Department's action and we are of the view that Congress has not delegated to the Department the discretion to take such action.

Here, briefly, are the reasons for that view:

First. Authorization for presidential actions must stem from either an act of Congress or the Constitution, because the lawmaking power is entrusted by the Constitution to the Congress alone.

Second. The Constitution does not confer power on the Executive to terminate statutorily established programs.

Third. Congress has not expressly or impliedly delegated power to the executive branch to terminate the Rural Electrification Act program in the Rural Electrification Act, itself, in any of the appropriations requested by the Secretary and approved by the Congress under that act, or in the Anti-deficiency Act.

Fourth. The Rural Development Act of 1972 was clearly not intended by Congress as a substitute for the Rural Electrification Act of 1936, but was intended rather to provide facilities such as community centers, firehouses, industrial parks, and fire and rescue equipment, including ambulances. It therefore implied no authority to terminate the Rural Electrification Act loan program.

Fifth. The Senate, during its consideration of the public debt and expenditure limitation legislation of 1972, twice refused to grant the President authority requested by him to cut specific budget items without limit.

Sixth. It is doubtful that even under authority provided by the Reorganization Act of 1949, which was not invoked in this case, the President could initiate the complete termination of a statutory program.

Therefore, the administration's action must be viewed as an overt challenge to the constitutional lawmaking power of Congress by the Executive; a challenge in which the Executive refused to carry out certain selected statutory programs enacted through regular constitutional procedures and, by so doing, completely frustrates the power and intent of Congress.

In enacting legislation over the years, Congress has proceeded on the assumption that a law once duly enacted would be carried out in good faith by the executive branch. Its statutes, therefore, "authorizing" and "empowering" the Executive to perform certain acts, and of "making available" or "appropriating" money for specified purposes. Certainly, the Congress has not usually enacted laws in contemplation of situations created by willful refusal of the Executive to perform its constitutional responsibility.

However, because the Executive is willfully refusing to administer the Rural Electrification Act of 1936, we must reassert our constitutional authority by passing this bill and making it clear beyond a shadow of a doubt that this act is the law of the land and that it should be administered as the Congress intended.

There are several other compelling reasons why we need to act on S. 394 and act quickly.

Since December 29 there has not been a single loan approved for rural electrification, either under the Rural Electrification Act or the Rural Development Act. The fact is that the decision by the Office of Management and Budget to terminate the Rural Electrification Administration's direct loan program caught even the Department of Agriculture by surprise. As a consequence, it was not prepared then—and it is not prepared now—to make loans under the insured and guaranteed loan programs of the REA Act.

In fact, the Department's Office of General Counsel has itself raised serious questions about the legality and practicality of making rural electric and rural telephone loans under the Rural Development Act.

Mr. President, I am privileged to have in my possesssion a communique of the Department of Agriculture dated February 2, addressed to David A. Hamil, the Rural Electrification Administrator. The subject of this memo is in response to a request by the administrator for opinions of counsel with respect to the authority for making rural electric and telephone loans under the Consolidated Farm and Rural Development Act.

Mr. President, I ask unanimous consent to have this memo printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. HUMPHREY. Mr. President, this particular document prepared by the department's own counsel, which is some 20 pages in length, creates great doubt as to the legality of the department's action.

Let me summarize it briefly:

On January 8 of this year, REA Administrator David Hamil requested the Office of General Counsel to advise his Agency on certain legal questions concerning use of the rural development program for rural electric and telephone loans. On February 2, R. Stanley Harsh, Assistant General Counsel for Rural Development and Conservation, replied to Administrator Hamil in a 20-page opinion. Mr. President, I will summarize briefly some of the questions this opinion raises, but I ask that it be placed in the RECORD in its entirety following my remarks.

This opinion points out that before a loan under the Rural Development Act may be made, the Secretary of Agriculture must determine that an applicant is unable to obtain credit elsewhere.

This appears largely to nullify the Department's December 29 announcement that "all REA" loans would thereafter be made at 5 percent under the Rural Development Act. Under this interpretation, it would seem that the "no credit elsewhere" test would effectively prevent most rural electric systems from obtaining insured loans as contemplated earlier by USDA.

A second major and serious problem is emphasized in the opinion. Even if a loan should be made, it would be subject to the contingency that at any time over the loan period the borrower could be compelled to refinance and repay the Government loan, if the Secretary should determine: First, that private credit is available to the borrower, at then prevailing rates and terms, and second, that the borrower is reasonably able to repay such loans without seriously impairing the operation for which the loans were initially made. In other words, financing under the Rural Development Act is not really permanent, long-term financing.

Finally, the assistant general counsel points out that all loan applications must be submitted for review and comment to local multijurisdictional planning agencies and to the unit of local government having jurisdiction over the area in which the proposed project is to be located; and the Secretary must in each case make a determination "that the loan project is not inconsistent with area development planning." The potential for delays, irrelevant and frivolous controversy and added borrower burdens in these requirements is incalculable.

In summary, the changes proposed in rural electric loan programing will enable REA and its borrowers in untested, uncharted, and cumbersome procedures under a statute not designed for this kind of application.

As cumbersome and impractical as it appears in the Rural Development Act in the case of the rural electric borrower, it is even more impractical for the use of rural telephone borrowers. Although rural electric cooperatives would have to pass a stringent credit elsewhere requirement before qualifying for 5-percent loan money, and even though they would stand to lose their 5-percent loan at any time that their financial condition improved sufficiently, they would at least have some hope of receiving some help from the Rural Development Act.

For rural telephone borrowers, this is not the case.

Of the 867 telephone companies who borrow from the Rural Electrification Administration 74 percent are commercial companies. These commercial companies are specifically excluded from a 5-percent loan under section 306(a)(1) of the Consolidated Farm and Rural Development Act. This section of the act excludes from eligibility corporations that are operated for profit.

Even though these companies are operated for profit, they make very little profit. Many of these small commercial companies are small and inefficient operations with low-revenue potential. They are not inefficient because of bad management, but because they are serving very sparsely populated rural areas. They serve areas that the Bell System would not want to be bothered with. There are 262 REA borrowers with less than 1,000 subscribers. Of these 262 companies, 201 are commercial companies. Yet small commercial companies such as these would qualify only for high-interest guaranteed loans under section 310B of the Consolidated Farm and Rural Development Act. The interest rate under this section of the act would be "at such rate as may be agreed upon by the borrower and lender." Therefore, these companies

which are struggling for survival would be forced to make a giant leap from 2-percent interest loans, for which they have previously qualified, to an interest rate in excess of 7 percent, because of the unusual circumstances of a few member-users of the line. That would kill the rural telephone program in vast areas of rural America. Besides that, as one of the authors of the Rural Development Act and as chairman of the Rural Development Subcommittee that held hearings throughout the country on that legislation, I can tell you that there was never any intention that the Rural Development Act was intended to do the job of providing all the needed financing required for the rural electric and telephone programs.

The rural telephone program is rather new and accommodates rural users in sparsely settled areas of this country, so it has to be a program that has some special considerations. That is why it was placed within the Rural Electrification Administration, to qualify under certain circumstances for the low interest rate loans.

Mr. President, the people who live in our cities would not tolerate the kind of telephone service that many rural Americans have, if they have any telephone service at all. The Rural Electrification Administration's most recent yearbook points out that 22.9 percent of the subscribers served by REA telephone borrowers have light-party lines. They must share their telephone line with eight other families. Another 25.6 percent of the subscribers of REA telephone borrowers have four- and five-party line service. Only about half of the subscribers of the REA telephone system have one- and two-party lines.

Congress has recognized that much needs to be done to upgrade the quality of telephone service available in rural America. It recognizes that the annual appropriations that Congress has made for REA telephone loans is not enough. For fiscal year 1973, this appropriation was $145 million.

For this reason, Congress passed and the President approved legislation which established the rural telephone bank. This bank receives $30 million of Federal capital each year, and it uses this capital to borrow additional funds from the money markets. Although the bank is only in its second year of operations, it is already a success. In the fiscal year ending June 30, 1972, the rank made 89 loans totaling $90,954,080 to REA telephone companies.

Congress realized that some telephone companies could pay more than 2-percent interest on loans. It realized that some telephone companies could pay more than 4-percent interest. Therefore, the law provides that interest rates shall be at a minimum of 2 percent and they shall be set at higher rates according to the ability of the borrower to pay. Because some borrowers can pay more than 2 percent, but less than 4-percent interest on loans, the Rural Telephone Bank Act even provides for these companies a blend of 2-percent money and 4-percent money.

The arbitrary termination by the Secretary of the REA loan program will mean that there will be no more blending of loan funds. Worse than that, it will mean that no new borrowers can qualify for a loan from the Rural Telephone Bank. The law requires that all borrowers from the Rural Telephone Bank must first be borrowers under the direct loan program of the Rural Electrification Administration. To meet this criteria, a number of applicants were granted token loans of $20,000 each from the direct loan program so that they could qualify for a bank loan.

Thus, the arbitrary termination of the REA direct loan program not only eliminates aid to small telephone companies that desperately need 2-percent loans; it cripples the operation of the Rural Telephone Bank—in fact, it practically kills it—a bank created to help borrowers who can pay higher rates of interest.

Mr. President, there is one other area I want to touch upon in relation to this bill. Since December 29, when it announced that it was terminating the REA direct-loan program, the administration has been attempting to justify this action with all sorts of wild statements about rural electrification.

Secretary of Agriculture Butz has repeatedly stated that "only" 20 percent of the consumers of REA-financed electric systems are farms. This convenient figure was arrived at by a very loose application of statistics.

USDA says that REA has made loans to finance connections to 7.1 million consumers. USDA also says that there are 2.8 million farms in the United States and that REA borrowers serve about half of these. Thus, 1.4 million of the 7.1 million consumers—about 20 percent—are farms and the rest, 80 percent, are, by their definition, "nonfarm."

Let us take a look at what that other 80 percent is made up of. First of all, nearly 500,000 of these "consumers"—7 percent of them—have yet to be hooked up. In reality, REA borrowers serve only 6.6 million consumers.

Also, REA counts every meter as a consumer. Thus, included in this 80 percent "nonfarm" is every second or third meter on a farm—crop dryers, range wells, irrigation pumps, tobacco barns, and so on.

Also included in this 80 percent is every tenant house, every second home on a farm, or every hookup for migratory workers' living quarters.

This 80 percent also includes highway lighting, billboard lighting, and many other such "consumers."

It turns out, then, that Mr. Butz is twisting statistics when he claims that 80 percent of REA consumers are "nonfarm."

But, that was only the beginning of what I call the "big lie."

Once it had been established that "80 percent of the REA loans went to nonfarm services," it was time for the next escalation.

On January 30, Treasury Secretary George Schultz appeared on national television and declared:

> Eighty percent of that money goes in nonrural areas; some of it to help country clubs and things like that.

Notice the not-so-subtle switch from "80 percent nonfarm" to "80 percent nonrural."

The next escalation came only a day later at the President's news conference. He declared:

> Now 80 percent of this 2-percent money goes for country clubs and dilettantes, for example, and others who can afford living in the country.

I submit that if decisions are being made on the basis of this kind of misinformation and misuse of the facts, then it is not hard to see why vital rural programs are being scuttled by the administration.

One North Dakota electric co-op manager, following the President's statement, started checking to see if he could find the dilettantes, country clubs, or other wealthy rural Americans in North Dakota. Here is what he found:

During 1972, his system connected 145 new services, while retiring the services of 58 abandoned farms. The 145 broke down as follows:

Service to Indians on two reservations—84; other nonfarm residences—22; lake cottages—3; farms and farm related facilities—18; small commercial, such as CTV tower, community water supply, tribal center, and so forth—18; country clubs—0.

Fourteen of the nonfarm residences were financed by Farmers Home with restrictions on income, and seven were mobile homes. These hardly meet the category of others who can afford "to live in the country." The three lake cottages might.

The big problem we have at home is that you cannot afford to live in the country because rural living is not always the choice living.

Since 80 percent of the 145 new services would be 116 and only three meet the classification of "others who can afford living in the country" and there were no country clubs served, it follows that the co-op must have extended service to 113 dilettantes.

And, since most of the new hookups were to American Indians, the sheer weight of mathematical proof seems to be that the majority of those dilettantes are Indians. As the manager of the co-op said: "They sure had us fooled."

He still has not figured out how to tell a dilettante Indian from a nondilettante Indian.

All of this may sound somewhat frivolous, but it is not. The misuse of statistics to attempt to justify an illegal action is a serious matter. When a department head or a President grossly distorts facts and discredits one of the soundest-working programs ever created by Congress, then it is time for action.

I might also remind the President and my colleagues that all of this talk about how many farms are served is irrelevant in terms of the Rural Electrification Act. The act was not passed with the idea of serving only farmers. It was passed to provide for service to rural areas—that is how the law reads—and the only place the act mentions farms is when it declares that rural areas include "both the farm and nonfarm population thereof."

So the REA act is not merely for farms but also for rural areas, for smaller communities, rural counties, and subdivisions.

I want to reiterate my strong feeling that Congress cannot continue to accept this kind of arbitrary disregard by the Executive of its plain and unambiguous constitutional duty to execute the law.

Unless Congress accepts this challenge to its constitutional power and reasserts its status as a coequal branch of the Federal Government, it will soon degenerate into little more than a society for the debate of issues already decided by someone who has assumed higher authority.

The loan-making authority of the Rural Electrification Act of 1936 was created by Congress to carry out a policy declared to be in the public interest. The act did not say to the executive branch, "Carry out this policy if you like it."

It laid down a program, and that program has been reenacted time after time by this Congress and reexamined by Congress after Congress before the committees of Congress, the legislative committees and the appropriations committees.

The issue is whether we shall continue our system of checks and balances which the Founding Fathers considered essential to preserving our system of government—or whether we shall drift into self-serving oligarchy.

I raise my voice in alarm at attempts to relegate Congress into a second-rate branch of Government. And I object to the President's actions which are designed to cripple or end programs that help those who need it the most.

I ask each of my colleagues to join with me and Senator AIKEN in voting for this bill.

The Rural Electrification Act is not subject to change by the President. That is the duty of Congress. It cannot be and it must not be changed by Executive fiat or edict. In this instance, it is not that the Department of Agriculture, acting on instructions from the OMB, is merely reducing the funds available for 2-percent loans. It is that they are terminating the program.

This veto of a program is not permitted under the system of government which we have. If the REA loan program is to be changed, terminated, or in any way altered or modified, it must be done by Congress. The purpose of the bill before us is simply stated. It simply directs that the law—the law as presently written and passed by Congress, an appropriations law that was signed by the President—be properly executed and administered.

The language of the bill substitutes for the word "empowered" the word "directed" and notes in the Consolidated Farm and Rural Development Act that the loan authority provided is not to replace existing REA loan authorities but is to be supplemental to them.

So we have a clear-cut issue as to whether or not Congress is going to see to it that the programs it has authorized—in this instance a very valuable program which has produced tremendous results, which has aided the rural areas of America and which has made possible the high productivity in many ways of our farms—whether or not that program is to be abandoned by Executive decree. I submit that the executive branch has no right to abandon programs authorized by Congress either in the law or in the Constitution.

Rural America will look upon the action of Congress, if it should fail to reassert its will in this program, as an abandonment of our responsibility. I know of no Member of this body who feels the rural electrification program has been a waste of public funds. I know of no public utility capable of going into an area where there are few customers on the line and being able to establish a system of electricity or telephone service.

If the decision to terminate the program remains as the express will of the Government, the rural telephone program is gone out the window and finished, and many of the rural electric cooperatives will suffer because many of these cooperatives have to make improvements and bring their equipment up to date. While it is true that most American farms today have electricity, there are heavier demands for electrical energy on those farms.

Before we decide to make a fundamental change in policy I submit we should do it through Congress and through the proper committees and subcommittees, with votes in the Senate and in the House. That is the way to change the law. We cannot permit the abandonment of public policy by the order of an executive officer of this Government. To do so would, for all practical purposes, violate the intent and purpose of our constitutional system.

EXHIBIT 1

U.S. DEPARTMENT OF AGRICULTURE,
OFFICE OF THE GENERAL COUNSEL,
Washington, D.C., February 2, 1973.

Subject: Request for Opinion of Counsel with Respect to Authority for Making Rural Electric and Rural Telephone Loans Under the Rural Development Act and the Consolidated Farm and Rural Development Act.

To: David A. Hamil, Administrator, Rural Electrification Administration.

This is in response to your memorandum of January 8, 1973, same subject, requesting an opinion on certain legal questions in connection with the making of rural electrification and telephone loans pursuant to the Consolidated Farm and Rural Development Act, Pub. L. No. 92–419, title I, 7 U.S.C. 1921, *et seq.* (the "Act"). Answers to your specific questions and additional related comments are as follows:

1. *Which authorities may be used for the making of loans to REA electric and telephone borrowers, distinguishing between nonprofit and profit making or commercial borrowers?*

Two authorities in the 1972 Act may be employed in making rural electric and rural telephone loans, as discussed below.

SEC. 305(a)(1)

The announcement of the changes in the rural electric and rural telephone programs indicated that henceforth guaranteed and insured loans will be made under the authority of Sec. 306(a)(1) of the Consolidated Farm and Home Development Act. That section authorizes loans for "essential community facilities". Congress did not attempt to define all of the facilities that might be included within the ambit of the term. Rather, as the House Report on the 1972 Act declared: "These facilities would include, but would not necessarily be limited to, such items as community centers, firehouses, industrial parks and fire and rescue equipment, including ambulances." H.R. Rep. No. 92–1129, 92d Cong., 2d Sess. 24 (1972). See also Senator Talmadge's comments, during debate, in the CONGRESSIONAL RECORD, August 17, 1972, vol. 118, pt. 22, p. 28802.

While Congress did not specifically indicate that rural electric or telephone systems were to be considered as "essential community facilities" for the purpose of making loans under this section, it would appear that such systems are "needed for the orderly development of rural community", a stated purpose of the Section, and are commonly understood to be essential community facilities" for the purpose of making loans under this section, it would appear that such systems are "needed for the orderly development of a rural community", a stated purpose of the Section, and are commonly understood to be "essential community facilities". Therefore, it is concluded that Sec. 306(a)(1) does authorize certain loans to be made pursuant to its terms for rural electric and rural telephone services.

Sec. 306(a)(1) explicitly authorizes loans to nonprofit associations and public agencies. A separate question is whether this section authorizes loans to profit-oriented organizations. While not entirely free from legal doubt, we are of the opinion that it does authorize loans to profit-oriented organizations.

The section expressly authorizes loans to "associations, including corporations not operated for profit . . . ." The term "association" is a generic term, having a vague legal meaning. In its broadest usages it has been held to include profit-making business, nonprofit organizations, and government as well as other bodies in the society. Literally, therefore, the statutory language of Sec. 306(a)(1) would permit loans to profit-oriented corporations, as a common type of "associations".

Additionally, the new statutory language in Sec. 307(a) and Sec. 344, which was added by the 1972 Act, supports the conclusion that Sec. 306(a)(1) authorizes loans to organizations for profit as well as nonprofit. Provisions of both of those sections apply explicitly to loans made under certain specified sections of the Act, including Sec. 306(a)(1) "except for loans to public bodies and nonprofit associations" under that section. If Sec. 306(a)(1) were interpreted as being confined to loans to public bodies, and not to organizations for profit, then the references in Secs. 307(a) and 344 to Sec. 306(a)(1) would be without meaning and superfluous. It is a time honored rule of statutory construction that significance should be accorded to every word, and a statute ought not be construed, if it can be prevented, to render any part or word superfluous. *Ex parte Public Bank,* 278 U.S. 101, 104. This would require that the term "associations" in Sec. 306(a)(1) be accorded a meaning beyond that of public bodies and nonprofit associations, reasonably to include organizations organized for profit.

A contrary argument can be made that Congress intended the term "associations" in Sec. 306(a)(1) to be restricted to nonprofit associations, including public bodies, when it was first employed in the Consolidated Farmers Home Administration Act of 1961. Congress made many references to loans to nonprofit associations but made no mention of the eligibility for loans of profit-making associations. The legislative history of that Act reveals further that the particular phraseology was, in effect, an enactment of the eligibility standards formulated under the Water Facilities Act, acts Aug. 28, 1937, ch. 870, 50 Stat. 869, as amended. The Committee Report on the 1961 Act stated:

"The existing authority for direct and insured loans to *nonprofit* and public orga-

nizations for soil and water development and conservation and for drainage and flood control in rural areas *would be continued* and would be made available to some developments now excluded because of the existing $250,000 limitation." (Emphasis added.) H.R. Rep. No. 754, 87th Cong., 1st Sess. 66 (1961). Similar language is found in S. Rep. No. 566, 87th Cong., 1st Sess. 65 (1961).

The Water Facilities Act itself contains no such limitation of authority with respect to soil and water conservation loans; however, the regulations issued to implement it did limit eligibility to nonprofit organizations. (See 6 C.F.C. § 351.3(c)(6) (1956).)

In 1965 Sec. 306(a)(1) of the Consolidated Farmers Home Administration Act of 1961 was amended by Pub. L. 89, 240, § 1, October 7, 1965, 79 Stat. 93, but the language under consideration reappeared unaltered in the new law. The title of the 1965 Act declared that its purpose was "to amend the Consolidated Farmers Home Administration Act of 1961 to authorize the Secretary of Agriculture to make or insure loans to public and quasi-public agencies and corporations *not operated for profit*. . . ." (Emphasis added.) The title of an Act is useful in that it throws light on the meaning of the language in question and "in ascertaining the intention of the legislature nothing is to be rejected which will assist in the clarification of ambiguous phrases. . . ." 3 Sutherland, *Statutes & Statutory Construction*, 345 (3d ed., 1943).

The Farmers Home Administration since 1961 limited loans under Sec. 306(a)(1) to nonprofit organizations or public bodies.

The familiar rule is that administrative construction of a statute made contemporaneously with its enactment may be useful in validating controversial administrative acts, but the rule does not operate necessarily to invalidate subsequent changes in administrative regulations. *E.g., Norwegian Nitrogen Products Co.* v. *United States;* 288 U.S. 294; *Udall* v. *Tallman*, 380 U.S. 1; *Massachusetts Trustees* v. *United States*, 377 U.S. 235.

Also, the fact that an administrative program has been continued in operation through a series of Congressional reenactments of a statute does not infer that prior administrative interpretations of the statutes involved were frozen into the interpretation of the statutory provisions. As The Supreme Court stated in *Helvering* v. *Wilshire Oil Co.*, 308 U.S. 90, 100–101:

"* * * The oft-repeated statement that administrative construction receives legislative approval by reenactment of a statutory provision, without material change * * * does not mean that a regulation interpreting a provision of one act becomes frozen into another act merely by reenactment of that provision, so that administrative interpretation cannot be changed prospectively through exercise of appropriate rule-making powers * * *. Such dilution of administrative power would deprive the administrative process of some of its most valuable qualities—ease of adjustment to change, flexibility in light of experience, swiftness in meeting new or emergency situations. * * *"

See also *Helvering* v. *Reynolds*, 313 U.S. 428, 432; *National Labor Relations Board* v. *Seven-Up Bottling Co.*, 344 U.S. 344.

It may possibly be concluded that even with the original enactment of this provision in 1961, the Secretary was free to adopt regulations that would have made loans available to organizations for profit, but chose not to make such loans under the conditions existing for policy reasons. Support for that conclusion is evidenced from the fact that as originally promulgated the purposes for which the loans were made under Sec. 306(a)(1) were largely carried out by public bodies or nonprofit organizations. But in enacting the Rural Development Act of 1972, Congress added to Sec. 306(a)(1) the authorization to make loans for the purpose of accomplishing "essential community facilities", which in certainly a greater number of instances are provided by organization for profit. Moreover, the entire Rural Development Act incorporates a broader role of federal financial assistance in improving the rural environment.

In this view, Sec. 306(a)(1) must be viewed as new legislation, albeit in a borrowed form, and the Secretary should be free to interpret it in any way that furthers the purpose of the Act with which it is associated in a manner consistent with the statutory words.

For all the above reasons, while not wholly clear of legal doubt, we believe the stronger evidence supports a conclusion that pursuant to Sec. 306(a)(1) loans may be made to organizations organized for profit or not for profit.

The interest rate to be paid by nonprofit organization borrowers of Sec. 306(a)(1) loans for essential community facilities, whether made as insured or as guaranteed loans, is "not in excess of 5%."

The interest rate for profit organization borrowers of *insured* loans under Sec. 306(a)(1) is the rate prescribed by the Secretary of Agriculture "not less than the rate prescribed by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States comparable to the average maturities of such loans, adjusted in the judgment of the Secretary of the Treasury to provide for a rate comparable to the rates prevailing in the private market for similar loans and considering the Secretary's insurance of the loans, plus an additional charge" prescribed by the Secretary of Agriculture to cover loss and cost of administration, all adjusted to the nearest one-eighth of one percent.

The interest rate for profit organization borrowers of *guaranteed* loans under Sec. 306(a)(1) is a rate agreed upon by the lender and the borrower.

SEC. 310B

Section 310B of the 1972 Act authorizes loans to "organizations organized for profit or nonprofit . . . for the purpose of improving, developing, or financing business, industry, and employment and improving the economic and environmental climate in rural communities. . . ."

It would appear that loans to finance rural electric and rural telephone systems would clearly come within the stated purposes of this section. It may be noted that this section by its terms explicitly authorizes loans to organizations organized for profit and for nonprofit.

The interest rate for profit or nonprofit organization borrowers of *insured* loans is the cost of money formula described above for Sec. 306(a)(1) (where it applied only to profit organization borrowers).

The interest rate for profit or nonprofit organization borrowers of *guaranteed* loans under Sec. 310B is the rate agreed upon by the lender and the borrower.

2. *Do the authorities contained in the Consolidated Farm and Rural Development Act permit guaranteed loans through such private organizations as the National Rural Utilities Cooperative Finance Corporation and Farm Credit's Bank for Cooperatives?*

Yes. From a legal point of view, it is immaterial who the lender is for the purposes of Section 306(a)(1) or Section 310B guarantees. Section 343(4) requires only that the lender be a "private financial agency or other lender approved by the Secretary."

3. *May the authorities contained in this Act be delegated directly to REA by the Secretary of Agriculture in a manner that will permit REA to administer guaranteed and insured loan programs to REA borrowers?*

We have already approved as to legal matters the REA delegation for the following reasons.

Section 339 of the Consolidated Farm and Rural Development Act (7 U.S.C., 1989) expressly provides for the delegation by the Secretary of the authorities contained in the Act. This section reads as follows:

"§ 1989. Rules and regulations; delegation of powers.

"The Secretary is authorized to make such rules and regulations, prescribe the terms and conditions for making or insuring loans, security instruments and agreements, except as otherwise specified herein, and make such delegations of authority as he deems necessary to carry out this chapter. (Pub. L. 87–128, title III, § 339, Aug. 8, 1961, 75 Stat. 318.)"

There is nothing in this section nor elsewhere in the Act which would limit the Secretary's power to lodge these authorities in REA as distinguished from another agency of the Department. While your question is in terms of a "direct" delegation to REA, it is assumed that a delegation by the Secretary to an Assistant Secretary with a redelegation to REA, in a manner similar to that by which REA administers the Rural Electrification Act of 1936 under the delegation from the Assistant Secretary of December 20, 1972, is within the intent of your question.

4. *Are there any legal reasons why the existing security held by the United States on assets of REA borrowers may not be shared with other private and public credit agencies in order to facilitate the making of guaranteed and insured loans?*

Prior to the 1972 Act, Section 307(b) of the Consolidated Farmers Home Administration Act, in referring to security instruments for loans to associations under Section 306 (which would now include loans for electric and telephone systems) provided that "such security instruments shall constitute liens running to the United States, notwithstanding the fact that the notes may be held by lenders other than the United States." The 1972 Act changed the "shall" to "may."

The report of the Senate Committee on Agriculture and Forestry ("The Rural Development Act of 1972," October 3, 1972, p. 31) explained this change as follows:

"This section also makes clear that liens securing guaranteed loans may run to the lender rather than the United Statees (emphasis added).

Thus, while the amendment technically permits liens on every type of loan made under Section 306 to run to other than the United States, Congress apparently had in mind that this would occur only with respect to guaranteed loans.

It is difficult to perceive under what circumstances the security for insured loans would be held or shared by other than the United States. The purchaser of insured notes has the full faith and credit obligation of the United States backing such notes. It appears he could achieve little, if any, additional risk security by holding or sharing part of the underlying lien. Moreover, the holders of a lien normally must assume certain duties in servicing the loan, which responsibility it is doubtful that the purchaser of insured notes would want to assume.

On the other hand, a private lender whose loan is guaranteed under the 1972 Act would probably desire and need to hold or share some part of the lien. If the guarantee is executed pursuant to Section 310B, the Government will guarantee only 90% of the loan; the private lender must then look to the lien to secure his remaining risk. Additionally, while the full duties and responsibilities of a guaranteed lender have not as yet been postulated, Section 343(4) defines the federal guarantee under the 1972 Act as applying to "a loan originated, held and serviced by a private financial agency or other lender." Any private servicing of guar-

anteed loans will normally require the lender to hold or share the lien for such purposes as foreclosure, etc.

With this background, we turn to the specific question whether the United States may share existing securities in order to facilitate the making of a new loan under the 1972 Act. The general rule, as declared by the Comptroller General in a letter Opinion B–169930, dated June 2, 1970, a copy of which was previously furnished to you, is as follows:

". . . No officer of the Government has authority to surrender or waive contractual rights which have accrued to the United States or to modify existing contracts without a compensating benefit to the Government and in the interest thereof."

The GAO letter further indicates that each instance of surrendering or waiving an existing lien running to the United States must be individually supported by clear evidence that it is in the interest of the Government, and that any general or blanket findings applicable to all REA loans is precluded. REA has, as you know, shared existing liens in connection with most recent loans made pursuant to the 1936 Act.

In connection with the 1936 Act determinations of compensating benefits, lien sharing received legal approval where it was administratively determined that it was reasonably necessary to obtain the supplemental financing and the supplemental financing protected the security of the Government's prior loans by assuring the borrowers' continued operation. Additional justification appeared for such lien sharing from the fact that the supplemental financing it facilitated relieved the Government of providing additional funds to meet borrowers' systems' capital needs, without which the borrowers continued operation would be endangered. Such saving of Government funds would be particularly beneficial as to the 1936 Act loans because of the substantial difference between the 2% loan interest rate on such loans and the cost of money to the Government.

Presumably, some of the same justifications could apply to certain of the guaranteed loans made in the future pursuant to the 1972 Act. In light of the questionable basis for having liens run to the purchaser of insured notes, there is even greater doubt concerning the legal justification for sharing existing liens with such purchasers.

Another situation arises in connection with supplemental financing where the private lender will not have the Government guarantee or insurance, but where the Government portion of the concurrent loan is to be provided under the 1972 Act rather than the 1936 Act. This situation would appear to us to be very similar to that to which the GAO letter was addressed. For purposes of the compensating benefit determination there would be a factual difference in that there is a diminution of the saving of Government funds made possible by the lien sharing, since the 1972 Act reduces the program cost to the Government by increasing the borrower's interest rate. In our opinion, this difference would not, under present conditions, significantly affect the making of a compensating benefit determination which could otherwise be made in favor of lien sharing in this situation.

A special situation exists with respect to CFC or other private lender which may have already shared the Government's lien because of 1936 Act concurrent loans. Under the common mortgage form generally used, first mortgage lien security for 1972 Act loans may not be possible without the consent of CFC or other existing supplemental lender. The compensating benefit determination in such cases may be more easily resolved where one of the compensating benefit factors is the granting of such consent under the common mortgage by CFC or other existing supplemental lender.

5. *Are Rural Electrification Act administrative funds available to pay REA's administrative expenses in connection with REA loans made pursuant to the Rural Development Act?*

The general rule with respect to appropriation authority is stated in 37 Comp. Gen. 472, as follows:

"It is fundamental that the appropriations provided by the Congress to the Federal agencies to carry out their statutory duties and responsibilities may be used only for the objects for which they are appropriated and for no others. The statute from which this principle is derived is 36 U.S.C. 628, which reads as follows:

" 'Except as otherwise provided by law, sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no others.' "

"The Department of Agriculture—Environmental and Consumer Protection Appropriation Act, 1973 (P.L. 92–399) appropriates:

"RURAL ELECTRIFICATION ADMINISTRATION

"To carry into effect the provisions of the Rural Electrification Act of 1936, as amended (7 U.S.C. 901–924; Public Law 92–12), as follows:

* * * * *

"SALARIES AND EXPENSES

"For administrative expenses, including not to exceed $500 for financial and credit reports, funds for employment pursuant to the second sentence of section 706(a) of the Organic Act of 1944 (7 U.S.C. 2225), and not to exceed $150,000 for employment under 5 U.S.C. 3109, $16,720,000."

The Committee Reports on this Act (House Report No. 92–1175, June 26, 1972, to accompany H.R. 15690; Senate Report No. 92–983, July 24, 1972, to accompany H.R. 15690; House Report No. 92–1283, August —, 1972 Conference Report on H.R. 15690) give no basis for concluding Congress had any intention other than that apparent from the express language of the Act itself. The Committee referred to REA loans under the Rural Electrification Act of 1936 without any indication that salaries and expenses for other activities of REA not based on the authority of the Rural Electrification Act of 1936 were contemplated. The Appropriations Act itself of course expressed no such intent. It provides administrative expenses only "to carry into effect the provisions of the Rural Electrification Act of 1936, as amended."

The Rural Electrification Act cannot be deemed to have been amended by the Rural Development Act, for the purpose of arguing that the implementation of the latter was a carrying out of the former Act, as amended. There is not the slightest indication that in passing the Rural Development Act Congress intended to amend or repeal the Rural Electrification Act. A long standing rule of statutory construction is that no implied amendments or repeals will be adjudged except where clearly expressed and where no other reasonable interpretation can be made. *Grimes Packing Co.* v. *Bynes*, 7 F. Supp. 43, 48. Consequently, while it is reasonable to interpret the Rural Development Act as permitting rural electrification and rural telephone loans, it is unreasonable to conclude that it does so by amending or repealing the Rural Electrification Act. Additionally, at the time of passage of the Appropriations Act, the Rural Development Act could not have been considered as an amendment to the Rural Electrification Act, since it was not enacted until after the Appropriations Act was passed. (See discussion below.)

"Where an appropriation is made for a particular object, by implication it confers authority to incur expenses which are necessary or proper or incident to the proper execution of the object unless there is another appropriation which makes more specific provision for such expenditures, or unless they are prohibited by law." 29 Comp. Gen., 419, 421. That opinion held that an Immigration and Naturalization Service appropriation for "salaries and expenses" permitted expenditures for lights, warning devices and observation towers to prevent illegal entry into the United States.

However, the making of loans for electrification and telephone systems pursuant to the Rural Development Act cannot be regarded as necessary or incidental to the "carrying into effect the provisions of the Rural Electrification Act of 1936." Hence, there is no basis for concluding that an implied authority exists for such purposes in the Appropriation Act.

Having determined that there is no legal basis for employing 1936 Act funds for administrative expenses in connection with loans made pursuant to the 1972 Act, it is appropriate to consider what appropriation authority exists for such purposes.

The 1972 Act, on the other hand, contains clear authority to utilize the Rural Development Insurance Fund (RDIF) for the administrative expenses of making loans under that Act (Sec. 309(g)(8), as well as for the loan money itself (Sec. 309(g)(1)).

The question has nonetheless been raised whether, in addition to the above enabling authority, it is necessary for Congress also to specifically appropriate funds for the carrying out of the new legislative authorities. In general it is argued that the matter is governed by the expression of law found in an unpublished opinion of the Comptroller General, B–15396, dated October 23, 1964, to the effect:

"Where the additional duty is imposed upon an agency without an appropriation specifically having been made to cover such duty, it does no violence to the cited provisions to charge the expenditures connected with the new duty to appropriations previously made if the duty involved is an 'object' within the ambit of the prior appropriation being charged. . . . But where the additional duty, function, or program is not in any way related to the objects for which the appropriation to be charged has been made, it is manifest that use of the appropriation cannot be deemed proper in the fact of [31 U.S.C. 628.]"

However, we believe that the rule stated above is *inapposite* where no specific appropriations are required by Congress to effectuate the purposes of the amendatory legislation. In setting up the RDIF Congress made it unmistakably clear that there was no requirement for further appropriations acts in order to utilize their assets. Various revolving funds have been in existence for years. However, until fiscal 1972 Congress did not specify in the annual appropriations acts any amount for lending purposes under those funds. In fiscal 1972, Congress did specify an amount for loan purposes to be made from the Agricultural Credit Insurance Fund (ACIF) and the Rural Housing Insurance Fund (RHIF). The Senate Committee on Appropriations commented on this action as follows:

"The Farmers Home Administration has been making insured loans as authorized in basic law for a number of years. For the first time the bill as passed by the House indicates specific amounts for such loans under both the Agricultural Credit Insurance Fund and the Rural Housing Insurance Fund. The *underling statutes for these Insurance Funds by their own provisions authorize loans to be made without action by Congress in the annual appropriations acts.* Therefore, the indication of specific amounts in the bill does not constitute a limitation on the amount of loans which may be made and insured by the Administration." (Emphasis

supplied.) S. Rep. No. 92-253, 92d Cong., 1st Sess., 29-30 (1971).

Again in acting upon fiscal year 1973 appropriations, the Senate Appropriations Committee Report stated:

"As was pointed out in the report of the Committee last year, the basic legislation for the Agriculture Credit Insurance Fund and the Rural Housing Insurance Fund, by their own provisions, authorize loans to be made without specific action by Congress in the annual Appropriation Act. Therefore, the recommended amounts herein do not constitute a limitation on the amount of loans which may be made and insured by the Administration." S. Rep. No. 92-983, 92d Cong., 2d Sess. (1972).

While the above comments referred directly to the employment of the ACIF and the RHIF, we believe they have equal application to the Rural Development Insurance Fund, which is to be the source of funds for loans for rural electrical and rural telephone purposes. Not only was this new fund created using in part assets of the ACIF, but the essential enabling provisions of these two insurance funds are substantially identical. One difference is that the ACIF and RHIF do not have specific provision authorizing the use of their funds for administrative purposes in connection with the making of loans, whereas the RDIF, from which funds will come for rural electric and rural telephone loans, does contain an explicit provision to that effect.

Therefore, we believe that administrative funds required in fiscal 1973 in connection with loans made pursuant to the 1972 Act can and must come from the Rural Development Insurance Fund created by that Act. At the same time servicing of loans made under the 1936 Act must come from administrative funds appropriated under that Act. This necessarily will require a division of administrative expenses into two accounts.

6. Finally, your memorandum requests an identification of any specific problems that may be encountered and guidance how these might be met in the new program. Under this heading we will discuss first the operation of several provisions of the Rural Development Act as they may apply to certain of the rural electric and rural telephone loans.

No credit elsewhere requirement

Sec. 333(a), as a condition for eligibility for a loan under the Rural Development Act, requires that the applicant be unable "to obtain sufficient credit elsewhere to finance his actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time." This provision will apply to all rural electric and rural telephone loans made under the 1972 Act except guaranteed loans under Sec. 310B. A "no credit elsewhere" requirement has been in effect since passage of the Farmers Home Administration Act of 1946, Act Aug. 14, 1946, ch. 964, 60 Stat. 1064. The purpose of this predecessor requirement was stated as follows:

"It is believed that this subsection would be an effective means of preventing competition by the Corporation with other responsible lenders who are able to furnish credit for the farmers upon an reasonable basis." H.R. Rep. No. 1752, 79th Cong., 2d Sess. 13 (1946) and H.R. Rep. No 1873, 79th Cong, 2d Sess. 13 (1946).

The Farmers Home Administration Act of 1961 retained the basic "no credit elsewhere" concept but eliminated the five percent ceiling on outside rates. The purpose of the change was "to avoid a rigid position in the statute which might from time to time appear to make credit under this authority competitive with private and cooperative credit sources. For example, at any time when similar purpose loans are available at from 5½ to 6 percent, under existing law a farmer would be technically eligible for Bankhead-Jones assistance because he could not get other credit 'at a rate of not more than 5 percent,' even though the other creditor was willing to make the loan and the applicant could repay it." (S. Rep. No. 566, 87th Cong., 1st Sess. 65 (1961); H.R. Rep. No. 754, 87th Con., 1st Sess. 69 (1961).)

Prior to the Rural Development Act the law only required that the applicant certify in writing that he is unable to obtain credit elsewhere. The Rural Development Act amended section 333 to require an affirmative determination by the Secretary of Agriculture, or the official to whom this authority is delegated, that an applicant is unable to obtain credit elsewhere.

The statutory language, as well as the legislative history indicates this determination involves first a finding as to the availability to the applicant of credit from private lenders at prevailing interest rates and terms for loans for similar purposes and periods of time. Manifestly also, the prevailing interest rate is not to be limited to five percent.

But the existence of a willing private lender at commercially reasonable rates and terms is not the only criterion for adjudging whether the applicant can finance his actual needs elsewhere. The language of Sec. 333 itself indicates that the rates and terms of private loans for similar loans prevailing in the community should only be "tak[en] into consideration", which suggests that they are not necessarily controlling of the matter. Another question to be answered, as the above Senate Report indicates, is whether the applicant can repay such a loan. More specifically the question is whether the applicant can repay such a loan without injuring the project for which the federal loan is considered.

In making determinations under this section, the Farmers Home Administration has long considered not only the availability of loans at the prevailing rate structure in the community for similar loans, but also considered what the borrower can afford to pay. For present regulations see for example 7 C.F.R. § 1821 5(c) (1972). For previous regulations see for example 6 C.F.R. § § 365.1 (b)(6), (7), (10), (11), (13) and 365.3(a) (Supp. 1947); 6 C.F.R. § § 351.5(a)(6), 332.3 (a), and 341.2(a)(5), (b) and (c) (1956). The interpretation of an Act by the Agency charged with its implementation is entitled to great weight. See p. , *supra*.

We believe that a similar construction with respect to rural electric and rural telephone loans under the Act is reasonable.

Refinancing provision

Sec. 333(c) requires an agreement from the borrower that it will, upon the determination of the Secretary that the borrower may be able to obtain a loan from other sources at reasonable rates and terms, and upon the Secretary's request, obtain a loan in sufficient amount to repay the Government loan. This provision will apply to all rural electric and telephone loans under the 1972 Act except guaranteed loans under Section 310B.

The refinancing provision was also promulgated for the first time in the Farmers Home Administration Act of 1946, Aug. 14, 1946, 60 Stat. 1064. Its purpose, as stated at the time, was:

"Another safeguard against competition by the Corporation with farmers' cooperatives, such as production credit corporations, Federal land banks, and other responsible private credit sources, and a further check against persons who acquire adequate resources continuing to enjoy the liberal credit privileges of the Corporation when they are well able to obtain their financing upon customary terms and conditions." H.R. Rep. No. 1873, Cong., 2d Sess. (1946).

Not only is its purpose complementary, but the operation of the refinancing provision is similar to that of the no credit elsewhere requirement, discussed above. Thus before a determination is made to invoke such provision, there should be findings that other credit is available to the borrower at rates and terms, prevailing on similar type loans and that the borrower is reasonably able to repay such loans without seriously impairing the operation for which the loans were initially made. This is consistent with the Farmers Home Administration current interpretation of that provision. For present regulations, see for example 7 C.F.R. § 1865.3 (b).

On several occasions in past years the General Accounting Office expressed doubt whether the FHA was requiring a sufficient number of borrowers to refinance their loans pursuant to this provision. At the same time, the Chairman of the Subcommittee on Appropriations for Department of Agriculture and Related Agencies expressed the view in 1968 appropriation hearings that the Agency was requiring too many refinancings consistent with the intent of the Act. The Chairman provided an enlightening discussion of this provision, emphasizing that a loan should not be refinanced if it means a serious impairment of the borrower's operations for which the loan was made. Hearings on Department of Agriculture and Related Agencies Appropriations for 1968 Before the Subcomm. of the House Comm. on Appropriations, 90th Cong., 1st Sess., pt 3 at 452-55 (1967).

Consideration has been given to the adoption, either by regulations or in each loan contract, of a maximum interest rate which would be binding upon future refinancing, in order to provide some additional protection to the borrower and to facilitate refinancing determinations. We believe such procedure to be legally impermissible.

It may be recalled that Congress repealed a maximum outside interest rate of 5 percent provision in Sec. 333(a), for the declared purpose of requiring that the no credit elsewhere determination be based on outside interest rates prevailing at the time the loan is made. It appears equally clear that Congress intended the refinancing determination to be made based on the outside interest rates prevailing at the time of the refinancing determination.

The purpose of the refinancing provision, as indicated above is to require borrowers who subsequently "acquire adequate resources" to finance their operations upon customary terms, to do so. But in the event that a refinancing rate were fixed in an amount which was less than the interest rates prevailing on some future date, it would be impossible to require refinancing no matter what valuable resources the borrower had acquired, which is directly contrary to the central purpose of the provision.

Time intervals required to consummate loans

Sec. 306(a)(3) requires that *all* applications for loans under Sec. 306 be submitted to planning agencies and to county or municipal governments for review and comment "within a designated period of time not to exceed 30 days." Thereafter the Secretary must make a determination that the loan project is not inconsistent with area development planning.

Sec. 310B requires the Secretary of Labor to determine that any assistance derived from loans under that section will not result in the transfer of any employment or business from one area to another or result in overcapacity of goods, services, or facilities. Loans may not be made pursuant to this section "if the Secretary of Labor certifies within 60 days after the matter has been submitted to him by the Secretary of Agriculture" an adverse opinion that the loan project are contrary to the above provisions.

It appears that the above requirements cannot be met by general or blanket findings, but require an individual determination with respect to each loan made pursuant to the respective sections of the 1972 Act. This will necessarily result in an unavoidable delay before rural electric and rural telephone loans can be finally consumated and moneys dispensed.

However, it appears legally permissible for the parties to sign a loan agreement conditional upon the necessary determinations being rendered pursuant to the applicable sections above. The Comptroller General in an unpublished opinion, dated November, 1963, approved the legality of an REA loan which conditioned advances of loan funds upon the borrower's obtaining from State authorities a certificate of convenience and necessity.

Also we understand that some loan contracts have been conditioned upon the filing of a favorable environmental impact statement.

The instant loan contracts will thus be conditioned upon a future discretionary act of a federal official. In other type of contracts a private party would understandably dislike signing an agreement with the Government which was conditional upon the future discretionary act of a Government official. Whether private parties as a practical matter will object to loan agreements with the discussed conditions pursuant to the 1972 Act is unknown.

Effect on Rural Telephone Bank loans of discontinuance of Rural Electrification Act loans

Section 408 of the Rural Electrification Act authorizes loans to be made by the Rural Telephone Bank (P.L. 92–12, 7 U.S.C. 948). Recipients of such loans, however, must be "corporations and public bodies which have received a loan or loan commitment pursuant to Section 201 of this Act"; i.e., a 2% RE Act loan or loan commitment. Thus, discontinuance of 2% RE Act loans under Section 201 would prevent the Rural Telephone Bank from making loans to new borrowers, at the higher Bank interest rates.

Legislative history shows the congressional intent to have been in accord with the literal language of the statute. Senate Report 92–21, on S. 70, February 25, 1971, at page 2, states:

"C. Loans by the bank would be made to existing or approved borrowers under the 2% loan program."

Similarly, at page 9 of this Report, in the section by section analysis, the following appears:

"New Section 408. Lending power.—Section 408(a) authorizes the Governor of the Telephone Bank to make loans on behalf of the Telephone Bank, in conformance with policies approved by the Bank board, to *corporations and public bodies which have obtained a loan or loan commitment pursuant to section 201 of the act.*" (italic added)

It would be legally permissible to make a Section 201 loan in a nominal amount, if funds were available therefor, so that a borrower could qualify for a Rural Telephone Bank loan.

Further legal clearance

It is recognized that the legal interpretations included in this memorandum may present some difficulties in the administration of the new loan program. In the event that particular interpretations seriously impede the proposed implementation of that program, it would appear appropriate with respect to those matters to consult either the Comptroller General or the Attorney General, depending upon the nature of the questions involved.

In any event, before the sale of any notes evidencing insured loans under the 1972 Act can be effected, it will be necessary to obtain a statement or certification from the Attorney General that such notes are backed by the full faith and credit of the United States. This in turn will require that the Attorney General review the basic authorities in using funds of the Rural Development Act in making rural electric and rural telephone loans.

R. STANLEY HARSH,
Assistant General Counsel for Rural Development and Conservation.

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

Mr. HUMPHREY. I yield.

Mr. McGEE. Mr. President, I associate myself with all of the remarks of the distinguished Senator from Minnesota. I have joined him as a cosponsor of this legislation. I think it should have a high priority for Members of this body. But what I want to suggest is that even if we succeed in passing it, even if we enact it into the law again as the clear intent of this Congress, by that time the REA 2-percent program will have been effectively dismantled. They are dismantling it now.

We had the new Secretary of the Treasury, Mr. Shultz, before our committee this morning. He agrees it is dismantled now. His former office has cut it out. Therefore, I am wondering what the Senator's view would be on the approach I make in conjunction with this legislative approach, which is that as long as the decision was made to tear up the Constitution, therefore we should not hear any request for a new budget until they agree to abide by the Constitution?

I wish to review what happened. A year ago this man who is now Secretary of the Treasury, who drafted that budget, came before our Committee on Appropriations and said:

We want $140 million for REA. We want $350 million for the REA 2-percent loan funds.

There was not a whisper that this was bad government, that this was too rich for our blood, that we could not afford it in these times. There was not a whisper to that effect, but a positive request for those funds. We spent several hundred dollars as a committee listening to them patiently and adding a substantial amount of money to both programs, and the President signed it into law. This is as the Constitution decrees. The President initiated a budget request; we acted upon it and honored it. Then, last New Year's Day, even those responsible for the hearings had to read in the morning newspapers that the President had decided not just to cut back the program, not just to impound the funds that Congress had made available, but to wipe out the program completely and that is the constitutional breach we face here. It is a sharper and clearer question than all the impoundment questions. I support them, too. I think they are desperately urgent because they reflect priority. But in terms of the Constitution, the Congress appropriates and the President can veto or recommend against.

He did none of these things. He asked for the money—$350 million. We gave it to him. He then abandoned the program by knocking it out with unilateral action. That is why it seems to me that Members of Congress must act, regardless of party, because this is a much larger issue. The REA's go into Republican areas as well as Democratic areas. This is bipartisan.

Mr. HUMPHREY. The large number of cosponsors of this measure indicate that this is a very bipartisan bill.

Mr. McGEE. Indeed, it is. The thing that concerns me is there may be those who believe that but who are afraid to stand up and be counted. Some of our colleagues are afraid this might adversely affect other projects in their States. All I can say to them is that next Christmas their project may be the one to be dropped on the front page of the newspaper, and the next year it might be someone else's program. It is time now to bite the bullet and for Congress to draw the line. Here is a clear-cut case where no petition was made to wipe out a program, but a decision made by someone upstairs to eliminate the REA 2-percent loan money.

Does the Senator from Minnesota see any particular reason in why we cannot develop rural America at 2-percent loans when we can develop lots of rural areas around the world at 2-percent loans, which I happen to support?

I am not knocking the President's efforts, but are not Americans just as important in considering who gets 2-percent loans as are the Thais or the Indians or——

Mr. HUMPHREY. The Afghans.

Mr. McGEE. Or the Afghans, or would the Senator think that there perhaps was a distinction as to who should draw such loans?

Mr. HUMPHREY. If there were to be any distinction, if we were to look at 2-percent loans as compared with gifts or charity, the old adage that charity begins at home should apply. Let me point out that 2-percent loans are only a part, a fraction, of the money borrowed under REA. The rural electrification systems, whether they are telephone or electric, have what we call blended loans. I have noted in the committee report, which was prepared with the help of the committee staff, and in the many bulletins which have been issued over the years by Mr. Hamil and other administrators, that 2-percent loan money is not available to all; 2-percent money is available to REA co-ops with a very limited number of customers on the line and that REA loans that are required for capital purposes are blended loans with 2-percent and private financing.

We should not let the word go out from this place that REA is a grab bag of 2-percent money. It is not. If the Secretary of Agriculture, or whoever else it may be, feels that we ought not to have this kind of loan program, he ought to express his intent in a message to Congress. But it is the Congress duty to dispose. It is the President's duty to propose. In this case the President has proposed and disposed.

Therefore, what I am doing, on behalf of myself and many of my colleagues, is merely restating what we have already done. It merely restates what the President asked for and what the Secretary of Agriculture testified on behalf of before the Appropriations Committee last

year, and what others have been asking for over the years; namely, the continuation of the Rural Electrification Act of 1936, as amended, with different sections, 2, 3, and 4 in that act, simply to be continued until Congress has had another chance to review it.

I see present the chairman of the Subcommittee on Rural Electrification. He is going to hold more hearings. He already held hearings a year ago and 2 years ago. If there is a need for modification, we can modify it. We will listen. As a matter of fact, the rural electrification program has been modified. The supplemental program——

Mr. McGEE. The CFC, the Cooperative Finance Corporation.

Mr. HUMPHREY. The CFC program was a step toward modification.

Mr. McGEE. They still need time to get that fully implemented. To have it gutted at this stage might be fatal.

Mr. HUMPHREY. May I say that the REA has, if not the best, one of the best, records of repayment of principal and interest.

Mr. McGEE. And it is not correct to speak of them as though they have been freeloading. They are some of the best businessmen we have. They have had to operate on a marginal basis. They have not asked for any free gift. They have not asked for any handout. They are making it work in this marginal operation where there are so few users on the line that no private company can take them on or even make any pretention of doing so.

Mr. HUMPHREY. If we really mean to do something about rural development, we need to help develop our smaller communities and our nonfarm rural areas, and if we are to do that job we are going to need electric energy and rural electric cooperatives. The fact is that rural electric co-ops are of major importance in promoting and bringing about rural industrial development, rural jobs, and in creating more small industries in rural America. We need to carry out what Congress has mandated to be done in this regard and one way to do that is to fully implement the rural electrification program. I can think of nothing we can do that will benefit the rural areas more—east and west, north and south—than to provide them with a ready source of electric energy and communication or telephone service in those areas, farm and nonfarm.

Again we must make it clear, because it has been so distorted, that the REA Act of 1936, as amended, and as passed time after time in this body without exception, does not refer to farms; it refers to rural areas, farm and non-farm.

Mr. McGEE. I have one last point to make for the purpose of clarifying the record, and that is that the President's message, which disclosed his attitude about this program. He made allusion to the fact that he did not want to provide 2-percent loan money so anyone could build country clubs. How low can anyone get in striking a blow like that? The fact is that less than one-tenth of 1 percent of REA-generated energy goes for recreational purposes. I do not want to advocate building plush country clubs, but to scuttle the entire program because of a single alleged case seems to me to betray the whole philosophy behind the REA program.

I want to reinforce the Senator's efforts in trying to put back on the track a program that is paying its own way, that is not contributing to the drain of our dollars and the imbalance in our fiscal affairs at this time.

Mr. HUMPHREY. It might very well be responsible for increasing revenues. When we speak of country clubs, I do not know how many of my colleagues belong to them, but many people charge off those dues as a business expense. The Cokato Country Club has only 9 holes, but farmers are entitled to play some golf. There is nothing wrong, when Members of Congress and the rich and mighty belong to country clubs, what is wrong with a few tillers of the soil belonging to them. May I point out that most people who belong to country clubs deduct their expenses for belonging as business expenses, which is better than 2-percent interest.

Mr. McGEE. Barnyard golf is something of an American pastime, is it not?

Mr. President, I wish to make a fuller statement on this subject.

I want to join with many of my colleagues, and more particularly, the distinguished Senator from Minnesota (Mr. HUMPHREY), in urging passage of S. 394. As all of us are well aware, this bill would restore the Rural Electrification Administration's 2-percent loan program—one of the many programs several of us feel were unconstitutionally terminated by the President.

This unilateral action on the part of the President has many disturbing ramifications, not only for those of our citizens directly affected by these terminations, but also for a Congress which is being ground into impotence by the heavy boot of unchecked Executive power.

What the President has done, under the guise of governmental reorganization, is to remove the wielders of Government power from public view and public access. The abolition of the low-interest REA program is just one ramification of this so-called reorganization. We now see a group of bureaucratic czars who cannot be called before Congress to account for their actions. The fate of farm programs is now in the hands of people far removed from the farms and insulated from congressional influence. The President's new supercabinet spells doom for rural America.

In recent weeks, we have seen a parade of Presidential surrogates to the Hill justifying these Executive actions. We are told the President has a mandate from the people to carry out the terminations and program cutbacks. Well, that is nothing more than a myth. There is no mandate.

The President did not go to rural America during the 1972 campaign and ask the farmers and ranchers of this country to vote for him because he was going to put them out of business. He did not have the courage to do so. Instead, he hid behind Secretary of Agriculture Earl Butz who urged my Agriculture Appropriations Subcommittee last year to fund every program the President ended up dumping in December. The President did not propose, before my subcommittee, to terminate REA or the rural environmental assistance program, or any other agriculture program. His Secretary of Agriculture did not express any reservations whatsoever concerning the merits of these programs. Neither did the President exercise his ultimate power—the veto—in expressing his reservations over the Agriculture appropriations bill. Instead, the President chose to make a mockery of our entire constitutional process. He waited until after the election and until after the Congress had adjourned to take unilateral action. He chose the most deliberately deceitful route possible—Executive fiat—and he called it a mandate from the people.

The President, through unilateral action, has determined to dismantle every social program enacted for the little man in this country over the period of the last 30 years. He is doing so in spite of the fact that Presidents such as Franklin Roosevelt, John F. Kennedy, and Lyndon Baines Johnson went to the people and to the Congress to obtain approval for these programs. The President refused to level with the people during the last campaign, and now he is ignoring the will of the people's representatives—Congress. He has chosen to completely disregard the Constitution and our tradition as a nation.

Therefore, the mandate the President talks about was not at the ballot box in November.

While I strongly support the passage of S. 294, I have certain reservations as to whether this effort will be fruitful. In light of these reservations, I have already announced my refusal to hold hearings on the administration's fiscal 1974 budget requests for the U.S. Department of Agriculture. There are many who say this is too drastic a move, and that it will penalize many people who are now suffering because of the program terminations and cutbacks. These people say that Congress should enact laws to prevent the President from flouting our system of checks and balances, and I agree. Yet, I would ask these same people where they think the REA program originated. It did not just materialize out of thin air. REA was, and remains, the law of the land. The President has already chosen to ignore the law of the land and there is no indication that he will not continue to do so, no matter what we in Congress may do.

Therefore, it is apparent to me there is no reason for my holding hearings on the President's budget request for the U.S. Department of Agriculture if he is going to once again ignore the input of Congress and terminates REA, REAP, and other Agriculture programs.

While I strongly support this legislative effort, time is quickly running out on the "little guy" in rural America. This administration has made agribusiness more of a fact and less of a word as each day passes. Even if we should pass S. 394, there is no guarantee the President will abide by its enactment. In the meantime, the administration continues to dis-

mantle the machinery needed to run these programs. That is why I believe that legislative efforts should coincide with the use of the only effective tool we may have left to fight the President—the power of the purse. I would hope my colleagues would join me in this effort in an attempt to get this administration to once again consult with Congress. I am sure all of us in this body agree that there is a need for setting a ceiling on Federal expenditures. But, I am also sure we agree this can be achieved in the absence of terminating programs that have been effective in dealing with problems of the people and that adjustments can be made in those programs which have not been as effective.

In the February 16, 1973, publication of the National Farmers Union Washington Newsletter, there appeared an article which very effectively sums up the critical aspects of this crisis.

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

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

PRESIDENT NIXON CALLED FOR THE ABOLISHMENT OF FARM PROGRAMS

Thursday in his message to Congress on natural resources and the environment. In the vaguely worded message the President recommended that direct payments, support prices, and acreage allotments should be terminated.

Referring to farm programs as "old fashioned federal intrusion," the President said, "I believe, for example, that dairy support systems, wheat, feed grains and cotton as bases—are drastically outdated." He said that after a "reasonable transition period," direct federal payments should be "limited to the amounts necessary to compensate farmers for withholding unneeded land from crop production." USDA officials said that with the exception of land retirement payments, other "subsidies" would be phased out over a 3-year period.

Farmers Union National Director of Legislative Services Reuben Johnson said that "The President's plan is reminiscent of the Ezra Taft Benson "soil bank" proposals which have been soundly rejected on a number of occasions." He said, "Notwithstanding the strengthened prices and increasing export demand in 1972, farmers will continue to need provisions in new farm legislation to maintain a balance between supply and demand and to protect price and income. Such a program works to the advantage of the consumer as well as the farmer because of the stability it brings to farmers in the level of prices received and to the consumer in the level of prices paid."

Reaction on Capitol Hill was swift. Senate Agriculture Committee Chairman Herman Talmadge (D-Ga.) voiced the sentiment of members when he said, "I don't think I was sent to the U.S. Senate to help liquidate the farmers of the nation." Sen. Talmadge said that if the entire economy was completely free, the farmers could fare well in the open market. However, he pointed out, the rest of the economy is not free. "Congress is not about to repeal minimum wages. Congress is not about to repeal a citizen's right to collective bargaining. Congress is not about to break up large businesses. Without some aid in the way of price supports, virtually every small farmer in America would be plowed under," Talmadge said.

A preliminary injunction was granted in the emergency FmHa suit filed by four Minnesota farmers against Secretary Butz and other Administration officials. The U.S. District Court Thursday ordered that Farmers Home emergency loan applications be made available to all farmers in the 15 Minnesota counties which had been designated as disaster areas by Secretary Butz last year. It also ordered that each application must be accepted and dated by the Farmers Home Administration.

The case is believed to be the first lawsuit on the Administration's termination of federal programs to win such an injunction. If the Minnesota farmers are successful in their suit, it could set a precedent for other such actions around the country. The full trial "on the merits" is set for Feb. 27.

The devaluation of the dollar means that the farmer's production costs will rise. They will increase because the price of all imported items, such as steel and petroleum—two major elements in the farmer's cost of power and machines—will increase by 10%. The very purpose of the devaluation is to reduce the U.S. manufacturer's competition from foreign goods and services, both here and abroad. Since foreign goods will be more expensive, domestic manufacturers will tend to increase their prices to match the price of imported goods.

Contrary to statements by Secretary Butz, cheapening the dollar will not increase exports. In the short run, it is doubtful that the U.S. can even deliver fully on the contracts it has already made. The long-term effect of the devaluation on exports is "iffy" at best. The devaluation, in terms of gold and foreign currency, has the same effect as if the U.S. simply cut its price by 10%. The question is whether other countries will follow with lower export prices. Will Canada, for instance, allow itself to be priced out of the wheat market by maintaining its prices, while the U.S. becomes more competitive by lowering export prices?

The real winners of the economic juggling are the Russians. They had already saved about $500 million on the subsidized grains purchase compared to the price U.S. consumers and our regular export customers have to pay. Now the devaluation will give them an additional discount of 11.1% in gold (the equivalent of some $100 million) on all grain not yet delivered. On the other side of the trade arrangement being worked out, the U.S. will have to pay 10% more, in terms of gold value, for any oil or gas the Russians might sell to us.

The Nixon administration is out to kill farm programs permanently. That point was driven home by Farmers Union National President Tony Dechant in his remarks to the National Association of Conservation Districts in Las Vegas, Nevada, Wednesday. Dechant called on the some 2,000 members of the governing boards of conservation districts to "use the full strength of your Association to reverse the Administration's action against REAP, Water Bank, and other conservation programs."

"I can assure you," Dechant said, "that what we are witnessing is not mere short-term impoundment of funds for conservation practices; the Administration is out to kill REAP, Water Bank, and other programs permanently, unless countered with enough force to prevent it from happening." He said that decisive action must be taken now, before the closing of ASCS offices and "further actions by the Administration make a reversal of the decision to kill the programs even more difficult." Dechant's remarks were made one day prior to the President's Congressional message calling for the end of farm programs.

Green Thumb, Inc. has been asked to prepare a 10-month contract which, when signed, will assure continuance of the program at least until Dec. 31, 1973. Since Green Thumb had been operating on 30-day extensions since the Administration's budget went to Congress, there had been some concern as to how much it would be affected by the budget cuts. The Labor Department said that it had been flooded with calls and letters from Capitol Hill and around the country asking about the future of the program.

Green Thumb, which is an employment program for older, low-income rural people, is presently operating under a somewhat restricted extension which expires on Feb. 28. The program is operating in 25 states and Puerto Rico and employs some 4,000 older people in needed conservation and improvement projects.

A special survey on the 1972-crop corn, soybeans, and sorghum is being conducted by the USDA. The survey is said to be needed because poor harvest conditions beginning last fall and continuing into this year have caused uncertainties about the size of the crops. The Statistical Reporting Service will send questionnaires to farms in 20 states late this month covering acreage utilization and production. The results of the survey will be reported along with the usual March 15 Planting Intentions Report.

THE QUIET CRISIS

The somewhat higher farm income during 1972 has tended to lull many farmers into a false sense of confidence. Although the Administration has stirred up something of a revolution with its termination of REAP, REA loans and emergency loans, the countryside may not have completely awakened to what is happening to agriculture.

Although it may be clouded by relatively good prices, a crisis is at hand. Through the reduction of commodity programs, impoundments, terminations, and Congressional defiance, the Administration is building the foundation for its policies which will demolish the present system of agriculture.

If the Administration is allowed to continue on its course, price supports and supply management in the farm program will be a thing of the past. There is no question that overproduction and low prices would return in a matter of months or, at the most, a few years. When this happens, the large-scale farms, especially the corporate conglomerates, will be able to siphon dollar reserves from their auxiliary operations and use the futures market to pull themselves through the low price period. Family farmers, without these financial advantages,, will go bankrupt and out of business by the hundreds of thousands.

The trend to larger and larger farms gives a graphic illustration of what can be expected in the future unless protections for the family farmer are maintained and strengthened. A recent USDA study concludes that by 1980, farms with gross incomes of $100,000 and over will make up nearly 5% of all farms, but will account for more than 55% of receipts from marketing. While earlier studies had assured farmers that a $20,000 annual gross operation is a viable economic unit, the new studies show that this may no longer be true.

By 1980, the new study shows, even farms with $50,000 gross income may not be able to survive. Farms in the $100,000 gross category will be absorbing farms in the lower sales class, including many in the $20- to $40-thousand class. During the 70s, farms with $40- to $100-thousand gross will increase by about 16%, while farms in the $20- to $40-thousand class will decrease. But the most significant statistic in the study is that during this decade, farms with $100,000 gross will increase by 72%.

The results of this system of corporate agriculture are well known and frightening. The death of independent businesses, banks, and farms in rural America are already too obvious. Reduced concern for the land by corporate managers, as opposed to the family farmer, has been proven. The thought of continued migration into the already over-

crowded cities should cause panic in the hearts of urban and suburban citizens.

But at the same time this "quiet crisis" is upon us, the Administration is attempting to get the government out of agriculture and throw the industry into the jaws of the "free market." If that occurs, agriculture would be the only industry enjoying the dubious benefits of absolutely no protection.

The dire predictions of the USDA will come true in the very near future unless farmers, as well as urbanites, recognize the dangers and reverse the trend. But it must also be recognized that this trend toward bigness and corporate agriculture is being encouraged and enhanced by the Administration from the President down through Treasury Secretary Shultz, OMB Director Ash, and Agriculture Secretary Butz.

Reversing that trend can only be accomplished through the people's representatives in Congress. As the first step, Congress must demand that all impounded funds be released and all terminated programs be reinstated. Beyond that, future agriculture legislation must demand that the Agriculture Secretary carry out the will of Congress.

Mr. HUMPHREY. Mr. President, I also ask unanimous consent that a statement by the Senator from Alaska (Mr. GRAVEL), who is in the Mideast on official business of the Finance Committee, be printed in the RECORD at this point.

The PRESIDING OFFICER (Mr. SCOTT of Virginia). Without objection, it is so ordered.

Emergency FmHA loans have been approved for four counties in Southern California. After terminating the 1%, $5,000 forgiveness loans for all other farmers, the President ordered these loans approved without explanation. The USDA refuses to answer inquiries about the special exception. Sen. Ag Committee Chairman Herman Talmadge (D-Ga.) said, "It is clearly an example of unequal treatment under the law." Sen. Hubert Humphrey (D-Minn.) said he would have trouble voting for aid to North Vietnam when aid is refused to most disaster victims in the U.S.

Efforts to abolish the agriculture census are behind the Presidential order to make IRS income tax returns available to the USDA. Initially, the Department will get names, addresses and size of operation from the IRS but, eventually, the Department could get enough information from the returns to carry out whatever surveys they want to terminate the ag census. Concern has also been expressed about the confidentiality of information in the returns because USDA security regulations are not nearly as strict as those at the Census Bureau.

Four railroads would take over all other lines west of the Mississippi if a recommendation by Interstate Commerce Commissioner Nathan Klitenic is approved. He says smaller railroads should merge with Burlington Northern, Union Pacific, Santa Fe, and Southern Pacific. Extinction is recommended for such lines as Rock Island, Missouri Pacific, Chicago & North Western, Milwaukee Road, Western Pacific, Frisco, and Katy.

The Russian wheat deal will get special attention by the Senate Ag Committee in its hearings on March 8. The Committee will try to determine if the USDA kept wheat export subsidies higher than necessary. The Committee has invited Comptroller General Elmer Staats, head of the General Accounting Office, to testify.

STATEMENT BY SENATOR GRAVEL

I wish to express my strong support for the Humphrey-Aiken Bill to require the REA Administrator to loan all appropriated funds. This bill is of the utmost importance to rural America and should be enacted at the earliest possible date. We in Alaska rely heavily on the REA two percent loan. REA co-ops serve over fifty percent of the Alaskan population, the highest percent in the country, and any change in the cost of the REA program, will be felt in higher prices throughout the entire State. We currently have the highest per month electric bill in the country, $25.56 compared with the national average of $11.13. If our co-ops are forced to pay higher interest rates on their loans, there will be a 15–20% price increase for 60% of the State. As you can see, this, on top of our already high cost of living, will be unbearable for much of our population.

Each one of us that has REA in our State, knows how important it is for our rural areas. In Alaska, due to our present period of rapid growth, the importance is multiplied. I therefore urge adoption of this important bill. Without it, the already high inflation ravaging our rural areas will increase as the electric rates increase, adding another burden on this segment of our population.

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

Mr. HUMPHREY. I yield.

Mr. ABOUREZK. Mr. President, while waiting to get the floor from the Senator from Minnesota, I was thinking we have reached a kind of critical time in the history of America when the Congress has to pass each bill twice. That is exactly what we are doing today, and that is to pass the REA bill, which has been enacted by way of authorization every year since 1936, which was renewed last year and is really being renewed now.

I think, along with the Senator from Minnesota and the Senator from Wyoming, that if we do not pass this bill today, or tomorrow, when the vote comes, we will indeed be holding ourselves in contempt; no one will need to do it for us.

But I rise to report to the Senate that I have a letter from the Acting Administrator of the REA, E. C. Weitzell. After hearing the President's press conference in the early part of February when he said 80 percent of this money is going to country clubs and dilettantes, I wrote him asking the Administrator to furnish me the exact amount of money the REA has loaned to country clubs throughout the United States.

The letter reads in part:

May we advise that the Rural Electrification Administration has never loaned any money to country clubs. Our loans are limited to cooperatives and utility companies providing central station electric service and modern telephone service.

Undoubtedly some of our borrowers provide electric and telephone service to country clubs that are located in their service areas. However, we have no specific information regarding this matter.

Then in the second letter I received from Mr. Weitzell, he goes on to say that they have no information concerning the number of country clubs.

According to the Administrator:

There is only one way I know to obtain such information and that would be to canvass all REA borrowers. It is my humble opinion that this would not be justified.

I hope that the Administrator would pass this information on to the President before his next news conference.

I ask unanimous consent that the documents to which I have referred be printed at this point in the RECORD.

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

FEBRUARY 2, 1973.

Mr. DAVID A. HAMIL,
Administrator, REA,
U.S. Department of Agriculture,
Washington, D.C.

DEAR MR. HAMIL: After reading the President's press conference in Thursday's Washington Post, I am writing to ask if you will please furnish me the exact amount of money the R.E.A. has loaned to country clubs throughout the United States, and I would also like to know specifically which country clubs received this money.

I would be grateful to you for an early reply with this information.

Sincerely,

JAMES ABOUREZK,
U.S. Senate.

U.S. DEPARTMENT OF AGRICULTURE,
Washington, D.C., February 6, 1973.

Hon. JAMES ABOUREZK,
U.S. Senate.

DEAR SENATOR ABOUREZK: In response to your letter of February 2, may we advise that the Rural Electrification Administration has never loaned any money to country clubs. Our loans are limited to cooperatives and utility companies providing central station electric service and modern telephone service.

Undoubtedly some of our borrowers provide electric and telephone service to country clubs that are located in their service areas. However, we have no specific information regarding this matter.

Sincerely,

E. C. WEITZELL,
Acting Administrator.

FEBRUARY 9, 1973.

Mr. E. C. WEITZELL,
Acting Administrator, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C.

DEAR MR. WEITZELL: Many thanks for your prompt reply to my letter of February 2nd regarding REA loans to country clubs.

I am also very much interested in learning what percentage of REA business across the country is done with country clubs. While I note that you apparently have no specific information regarding this matter, I would be very much interested in any sort of rough estimate you might be able to provide, or any suggestion you might have where I might obtain this information.

Sincerely,

JAMES ABOUREZK,
U.S. Senate.

U.S. DEPARTMENT OF AGRICULTURE,
Washington, D.C., February 14, 1973.

Hon. JAMES ABOUREZK,
U.S. Senate.

DEAR SENATOR ABOUREZK: I have your letter of February 9 in which you comment and ask for information about the "percentage of REA business across the country" that is done with country clubs.

Actually REA as a Federal agency has no business whatsoever with country clubs. Furthermore, we have no information concerning the number of country clubs and other similar organizations that might be served by REA borrowers. We know there are some but whether there are a dozen or a thousand, we do not know.

There is only one way that I know to obtain such information and that would be to canvass all REA borrowers. It is my humble opinion that this would not be justified.

Sincerely,

E. C. WEITZELL,
Acting Administrator.

Mr. HUMPHREY. Mr. President, I am pleased to yield to the distinguished Senator from South Dakota, the chairman

of the Subcommittee on Agricultural Credit and Rural Electrification of the Committee on Agriculture and Forestry.

RESPECT FOR THE REA LAW

Mr. McGOVERN. Mr. President, the issue we are discussing today is whether or not the administration believes in law and order.

The law, in this instance, is the Rural Electrification Act of 1936. It became law on May 20 of that year. It remains law.

Yet, since December 27, 1972, the administration has chosen to ignore that law.

We have heard a great deal in recent years about the supposed right of individuals to obey those laws with which they agree, and to ignore those laws oppose. This, I submit, is the posture the administration is taking when it chooses to ignore the Rural Electrification Act of 1936.

Such a law can be repealed by Congress. But Congress has not chosen to repeal the REA Act. Instead, the Congress has, through the years, carefully and intently amended, improved, strengthened, and provided money to carry out the REA Act.

In 1944, Congress passed the Pace Act, which made REA a permanent agency within the Department of Agriculture. The act established 2 percent as the interest rate on REA loans.

In 1948, Congress again amended the REA Act, to require the Secretary of the Treasury, instead of the Reconstruction Finance Corporation, to provide funds to REA for its loans.

In 1949, Congress amended the REA Act to make loans for rural telephone systems.

In 1955, Congress changed the method for allotment of REA loan funds among the various States. Congress made clear in that amendment that most loans from that day forward would be for heavying up existing utility systems, rather than for serving unelectrified farms.

Throughout these years, the Congress has been convinced of the need for REA loan funds in amounts greater than that which the administration has sought. And in each of those last 3 years, this administration has ignored the intent of Congress and withheld parts of those appropriations.

From May 20, 1936, until December 27 of last year, this Nation had a rural electric loan program. It had a program which we in the Congress have given overwhelming support. It had a program with one of the best repayment records in the history of any lending program of this Government.

But today the rural electric program is in great peril.

The administration, by the stroke of a pen, has repealed an act of Congress. And it proposes to establish a new program which the Congress never intended.

In the civics and Government classes in our school years, we teach young people that the Executive proposes and the Congress disposes. It appears there are some in the White House who do not recall that admonition. For if we fail to enact the bill before us today, we will have to rewrite our high school Government textbooks to say that the Executive disposes and the Congress reposes.

Perhaps we should not debate the merits of the rural electrification program in this instance, because that is not the issue here today. The issue is whether the administration has a constitutional and legal right to terminate, at whim, a program created by an act of Congress.

A companion issue is whether the administration has the corollary right to create a new program which Congress never intended. In addition to the questionable legality of the administration's proposed new program, the good name of our National Government has been clouded by this action.

Publicly and privately, the Administrator of REA pledged to several cooperatives that he would approve certain of their loan applications, for funds urgently needed by those cooperatives.

The clearest case of such a pledge, one on which the administration would now renege, involves a cooperative on which the rural people of my State are dependent for their future power supply.

The Basin Electric Power Cooperative in Bismarck, N. Dak., is a power supply cooperative which provides bulk power for more than 100 cooperatives in parts of eight States, including South Dakota. Since 1965 it has been providing a part of the bulk power supply for the Upper Missouri Basin from its Leland Olds Power Station No. 1, a 216,000-kilowatt turbine-generator in the lignite coalfields of North Dakota.

In late 1968, the REA approved a loan to Basin Electric of $96 million to build a second generating unit, of 400,000 kilowatts. In addition, the distribution cooperatives which make up Basin Electric were required to contribute another $18.4 million of their own retained earnings to the cost of the second generating unit.

In the intervening 4 years, costs of construction of such a generating plant have increased astronomically. Inflation required another $51 million to complete the Basin Electric second unit.

The cooperative made application to REA for the additional $51 million in April of last year. The Administrator of REA made it obvious to Basin Electric at that time that he intended to complete the financing program with 2 percent loans.

Arthur Jones of Britton, S. Dak., a longtime trusted friend of mine, is president of Basin Electric. He tells me that the Administrator promised to make an initial loan to Basin Electric in June of last year. In June, he postponed the date of the loan until October. In October, he again postponed the date, but categorically promised a loan of $25 million on or about January 1, 1973, and the remaining $26 million on July 1, 1973.

Mr. Jones assures me that the Administrator made these commitments in complete good faith. In fact, there is some question that the Administrator of REA had any advance knowledge of the decision of the Office of Management and Budget to terminate the REA loan program.

What Congress must do, Mr. President, is to help the Administrator live up to his word—something, I am sure, he would very much like to do.

The financing need is no less critical for rural telephone cooperatives. And the need for capital for both rural telephone and rural electric cooperatives has not been eliminated by the creation of supplemental financing institutions.

The telephone cooperatives have some additional capital available through their rural telephone bank, but its considerably higher interest rates are of little solace to a cooperative such as the West River Cooperative Telephone Co. of Bison, S. Dak. That cooperative has seven-tenths of a telephone per mile of line. Some farmers and ranchers in an area adjoining the service area of West River Cooperative Telephone Co. still do not have modern telephone service—in the year 1973. The telephone cooperative hopes to provide that service. But without 2-percent loans, that hope is an idle dream.

The electric cooperatives have additional sources of capital in their own National Rural Utilities Cooperative Finance Corp. But the CFC lending program is predicated on the continuation of 2 percent financing for that portion of the rural electric cooperatives that must have it to survive. And the CFC interest rates are of little assistance to a cooperative such as FEM Electric Association of Ipswich, S. Dak., which has nearly as many idle service installations on farms which have been closed up as it has on active farms.

The central fact before this body is that there is no financing program for REA cooperatives today. When you strip away the public relations verbiage from the statements of the White House and the Department of Agriculture, what it comes down to is that most cooperatives, in urgent need for capital, have no sources of financing at all. The administration, publicly and privately, has made firm commitments for REA loans. Congress has made funds available to fulfill those commitments. Those funds should be used, and used immediately, to fulfill those commitments.

And after the administration restores respect for law in the REA program, and fulfills those immediate and pressing needs for capital in rural America, if the adminstration then desires to work out a different program for REA financing, that is the time for them to come to the Congress with their proposals.

In October of 1971, the Subcommittee on Agricultural Credit and Rural Electrification, of which I am chairman, of the Committee on Agriculture and Forestry held extensive hearings into the problems of rural electric cooperatives. Those hearings disclosed heavy capital needs, in a variety of economic circumstances, for the cooperatives of the Nation.

Our subcommittee is willing, able, and eager to work with the adminstration, or any other party, if they feel that changes are needed in the rural electrification and rural telephone program.

If the administration feels that 2 percent is too low an interest rate, let them come to the Congress with a proposal to increase it.

If the administration feels that the Government should not be in the business of lending money to rural electric utilities, let them come to the Congress with a proposal.

If the administration feels that the funds in an REA loan program should not be used to provide electric service to "country clubs" and "dilettantes" in the rural areas, let them come to the Congress with language.

But first, the administration must adhere to the law and carry out the intention, terms, and provisions of the Rural Electrification Act of 1936, as amended.

The legislation before this body today would help the administration do just that. If there is any lingering doubt in the White House that the Congress merely wishes to "authorize and empower" the making of 2-percent loans, and did not desire that it be done, this legislation will clear up that misconception.

This legislation will make that point perfectly clear.

I would like to say to the Senator from Minnesota that the Subcommittee on Agricultural Credit and Rural Electrification of the Committee on Agriculture and Forestry is now planning a series of additional hearings on the future needs of the REA program in this country.

Mr. President, I do not think any member of that subcommittee is rigidly committed to the present formula for handling REA loans. We are willing to look at the new information, new needs, and new insights into the problem. But that is not the question involved here today. The question we are deciding here this afternoon is whether or not the law of the land and the action of the Congress on one of the most honored laws ever to go on the statute books can suddenly be terminated by a stroke of the pen of the executive branch of our Government.

If we fail in that test, it seems to me, Mr. President, that there is a very gloomy prospect ahead, that Congress is going to maintain any degree of control or respect in terms of our legitimate responsibilities to the American people.

So, again I am very hopeful that the Senate will join in overwhelmingly approving the measure offered by the Senator from Minnesota.

I thank the Senator for yielding.

Mr. HUMPHREY. Mr. President, I thank the Senator from South Dakota (Mr. McGOVERN) for his continued support and for the proposed hearings of which he speaks.

I know that there will be those who want to present views on the matter of rural electrification. And there may very well be amendments offered here. However, those amendments offered in the hearings can have a chance to be carefully examined by us.

The Senator from South Dakota is devoting his time to this program. I know that his subcommittee will give every opportunity for a full explanation of any proposals or adjustments to the program.

Mr. CURTIS. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Nebraska is recognized for 5 minutes.

Mr. CURTIS. Mr. President, the Constitution is not about to be torn up. The lights in rural America are not about to go out. The REA program has an overwhelming number of friends in the Congress and in the executive branch.

Neither is there any great clash between the legislative and the executive branches of any grave consequence.

I do not think the impoundment of funds is an ideal way to achieve economy. However, it certainly is a bipartisan way. It has been used by many administrations in the past.

The cold fact is that we spend more money than we take in. The national debt is about $100 billion more than it was 4 years ago. And there come periods of time when there is not any further money. About 70 percent of the Federal budget is uncontrollable.

We have no control over it. It is determined by the acts of others, by commitments, and so on, and consequently, when this system of impounding funds is resorted to, some uncomfortable and I think even some unwise consequences ensue.

I would like to make just a few observations about rural electrification. I believe in it. I have always supported it, and I support it now.

The facts are that, under the blended system of making loans, part out of the CFC and part out of direct loans, REA's are paying now a blend rate of about 4 percent, not 2. It is true, as the distinguished Senator from Minnesota has said, that the REA does not specifically say farmers and ranchers; it talks about rural America. Yet I believe—I do not ask everyone else to accept it, but I believe—that the REA came into being to bring electricity to farms and ranches a long way out, where it was not profitable to take electricity by any other means, The interest rate was fixed at 2 percent at that time, because the Government was paying less than 2 percent on the money that it borrowed.

Even though the Government has to pay more than that on borrowing now, I want the 2-percent money to continue to be available, not only to extend lines to farmers and ranchers, but to increase the size and the power of lines, and to pay their proportionate share of the cost of generation facilities and other lines.

In other words, I believe that in the case of farmers and ranchers, because of the wide area to be served for a few customers, we should continue with this 2-percent money. However, REA serves many other people. It serves small cities and towns. It serves a great many people who are not farmers and ranchers, who choose to live in the country. It serves some industry in the country. It is going to be quite difficult to say to the wage earners, the small farmers, and the taxpayers of all kinds, "We are going to tax you to provide an interest subsidy for a part of our people, to provide them electricity, who are not in a far-removed place where a subsidy would be justified."

It would not be difficult to work out such a program. When a cooperative applies for a loan, they have to justify what they are spending it for. It is easy to determine that 30 percent of that loan is going to be to provide electricity to farmers and ranchers, and 70 percent to other people.

I would preserve a subsidized interest rate for that part that continues to provide electricity for farmers and ranchers, and let the others pay what the Government has to pay for money. That is my idea. I have freely proposed it back home in the rural areas and elsewhere. I would not say everyone agrees with it, but many people do.

I think it would have been a better procedure if we had let the distinguished Senator from South Dakota (Mr. McGOVERN) hold his hearings and come in with a realistic proposal to update REA, to save the 2-percent money for farmers and ranchers and to let the rest of the people borrow their money for what it cost the Government, and it would have been accepted, I believe, almost everywhere, and would have gone on.

Now, by ignoring the need for updating——

The PRESIDING OFFICER. The Senator's time has expired.

Mr. CURTIS. I yield myself 5 additional minutes.

By ignoring the need for hearings, looking at the act for some general change, and bringing this in at this time, we are not going to solve anything very much. I do not like the impounding of funds, but as I say, it is a bipartisan weapon. I do not believe that I want to stand here and say that a mayor has to spend all the money that a city government provides for him, or that a Governor has to spend all the money the legislature appropriates, or that a President of the United States has to spend all the money that Congress appropriates.

What this amounts to is that the funds have been impounded in one program, and he says, "We will use the other program." I do not like it. It may be that I, if I had to make the decision, would have suggested other types of funds to be impounded. But it is a weapon that has been used, because Congress and everyone connected with the Government have spent more money than we have had the courage to collect in taxes, and we have deficits and shortages from the standpoint of the inflow and the outflow of money.

But I do want to say that I believe that after the hearings are held, a bill can be brought in that will give to that farm and ranch family the opportunity to have electricity at a subsidized interest rate, because they are removed by distance in such a way that oftentimes it is not profitable for some other concern to bring them electricity. The very fact that Congress awhile back made possible the CFC program resulting in a blend of interest rates points to the recognition of the fact that attention needs to be given to this matter.

It is my understanding that one or two amendments will be offered. One of them will have one formula and the second another, to reach the very objec-

tive about which I have spoken: That we preserve for farmers and ranchers the historic subsidized interest rate, but that it not be extended to all other customers of rural electric cooperatives.

It might be well to call attention to the fact that out of the 7 million meters on REA lines, only 1.4 million are farm meters. Lines financed by REA in 1972 averaged 14 meters per mile. Those customers were not farmers and ranchers in Nebraska. We have lines that have to run 20 miles to reach one ranch, and that makes the subsidy all the more important.

Mr. President, again let me say that the REA program will go on, and we would better serve that program if we would be realistic, call in all the witnesses, and write a proposal that would serve all the parties involved.

Mr. DOLE. Mr. President, will the Senator yield me some time?

Mr. CURTIS. I yield the distinguished Senator from Kansas 5 minutes.

Mr. DOLE. Mr. President, I have listened with interest to a number of distinguished Senators with reference to the bill before us, of which I am a cosponsor. We may have some differing views on the needs of the program. I think the Senator from Nebraska has just pointed out that in 1936, when the original act was passed, the cost of money to the U.S. Government was about 1.9 percent, and so it was figured at a rate of 2 percent. Of course, since that time the interest rate to the Government has increased, but the act provisions have stayed the same.

It has been pointed out by the distinguished Senator from Minnesota, the distinguished Senator from Nebraska, and others, that there has been a continuing need for 2-percent loans, particularly in those areas of very low population density. I have discussed the recent Executive action with members and leaders of the REA from the State of Kansas. I do not find any great difference in view insofar as the economy is concerned and insofar as the desire of those leaders in Kansas to cooperate with the President is concerned. Loans from the REA have formed the foundation of the REA cooperatives and the rural telephone associations and independent telephone companies throughout the Nation. The farmers do have lights, power, and communications as a result of this program. Those who live in rural America know that much still remains to be done to provide all rural residents with the same service that urban dwellers enjoy. Everyone agrees that the rural residents are entitled to comparable service. There is no doubt that the direct loan program at 2-percent interest has been the basis for this service.

It is quite clear as indicated by discussion on the floor, however, I do not believe anyone stood up and said we should preserve the 2-percent program regardless of qualifying factors. Every Member of the Senate Agriculture Committee agrees that the 2-percent interest rate deserves close scrutiny and possible increase. In some cases, there is no question about the fact that the rate should be increased to those cooperatives in areas of high-population density.

I am pleased that the senior Senator from South Dakota (Mr. McGOVERN) has indicated we will have hearings in that committee. We will have a chance and opportunity, then, to examine the full circumstances as to how the program is being operated and how we can keep it on the track and, in some cases, be able to expand the rate of interest.

As has been said before, the present 2-percent loans by the REA are being blended with funds from the Cooperative Financial Corporation, that is, the CFC, at 7- to 8-percent interest to effect a considerably higher rate.

The amount of the higher interest loan is restricted because of the limited funds the REC's have been able to contribute to the CFC. It has been apparent, the continued growth of the CFC is dependent on the continuation of a reasonable interest rate.

The distingiushed Senator from Minnesota pointed out that REA leaders across America recognize, and have for years, the need for gradual change. That was the reason for the modification. That was the reason for the CFC. It was through their initiative, after many unsuccessful attempts, I might say, on the part of responsible REA leaders across the country, that the REC's established the CFC which is similar to the telephone bank authorized by Congress and signed by the President last year.

There has been great discussion in Congress for a number of years, and not a partisan discussion, and not a discussion of urban versus rural interests, but a discussion of what can be done in the interest of rural America and, at the same time, be compatible with the overall interests of the economy and with the budget program.

As the Senator from Nebraska (Mr. CURTIS) has indicated, that the REA's may have reached an average of 14 meters per mile, and that certainly does not represent a sparsity of population. But I would point out, as has been pointed out before, that that figure is an average for the Nation and not an average for the State of Kansas. The Kansas average is 1.8 meters per mile. This is also true in States like North Dakota, South Dakota, Wyoming, Montana, and many other States.

Under the present system of combined loans, only 88 rural electric cooperatives in the Nation qualify for 100-percent loans at the 2-percent interest rate, only 88—and only eight in the State of Kansas—eight out of a total of 36. There has been a responsible effort on the part of Congress and on the part of the executive branch and by the REA's themselves and the REC's themselves to adjust the program.

I do not think it comes as any surprise that those of us who represent the rural areas have been inundated with mail on this subject. I have received thousands of letters. Some of the mail is perhaps generated, but much of it comes from farmers, or the wife, who is very much concerned about the program, not attacking the President, not attacking Congress, but just concerned about preserving the program.

This is a necessary program and a worthwhile program and one that should be continued.

I do not find the REA members in my State—and I am certain this is true of other Senators—any different from other Americans. They are all concerned about fiscal responsibility and they want a balanced budget. They have to live within their income. They recognize that we cannot for long spend more than we take in without problems. I think the farmers have indicated and demonstrated that they are hard working and honest people.

So I believe that what we are faced with is, what do we do now? What action should be taken to indicate to the executive branch and to the President that we believe the program should be continued. But what do we do in the interim. What do we do now and after the action taken today?

Having served in the House on the House Agriculture Committee for 8 years, and having wrestled with the almost annual problem under every President who is trying to modify the 2-percent loan program, there is no doubt in my mind that it has brought about some change and there is also no doubt in my mind that further changes may be necessary.

I believe that Congress will act responsibly. I believe that Congress can cooperate with the executive branch and can work within the framework of compromise.

I recall that when we concluded the committee work on the bill before us, the distinguished Senator from Nebraska (Mr. CURTIS) did request further action by the committee to update REA legislation. That has been directed to be considered.

It goes without saying that the farmers depend more and more upon electricity and on electric power.

In addition to the adverse effect of the termination of direct loans already referred to, the small rural telephone companies are not being afforded the same financial privilege as rural telephone cooperatives, that is, the small companies serving sparsely populated and poverty areas which have been eligible for low-interest loans under the rural telephone bank and REA program. With the recent changes, the companies must pay 7- to 8-percent interest if they can qualify for the loan. This discrimination—and there is no conflict between the small companies and the cooperatives as they get along very well—but this discrimination adds to the need to reinstate the program and provide both communication and power to rural America.

Mr. HUMPHREY. Do I correctly understand that the distinguished Senator from Kansas was the main sponsor of the rural telephone bank program?

Mr. DOLE. Yes; I had the privilege with the distinguished Representative from Texas (Mr. POAGE) he being the principal sponsor of that rural telephone bank bill.

Mr. HUMPHREY. That program has been working very well, from what I un-

derstand. Under the present order relating to the terms of the REA, it would, for all practical purposes, as I indicated in my opening presentation, do away with any of the low rate loans to the small companies.

Mr. HUMPHREY. It would be 7- or 8-percent interest, rather than a modified interest between 2 and 4 percent.

Mr. DOLE. Frankly, I felt that Congress had worked out a very responsible telephone bank bill. We recognized the problem of 2-percent loans. We recognized the problem of small companies and small cooperatives. Perhaps somebody at OMB does not recognize the great struggle we have had in Congress over a great number of years—not just last year but 7 or 8 years—when some of us have been trying to come up with some proposal with reference to rural telephone service.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. DOLE. I ask for 1 additional minute.

I hope we can pass the bill before the Senate, of which the distinguished Senator from Minnesota is the principal sponsor, without amendments that might delay it, and that we can indicate our urgent plea to the Executive and to others that we believe that the program should be continued.

Our farmers depend on electric power more every day. This is evident in the increasing demand. Use of electricity on the farm has doubled the past 7 years and is expected to double again the next 7 years. Many of the machines they use are now powered by electricity and it is essential that they can plan on having an adequate supply of power for the future.

Mr. President, in addition to the adverse effect of the termination of direct loans, small rural telephone companies are not being afforded the same financial privilege as the rural telephone cooperatives. The small companies serving sparsely populated and poverty areas have been eligible for low-interest loans under the REA program. With the recent change, these companies must pay 7- to 8-percent interest—if they can qualify for the loan. This discrimination adds to the need to reinstate the program to provide both communications and power to rural America.

The REA and RTA program is essential to American agriculture, and I urge my colleagues to support this legislation to reinstate this important program.

Mr. President, I ask unanimous consent to have printed in the RECORD information in connection with REA loans in Kansas.

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

REA LOANS TO KANSAS AS OF DECEMBER 31, 1972

ELECTRIC—SEC. 4, CONSTRUCTION OF LINES, ETC.

Total Loans, $192,142,982.20.
Total principal repaid, $66,388,838.81.
Total interest paid, $36,401,578.28.
Advance payments made, $7,858,429.02.

SEC. 5 LOANS WHICH FINANCE WATER SYSTEMS, APPLIANCES, ETC.

Total loans, $414,845.32.
Total principal repaid, $89,845.32.
Total interest paid, $33,720.95.
Advance payments made, $145,420.54.

SEC. 201 TELEPHONE

Total loans, $86,980,721.07.
Total principal repaid, $15,197,575.39.
Total interest paid, $12,547,407.28.
Advance payments made, $1,276,836.23.

NUMBER OF SYSTEMS IN KANSAS ELIGIBLE FOR 100 PERCENT REA LOANS

Eight were eligible for 100 percent.
Five were eligible for 90 percent.
Seven were eligible for 80 percent.
Sixteen were eligible for 70 percent.

Number of REA loans announced, calendar 1972, 18.

Total of REA loans announced, calendar 1972, $8,239,000.

Number of borrowers qualified for 100 percent REA financing at 2 percent, 8.

Number of 10/1/72 applications pending 12/31/72, 1.

Loan needs during FY 1973, according to NRECA survey (Jan. 1972), $9,164,000.

Number of consumers per mile of line, REA borrowers, 1.8.

Number of consumers per mile of line, power companies, approximately 26.0.

Amount of revenue per mile of line, REA borrowers, approximately $591.

Amount of revenue per mile of line, power companies, approximately $9,400.

UNITED STATES

Appropriated by Congress for rural electrification loans during FY 1973, $595,000,000.

Administration budget was, $438,000,000.

Loans approved by REA during FY 1973 before cutoff of 2 percent loan program (282 loans), $228,000,000.

Amount appropriated by Congress and remaining unused at cutoff, $367,000,000.

Applications for loans on hand at REA at cutoff (159 applications), $467,633,000.

Number of borrowers wholly dependent upon REA 2 percent financing (not eligible for supplemental loans), 88.

Loan authorization under the Rural Development Act (insured loans at 5 percent), $618,000,000.

Balance available under the Rural Development Act, insured loans at 5 percent ($618,000,000 less $228,000,000), $390,000,000.

Mr. HUMPHREY. Mr. President, I extend my thanks to the distinguished Senator from Kansas for his splendid statement and for the reasonableness of his approach.

I say most respectfully to my colleagues that there is no one here who is not interested in the REA program. The distinguished Senator from Nebraska comes from a State known for its REA's and its public power. George Norris, one of the great Senators, a predecessor of the Senator from Nebraska, was the father, so to speak, of REA.

All we are trying to do is merely to state that the law that is now on the books shall continue to be the law, including the appropriation provided, which also is law until June 30, 1973. That is all we are attempting to do.

We are simply saying that the program ought to be continued in accordance with the law.

We are saying, further, that the administrator of the program, Mr. Hamil, has been conducting the program in a manner which affords a blend of moneys, as the Senator from Kansas pointed out—moneys at 2 percent interest with moneys at higher rates of interest. I believe I heard the Senator from Kansas say that out of 36 loan applications that were acted upon in his State, only eight qualified for 100 percent 2-percent money and the others were a blend of 2 percent and a higher rate of interest.

I am hopeful that we will state what we want done here. This is a very simple bill. It merely provides that we continue with what we have until such time as Congress—not the executive branch—decides to change the program.

Hearings will be held. The Senator from South Dakota (Mr. MCGOVERN) has said here that those hearings will be open for witnesses, testimony, and any suggested amendments to the program. We will review the entire program. I think that is the way we ought to change the program, if we are going to change it. I do not think it ought to be done by somebody downtown, without regard to the will of Congress.

Mr. CURTIS. Mr. President, I yield 5 minutes to the distinguished Senator from North Dakota (Mr. YOUNG).

Mr. YOUNG. Mr. President, I feel strongly that the bill with reference to REA loan cutoffs by the administration should be approved.

I believe most REA co-ops and the farmers they serve will agree that some modification of the present REA loan program is necessary and overdue. In fact, Mr. President, the National Association of REA co-ops for several years has proposed that the 2-percent loan program be continued only for co-ops serving low density areas, usually areas that only have one or two farmers per mile or many that have less. Two-percent loans for this kind of REA co-op are essential and fully justified. The total amount of loan money for such co-ops would be very minimal.

From listening to much of the publicity in opposition to this type of loan program, one would think that these loans represented a gift from the Federal Government. Nothing could be further from the truth. REA co-ops have a repayment record of better than 99 percent. What other loans made by the Federal Government have this kind of a repayment record? What foreign countries that we give help to have this kind of a record? They get very low interest rates and the repayment record is miserable, and most of the money they get is in the form of grants.

A great majority of REA co-ops are serving a high enough density population or are providing service in many cases to customers other than farmers and are able and very willing to accept a higher rate of interest. They do need additional funds continually, year after year, to modernize and improve their service the same as investor-owned utilities.

Mr. President, it is not easy for me to criticize my own administration, but I feel that I must in this case, especially because of the manner in which this

great loan program was so abruptly wiped out. Just after Christmas when the administration, without any prior notice whatever, discontinued all loans to REA co-ops, REA had many loan applications pending for which they had made verbal commitments. For 25 years or more during the operation of this very fine REA program, most if not all applications were agreed to by verbal commitment pending the drawing up of the necessary documents to be signed later. For the administration to say that they had no commitments to these borrowers to which they had made verbal commitments is absurd. No individual, group or industry, and more particularly the Federal Government, can afford to make commitments and then summarily dismiss them.

I realize, Mr. President, that there are a few in high places in this administration who use the excuse for abolishing this program that some of the REA co-ops had occasionally provided electrical service to a country club. This was not the intention of the loan program. If loans have been made to REA co-ops who are serving a country club, then the Administrator could easily have denied loans providing for that kind of service. The Administrator had this discretionary authority. It is revolting to farmers and their friends to hear from a high-placed official of this administration that one of the reasons for wiping out the REA loan program was that some country club was provided service by an REA co-op.

Mr. President, the approval of this bill by Congress may not get the desired results, but it will express the views of the Members of Congress with respect to the unwarranted action taken by the administration in abolishing REA programs. I believe that we in Congress should write a new REA loan program along the lines I have previously discussed—that of 2 percent money for just those co-ops with a low density factor and a higher rate of interest for the co-ops in more densely populated areas or others which, because of their profitable power loads, are able to pay a higher rate of interest.

Mr. CURTIS. Mr. President, I yield 2 minutes to the distinguished Senator from Oklahoma (Mr. BELLMON).

Mr. BELLMON. I thank the Senator from Nebraska.

Mr. President, probably no program that the Federal Government has ever undertaken has done the country more good than the rural electrification program. I cannot imagine what shape American agriculture would be in today if our farms had been denied access to dependable, reasonably priced electricity. A great many city folks would have to go out and milk their cows by hand before they could have breakfast every morning, and I am afraid that that would not work too well.

I believe that the REA program has served not only the rural part of the country but also the rest of the United States as well as any program Congress ever put into action. I want to do all I can to make certain that the rural electrification program continues to be a healthy activity that can adequately and reasonably meet the needs of agriculture, because the demands on agriculture for food are growing, not decreasing. So I strongly support the continuation of the REA program.

I particularly feel that we will still need some of the low interest money available, because there are still remote areas of the United States—a good many in my State—where it is simply impracticable to provide electricity if the full cost of money is going to be charged. Many of these areas are just developing; and if we do not provide low interest loans, they simply will not develop.

Mr. President, it is my intention, when it is in order, to offer an amendment that I believe might make the continuation of low interest money possible, might get the administration to release some of these funds, so that REA's that need those loan funds would have that money available to go ahead with construction programs.

The problem is if we go ahead and act today and pass legislation that the administration will not accept there is little reason to believe they will change their minds downtown and they will continue to impound the 2 percent direct loan funds.

I would like to see us pass a bill to assure that the funds will be available so that programs that are presently held in abeyance can get funds they need for farmers that need it.

Most of agriculture has been served, but it is also a fact that some areas have not been served and some areas being served are being inadequately served. In those cases where farmers live some distance from the source of supply the only way they will get service is through low interest loans.

I strongly support that program and intend to do all I can to keep it in operation.

The PRESIDING OFFICER. Who yields time?

Mr. McCLURE. Mr. President, will the Senator from Oklahoma yield to me for 10 minutes?

Mr. BELLMON. I yield 10 minutes to the Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. McCLURE. I thank the Senator for yielding.

Mr. President, I rise at the outset as a supporter of the REA program and as a defender of the necessity for continuing a program which will provide expanded electrical service to the people of rural America. The action which I am taking today will be in the sense of trying to resolve a problem rather than to attack a program which I think has served and is serving the people of rural America well.

The recent administration cancellation of the REA 2 percent direct loan program has raised a question of critical importance to rural Americans: how do we insure the survival of those rural electric cooperatives which cannot afford an increase from a 2-percent interest rate to a 5-percent rate? The cooperatives themselves have already recognized that some can afford higher rates and, therefore, they established the National Rural Utilities Cooperative Finance Corp., known as CFC. My concern today, though, is especially with that group of cooperatives that, for various reasons, cannot generate adequate revenues necessary to provide continued, reliable electric service in their service areas without the 2 percent direct loan program.

The administration has focused its attention on only those cooperatives which can afford higher interest rates. Several of my fellow Senators, on the other hand, have focused their attention on only those cooperatives which cannot afford higher rates. The financial situation facing all of us today, including the Federal Treasury and the rural electric cooperatives, demands that we establish separate programs, distinguishing between cooperatives on the basis of their individual financial situation. This approach has already been instituted, to some degree, by the REA and CFC, in their formulas for allocating shares of loans between these two lending agencies.

What I am proposing today is that this procedure be expanded, to become the new Federal policy towards financing of the rural electrification program.

Basically, the amendment which I will offer would establish a flexible program for financing according to the need for that Federal assistance. The amendment would establish a financial criteria for borrowers in accordance with the provisions of REA Bulletin 20–14. These criteria are the time interest earned ratio, sometimes called TIER, the debt service coverage, or DSC, and the plant revenue ratio, called PRR.

If a borrower has a time interest earned ratio of less than 1.5 or a debt service coverage of less than 1.25, then that borrower would be entitled to a 2 percent direct loan in an amount equal to his approved needs.

If, however, a borrower has a TIER of 1.5 and above, and a DSC of 1.25 and above, then some portion of the loan made would be on an insured basis at 5 percent interest, based on the plant revenue ratio.

A borrower with a PRR of 9.01 and above would be entitled to a loan composed of one-half 2 percent direct funds and one-half 5 percent insured funds. A borrower with a PRR of 8.01 to 9 would be entitled to a loan composed of one-fourth 2 percent direct funds and three-fourths 5 percent insured funds. If the borrower's PRR is 8 and below then the financial criteria calls for an insured loan at 5 percent interest to meet the approved needs.

In this manner I believe that the concurrent goals of Federal fiscal responsibility and strengthening of rural America can be brought closer together. Obviously, this legislative approach will satisfy neither those who wish to completely wipe out the 2 percent program, nor those who wish to provide 2 percent loans to all cooperatives, regardless of financial position. It will, though, provide a new thrust and a stronger sense of purpose

to a program initiated in 1936, to bring electric power to all rural Americans. On that basis, I urge the support of my colleagues for adoption of this amendment.

I was pleased in the colloquy earlier to note that the senior Senator from South Dakota indicated he will hold hearings on amendments to the REA Act that might encompass this and other suggestions as a means by which we might amend the basic law and conform to the very soundly held position of the Senator from Minnesota that Congress should set the policy, that Congress should enact the law, and that Congress should make the changes in the laws, rather than to have it done by Executive edict. I strongly support that position.

I am concerned, however, with one thing that seems to be running through much of the discussion this afternoon, and that is that we are anxious to confront the issue of Executive privilege without reference to whether or not there will be money available to the rural electrical cooperatives as they need it. Passage of the pending legislation without the amendment would, in my opinion throw down the gauntlet to the administration without assuring the continuation of loans below 5 percent.

Either the amendment to be offered by the Senator from Oklahoma (Mr. BELLMON) or me would go part way in assuring that some 2 percent funds would be available while this impasse between Congress and the Executive is being thrashed out. If, indeed, my amendment or the amendment of the Senator from Oklahoma is not adopted today I will do what I can through those hearings to see that there is a suitable amendment to the program that will bring some flexibility and assurance to the necessary financing of the REA's of America.

But let us not ignore the fact that there have been problems; and let us not gloss over the fact that there have been serious charges against the REA in the past for misuse of 2 percent funds. The REA's are the first to admit such abuses have occurred and there are circumstances that do not justify 2 percent financing. They have taken the lead and they recognize the need. Do you deny the opportunity for 2 percent funds where it is warranted while we fight out some kind of very grave problem between Congress and the President.

Therefore, I would hope that at the proper time when the amendments are offered that my amendment would receive the majority support of this body.

Mr. HUMPHREY. Mr. President, this matter will not be concluded this evening, but I do wish to make this rejoinder. There is not a single thing the Senator from Idaho presented that the Administrator of REA cannot do as long as he spends the full amount of funds appropriated by Congress already. I do not think we should start rewriting the law on the Senate floor without the benefit of public hearings, We have committees of Congress that are capable of undertaking this responsibility.

The first part of the Senator's amendment is already in the REA Administrator's regulations. If Senators will study the committee report, particularly page 11, starting with attachment A, "Supplemental Loan Criteria for Electric Distribution Borrowers," and continue to page 12 and into page 13 of the report, I believe they will be informed that the present Administrator of the Rural Electrification Administration program has the authority and is using his authority to make adjustments for the blending of 2-percent money with supplemental funds at a higher rate of interest. My point is that any changes in the law ought to be worked out with advice from the rural electric cooperatives and with bankers. We need to look at the amounts of funds that might be available in the open money market as well as the ability of rural electric cooperatives to pay a higher interest rate.

This is a complicated business. The administration has looked at these issues in the past and has come up with the formula printed in this document, the report, at pages 10, 11, 12, and 13. The committee report contains a very careful documentation of existing REA policy by the competent staff of the Committee on Agriculture and Forestry. I do not want to scrap the carefully considered policies of the Rural Electrification Administration. That is not what this debate is all about.

The press release announcing the termination of the REA direct loan program was not signed by the Senator from Minnesota or the Senator from North Dakota. It was signed by Mr. Butz. Every complaint that has been made about the REA direct loan program has been heard before by the Senate Appropriations Committee. After the complaints had been filed, if there were any, the Senate overwhelmingly—I believe unanimously—approved funds for the Rural Electrification Administration over and above the President's request.

The President did not just reduce REA loan funds. The Secretary, in his press release, did not say, "We are going to cut back funds to the President's level in the budget request." They terminated the program. All we are trying to say is that we should reactivate the program.

It is my judgment that if the President hears from Congress overwhelmingly, on a bipartisan basis—and this is of a bipartisan nature—he will reconsider. It is my honest judgment that the President was not even really informed. The bureaucrats in the Office of Management and Budget were the ones who were trying to cut down on REA funds.

My friend the Senator from North Dakota (Mr. YOUNG) serves on the Committee on Appropriations. He has heard the budget directors come up time after time, seeking to cut down on the program. Most of them have never been on a farm; they have never seen what takes place on a farm. Congress has listened to the principal budget directors. Many of them have made recommendations similar to the one we got in the press release of December 29. But the House and Senate both said, "No."

The Senator from Kansas spoke of the telephone bank. That did not come out of thin air; it came out of experience.

If the Secretary of Agriculture has some amendments that he believes would redesign the rural telephone bank program, let him come before the Committee on Agriculture and Forestry and make his presentation. Let him come before the Committee on Appropriations, headed by JOHN MCCLELLAN, of Arkansas, a distinguished gentleman in this body, a Senator who is not known for capricious action. He is for responsible action because he is a responsible Senator. The ranking member of the committee is here, the distinguished Senator from North Dakota (Mr. YOUNG). I have known him for years. We have stood on the floor of the Senate year after year, fighting for things that we thought were right for rural America.

I do not intend to let anything stand in the way of what I believe is right for rural America. All I am saying is what we have to do is to send a message to—and I am quoting somebody—send a message to the Director of the Bureau of the Budget, send a message to the Secretary of Agriculture, and send a message to the President.

We all know what happened to the Veterans' Administration. They had some regulations that were going to take our Vietnam veterans and give them the treatment. The President heard about that. He got the message. He said—

> Just a minute. There is somebody over there who thinks he is the President. We are going to change that.

So he rescinded these regulations because somebody did it in his name.

I want to tell the President, "We are trying to say to you from this body today, we are trying to tell the people in the Office of Management and Budget, we are trying to tell the so-called budget experts, that they ought to get the facts; we are trying to tell them that the bill you signed last year for Agriculture appropriations was a good bill. We are trying to tell them that that bill would have saved money. We are trying to improve life in rural America. We are trying to save the rural electric and telephone programs."

I do not think the President was trying to stop the rural electric and telephone programs. I think the President of the United States would do better than that. I think there are some bureaucrats, some appointees, that slipped it onto his desk. My goodness, it is time we rescued the President. I want to do it in a bipartisan measure.

There is no Senator for whom I have greater affection than the distinguished Senator from North Dakota (Mr. YOUNG). I have worked with the distinguished Senator from Oklahoma (Mr. BELLMAN) over the years. I have worked for many years with the distinguished Senator from North Dakota (Mr. YOUNG). These men want to do what is right, and so do I. But I know one thing that is right, and that is not to permit someone who is in the executive branch of Government, whatever office it is, to repeal laws we pass in the Congress. We may not be the smartest people in the world, but we are elected representatives, and there is a way to take care of those of us who do not do our work well, and that is through something called elections. But there are some people who

have tenure and they do not have to stand for elections. The President is concerned about matters all over the world. When the matter of rural electrification or environmental assistance comes up, I can see somebody over there in the Office of Management and Budget—with a Harvard degree—coming up and saying, "Well, I tried to get Truman, I tried to get Eisenhower, I tried to get Kennedy, I tried to get Johnson"—because those budget bureaucrats live a long time over there—"I tried to get to all of them, but someone always caught me before it went through. Now, I think I will try to get through President Nixon."

President Nixon has some staff people in the White House that just try these things. Now my colleagues on the other side may be acquainted with some of these people, but I do not get to see them myself.

I rise in the Senate today to save our President. I do not want the farmers of America to say, "Look what Mr. Nixon did to us." After all, he cannot run for reelection. I do not want to pick on him; I want him to succeed. I really want him to succeed, and the other Senators here really want him to succeed. So let us not burden this bill with a lot of amendments. Let us do what we ought to do and send him a message. That is what I think we must do. The Senator from Minnesota wants the Senate to send him a message.

And I will tell the Senate that if we put it in capital letters, without even the benefit of neon lights, that the President will get that message. And the lights will continue to burn in rural America. And the country will not go bankrupt. The loans will be repaid, the 2-percent money, the 4, 5, and 6-percent money.

I can tell the Senator from North Dakota (Mr. YOUNG) that the Basin Electric Cooperative will get its loan. That loan was promised, and that promise has now been broken.

Loans were promised in Minnesota, and those promises have been broken. If people cannot believe their own Government when a promise is made, who can they believe?

This is not a complicated bill. This is as simple as telling the truth. All we have to do is to say that the law that was passed and the funds that we appropriated shall be honored. That is all. All that we have to say is that the President shall faithfully execute the laws, which is what the Constitution provides.

I am just asking all of my distinguished associates in the Senate to join the 54 Senators who are sponsoring this legislation to send a message to the President. It is a simple message:

Just abide by the law. Just do what you are required to do.

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

Mr. HUMPHREY. I yield to the Senator from North Dakota.

Mr. YOUNG. Mr. President, first, I express my appreciation to the Senator from Minnesota for his very kind comments. We have worked together for nearly a quarter of a century on these fine programs. I am very happy to see the Senator from Minnesota back on the Committee on Agriculture and Forestry.

I will have to oppose the suggested amendments, not because I do not agree with them, but because I believe that this is not an appropriate place to offer such amendments. These measures should be introduced as bills, and we should hold hearings on them and get the views of the REA, the Secretary of Agriculture and others. Then we can write the proper bill.

Mr. MONTOYA. Mr. President, much has been said here this afternoon about REA, and ample testimony has been offered as to the fine work which REA has accomplished since the program was created in 1936. There is little I can say to further embellish the record except to point briefly to what REA has done in New Mexico.

When REA was first created, only 3.3 percent of the farms in New Mexico were electrified. Today, that figure is 90 percent.

REA in New Mexico serves 87,597 rural consumers over 29,377 miles of line.

And, since 1936, REA has advanced $131,938,136 to New Mexicans, of which amount $83.4 million has been repaid.

But, Mr. President, the recent actions taken by the administration to eliminate the 2-percent REA loan program cast a shadow over the ability of REA to continue its work in the future. The administration justifies its termination of the 2-percent program with the claim that the Rural Development Act of 1972 authorized a new source of loans for rural electrification. In fact, however, the action means that no funds at all are available for REA now.

Last year, the administration failed to make a request for funds for the loan program which they now claim is to provide substitute REA money. And, so far, the procedures, field instructions, and guidelines for operating the substitute program have not been written. There is no money for this program, and there is no mechanism to administer it. Based on this record, it seems clear that there is not going to be much of REA left unless we act.

Mr. President, I am discouraged and disturbed that we should have to be debating this issue at all, because the program should still be in operation. Where did the President get the authority to unilaterally shut this program down? What law or constitutional privilege gave him the authority to do what he did? Mr. President, I believe the administration has acted improperly with regard to REA, and it is our responsibility to correct this error.

Over the past month, I have received a great deal of mail in support of the REA program. I have also been visited by a delegation of REA officials from New Mexico who indicated their approval for this bill. They also indicated that the financial status of many cooperatives is better now than it was some years ago, and that it may be time to consider replacing the 2-percent-loan program with a new program based on a sliding rate of interest. Mr. President, I am open to that suggestion, and I hope that the Agriculture Committee will consider it. But until we have time to consider alternatives carefully and thoroughly, I believe we must past this bill so that we may continue without interruption the progress we have made so far.

Mr. BURDICK. Mr. President, I wish to state my strong support for S. 394, to reaffirm that funds appropriated for the rural electrification program must be made available each fiscal year as obligated to carry out programs authorized under the Rural Electrification Act. I am proud to be a cosponsor of this bill.

Rural electric and telephone cooperatives were established in this country because privately owned utilities did not consider it profitable to extend service into thinly populated rural areas. It is only because the Rural Electrification Act made available low-interest direct loans to farmer cooperatives that North Dakota farms and small towns have been able to enjoy the labor-saving benefits of electric power and rapid communication that people in more densely populated parts of the country have taken for granted for years.

The termination of the REA direct loan program forces all electric and telephone cooperatives, regardless of their financial situation or the density of the area served, to pay higher interest rates on borrowed capital necessary to meet the needs of consumers. The increased costs will necessarily be reflected in higher rates charged to consumers. In North Dakota, where net profit from farming operations is usually quite small because of the ever-increasing costs of production, this additional expense added to others could be enough to drive some people off farms and out of rural communities.

It is estimated that cancellation of this program will cost North Dakota rural electric cooperatives $1,370,000 more per year for higher interest costs on the $65,200,000 in loan funds now required for the balance of the present fiscal year. Taken for the total 35-year term of such loans, this results in increased interest costs amounting to $47,920,000.

For North Dakota telephone cooperatives, $252,300 more per year will be required on loans of $12,010,000 for this fiscal year or a total of $8,830,000 for the 35-year period.

Mr. President, in abruptly terminating this program, apparently no consideration was given to the impact on rural cooperatives to whom the REA Administrator had given definite commitments to enable them to implement long-range operating plans.

The President of the Central Power Electric Cooperative of Minot, N. Dak., has written to me a detailed statement regarding the chaos resulting from the administration's reneging on what Central Power and their member co-ops had regarded as firm financial commitments. I want to quote briefly from this letter about Central Power's efforts to consolidate power transmission and substation facilities in their areas after a 4-year study. The letter points out that this study and plans were actively encouraged by REA and that their loan application for $9.2 million was formulated by a close association of efforts between Central, its members, and REA. Con-

struction was to start in 1973. Mr. O'Connor, the president, states:

Since submitting the loan application to REA we have time and again been assured by the REA administrator, David Hamil, that the loan would be granted in the quarter beginning January 1, 1973. In fact, the loan was to be granted in January of this year. We, of course, felt that we could rely on these representations by the administrator inasmuch as REA fully concurred in the legitimacy of the loan request. One of the facilities which was planned for under consolidation and the 9.2 million dollar loan request was a 115 KV transmission line from Rugby to Rolette. This line is of critical importance and in recognition of this fact, on December 1, 1972, REA, by letter, gave permission to the cooperative to use $204,000 of general funds so as to permit the accomplishment of the preliminary engineering, the acquiring of right-of-way and similar first steps in advance of the actual granting of the loan so as to avoid any further delay in this urgently needed construction. Additionally, REA also gave their approval for the cooperative to advertise for bids for four large transformers. . . . In short, relying on the representations of REA that such loan funds would be forthcoming, this cooperative has substantially committed itself to a program of providing these facilities as well as other such similarly required facilities included in the loan. . . . If the President's action in permanently terminating the REA 2 percent loan program is not reconsidered and reversed, the consumers of rural electrics will be the victims of a cycle of pyramiding rates with each power supplier, in turn, forced to pass on the heavy increased costs to rural consumers already caught in a price-cost squeeze and bear the ultimate unfair burden resulting from the President's action.

Mr. President, at one point in this letter, Mr. O'Connor indicates that the rug had been pulled out from under this cooperative. I will say that the rug has been pulled out from under not only the Central Power Cooperative, but from under the Administrator of the Rural Electrification Administration, and from under the people of North Dakota who live on our farms and in our rural communities.

Mr. President, I ask unanimous consent that the entire text of this letter from Lewis O'Connor, president, Central Power Electric Cooperative, Inc., of Minot, N. Dak., be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. BURDICK. Mr. President, it is unfortunate that it has become necessary for a bill such as this to be considered by the Senate. The Rural Electrification Act is the law of the land. Congress has appropriated the funds for the administration of the act. The appropriation bill was signed by the President. In spite of these facts, the President has terminated the program.

Therefore, it is our responsibility as the elected representatives of the people to reaffirm the intent of Congress that the REA program go forward by passage of S. 394.

EXHIBIT 1

CENTRAL POWER
ELECTRIC COOPERATIVE, INC.,
Minot, N. Dak., January 19, 1973.

Senator QUENTIN N. BURDICK,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BURDICK: By this letter we hope to communicate to you the feeling of stunned surprise and outrage relative to the terse announcement by the Administration that the Administration unilaterally and without consultation or concurrence of the Congress, was terminating as of January 1, 1973, the REA 2 percent loan program and to request and urge that you do all in your power to reverse such unwise, unwarranted and unprecedented action by the Administration. The termination of this program, if allowed to stand, will without question jeopardize the functional ability of this cooperative to adequately discharge its responsibility to the increasing needs of its members.

Since you, more than most members of the Congress, are aware of the many ways that the quality of life in Rural America has been enhanced directly or indirectly by the existence of the REA program and, in particular, the 2 percent loan program, we will not devote the time or space that would be required to fully articulate the myriad benefits that the 2 percent loan program has made possible. It is enough to say that all of us from these thinly populated rural areas are keenly conscious of what the REA program has meant to us and how vitally important it is that the 2 percent loan program be continued.

Central Power, working with its members, has as you are aware, been engaged in a four year study and endeavor intended to accomplish a consolidation program whereby Central Power would assume the existing transmission and substation facilities of our members and assume further responsibility to supply the future needs of its members in this regard. This is a heavy responsibility for Central Power and many thousands of North Dakota rural people will be directly affected by how well Central can meet this responsibility. The abrupt termination of the 2 percent loan program will have an intimate correlation to our ability to provide for the future legitimate needs of our members.

It is ironic that the announcement by the Administration of the termination of the 2 percent loan program coincided to the exact date that the consolidation program became legally effective. It is important that we point out to you that many different elements were included in the consolidation program and the reasons for striving for its accomplishment. Included would be the savings that can be realized if one organization (Central Power) was given the responsibility for the planning, engineering, construction, operation and maintenance of all of the transmission and substation facilities required to serve our members and areas.

During the four years that consolidation has been considered by Central and its members there has been a ongoing need for construction of facilities. Absent the efforts and determination to effect consolidation most of these needed facilities would have been constructed by our members or loan applications would have been submitted to REA so as to provide for their construction. This was not done because it was felt that the borrowing of the funds necessary to accomplish such construction could be better left to Central Power under consolidation so as to insure that maximum utility value could be realized from such facilities through the coordinated planning by Central Power. In many instances this actually resulted in delaying the installation of these facilities for one or more years. This accumulation of needs has resulted in a critical construction schedule for Central Power for 1973 under consolidation.

We should further point out that not only was the concept of consolidation between Central and its members actively encouraged by REA but that REA also encouraged and recommended that our members delay any applications for REA funds for such facilities until consolidation could be accomplished under Central so as to permit Central to secure REA financing for the construction of such facilities.

Directly relevant to the consolidation program is the loan application for 9.2 million dollars previously submitted to REA. This 9.2 million dollar loan was for a 3 year period of time, with 3.6 million dollars of construction planned for 1973. The 5.6 million dollar balance was to be devoted to the 1974 and 75 construction program. Again, it should be pointed out that such loan application was formulated by a close association of efforts between Central, its members and REA and was intended by all parties to meet the critical needs and responsibilities engendered by consolidation.

Since submitting the loan application to REA we have time and again been assured by the REA administrator David Hamil, that the loan would be granted in the quarter beginning January 1, 1973. In fact, the loan was to be granted in January of this year. We, of course, felt that we could rely on these representations by the administrator in as much as REA fully concurred in the legitimacy of the loan request. One of the facilities which was planned for under consolidation and under the 9.2 million dollar loan request was a 115 KV transmission line from Rugby to Rolette. This line is of critical importance and in recognition of this fact on December 1, 1972, REA, by letter, gave permission to the cooperative to use $204,000 of general funds so as to permit the accomplishment of the preliminary engineering, the acquiring of right-of-way and similar first steps in advance of the actual granting of the loan so as to avoid any further delay in this urgently needed construction. Additionally, REA also gave their approval for the cooperative to advertise for bids for four large transformers which are also in the loan application. In short, relying on the representations of REA that such loan funds would be forthcoming, this cooperative has substantially committed itself to a program of providing these facilities as well as other such similarly required facilities included in the loan.

It seems manifestly unfair that the government should be permitted to encourage a course of action on the part of this cooperative and to then suddenly pull the rug out from under this cooperative to our obvious detriment.

The foregoing is only partially illustrative of the needs of Central's members for construction of additional facilities. Our members, in reliance upon the accomplishment of consolidation and of the granting by REA of a 2 percent loan sufficient to permit the construction, delayed as is pointed out above, requesting funds for the construction of those facilities by the members. Except for the savings which can be realized under consolidation, the following represents only a sampling of the major projects which would have been started earlier by our individual members and which would have been completed if all concerned, including REA had not accepted the consolidated loan concept.

Project	*Estimated cost*
Rugby Rolette (Line & Subs)	$1,450,000
Max Sub	495,000
Mallard Sub	345,000
Jud Line & Sub	136,000
Leeds Transformer	200,000
Rolla Transformer	100,000

We have been negotiating with Otter Tail Power Company towards the end of achieving an agreement regarding joint planning investment operating, and maintaining a system to serve our joint areas of small towns and rural North Dakota. We have just about successfully completed our negotiations in this regard. Such agreement will provide for the construction of facilities needed both by Central Power and Otter Tail Power. If these facilities are not constructed, service to customers of both utilities (cooperative and in-

vestor-owned utility) will be jeopardized and we are concerned about the potential for brown outs or black outs of large areas of North Dakota. If further delay, in the 1973 construction schedule, is experienced the winter of 1973–74 and beyond could well be most hazardous. We do not exaggerate when we state and advise that if these facilities scheduled are not constructed that real danger to the safety and well being of the customers of both Central Power and Otter Tail could result. We emphasize that Otter Tail Power has similarly relied upon the fact that this loan would be granted and, in fact, has previously indicated their concurrence to REA that such loan should be granted for the use intended. We emphasize that such joint transmission planning between Central and Otter Tail has been with the full encouragement and in fact by the direction of REA.

Mr. Hamil, in a telephone conversation on January 3, 1973, expressed his regrets at not being able to fulfill his previous and unequivocal commitment to Central that the 9.2 million dollar loan would be granted at the traditional 2 percent rate. These words of regret while not unappreciated obviously do little to provide a solution to Central's problems because of its reliance upon the promises and representations of REA as made by the administrator. The consolidation program and the 9.2 million REA loan are in every sense a tandem project and are not capable of separation. All parties involved including REA so conceived and planned both.

In addition to the hardships that will result to Central's members if Central's $9.2 million dollar loan is not granted at the 2 percent level, Central's members will further experience hardships because Central purchases power from Basin Electric for resale to our members and if Basin's $51.1 million dollar loan which also was to be granted on January 1, at 2 percent, is not granted, this will obviously impair the ability of Basin to supply to us power on schedule and at feasible rates.

If the President's action in permanently terminating the REA 2 percent loan program is not reconsidered and reversed, the consumers of rural electrics will be the victims of a cycle of pyramiding rates with each power supplier, in turn, forced to pass on the heavy increased costs to rural consumers already caught in a price cost squeeze and bear the ultimate unfair burden resulting from the President's action. The emasculation of the REA program becomes even more intolerable to rural Americans when they are at the same time being forced to suffer the consequences of the abandonment of other previously regarded essential agricultural programs.

As you are aware, a delegation of Central Power and its members will be in Washington on January 22 to participate in the grass root effort to convince Congress and the Administration that the termination of the 2 percent program must be reversed. I know Gary Williamson has talked to you about this matter and the Central delegation will look forward to seeing you next week, in Washington.

We are aware of and appreciate your long-term support of the REA program. We respectfully request that you assert your position of influence in the efforts to reverse this unfortunate action by the Administration and by so doing, reflect in full measure the sense of dismay felt by us in the rural areas.

Sincerely,

LEWIS O'CONNOR,
President, Central Power Board of Directors.

Mr. FULBRIGHT. Mr. President, today's New York Times contains an article which is especially pertinent to our consideration of restoration of rural electric and telephone direct loan programs.

The article, by Roy Reed, tells how the proposed cuts in the REA program would affect some Arkansas families. Mr. Reed reports that although some rural families, particularly those who have benefitted from the REA program, may no longer be dependent on the REA, many others would remain "locked into the past" if the cutbacks are allowed to stand.

In investigating President Nixon's absurd charge that most REA loans go "for country clubs and dilettantes," Mr. Reed found that the Nation still has many families like the John Chisums in Arkansas who apparently were overlooked in Mr. Nixon's change of policy.

As Mr. Harry Oswald, general manager of the Arkansas Electric Cooperatives, told the Times:

The President doesn't understand rural needs and the necessity of getting people away from the asphalt jungle.

As I have constantly emphasized, Mr. President, we must provide our rural areas with the amenities which will make them attractive places to live so that we can relieve the burden on our crowded and troubled urban areas.

The problem with the President's proposed changes and cutbacks is that he neglects to look at the whole picture. Because there have been some improvements and a diminished or changed need for certain programs, he proposes to abolish or drastically reduce them. The REA is but one example.

The proper procedure, of course, is for the administration to submit proposed changes to Congress for consideration. Instead the President is attempting to terminate or restructure programs by fiat.

There have been great advances in rural America, due in large part to agencies like the REA and the Farmers' Home Administration. However, the job is by no means finished. The Times article points out that half the Nation's poor people and 60 percent of its substandard housing is in rural areas. Some 45,000 communities have inadequate sewerage and water systems, although the administration would severely restrict funding for such systems.

Mr. President, I think the article in today's New York Times should be read by all who would terminate the REA 2 percent direct loan program. I ask unanimous consent that the article be printed in the RECORD.

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

HOW CUTS IN R.E.A. SUBSIDY AFFECT TWO FAMILIES IN ARKANSAS

(By Roy Reed)

BEN HUR, ARK., Feb. 16.—In the rugged heart of the Ozark Mountains, 80 miles northwest of Little Rock and nine miles from the last black-top, the settlement of Ben Hur crouches and survives.

The soil here is thin. The trees are insubstantial on the lonely ridges. Every living thing, including the human, is touched with wilderness.

John Chisum lives here in a wood-heated cabin that clings to a hill above a dirt road. His past is as poor as the clay hill he inhabits. He has no future, using the word the way most Americans use it.

Seventy-five miles to the west, the mountains, by some accident of history and geography, are lush and tame. There, in the prosperous community of Bethel Grove, a few miles from the state university town of Fayetteville, lives a man named A. C. Williams.

He also had seemed destined to be a leftover from the past. But his luck shifted, and he will bequeath to his children and grandchildren a farm worth hundreds of thousands of dollars.

ACTION BY PRESIDENT

President Nixon made a decision recently in faraway Washington that will affect A. C. Williams and John Chisum. It will cause Mr. Williams and his family mild annoyance. It will probably help keep Mr. Chisum and his family locked into the past.

The President ordered an end to a large part of the Federal subsidy that had maintained the Rural Electrification Administration, a cornerstone of Franklin D. Roosevelt's New Deal, a program that has built rural electric systems in 48 states since 1935.

Two per cent direct Government loans to rural electric cooperatives are to be replaced by 5 per cent federally insured loans and an as yet undetermined amount of private capital at 7 or 7.5 per cent interest.

Mr. Nixon, explaining his action at a news conference Jan. 31, said 80 per cent of the R.E.A.'s money once went for rural development and getting electricity to farmers.

"Now," he said, "80 per cent of this 2 per cent money goes for country clubs and dilettantes, for example, and others who can afford living in the country."

A week's investigation in this heavily rural state indicated there was some truth in Mr. Nixon's assertion. Not more than a handful of country clubs are tied to R.E.A. lines. But many rural Americans like A. C. Williams of Bethel Grove have become prosperous enough that they probably no longer need a Federal subsidy for their electricity.

However, the investigation also suggested that the nation still has a great many John Chisums, who apparently were overlooked in Mr. Nixon's change of policy.

"The President doesn't understand rural needs and the necessity of getting people away from the asphalt jungle," Harry L. Oswald, general manager of Arkansas Electric Cooperatives, Inc., said this week.

A COMMON FEAR

He was expressing a common fear among electric cooperative officials: that the new direction of the R.E.A., while it will not hurt the more prosperous systems, will damage those that serve the still sparsely populated back country and in so doing will make it even more difficult to keep people in the country and out of the crowded cities.

A spokesman for the National Rural Electric Cooperatives Association in Washington predicted that the new policy would have a "profound" adverse effect on the poorest 100 of the more than 900 rural electric cooperatives, especially some in the Great Plains and the Far West and in isolated parts of the Eastern mountains.

Residents of those areas are spaced so widely that it is difficult for an electric system to earn enough to repay an expensive private loan. Thus, industrial and other economic development would be crippled by high interest rates, the spokesman said.

The R.E.A. has lent $8.4-billion since 1935 and that money has built 1.7 million miles of electric lines in rural America. Those lines take power to 7 million consumers. More than 95 per cent—perhaps 98 or 99 per cent—of rural Americans are now served by electricity.

But that suggests mistakenly that the job is finished, the association spokesman said.

"In the power business," he said, "when you get the poles and lines you are just getting the system set. You've then got to pro-

vide for the growing needs. Our demands double every seven years."

He said that half the nation's poor people and 60 per cent of its substandard housing were in rural areas. Some 45,000 communities have inadequate sewerage and water systems, he said.

Even though many electric cooperative officials share that view, they are far from unanimous in condemning the Administration's new loan policy.

Several in Arkansas, including Mr. Oswald, find that in spite of their concern for undeveloped areas, they are more concerned about the availability of capital. They hope the higher interest rates will make more money available and reduce delays in getting loans.

Mr. Nixon's proposed budget coupled the rise in interest rates with a substantially larger allotment for R.E.A. loans, increasing the amount that cooperatives can borrow for electrical systems this year from $418-million to $618-million. That pleased Mr. Oswald.

Electric cooperatives had begun to borrow large amounts of expensive private money long before the President's action. Early in 1971, the R.E.A. began encouraging a mix of private and public loans to meet the accelerating needs of the rural systems.

About 37 per cent of the money borrowed by the cooperatives in 1972 was private capital obtained from banks, insurance companies and the like. The interest rate on most of it was 7.5 per cent.

One example of a rural resident who has done well with R.E.A. help is Mr. Williams. In his brick house overlooking a pasture at Bethel Grove, Mr. Williams, 58 years old, leaned back in an expensive chair. He wore blue overalls, the same kind he wore in 1935 when he and his bride got their start in dairying.

A COW TO START ON

The two of them explained how they had become prosperous dairy farmers in a part of the mountains that once was desolate and is now green and thriving.

"Her daddy give her a cow to start on," Mr. Williams said. "That was back in the Depression times, see. I worked on the W.P.A. [Works Progress Administration] then. The cows kept us in groceries, and whenever I'd get a $35 check from the W.P.A. I'd go buy another cow with it."

Their herd had grown to 18 or 20 cows by 1942. In that year their lives were changed by an outside force that they would not fully appreciate for several years. They got electricity.

"It took $10 or $15 to wire a house back then, and we didn't have the $10 or $15, I don't mind telling you," Mr. Williams said. But they scraped together the money and tied on to the new electric power line that had been installed across Washington County by the Ozarks Electric Cooperative, one of the R.E.A.'s early borrowers.

At first, electricity seemed to be merely a pleasant convenience. Incandescent bulbs took the place of kerosene lamps. Milk and butter were no longer kept cool in a spring outside, but in a new electric refrigerator.

SAW LARGER POSSIBILITIES

But Mr. Williams soon saw larger possibilities in this new source of energy. He began by installing electric lights in his milking barn. Then, using an electric pump, he piped water for cleaning into a nearby shed. After that came the first major step toward automation, electrically run milking machines that ended the slow, hard work of milking by hand.

In time, as new equipment was invented, Mr. Williams put the inexpensive R.E.A. electricity to work doing every chore in the barn.

Mr. Williams, his cattle and 400-acre farm—now worth more than half a million dollars—runs the entire dairy operation with only one other helper, his son-in-law. He estimates that without electricity he would have to have eight employes to milk and care for his 74 milk cows, aside from the work of caring for his 75 or 80 heifers and 110 head of beef cattle.

The electricity that takes the place of seven employes costs him about $60 a month. If President Nixon's increase in R.E.A. interest rates should cause his power bill to rise $3 or $4 a month, this dairyman would consider it a mere drop in the bucket.

His electricity is an obvious bargain, anyway, thanks to the Federal subsidy. The power that costs him $60 would cost $79 a month if he had to buy it from one of the nearby private power companies.

Near Ben Hur, down a clay road rutted by winter rain and across the fjord of a creek, John Chisum has a small, unkempt cabin.

Mr. Chisum is 52 but he looks younger, perhaps because of the slender body and alert thin face that seemed well adapted to these wild mountain woods. He is a man of his place, if not of his time.

But there is little employment for a 52-year-old man at Ben Hur, where the last store went out of business 25 years ago. So Mr. Chisum, once a small farmer and migratory fruit picker, now disabled by deafness and a bad back, supports his family on $236 a month in Social Security payments.

The Chisums were among the last Americans to get electricity in their home. They have had it three years.

They lighted their house with kerosene and butane lamps and preserved their meats by smoking it until 1969, when the Petit Jean Electric Cooperative, using $120,000 of a low-cost Federal loan, strung wires over the mountains and tied Ben Hur to the rest of the world. The Chisums remember the helicopters that had to be used to set poles on some of the steep ridges.

How has electricity changed their lives? Mr. Chisum, with his bad hearing, could not make out the question. He watched his wife as she pondered, her face tired and thoughtful, her hands resting on her stomach.

"I was really more tickled with the iron than anything," she said finally. "I had to use one of them white gas irons before."

With electricity, they also bought a well pump, a freezer and a refrigerator and a stereo record player, on which they listen to hymns.

Speaking of electricity, "I don't hardly know how we got along without it," she said.

The Chisums had not heard about the increase in R.E.A. interest rates. They were told that an Arkansas electric cooperative official had calculated that the increase might mean slightly higher electric bills. (He estimated that an average 1973 bill of $20 would rise to $31 by 1983 but that the higher interest would account for only $1.70 of that, with other rising costs making up the rest.)

The Chisums pay about $7 a month for electricity. What would an increase of $1 a month mean to them?

She said, "It would kind of hit us a little hard." Her voice was more apologetic than resentful.

Mr. HANSEN. Mr. President, yesterday in this Chamber when Senators were discussing various aspects of the current budget controversy, I indicated my belief that Congress has not faced up to its responsibility to set reasonable spending priorities, and that we must learn to say "no" at times when budget conditions call for spending less, rather than more money.

It is my intention to vote against S. 394, the bill to restore the 2-percent direct loan program for the rural electric co-ops across the country, and I want to comment on the reasons for my vote, which relate directly to what I said yesterday and have said many times in the past concerning Federal spending.

Let me preface my remarks by saying that there are 15 rural electric cooperatives in Wyoming, and a number of rural telephone cooperatives, whose services are absolutely essential to the residents of my State. The number of consumers per mile of line in Wyoming is less than half the national average, and Wyoming has been included in a list of several States where the change to 5 percent will be hardest to accommodate. I am keenly aware of the essential contributions made by REA's to the economic viability of rural areas like Wyoming.

Soon after the administration announced the termination of the 2-percent direct loan program, I met with a group of 20 REA officials from Wyoming, and at their urging, later met at length with REA Administrator Dave Hamil to try to determine the impact of the change in Wyoming. After these meetings, I forwarded to REA officials in Wyoming information as to the reasons given by the administration for the change, and the projected impact in Wyoming, and pledged to them my willingness to seek assistance for any co-op that could demonstrate with facts and figures its inability to survive under the 5-percent program. Mr. President, I ask that the text of my recent letter and the enclosures to Wyoming REA's be printed at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. HANSEN. Mr. President, many REA officials have candidly indicated that the majority of co-ops will be able to meet the 5-percent rate of interest. Consequently, I cannot support a bill which mandates, as S. 394 does, that direct loans at 2 percent be approved for all REA applicants, regardless of their individual condition or ability to pay a higher rate. The 2-percent loan program is a subsidy, because in today's money market, with the Treasury paying 7 to 8 percent, it represents a 5 or 6 percent direct subsidy. At a time when we face a growing rate of inflation and the possibility of a tax increase if spending is not curtailed, we cannot justify subsidies in instances where they are not required. S. 394 permits no flexibility, no authority for the Secretary to make the best use of tax dollars by approving the lower rate where it is required, but denying it where it is not required.

By contrast, as the situation now stands, it is my understanding the provision of the Rural Development Act which the administration cited in terminating the 2 percent direct loan program and announcing a 5-percent program, permits establishment of a rate of interest from as low as 1 percent to no higher than 5 percent. It is my further understanding the administration will be practical with respect to situations where REA's absolutely cannot survive under the 5-percent program.

I asked REA Administrator Dave Hamil about the possibility of assistance for REA's which find themselves in an

untenable position as a result of this new program, and apprised him of my promise to Wyoming REA's to plead the cause of any co-op that can demonstrate with facts and figures its inability to operate under the new program. Mr. Hamil said:

I have reason to believe that if there is an unusual circumstance that comes up that couldn't be remedied by some other factor like a merger, a consolidation, or elimination of cost factors that aren't absolutely necessary, that if taken to the Secretary, the matter could be handled by reconsideration of the interest factor. This won't happen in many cases, but there are some cases where it could, and if the need arises, I believe a reasonable approach would be taken.

I reiterate at this time my willingness to take up with the administration the case of any REA co-op from Wyoming that will require assistance under the new program. I believe this approach makes more sense than to pass legislation that requires the expenditure of funds that may or may not be justified at some point in the future, and denies all authority to the executive branch to allocate funds in the most efficient and economic manner.

Mr. President, a great deal has been said in recent weeks about who is or is not responsible for spending funds, and whether the President has taken from Congress its traditional and constitutional authority over the Nation's purse strings. There is more involved in the consideration of S. 394 than the question of whether or not REA's will have access to 2-percent direct loans in the future. Indeed, the Senate Agriculture Committee made it clear in its report on this legislation that it views this bill as a vehicle for serving notice to the President that Congress will not permit him to tamper with programs or impound funds. The committee noted:

However, the Committee feels that past failures of the Congress to challenge Presidential encroachment on Congressional prerogatives has encouraged the President to arrogate even more power to himself and to further ignore the Constitutional rights of the Congress. Therefore, the Committee feels that by passing S. 394, the Congress will be reasserting its Constitutional powers. The passage of this bill will clearly indicate that the Congress intends to call a halt to continued Presidential encroachments.

Mr. President, I agree that the decisions concerning spending should be made by Congress. The problem is that Congress has approved programs left and right, and spent money left and right, with no regard for the overall effect on our national economy and on the people whose taxes pay for these programs. If Congress wishes to regain control of spending, let it exercise some control and some responsibility, so the administration does not have to step in to prevent fiscal disaster.

Even now, as Congress rushes in righteous indignation to restore terminated programs and funding reductions, it makes no attempt to examine the merits of the programs affected to see if they might be made more efficient and equitable or to consider if the reductions may be justified. Congress seems only to be concerned with showing the President he cannot cut a program approved by Congress and get away with it—not with examining programs to see whether they can be revamped and made more responsive.

Mr. President, some REA officials in my State will not be pleased by my vote on S. 394, and I regret that, because we share the same hopes and ideals for our State and we have in common the belief that steps must be taken to improve conditions in rural areas. But I have promised all of the people of my State I will do everything I can to keep Federal spending at a reasonable level so as to avert a tax increase, and that I will work for efficiency in Congress and the Government whenever possible. To be consistent, I cannot support S. 394.

EXHIBIT 1

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, D.C., February 7, 1973.

To: Wyoming R.E.A. officials
From: Senator Cliff Hansen
Re: Changes in R.E.A. program

I appreciated the opportunity to meet recently with officials from Wyoming's Rural Electric Cooperatives about the termination of the two per cent direct loan program.

At that meeting, I indicated I would try to assist co-ops which could demonstrate their inability to meet the new five per cent interest rate, and I met at length after that with REA Administrator Dave Hamil to discuss this concern.

It is my understanding the Rural Development Act passed last year and cited as authority for the shift in the REA program permits the Administration to establish a rate of interest between one and five per cent. While the majority of REAs have indicated they will be able to get along with the five per cent interest rate, it has been pointed out there may be some whose customers could not afford rates under the new program.

I would be more than pleased to work with the Administration in behalf of any co-op that can demonstrate with facts and figures its inability to survive under the new program.

As you know, the action with respect to REA was a part of a government-wide effort to reduce federal spending—a goal I strongly support. Since the decision of REA, which followed other actions affecting agricultural programs, it has become apparent that program reductions and, in some cases, terminations have taken place in all agencies of government, including the White House, where three programs recently were terminated and an overall staff and spending reduction ordered. I indicated at the meeting with Wyoming REA officials my support for the intent of these spending reductions—to fight inflation and prevent a tax increase.

Perhaps the enclosed material will provide the answers to some questions you might have. If I can provide additional information or be of assistance, please let me know.

Thank you.

Unadvanced loan funds for all Wyoming systems as of December 31, 1972, $4,700,686.

Assumptions used

Amortization rate for 2% loan, 35-year period, 3-year deferment—$42.40 per thousand per year.

Amortization rate for 5% loan, 35-year period, 3-year deferment—$62.80 per thousand per year.

Effects of 5% interest on operations of the Lower Valley Power and Light, Inc., Afton, Wyoming, and Niobrara Electric Association, Inc., Lusk, Wyoming, for periods 1967—through 1972–1976–1981.

Year	Total plant increase	Increase in amortization payments	Increase per consumer per month	Increase per kilowatt-hour (sales)
Wyoming 11—Lincoln:				
1967–72	$1,559,978	$31,823	$0.438	
1976	3,277,465	66,860	.778	
1981	5,268,344	107,474	1.12	
Wyoming 22—Niobrara:				
1967–72	1,469,098	29,969	1.44	
1976	550,000	11,220	.518	
1981	971,726	19,823	.832	
State figures:				
1967–72	18,543,222	378,277	.90	$0.00038
1976	25,009,125	510,000	1.01	.00035
1981	58,738,269	1,198,255	1.97	.00056

It is impractical to examine the effects of a 5% interest rate on Wyoming borrowers on a per/consumer basis. While the consumer density is only 1.7 per/mile or less than half of the national average, approximately 67% of the total kWh sales within the state are for commercial and large industrial-type users. The kWh sales density per meter within the state are 27,909 kWh per meter per year as compared with 11,400 kWh per meter per year for all rural electric systems. For this reason we have also shown the effects of the higher amortization costs on a kWh sales basis. Even in 1981 this amounts to only .56 mills per kWh sales.

Unadvanced 2 percent funds for Wyoming

Riverton Valley Electric, Riverton, Wyo.	$161,067
Big Horn Rural Electric, Basin, Wyo.	0
Wyrulec Company, Lingle, Wyo.	0
Bridger Valley Electric, Mountain View, Wyo.	265,447
Wheatland Rural Electric, Wheatland, Wyo.	1,024,383
Lower Valley Power and Light, Afton, Wyo.	185,000
Garland Light and Power, Powell, Wyo.	0
Washakie Rural Electric Company, Worland, Wyo.	55,000
Rural Electric Company, Pine Bluffs, Wyo.	0
Hot Spring County Rural Electric Assn., Thermopolis, Wyo.	333,000
Carbon Power and Light, Inc., Saratoga, Wyo.	305,675
Niobrara Electric Assn., Inc., Lusk, Wyo.	113,031
Shoshone River Power, Inc., Cody, Wyo.	158,051
Sheridan-Johnson Rural Electrification, Sheridan, Wyo.	228,691
Tri-County Electric Association, Sundance, Wyo.	1,871,341
Total	4,700,686

THE REA LOAN

Question: What action has been taken concerning the Rural Electrification Program?

Answer: In December, 1972, the President issued an order terminating the government's two per cent direct loan program. Citing authority in the Rural Development Act passed in 1972 by Congress, a program was established whereby REAs will obtain financing on the open money market, with the government insuring all loans and paying interest costs in excess of five per cent.

Question: Why was this action taken?

Answer: The Administration has launched a government-wide effort to cut federal spending in order to avoid higher inflation and a tax increase. The change in the REA program was one of many actions taken to reduce federal outlays, and every agency of the government has been affected, including the White House, where three programs have been terminated and staff reductions have been ordered.

In support of its decision affecting REA, the Administration has made the following points:

1. The insured, five per cent loans of the future still involve a subsidy, since the average cost of borrowed money exceeds five per cent.

2. The change in the loan rate brings REA more in line with modern costs of credit. When REA was created 30 years ago, only 11 per cent of farms were electrified, and the two per cent rate was in line with the 1.9 per cent then charged in the money market. Now, more than 98 per cent of the farms are electrified, and the five per cent rate is more in line with current borrowing costs.

3. Of the seven million meters on REA lines, only 1.4 million are farm meters. The bulk of REA customers are non-farm rural residents, retirees, urban workers and industries, all of whom are able to pay rates to support the five per cent interest cost.

Question: Will the interest rate on loans already approved be increased to five per cent?

Answer: No. The impact of the increased rate will be as borrowers require additional loans to connect new customers or to expand their systems. Most sparsely settled farm areas already have their lines.

Question: What will happen to REAs whose loan applications were approved, but which haven't spent the funds yet?

Answer: All applications that were approved prior to the December cut-off date will be honored at the two per cent interest rate. At the present time, more than $800 million in unadvanced funds for REAs is on hand at the U.S. Treasury, and the interest rate for this money will be two per cent.

Of this amount, *$4,700,686* has been reserved for *Wyoming REA Co-ops* and will be available at *two per cent* when the Co-ops are ready to use the money. The total amount on hand at the Treasury Department is more than has ever been made available for REA in a single year.

Question: On a national basis, if the interest rate on all REA loans approved during the past five years had been five per cent instead of two per cent, how much more would the average REA consumer have had to pay?

Answer: The average cost increase above what was actually paid would have been 43¢ per consumer per month.

Question: What will be the estimated cost to REA consumers during the next five years under the five per cent interest program?

Answer: Based on a survey of future plans of 50 Co-ops nationwide (10 from each of five areas of the country), proposed expansion in the next five years using five per cent money would cost an additional 46¢ per consumer per month, and over the next 10 years, an additional $1.02 per consumer per month.

Question: In sparsely settled Wyoming, where the number of meters per mile is well below the national average and the costs are higher, how much more would the average REA consumer have had to pay during the past five years if the rate on actual loans had been five per cent?

Answer: The average cost above what was paid by Wyoming consumers during the past five years would have been 90¢ per consumer per month, or $10.80 per year.

The PRESIDING OFFICER. Who yields time?

Mr. HUMPHREY. Mr. President, might I ask the Senator from West Virginia what is the desire of the leadership at this time?

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator from Minnesota for allowing me to state that there will be no additional rollcall votes today.

If any Senator wishes to offer an amendment which would require a yea-and-nay vote, that vote would go over until tomorrow, together with the final passage of the bill.

Mr. HUMPHREY. Mr. President, if the Senator would yield, might I ask my colleagues if there is an intention to offer amendments or will amendments be offered on which there will be requests for yea-and-nay votes?

Mr. BELLMON. Mr. President, I have an amendment at the desk on which I will ask for the yeas and nays.

Mr. HUMPHREY. Does the Senator from Oklahoma want to call up the amendment for a yea-and-nay vote or just for debate and then discuss whether we want a yea-and-nay vote?

Mr. BELLMON. It is my intention at this time to call up the amendment and ask for a yea-and-nay vote.

Mr. HUMPHREY. We can determine that on tomorrow.

Mr. BELLMON. Yes.

Mr. ROBERT C. BYRD. Mr. President, is the Senator from Oklahoma ready to offer it?

Mr. BELLMON. I am.

Mr. President, I have an amendment at the desk which I ask to have stated.

The PRESIDING OFFICER. The amendment will be stated.

AMENDMENT NO. 16

The assistant legislative clerk read as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

"That the purpose of this Act is to provide for loans to certain borrowers under the Rural Electrification Act of 1936 which shall bear interest at the rate of 2 per centum per annum.

"SEC. 2. Section 4 of the Rural Electrification Act of 1936, as amended (7 U.S.C. 904), is amended by striking the second proviso and adding in lieu thereof the following:

"'*Provided, further,* That all such loans shall be self-liquidating within a period of not to exceed thirty-five years, and any loans which are made for the purpose of extending or upgrading distribution lines in areas where less than three customers per mile are or will be served shall bear interest at the rate of 2 per centum per annum:'".

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

Mr. BELLMON. I yield.

Mr. ROBERT C. BYRD. Mr. President, under the agreement there are 30 minutes on any amendment. Did the Senator from Oklahoma wish to consume any time on his amendment tonight? If not, we could by agreement not utilize any of his time on his amendment. The amendment would be the pending question before the Senate at such time as the Senate resumes consideration of the unfinished business on tomorrow; then we would have one-half hour on his amendment, following which time we could vote. Is that agreeable?

Mr. BELLMON. That is entirely agreeable.

Mr. HUMPHREY. That is agreeable to the Senator from Minnesota.

ORDER FOR TIME TO BEGIN RUNNING TOMORROW ON BELLMON AMENDMENT

Mr. ROBERT C. BYRD. Mr. President, with that understanding I ask unanimous consent that no time be charged today under the unanimous-consent agreement on the amendment just offered by the distinguished Senator from Oklahoma (Mr. BELLMON).

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

ORDER FOR ADJOURNMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stands in adjournment until 12 o'clock meridian tomorrow.

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

ORDER FOR RECOGNITION OF SENATOR ROBERT C. BYRD TOMORROW, FOR TRANSACTION OF ROUTINE MORNING BUSINESS, AND FOR THE CONSIDERATION OF THE UNFINISHED BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, following the remarks of the distinguished Senator from Minnesota (Mr. HUMPHREY) under the previous order, the junior Senator from West Virginia (Mr. ROBERT C. BYRD) be recognized for not to exceed 15 minutes; and that at the conclusion of his remarks there be a period for the transaction of routine morning business for not to exceed 30 minutes with statements therein limited to 3 minutes; at the conclusion of which the Senate resume the consideration of the unfinished business.

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

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

Mr. ROBERT C. BYRD. Mr. President, would the Senator from Oklahoma yield me 1 minute?

Mr. BELLMON. The Senator from Nebraska has control of the time.

Mr. CURTIS. Mr. President, I yield such time as the Senator may desire to the Senator from West Virginia.

ORDER FOR TIME AGREEMENT ON AERIAL HIJACKING BILL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent—this request having been cleared with Senators on both sides of the aisle and with the leadership on the other side of the aisle—that the time on the bill, S. 39, the aerial hijacking bill—at such time as it is called up and made the pending business—be limited to 2 hours, with the time to be equally divided between and controlled by the distinguished Senior Senator from New Hampshire (Mr. COTTON) and the distinguished Junior Senator from Nevada (Mr. CANNON), that the time on any amendment thereto be limited to 30 minutes, that the time on any debatable motion or appeal be limited to 20 minutes, and that the agreement be printed in the usual form.

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

The text of the unanimous-consent agreement is as follows:

Ordered, That when the Senate proceeds to the consideration of the bill S. 39, the

so-called aerial hijacking bill debate on any amendment, shall be limited to 30 minutes and debate on any debatable motion, or appeal, shall be limited to 20 minutes, to be equally divided and controlled by the mover of any such amendment or motion and the majority leader: *Provided*, That in the event the majority leader is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the minority leader or some Senator designated by him: *Provided further*, That no amendment that is not germane to the provisions of the said bill shall be received.

Ordered further, That on the question of the final passage of the said bill debate shall be limited to 2 hours, to be equally divided and controlled, respectfully, by the Senator from Nevada (Mr. Cannon) and the Senator from New Hampshire (Mr COTTON): *Provided*, That the said leaders, or either of them, may, from the time under control on the passage of the said bill, allot additional time to any Senator during the consideration of any amendment, motion, or appeal.

RESTORATION OF RURAL ELECTRIC AND TELEPHONE DIRECT LOAN PROGRAMS

The Senate continued with the consideration of the bill (S. 394) to amend the Rural Electrification Act of 1936, as amended, to reaffirm that such funds made available for each fiscal year to carry out the programs provided for in such act be fully obligated in said year, and for other purposes.

Mr. CURTIS. Mr. President, I yield such time as he desires to the distinguished Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. McCLURE. Mr. President, I thank the Senator from Nebraska for yielding time to me.

I take this time to give notice that I will call up my amendment tomorrow at an appropriate time.

I thank the Senator for yielding.

Mr. HUMPHREY. Mr. President, is the amendment at the desk?

Mr. McCLURE. The amendment is at the desk.

Mr. HUMPHREY. I thank the Senator.

Mr. ROBERT C. BYRD. Mr. President, has the Senator from Idaho asked that his amendment be printed in the RECORD?

Mr. McCLURE. No, I had not.

Mr. President, I ask unanimous consent that my amendment be printed in the RECORD.

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

The amendment is as follows:

AMENDMENT NO. 17

On Page 2, line 20—after "3", insert "(a)".

On Page 3, between lines 3 and 4—insert "(b)", as follows:

(b) Section 4 of the Rural Electrification Act of 1936, as amended (7 U.S.C. 904) is amended by adding at the end thereof the following: "Notwithstanding any other provision of this act, all loans made under this section shall be made as follows:

(1) A qualified borrower shall be entitled to a direct loan on the total amount of the approved loan at a rate of 2 per centum per annum if, on the basis of the Time Interest Earned Ratio and the Debt Service Coverage prescribed in REA Bulletin 20–14 (as in effect in July 1972), the Time Interest Earned Ratio of such borrower is less that 1.5 or the Debt Service Coverage of such borrower is less than 1.25.

(2) A qualified borrower, if the Time Interest Earned Ratio of such borrower is 1.5 and above and the Debt Service Coverage is 1.25 and above, shall be entitled to loans in the following amounts, based on the Plant Revenue Ratio as defined in REA bulletin 20–14 (as in effect in July 1972):

(i) A direct loan at a rate of 2 per centum per annum for one-half of the amount of the approved loan and an insured loan at a rate of 5 per centum per annum for one-half of the amount of the approved loan, when the Plant Revenue Ratio is 9.01 and above;

(ii) a direct loan at a rate of 2 per centum per annum for one-fourth of the amount of the approved loan and an insured loan at a rate of 5 per centum per annum for three-fourths of the amount of the approved loan, when the Plant Revenue Ratio is 8.01 to 9;

(b) (2) (iii) an insured loan at a rate of 5 per centum per annum for the total amount of the approved loan, when the Plant Revenue Ratio is 8 and below."

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, there will be no further debate on the pending bill today. And in accordance with the previous understanding, the time on the amendment by the Senator from Oklahoma (Mr. BELLMON) will begin running tomorrow upon the resumption of the consideration of the unfinished business. I understand that a yea-and-nay vote will then occur on the amendment of the Senator from Oklahoma.

Mr. HUMPHREY. That is to be asked for tomorrow.

Mr. ROBERT C. BYRD. The Senator is correct.

The Senator from Idaho (Mr. McCLURE) has an amendment which I presume he will call up immediately upon the disposition of the amendment by the Senator from Oklahoma (Mr. BELLMON).

So, we will have at least two rollcall votes on tomorrow and possibly three before this matter is disposed of, after which the Senate will proceed to the consideration of the aerial hijacking bill on which there is a time limitation, with votes expected thereon.

Mr. CURTIS. Mr. President, for the RECORD, how much time remains to each side on the bill?

The PRESIDING OFFICER. The Senator from Nebraska has 51 minutes remaining. The Senator from Minnesota has 15 minutes remaining.

Mr. ROBERT C. BYRD. Mr. President, I have already stated for the record sufficiently, I think, the program. I will restate it briefly.

The Senate will convene at 12 o'clock meridian on tomorrow. After the two leaders have been recognized under the standing order, the distinguished Senator from Minnesota (Mr. HUMPHREY) will be recognized for not to exceed 15 minutes. He will be followed by the junior Senator from West Virginia (Mr. ROBERT C. BYRD) for not to exceed 15 minutes, after which there will be a period for the transaction of routine morning business for not to exceed 30 minutes with statements therein limited to 3 minutes, at the conclusion of which the Senate will resume its consideration of the REA bill.

There will be yea-and-nay votes expected on that bill and amendments thereto on tomorrow, after which the Senate will proceed to the consideration of the aerial hijacking bill. A time limitation agreement has been entered thereon, and votes are expected.

ADJOURNMENT

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move in accordance with the previous order that the Senate stand in adjournment until 12 o'clock meridian tomorrow.

The motion was agreed to; and at 5:50 p.m., the Senate adjourned until tomorrow, Wednesday, February 21, 1973, at 12 o'clock meridian.

NOMINATIONS

Executive nominations received by the Senate February 20, 1973:

DEPARTMENT OF AGRICULTURE

Robert W. Long, of California, to be an Assistant Secretary of Agriculture, vice Thomas K. Cowden, resigned.

CONFIRMATION

Executive nomination confirmed by the Senate February 20, 1973:

DEPARTMENT OF THE INTERIOR

John Henry Kyl, of Iowa, to be an Assistant Secretary of the Interior.

(The above nomination was approved subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

EXTENSIONS OF REMARKS

OWEN L. HEGGS, JR.

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 20, 1973

Mr. STOKES. Mr. Speaker, it was with a great feeling of pride that I recently learned the identity of the new president of the Cleveland Urban League. The man elected to that important post was none other than my former administrative assistant, Mr. Owen L. Heggs, Jr. I know that Owen's many friends on Capitol Hill will want to join me in congratulating him upon his great achievement.

Owen Heggs is a young man who is destined to become a leader in the city of Cleveland. I can think of no man more deserving of this position of leadership and I wish him and his lovely wife both great success and happiness.

The following is a description of some of Mr. Heggs' important accomplishments: